

IN THE SUPREME COURT FOR THE STATE OF NEVADA

FRANCISCO SILVA, AN
INDIVIDUAL,
Appellant,

vs.

ED CLAY, AN INDIVIDUAL; SCOTT
NELSON, AN INDIVIDUAL;
DEDDRICK PERRY, AN
INDIVIDUAL; AND CPI
MANAGEMENT GROUP, LLC, A
NEVADA LIMITED LIABILITY
COMPANY
Respondents.

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Clerk of Supreme Court

Supreme Court Case No. 90651
Dist. Ct. Case No. A-25-909767

Appeal from the Eighth Judicial
District Court

RESPONDENTS' APPENDIX VOLUME 1

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Dated this 19th day of December 2025.

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CERTIFICATE OF SERVICE

I certify that on the date indicated below, I served a copy of this RESPONDENTS' APPENDIX upon all parties as follows:

By electronic service. Pursuant to CM/ECF System, registration as a CM/ECF user constitutes consent to electronic service through the Court's transmission facilities. The Court's CM/ECF system sends an e-mail notification of the filing to the parties and counsel of record listed above who are registered with the Court's CM/ECF system.

By personally serving it upon him/her; or

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

DATED this 19th day of December 2025.

By: /s/ Leilani Gamboa
An employee of BENDAVID LAW

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**DISTRICT COURT
CLARK COUNTY NEVADA**

Francisco Silva,

Plaintiff,

vs.

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

Defendants,

CPI Management Group, LLC,

Nominal Defendant.

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

**ORDER IMPLEMENTING
COURT'S DECISION
DATED JULY 3, 2025,
GRANTING IN PART,
DENYING IN PART, AND
HOLDING IN ABEYANCE
IN PART MEMBER
DEFENDANTS' MOTION TO
DISMISS AND GRANTING
IN PART AND DENYING IN
PART CPI'S MOTION TO
DISMISS¹**

¹ The court received a contested order. The court has modified this order to resolve the parties' disputes. The court has left side filed the contested order, but any party may file a proposed order into the record under a notice of proposed order.

1 Defendants, Ed Clay, an individual (“Defendant Clay”), Scott Nelson, an individual
2 (“Defendant Nelson”), and Deddrick Perry, an individual (“Defendant Perry”), and
3 Nominal Defendant CPI Management Group, LLC, a Nevada limited liability company
4 (“CPI”) (together, the “Defendants”), Motions to Dismiss Plaintiff’s First Amended
5 Complaint having come for hearing on May 13, 2025, with Jeffery A. Bendavid, Esq., and
6 Jacqueline Vokoun, Esq. of Bendavid Law, and Whitney Barrett, Esq. of Christiansen
7 Trial Lawyers appearing on behalf of Defendants, and V.R. Bohman, Esq. and Xyzlo Lee,
8 Esq. of Snell & Wilmer appearing on behalf of Plaintiff Francisco Silva (“Plaintiff”), in
9 Department 9, with the Honorable Judge Maria Gall presiding, and the Court having
10 considered the motions, and papers on file, and the arguments of counsel at the time of
11 hearing, and good cause appearing, hereby orders as follows:

12 **THE COURT HEREBY ORDERS** that Defendants Ed Clay, Deddrick Perry, and
13 Scott Nelson’s Motion to Dismiss Plaintiffs Third, Fourth, Seventh, Eighth, and Tenth
14 Through Sixteenth Claims for Relief Pursuant To N.R.C.P. 12(B)(5) is GRANTED IN
15 PART, DENIED IN PART, and held in ABEYANCE IN PART, in accordance with the
16 Court’s Decision dated July 3, 2025 (the “Decision”), adopted in full and appended hereto.
17 *Doc. #58, Decision on the Member Defendants' and the Company's Motions to Dismiss.*

18 **THE COURT FURTHER ORDERS** that Nominal Defendant CPI’s Motion to
19 Dismiss Plaintiffs First Amended Verified Complaint for a Derivative Action and/or
20 Motion to Dismiss Plaintiffs Fifth, Sixth, and Ninth Claims for Relief Pursuant To
21 N.R.C.P. 12(B)(5) is GRANTED IN PART and DENIED IN PART in accordance with
22 the Court’s Decision dated July 3, 2025, adopted in full and appended hereto. *Id.*

23 **IT IS SO ORDERED.**

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25 Dated this 18th day of July, 2025

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28 **02D 9B0 B883 2646**
Maria Gall
District Court Judge

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Respectfully submitted by:
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1 DECN

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DISTRICT COURT

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CLARK COUNTY, NEVADA

4 Francisco Silva,

Case No.: A-25-909767-B

5

Plaintiff,

Dept. No. IX

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vs.

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Ed Clay, et al.,

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Defendants,

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CPI Management Group, LLC,

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Nominal Defendant.

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Decision on the Member Defendants' and the Company's Motions to Dismiss

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This decision addresses the motion to dismiss filed by Defendants Ed Clay, Scott Nelson, and Deddrick Perry (collectively, the "Member Defendants")¹ and the motion to dismiss filed by Nominal Defendant CPI Management Group LLC ("CPI" or the "Company"). Having considered the briefs, all pleadings and papers on file, and the oral argument of counsel, the court sets forth its intended disposition and decision to GRANT the Member Defendants' motion IN PART, to DENY it IN PART, and to hold it in ABEYANCE IN PART, and to GRANT the Company's motion in PART and to DENY it IN PART.²

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I. Background

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Plaintiff Francisco Silva and Defendants Ed Clay, Scott Nelson, and Deddrick Perry were business partners in Nominal Defendant CPI Management, LLC. CPI

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¹ There are times either in filed papers or on the record where the Member Defendants are referred to by the parties and/or the court as the "Business Defendants."

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² To the extent the court is granting the motions to dismiss, it does so without prejudice and with leave to replead.

28

1 does business as “Cellular Performance Institute” and provides stem cell therapy.
2 Silva is a biologist and was CPI’s chief science officer. Clay is CPI’s chief executive
3 officer; Nelson is CPI’s marketing and recruitment officer; and Perry is CPI’s finance
4 and supply chain officer.

5 Silva and the Member Defendants signed an Operating Agreement in 2021
6 that governs “their respective rights, duties, and responsibilities with respect to” CPI.
7 Article VI of the Operating Agreement sets forth the members’ fiduciary duties, to
8 include what the members defined as the fiduciary duty of loyalty at Article 6.1, the
9 duty of care at Article 6.2, the duty of good faith and fair dealing at Article 6.3.
10 Article VI also sets forth the members’ right to rely on records and information at
11 Article 6.4 and to indemnification from the Company at Article 6.5.

12 The Operating Agreement at Exhibit A reflects the members’ capital
13 contributions, financial rights, and voting rights. In addition, to the monetary
14 contributions shown on Exhibit A, it appears that Silva may have contributed
15 “original” stem cell lines from the umbilical cords of his two children for use at CPI’s
16 Tijuana, Mexico clinic. The “original” stem cell lines come from certain “master” stem
17 cell lines. CPI duplicates the “original” stem cells and then injects the duplicated
18 “original” stem cells into patients.

19 The relationship between Silva and the Member Defendants soured in 2024.
20 Silva asserts that in April 2024, the Member Defendants informed him that
21 Defendant Julie Freeman—CPI’s chief financial officer since 2021—had embezzled
22 approximately \$5 Million from CPI. Silva took it upon himself to investigate
23 Freeman’s alleged embezzlement because the Member Defendants purportedly failed
24 to give him more information.

25 Silva says that during the course of his investigation, he discovered large
26 money transfers from CPI to the Member Defendants and/or use of CPI funds by the
27 Member Defendants to purchase non-CPI assets. Such monies included \$900,000 in
28 pre-tax distributions to the Member Defendants that Silva did not receive; the

1 purchase of real property in Longview, Texas, now owed by Advanced Integrated
2 Medical Solutions, LLC, an entity owned by the Member Defendants; and the
3 purchase of real property in Nashville, Tennessee, now owned by Russell & Fifth,
4 LLC, another entity owned by the Member Defendants. Silva believes that Member
5 Defendants worked with Freeman to divert more than \$9 Million in away from CPI
6 and Silva for their own personal gain.

7 In November 2024, the Member Defendants terminated Silva from his position
8 as CPI's chief science officer, although Silva remained a CPI member. On December
9 18, 2024, there was a member meeting. At that meeting, Silva asked whether the
10 Member Defendants used company funds to purchase the Tennessee property. Silva
11 asserts that Clay claimed the Member Defendants used their own funds for this
12 purchase. The Member Defendants then voted to terminate Silva's membership
13 interest without compensation.

14 In a letter to CPI dated January 10, 2025, Silva withdrew his consent for CPI
15 to use the "original" stem cells and "duplicated" cells derived from the "original" stem
16 cell lines. CPI rejected his withdrawal, asserting Silva does not have ownership of
17 the lines and that his withdrawal of consent is otherwise ineffective.

18 Silva then filed this lawsuit and makes the following claims in his first
19 amended complaint (FAC): (1) breach of the operating agreement against the Member
20 Defendants; (2) breach of the covenant of good faith and fair dealing against the
21 Member Defendants; (3) breach of the duty of loyalty against the Member
22 Defendants; (4) breach of the duty of care against the Member Defendants; (5)
23 conversion on behalf of CPI against Freeman; (6) conversion on behalf of CPI against
24 the Member Defendants; (7) breach of fiduciary duty against the Member Defendants;
25 (8) negligent hiring, supervision, and retention against the Member Defendants; (9)
26 negligent hiring, supervision, and retention on behalf of CPI against the Member
27 Defendants; (10) accounting; (11) minority member oppression against the Member
28 Defendants; (12) conversion against the Member Defendants; (13) negligence against

1 the Member Defendants; (14) misappropriation of trade secrets against the Member
2 Defendants; (15) unjust enrichment against the Member Defendants; and (16)
3 deceptive trade practices against the Member Defendants.

4 Silva later filed a motion for preliminary injunction based on his claim against
5 the Member Defendants for conversion of his “original” stem cell lines. The court
6 denied the preliminary injunction by order dated April 30, 2025 (Dkt. No. 44), finding
7 that Silva failed to persuade the court that he is either likely to prevail on his
8 conversion claim or that he will be irreparably harmed by the conversion. Silva has
9 appealed the denial; the appeal is pending.

10 The Member Defendants and CPI moved to dismiss all claims Silva makes
11 against them in the FAC, other than the claims for breach of the operating agreement
12 and breach of the covenant of good faith and fair dealing. The court addresses these
13 motions in turn, starting with the Member Defendants’ motion to dismiss.

14 **II. Member Defendants’ Motion to Dismiss**

15 **a. Application of the Business Judgment Rule to Silva’s Breach of** 16 **Fiduciary Duty Claims**

17 The court first addresses the application of the business judgment rule in
18 connection with evaluating the sufficiency of Silva’s breach of fiduciary duty claims.

19 NRS 78.138(3) codifies Nevada’s business judgment rule for corporate
20 fiduciaries. It provides that “[e]xcept as otherwise provided in subsection 1 of NRS
21 78.139, directors and officers, in deciding upon matters of business, are presumed to
22 act in good faith, on an informed basis and with a view to the interests of the
23 corporation. A director or officer is not individually liable for damages as a result of
24 an act or failure to act in his or her capacity as a director or officer except as
25 described in subsection 7.” NRS 78.138(3).

26 In contrast to NRS 78, NRS 86 governing limited liability companies (LLC)
27 does not codify the business judgment rule for LLC fiduciaries, like the Member
28 Defendants. With no statutory business judgment rule, the Member Defendants

1 assert that CPI incorporated the business judgment rule as part of Articles 6.3, 6.4,
2 and 6.5 of the Operating Agreement, which state in part:

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

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

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

20 Silva disagrees with the Member Defendants' reading of the Operating
21 Agreement. He argues that because NRS 86 is silent on the business judgment rule,
22 because LLCs are creatures of contract, and because no business judgment rule exists
23 in the operating agreement, the court should reject the business judgment rule in
24 assessing the sufficiency of the complaint.

25 The court has reviewed the Operating Agreement. While the court agrees with
26 Silva that the Operating Agreement does not expressly set forth a business judgment
27 rule or similar presumption, the court finds that by adopting fiduciary duties at
28 Articles 6.1, 6.2, and 6.3, the members incorporated the business judgment rule to
assess whether they breached those duties. An explanation follows.

 The business judgment rule is a standard of review, James D. Cox & Thomas
Lee Hazen, *Corporations* § 10.01 at 184 (2d ed.2003), and presumes that "in making a
business decision the directors of a corporation acted on an informed basis ... and in
the honest belief that the action taken was in the best interests of the company."
Aronson v. Lewis, 473 A.2d 805, 812 (Del.1984). *See also Shoen v. SAC Holding*
Corp., 122 Nev. 621, 632, 137 P.3d 1171, 1179 (2006) (citing to *Aronson*).

1 In “The Duty of Finest Loyalty and Reasonable Decisions: The Business
2 Judgment Rule in Unincorporated Business Organizations,” authors Beth Miller and
3 Tom Rutledge raise this pointed question:

4 If all fiduciary relationships in business organizations
5 include a duty of care, regardless of the statutory or
6 common law formulation of that duty, is there any reason
7 the same judicial standard of review should not apply to
8 every challenge asserting a violation of the duty of care, or
9 are the standards of care of the different organizational
10 forms of such a different nature that a single principle of
11 review is inappropriate?

12 Elizabeth S. Miller & Thomas E. Rutledge, *The Duty of Finest Loyalty and*
13 *Reasonable Decisions: The Business Judgment Rule in Unincorporated Business*
14 *Organizations?*, 30 Del. J. Corp. L. 343, 344 (2005).

15 Answering that question, Miller and Rutledge acknowledge that the parties in
16 an unincorporated organization, such as an LLC, should be able to freely contract and
17 that the court should assume that the parties said what they meant to say in
18 organizing the entity. They, however, acknowledge an exception:

19 [I]f the agreement in question incorporates a corporate
20 standard of care (either by reciting the corporate
21 formulation in the document or by a statement to the effect
22 that those in control of the unincorporated business are
23 subject to the standards of a corporate director), and the
24 state law applies the business judgment rule, it would be
25 appropriate to apply the rule to the actions of those acting
26 on behalf of the unincorporated organization. While doing
27 so involves an assumption that the drafter meant to
28 incorporate the business judgment rule, it is a greater
assumption to determine that the drafter sought to reject
the standard of review applied to that standard of care.”

Id. at 384.

23 Miller and Rutledge are right. It makes no sense to incorporate a duty of care
24 without applying the business judgment rule to determine whether that duty has
25 been breached—at least not without leading to an absurd result. With the fiduciary
26 standard in one hand but without the business judgment rule in the other, the fact
27 finder is left to determine whether the complained of transaction could have gone
28

1 better. This is what the business judgment rule is meant to stop; otherwise, business
2 will slowly stop as disgruntled stockholders and members repeatedly ask the court to
3 step in the place of business fiduciaries and second-guess decisions made by those
4 who are better positioned to act on behalf of the company. *See Wynn Resorts, Ltd. v.*
5 *Eighth Jud. Dist. Ct. in & for Cnty. of Clark*, 133 Nev. 369, 378, 399 P.3d 334, 344
6 (2017) (“Accordingly, we reiterate that the business judgment rule goes beyond
7 shielding directors from personal liability in decision-making. Rather, it also ensures
8 that courts defer to the business judgment of corporate executives and prevents
9 courts from substituting their own notions of what is or is not sound business
10 judgment if the directors of a corporation acted on an informed basis, in good faith
11 and in the honest belief that the action taken was in the best interests of the
12 company.” (internal quotations, citations, and brackets omitted).)

13 It would be a “knee jerk” response for this court to find that the business
14 judgment rule does not apply because NRS 86 does not codify the NRS 78.138(3)
15 business judgment rule and the members did not otherwise include its presumption
16 in CPI’s operating agreement. That response not only ignores the absurd result
17 explained above, it ignores the common law principles underpinning the business
18 judgment rule. *Gries Sports Enters., Inc. v. Cleveland Browns Football Co.*, 26 Ohio
19 St. 3d 15, 19–20, 496 N.E.2d 959, 963–64 (1986) (“The business judgment rule is a
20 principle of corporate governance that has been part of the common law for at least
21 one hundred fifty years.”) Although Nevada codified the business judgment rule for
22 purposes of corporations in NRS 78, Nevada also recognizes the common law, and this
23 court sees no reason why it should or would not do so for LLCs. *See, e.g.*, NRS 1.030
24 (“Application of common law in courts. The common law of England, so far as it is not
25 repugnant to or in conflict with the Constitution and laws of the United States, or the
26 Constitution and laws of this State, shall be the rule of decision in all the courts of
27 this State.”)

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1 Supporting this result are those other state courts that have extended the
2 business judgment rules to LLCs, even where, like Nevada, the state statutes do not
3 codify the business judgment rule. *See, e.g., HLHZ Invs., LLC v. Plaid Pantries, Inc.*,
4 No. CIV. 06-797-KI, 2007 WL 3129985, at *17 (D. Or. Oct. 23, 2007) (acknowledging
5 that the Oregon statutes do not codify the business judgment rule for LLCs, but “I do
6 not see anything in the statutes, however, to persuade me that the business judgment
7 rule would not apply to managers of Oregon LLCs); *Blackmore Partners, L.P. v. Link
8 Energy, LLC*, 864 A.2d 80, 85–86 (Del. Ch. 2004) (applying the business judgment
9 rule to the decision of directors of an LLC to approve the sale of the LLC).

10 Thus, the business judgment rule applies in assessing the sufficiency of Silva’s
11 pleading breach of fiduciary duty claims.

12 That said, the Member Defendants appear to urge the court to apply not only
13 the business judgment rule’s standard of review but also the exculpation provision
14 found at NRS 78.138(7). This provision provides that “a director or officer is not
15 individually liable to the corporation or its stockholders or creditors for any damages
16 as a result of any act or failure to act in his or her capacity as a director or officer
17 unless: (a) The presumption established by subsection 3 has been rebutted [i.e., the
18 business judgment rule]; and (b) It is proven that (1) The director’s or officer’s act or
19 failure to act constituted a breach of his or her fiduciary duties as a director or officer;
20 and (2) Such breach involved intentional misconduct, fraud or a knowing violation of
21 law.” NRS 78.138(7).

22 It is one thing to apply the common law business judgment rule as a standard
23 of review, given the Operating Agreement’s plain incorporation of fiduciary duties. It
24 is another thing to read in an exculpation provision—as framed in statute—where the
25 Operating Agreement makes no mention of exculpation absent fraud, intentional
26 misconduct, or knowing violation of the law. Instead, the Operating Agreement
27 exculpates only for good faith reliance on the company’s records. Thus, the court
28 declines the Member Defendants’ request to read in NRS 78.138(7).

1 The court now addresses each claim the Member Defendants seek to dismiss.

2 **b. Third Claim - Breach of the Duty of Loyalty**

3 Article 6.1 of the operating agreement limits a member’s duty of loyalty as
4 follows:

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

16 To rebut the business judgment rule’s presumption of good faith via an
17 allegation of breach of the duty of loyalty, Plaintiff must allege particularized facts
18 that “show[] that the fiduciary had a personal interest in the transaction”
19 *Guzman v. Johnson*, 137 Nev. 126, 132, 483 P.3d 531, 537 (2021).

20 Silva alleges that the Member Defendants breached their duty of loyalty by
21 failing to properly allocate funds belonging and due to CPI and Silva,³ failing to hold
22 as trustee the property, profit, and/or benefits produced as a result of CPI’s business,
23 and misappropriating CPI’s assets and/or misappropriating opportunities available to
24 CPI for their own personal enrichment. Silva asserts that the Member Defendants
25 diverted Silva’s and CPI’s funds to various other entities of which Silva is not a
26 partner, including CHIPSA/TAM for a multimillion-dollar renovation and to purchase
27 a property in Tennessee and fund mortgage payments on an apartment complex in
28 Texas. Silva specifies that the Texas property is owned by a company called
Advanced Integrated Medical Solutions, LLC, which is in turn owed by the Member

³ It seems to the court that any breach of loyalty claim based on misappropriation of
CPI’s funds may be a derivative claim, not a direct claim. The Member Defendants
did not raise this argument, and thus the court does not consider it beyond noting the
same here.

1 Defendants, and that the Tennessee property is owned by a company called Russell &
2 Fifth, LLC, which is in turn owned by the Member Defendants.

3 The court finds that Silva has alleged particularized facts that show the
4 Member Defendants had a personal interest in the transactions at issue and, thus,
5 has rebutted the business judgment rule as applied to the duty of loyalty. Thus,
6 Silva's duty of loyalty claim survives the motion to dismiss.

7 **c. Fourth Claim - Breach of the Duty of Care**

8 Article 6.2 of the Operating Agreement sets forth a member's duty of care as
9 follows:

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

20 Silva alleges that the Member Defendants breached their duty of care "both
21 with respect to CPI and to Silva, by acting to improperly enrich themselves." This
22 allegation, however, invokes the duty of loyalty, not the duty of care. *See TVI Corp.*
23 *v. Gallagher*, No. CV 7798-VCP, 2013 WL 5809271, at *13 (Del. Ch. Oct. 28, 2013)
24 ("The duty of care, however, is a process-oriented duty, and merely alleging that
25 Defendants made poor business decisions does not rebut the business judgment rule
26 or state a claim for breach of the duty of care. The Complaint does not allege any
27 specific facts to support an inference that Defendants' decisionmaking process was
28 grossly negligent or uninformed. Instead, the core of Plaintiffs' allegations are that
the Defendants made decisions that were self-interested and motivated by bad faith.
Such claims, however, invoke the duty of loyalty, not the duty of care.")

In Silva's opposition, he argues that his duty of care claims against the
Member Defendants go beyond mere improper enrichment, to include: (1) ignoring

1 distribution requirements to enrich themselves by diverting funds to other entities;
2 (2) terminating Silva from his officer position and then terminating Silva's
3 membership interest and pocketing compensation tied to that interest; and (3)
4 something about Freeman, although it is not entirely clear whether that something
5 has to do with hiring Freeman in the first instance or now seeking to dismiss the
6 derivative claims Plaintiff makes against her.

7 Again, Silva's allegations concerning diversion of funds sound in breach of the
8 duty of loyalty, not duty of care. Also, it is entirely unclear to the court what duty of
9 care allegations Silva makes about Freeman. Regardless, Silva has not alleged
10 particularized facts to show that the Member Defendants' decisions about Freeman—
11 whatever they may be—are grossly negligent or uninformed. Silva has also failed to
12 allege particularized facts, or any facts, that show the Member Defendants
13 terminated him from his officer position or terminated his membership interests on a
14 uniformed or grossly negligent basis. *See Friedman v. Maffei*, No. CV 11105-VCMR,
15 2016 WL 1555331, at *10 (Del. Ch. Apr. 13, 2016) (“The ‘gross negligence’ inquiry
16 focuses on whether the directors considered ‘all material information reasonably
17 available to them.’”) Instead, Silva merely alleges that the Member Defendants'
18 undertook actions inconsistent with the Operating Agreement. His claim is better
19 suited as one for breach of the Operating Agreement.

20 Thus, Silva's duty of care claim does not survive the motion to dismiss.

21 **d. Seventh Claim - Breach of Fiduciary Duty**

22 Article 6.3 of the Operating Agreement sets forth a member's duty of good faith
23 and fair dealing as follows:

24 Each Member shall discharge his duties and exercise any of
25 his rights consistently with the obligation of good faith and
26 fair dealing which he owes to the Company and the other
27 Members. A Member does not violate a duty or obligation to
28 the Company merely because the Member's conduct
furtheres 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

1 the Member are the same as those of a Person who is not a
2 Member, subject to other applicable law.

3 In the FAC, Silva alleges that the Member Defendants “owe [him] a fiduciary
4 duty imposed by the Operating Agreement and Nevada law” and they breached that
5 duty by “by improperly purporting to vote Silva out of CPI without authorization and
6 deceitfully misappropriating funds belonging or otherwise due to him.” In their
7 motion to dismiss, the Member Defendants point out that NRS 86 does not provide for
8 a “fiduciary duty”, other than the implied covenant of good faith and fair dealing. The
9 Member Defendants point out that Silva has already alleged a claim for breach of the
10 implied covenant in his second claim for relief.

11 In opposition, Silva points to the Operating Agreement’s imposition of an
12 express duty of good faith and fair dealing. Despite pointing to this distinctive duty,⁴
13 Silva describes the duty as being the same as the implied covenant of good faith and
14 fair dealing. For instance, Silva cites to *Hilton Hotels Corp. v. Butch Lewis Prods.,*
15 *Inc.*, 107 Nev. 226, 234, 808 P.2d 919, 923 (1991) and *Nelson v. Heer*, 123 Nev. 217,
16 226, 163 P.3d 420, 427 (2007), and asserts the duty of good faith and fair dealing is
17 breached when “[w]hen one party performs a contract in a manner that is unfaithful
18 to the purpose of the contract and the justified expectations of the other party are
19 thus denied,” and thus, it “prohibits arbitrary or unfair acts by one party that work to
20 the disadvantage of the other.” *Hilton Hotels Corp.* concerned breach of the implied
21 covenant of good faith and dealing. *Hilton Hotels*, 107 Nev. at 233 (“Hilton’s action
22 for breach of the implied covenant of good faith and fair dealing is problematical.”) So
23 did *Nelson*. *Nelson*, 123 Nev. at 226. (“Heer failed to establish that Nelson breached
24 the implied covenant of good faith and fair dealing.”)

25
26
27 ⁴ A contracted for duty of good faith and fair dealing is different from the implied
28 covenant of good faith and fair dealing. See *Gerber v. Enter. Prods. Holdings, LLC*,
67 A.3d 400, 418–20 (Del. 2013).

1 Given Silva’s description of his seventh claim as being one for breach of the
2 implied covenant of good faith and fair dealing, the court agrees that it is duplicative
3 of Silva’s second claim.

4 Thus, Silva’s breach of fiduciary duty claim—couched as a claim for breach of
5 the implied covenant of good faith and fair dealing—does not survive the motion to
6 dismiss.

7 **e. Eighth Claim – Negligent Hiring, Supervision, and Retention**

8 The court agrees with the Member Defendants that a claim of negligent hiring,
9 etc., must be made against an employer, not an employee or other agent who
10 happened to make the hiring decision. *See Hall v. SSF, Inc.*, 112 Nev. 1384, 1392,
11 930 P.2d 94, 98 (1996) (“The tort of negligent hiring imposes a general duty on the
12 *employer* to conduct a reasonable background check on a potential employee to ensure
13 that the employee is fit for the position. . . . An *employer* breaches this duty when it
14 hires an employee even though the *employer* knew, or should have known, of that
15 employee’s dangerous propensities.”)

16 At no point does Silva allege the Member Defendants employed Freeman, as
17 opposed to CPI. Rather, the only reasonable inference that the court can draw from
18 Silva’s allegation that Freeman was CPI’s chief financial officer is that CPI was her
19 employer. To the extent Silva alleges that the Member Defendants carelessly caused
20 CPI to hire Freeman, that claim is subsumed by Silva’s claim for breach of the duty of
21 care. (Silva, however, has failed to allege particularized facts to rebut the business
22 judgment rule under which that claim must be reviewed.)

23 Further, the court agrees with the Member Defendants that Silva’s claim for
24 negligent hiring, etc., sounds as a derivative claim, even if he styles it as a direct
25 claim. To determine whether a claim is derivative or direct, Nevada applies the
26 direct harm test. *Parametric Sound Corp. v. Eighth Judicial Dist. Court of Nev.*, 113
27 Nev. 417, 427, 401 P.3d 1100, 1108 (2017) (aligning Nevada jurisprudence with
28 Delaware’s “Direct Harm Test”). Pursuant to the direct harm test, courts consider (1)

1 who suffered the alleged harm, and (2) who would receive the benefit of any recovery
2 or remedy to determine whether a claim is derivative or direct. *Id.* In setting forth
3 the negligent hiring, etc., claim, Silva alleges that “Freeman stole from CPI and
4 converted CPI funds for over two years due to Clay, Nelson, and Perry’s lack of
5 oversight.” This allegation alone demonstrates that CPI suffered the harm and CPI
6 would receive the benefit of any recovery, making the claim derivative.

7 In opposition, Silva tries to save the negligent hiring, etc., claim by saying that
8 he alleged Freeman made distributions of approximately \$900,000 to the Member
9 Defendants but not to Silva, and thus, he has been directly harmed by Silva’s
10 conduct. This is not what the complaint alleges. The complaint alleges that CPI
11 made the distributions: “The Rogue Members and Askew refused to answer Silva’s
12 questions concerning *CPI’s improper distributions* at that time.” The complaint does
13 not even allege that Freeman caused CPI to make the distributions. Rather the
14 complaint’s allegation about Freeman as related to the unshared distributions is
15 simply that “Freeman [] made entries labeled ‘pre-tax distributions’ totaling
16 approximately \$900,000 to the Rogue Members” and that Silva “never received his
17 pro rata share of any such distribution.”

18 Thus, Silva’s claim for negligent hiring, supervision, and retention does not
19 survive the motion to dismiss.

20 **f. Tenth Claim – Accounting**

21 At oral argument, Silva’s counsel conceded that accounting is a remedy, not a
22 claim. Thus, Silva’s claim for accounting is not a claim at all and does not survive the
23 motion to dismiss.

24 **g. Eleventh Claim – Minority Member Oppression**

25 Silva argues that the Member Defendants’ appropriation of CPI assets and
26 distributions and termination of Silva’s membership interest substantially defeated
27 Silva’s expectations and constitutes minority member oppression. The Member
28

1 Defendants assert that Nevada does not recognize a claim for minority member
2 oppression.

3 In *Smith v. Gray*, 50 Nev. 56, 250 P. 369, 373 (1926), the Nevada Supreme
4 Court found that “[u]ndoubtedly it is the law that, where the majority stockholders
5 are oppressively and illegally pursuing a course, in the name of the corporation,
6 which is in violation of the rights of the minority, and which can only be restrained by
7 the aid of a court of equity, a stockholder may sue in equity on behalf of himself and
8 other stockholders who may come in for appropriate relief.” *Hollis v. Hill*, 232 F.3d
9 460 (5th Cir. 2000), echoes the principle set forth in *Smith*. In *Hollis*, the Fifth
10 Circuit applied Nevada law in determining that, “courts have equitable powers to
11 fashion appropriate remedies where the majority shareholders have breached their
12 fiduciary duty to the minority by engaging in oppressive conduct.” *Id.* at 468.

13 That said, in *In re Amerco Derivative Litig.*, the Nevada Supreme Court more
14 recently indicated in no uncertain terms that “Nevada does not recognize a cause of
15 action for abuse of control, and in the cases to which appellants cite, claims for abuse
16 of control are essentially claims for breach of the fiduciary duty of loyalty. . . .
17 Accordingly, we conclude that appellants’ claim of abuse of control is duplicative of
18 their claim of breach of the fiduciary duty of loyalty and need not be separately
19 addressed.” 127 Nev. 196, 223, 252 P.3d 681, 700 n.11 (2011).

20 This court agrees with the reasoning in *In re Amerco*.⁵ To the extent the
21 Member Defendants together abused their majority position and oppressed Silva,
22 they did so by breaching the duty of loyalty. The court addressed the viability of this
23 claim above.

24 Thus, Silva’s claim for minority oppression does not survive the motion to
25 dismiss.

26 ⁵ *In re Amerco* is not inconsistent with *Smith* or *Hollis*. To the extent Silva can
27 sustain and prevail on a duty of loyalty claim based on abuse of control, the court can
28 fashion appropriate remedies, as *Smith* and *Hollis* acknowledge.

1 **h. Twelfth Claim – Conversion**

2 Silva’s twelfth claim for conversion against the Member Defendants is based on
3 their refusal to return his “original” stem cell lines, the “duplicated” stem cell lines,
4 and all biological material created or produced therefrom. As noted at the start of
5 this decision, Silva based his preliminary injunction motion on this claim. Following
6 oral argument on the motions to dismiss, Silva appealed this court’s denial of the
7 injunction motion. Given the appeal, the court appears divested of jurisdiction on
8 this claim, including whether Silva can maintain such a claim against the Member
9 Defendants. Accordingly, the court declines to rule on this portion of the motion. *See*
10 *Russell Rd. Food & Beverage, LLC v. Galam*, No. 2:13-CV-776 JCM NJK, 2013 WL
11 2949615, at *1 (D. Nev. June 13, 2013). *See also* NRC 62.1 (“If a timely motion is
12 made for relief that the court lacks authority to grant because of an appeal that has
13 been docketed and is pending, the court may . . . (1) defer considering the motion.”)
14 The parties should remind the court to rule following decision on and remittitur of the
15 appeal.

16 Although the court declines to rule, the court take this opportunity to clarify its
17 position on this conversion claim, including as based on the *Gardner* decision. In
18 denying the preliminary injunction, the court made the following finding on the
19 merits of the claim:

20 Furthermore, a member or manager of a limited liability
21 company cannot be held liable for the acts of the entity
22 simply as a result of being a member or manager under
23 Nevada law. NRS 86.381; *Gardner v. Henderson Water*
24 *Park, LLC*, 133 Nev. 391, 393-94, 399 P.3d 350, 351 (2017).
25 The Court rejects Plaintiff’s interpretation of *Gardner* and
26 concludes that Plaintiff has not identified any wrongful act
27 committed by the Member Defendants amounting to
28 conversion of the stem cells or processes outside the course
and scope of their membership and management of CPI.
The Court thus concludes that Plaintiff’s claim for
conversion cannot proceed against the Member Defendants
in their individual capacity.

1 The law is clear that corporate officers and directors and LLC members can be
2 sued for their own individual torts, even if they are acting within the scope of their
3 employment when they committed the tort. The court’s focus and/or language on the
4 Member Defendants’ actions being within and/or outside the course and scope of their
5 membership and management of CPI was inartful. Indeed, both *Gardner* and
6 *Semenza v. Caughlin Crafted Homes*, on which *Gardner* relies, are clear that nothing
7 in NRS 78 or NRS 86 shields directors, officers, or members from personal liability for
8 individual and/or personal torts, even when committed within the scope of
9 employment. *Gardner*, 133 Nev. at 393 (“While NRS 86.371 and NRS 86.381 do not
10 shield members from liability for personal negligence, the Gardners failed to allege
11 that the member-LLCs were personally negligent.”); *Semenza v. Caughlin Crafted*
12 *Homes*, 111 Nev. 1089, 1098, 901 P.2d 684, 689 (1995) (“An officer of a corporation
13 may be individually liable for any tort which he commits. ...”). *Semenza* is even more
14 clear when it explains that “An officer of a corporation may be individually liable for
15 any tort which he commits, *and, if the tort is committed within the scope of*
16 *employment*, the corporation may be vicariously or secondarily liable under the
17 doctrine of respondeat superior.” *Semenza*, 111 Nev. at 1098 (citing *Donsco, Inc. v.*
18 *Casper Corp.*, 587 F.2d 602, 606 (3d Cir.1978).)

19 That said, the court stands by its decision on the preliminary injunction
20 motion, because Silva not only failed to demonstrate irreparable injury, Silva failed to
21 demonstrate he was likely to succeed on his conversion claim. Conversion is “a
22 distinct act of dominion wrongfully exerted over another's personal property in denial
23 of, or inconsistent with his title or rights therein or in derogation, exclusion, or
24 defiance of such title or rights.” *Wantz v. Redfield*, 74 Nev. 196, 198, 326 P.2d 413,
25 414 (1958). Silva did not persuade the court that any of the Member Defendants
26 converted his stem cells, whether based on the allegations alone or in looking at the
27 evidence.

28

1 In reviewing the allegations of the FAC as a whole, it is CPI that is exerting
2 dominion—wrongful or not—over Silva’s stem cells, not the Member Defendants.
3 Silva alleges that he gave his stems cells to CPI, not the Member Defendants: “Silva
4 permitted CPI to use the stem cells.” In his January 10, 2025, letter to CPI
5 withdrawing consent to use the cells, Silva does not demand that the Members stop
6 using his cells. Silva demands that *CPI* stop using the cells: “Silva further hereby
7 withdraws any prior consent for the Material to be used, stored, processed,
8 propagated or analyzed by CPI, which may have been provided to CPI by Silva on
9 behalf of his spouse/child/children or authorized by him for others to provide to CPI
10 on behalf of his spouse/child/children.”

11 Finally, even if the court misconstrued Silva’s allegations, the court was not
12 and remains unpersuaded that the Member Defendants are exercising dominion over
13 the stems cell inconsistent with their rights to do so, i.e., wrongfully. Stated another
14 way, Silva did not come forward with evidence that persuaded the court that the
15 terms of his alleged agreement with CPI and/or the Member Defendants allowed him
16 to unilaterally revoke consent on their retention of the stem cells.

17 **i. Thirteenth Claim - Negligence**

18 It is not entirely clear to the court what duties the Member Defendants owed
19 Silva and what duties the Member Defendants allegedly breached outside the parties’
20 relationships as co-members of the Company. In his opposition, Silva asserts that he
21 “alleged Defendants owe him duties of loyalty, care, and good faith and fair dealing
22 under the Operating Agreement, as described in Sections IV(A)-(C).” To the extent
23 Silva alleges a breach of duty created by the Operating Agreement, such claims are
24 subsumed by his claims for breach of the operating agreement and breach of the
25 implied covenant of good faith and faith dealing (which the Member Defendants do
26 not challenge) and his claims for breach of the duty of loyalty and breach of the duty
27 of care.

28 Thus, Silva’s negligence claim does not survive the motion to dismiss.

1 **j. Fourteenth Claim – Misappropriation of Trade Secrets**

2 A claim for misappropriation of trade secrets requires Silva to allege facts
3 sufficient to demonstrate (1) the existence of a valuable trade secret; (2) the
4 misappropriation of that trade secret through some use, disclosure, or nondisclosure
5 of use of the trade secret; and (3) and that the misappropriation was wrongful
6 because it was made in breach of an express or implied contract or by a party with a
7 duty not to disclose. *Frantz v. Johnson*, 116 Nev. 455, 999 P.2d 351 (2000).

8 The Member Defendants assert that Silva has not sufficiently pled the third
9 element. Silva argues in opposition that his stem cell duplication and dosing
10 methodology are trade secrets and the Member Defendants have misappropriated
11 these trade secrets by wrongfully continuing to use them after Silva withdrew his
12 consent for their use. In reply, the Member Defendants raise the *Gardner* issue,
13 which is on appeal through the conversion claim. Accordingly, the court declines to
14 rule on this portion of the motion. The parties should remind the court to rule
15 following decision on the appeal.

16 **k. Fifteenth Claim – Unjust Enrichment**

17 A claim for unjust enrichment has three elements; (1) the plaintiff confers a
18 benefit on the defendant, (2) the defendant appreciates such benefit, and (3) there is
19 an acceptance and retention by the defendant of such benefit under such
20 circumstances that it would be inequitable for him to retain the benefit without
21 payment of the value thereof. *Nautilus Ins. Co. v. Access Med., LLC*, 137 Nev. 96,
22 101, 482 P.3d 683, 688 (2021).

23 Silva alleges he conferred a benefit on CPI, not the Member Defendants, and
24 thus, he cannot maintain a claim for unjust enrichment against the Member
25 Defendants. At best, Silva alleges that as a result of the benefit he conferred on the
26 Company, the Member Defendants have derivatively benefited. The court, however,
27 is not aware of any way to seek equitable relief under unjust enrichment as a result of
28 a derivative benefit.

1 Thus, Silva’s unjust enrichment claim does not survive the motion to dismiss.

2 **1. Sixteenth Claim – Consumer Fraud**

3 NRS 598.0915(3) provides that person engages in a “deceptive trade practice”
4 (i.e., “consumer fraud”) if he knowingly makes a false representation as to “affiliation,
5 connection, association with or certification by another person.” To support this
6 claim, Silva alleges that the Member Defendants made “false representations as to
7 the affiliation, connection, association with or certification by Silva in information
8 that CPI provides to its patients.”

9 It may be that the Member Defendants made false representations about Silva
10 in information provided to CPI’s patients, whether by the alleged YouTube Video or
11 otherwise. However, under Nevada law, a deceptive trade practice can only form the
12 basis of a private right of action where that person is a *victim* of consumer fraud.
13 NRS 41.600(1) (“An action may be brought by any person who is a victim of consumer
14 fraud.”) *See also Nev. Power. Co. v. Eighth Jud. Dist. Ct.*, 120 Nev. 948, 955, n.7, 102
15 P. 3d 578, 583 n.7 (2004).

16 Here, Silva has not made any factual allegations establishing that *he* was a
17 victim of the Member Defendants’ purported deception, as opposed to CPI’s patients.
18 Silva has not provided the court with any authority for the proposition that the
19 *subject* of the false representations can be a victim of consumer fraud, as opposed to
20 the *object* of the false representations.

21 Further, the claim by definition sounds in fraud, and Silva has failed to state
22 his claim with the required particularity under NRCP 9(b).

23 Thus, Silva’s consumer fraud claim does not survive the motion to dismiss.

24 The court now addresses CPI’s motion to dismiss.

25 **III. CPI’s Motion to Dismiss**

26 Silva asserts derivative claims on behalf of CPI for conversion against
27 Freeman, conversion against the Member Defendants, and negligent hiring,
28 supervision, and retention against the Member Defendants. NRS 86.487 provides

1 that “[i]n a derivative action, the complaint must set forth with particularity: (1) The
2 effort of the plaintiff to secure initiation of the action by a manager or member; or (2)
3 The reason for the plaintiff not making the effort to secure initiation of the action by a
4 manager or member.” NRCP 23.1 echoes this requirement by demanding that “the
5 complaint must also allege with particularity the efforts, if any, made by the plaintiff
6 to obtain the action the plaintiff desires from the directors or comparable authority
7 and, if necessary, from the shareholders or members, and the reasons for the
8 plaintiff’s failure to obtain the action or for not making the effort.”

9 Silva argues that he did not ask the Member Defendants to initiate the
10 conversion claims against Freeman or themselves, or the negligent hiring, etc., claim
11 against themselves, because doing so would have been futile. In *United Food & Com.*
12 *Workers Union & Participating Food Indus. Emps. Tri-State Pension Fund v.*
13 *Zuckerberg*, the Delaware Supreme Court eliminated the need to decide whether
14 *Aronson* or *Rales* applies in assessing demand futility, 262 A.3d 1034, 1059 (Del.
15 2021), and in doing so directed courts to ask the following three questions on a
16 director-by-director basis when evaluating allegations of demand futility:

17 (i) whether the director received a material personal benefit
18 from the alleged misconduct that is the subject of the
 litigation demand;

19 (ii) whether the director faces a substantial likelihood of
20 liability on any of the claims that would be the subject of
 the litigation demand; and

21 (iii) whether the director lacks independence from someone
22 who received a material personal benefit from the alleged
23 misconduct that would be the subject of the litigation
24 demand or who would face a substantial likelihood of
 liability on any of the claims that are the subject of the
 litigation demand.

25 If the answer to any of the questions is “yes” for at least half of the members of the
26 demand board, then demand is excused as futile.

27 With regard to the derivative conversion claim against Freeman, Silva alleges
28 that Freeman embezzled approximately \$5 Million from CPI and CHIPSA/TAM

1 between 2022 and 2024, specifically that she utilized the companies' payroll systems
2 to withdraw over \$4,758,409 between 2021 and 2024 and by using her control of the
3 payroll, she authorized disbursements directly in her name, paying herself as an
4 independent contractor. There are no particularized allegations that the Member
5 Defendants benefited from these withdrawals; in fact, Silva's allegations sound the
6 opposite: "she authorized disbursements in her name, paying herself as an
7 independent contractor."

8 The court acknowledges that there are other allegations that Silva "*believes*
9 that the Rogue Members worked with Freeman to divert funds away from CPI and
10 Silva for their own personal gain," and that "Silva *believes* that the Rogue Members
11 and Freeman diverted more than \$9,000,000 from CPI for their own benefit and to
12 the detriment of CPI and Silva." These alleged facts are based on mere belief and are
13 not particularized. Stated simply, the allegations that Freeman and the Member
14 Defendants embezzled together for the Member Defendants' benefit appear to be
15 based on mere supposition and conjecture. Such non-particular allegations fail to
16 establish either a material personal benefit, a substantial likelihood of liability, or
17 lack of independence.

18 Silva's derivative claim against the Member Defendants for negligently hiring,
19 etc., Freeman also fail. Presuming Silva can maintain this claim against the Member
20 Defendants as non-employers (see Sect. II.e., above), Silva does not sufficiently allege
21 that the Member Defendants received a material personal benefit as a result of their
22 hiring, supervising, or retaining Freeman. Again, the court acknowledges that there
23 are allegations that Silva "*believes* that the Rogue Members worked with Freeman to
24 divert funds away from CPI and Silva for their own personal gain," and that "Silva
25 *believes* that the Rogue Members and Freeman diverted more than \$9,000,000 from
26 CPI for their own benefit and to the detriment of CPI and Silva." Silva bases these
27 non-particularized allegations on mere belief. As a result, there is no substantial
28 likelihood of liability that the Member Defendants will face from Freeman's hiring,

1 supervision, or retention. Silva makes no allegations regarding the Member
2 Defendants' lack of independence from one another or Freeman.

3 On the other hand, Silva's bases his derivative conversion claim against the
4 Member Defendants on particularized allegations that they diverted CPI funds to
5 purchase assets for companies they own outside CPI. These allegations are sufficient
6 to establish that the Member Defendants received a material personal benefit.
7 Further, if Silva's allegations are true, they establish that the Member Defendants
8 face a substantial likelihood of liability.

9 Thus, Silva's derivative claim for conversion against the Member Defendants
10 survives the motion to dismiss, while the derivative claim for conversion against
11 Freeman and the derivative claim against the Member Defendants for negligent
12 hiring, etc., do not.

13 ***

14 This constitutes the court's decision and intended disposition of the motions to
15 dismiss. It is not final appealable order. Rather, counsel for the Member Defendants
16 and CPI shall prepare an implementing order incorporating this court's decision and
17 any points and authorities raised in the briefs needed to fully implement the court's
18 decision,⁶ providing Silva's counsel an opportunity to review and comment as
19 required by the department guidelines. The order is due in two weeks pursuant to
20 EDCR 7.21. The court schedules an in chambers' status check on July 18, 2025, to
21 ensure submission of the order.

22 Dated this 3rd day of July, 2025

23 

24 _____
25 **801 B2C AA16 944E**
26 **Maria Gall**
District Court Judge

27 ⁶ If counsel is satisfied with this decision as is, counsel may append the decision to an
28 implementing order with no further point and authorities.

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 Decision was served via the court's electronic eFile system to all
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1 **CSERV**

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3 DISTRICT COURT
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4
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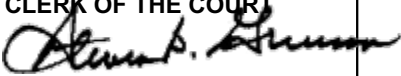
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12 *Attorneys for Plaintiff Francisco Silva*

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

15 Francisco Silva, an individual;
16
17 Plaintiff,

Case No. A-25-909767-B

Dept. No. IX

18 v.

19 Ed Clay, in his individual and
20 representative capacities; Scott Nelson, in
21 his individual and representative capacities;
22 Deddrick Perry, in his individual and
23 representative capacities; CPI Management
24 Group, LLC, a Nevada limited-liability
25 company; Doe Defendants 1 – 10;

**VERIFIED SECOND AMENDED
COMPLAINT**

**ARBITRATION EXEMPTION
NAR(5)(a)(1)(J)**

**BUSINESS COURT REQUESTED
1.61(a)(1) & (2)(ii).**

26 Defendants,

27 CPI Management Group, LLC, a Nevada
28 limited-liability company;

Nominal Defendant,

Ed Clay, an individual; Scott Nelson, an
individual; Deddrick Perry, an individual;
CPI Management Group, LLC, a Nevada
limited-liability company;

Counter-Claimants,

v.

Francisco Silva, an individual,
Counter-Defendant.

Snell & Wilmer

INTRODUCTION

1
2 1. Plaintiff Francisco Silva (“Silva”) brings this action to protect and enforce his rights
3 both as the owner of two lines of stem cells he developed from his and his family’s genetic material,
4 and as a 25% owner of CPI Management Group, LLC (“CPI”), a Nevada limited-liability company.

5 2. Silva has spent his entire career in the field of bioscience, including as the Chief
6 Science Officer of a major biomedicine corporation. He is a listed inventor on at least twenty-three
7 patents, seven of which are in the United States and the remainder in the European Union, Japan,
8 Australia, and Israel.

9 3. Silva and Defendants Edward Clay, Scott Nelson, and Deddrick Perry formed CPI
10 in 2021 to operate a regenerative medicine clinic in Tijuana, Mexico. Together, Clay, Nelson, and
11 Perry are the “Member Defendants,” and jointly with CPI, “Defendants.” Silva is the sole scientist
12 among CPI’s members, while the Member Defendants are experienced and sophisticated
13 international business professionals.

14 4. Silva and Member Defendants were at all relevant times, and upon information and
15 belief remain, CPI’s sole members.

16 5. In 2024, Silva discovered Defendants’ breaches of their duties to Silva, including
17 but not limited to embezzlement; theft; and serial, egregious violations of Nevada law and the
18 Operating Agreement of CPI Management Group, LLC, effective June 29, 2021 (the “Operating
19 Agreement”). A true and correct copy of the Operating Agreement is attached as **Exhibit 1**.

20 6. During that same timeframe, Silva also discovered Member Defendants’ breaches
21 of their duties to CPI under Nevada law and the Operating Agreement.

22 7. While CPI’s and Member Defendants’ misconduct is widespread, Defendants’
23 hiring of Julie Freeman (“Freeman”)—a convicted embezzler—as CPI’s CFO enabled them to
24 conspire with and direct Freeman to make improper transfers not only to Member Defendants and
25 their entities, but also enabled Freeman to embezzle at least \$5 million into her own accounts.

26 8. Further, Defendants continue to harm Silva by continuing to improperly use his stem
27 cells, interfering not only with his rights therein, but also with his ability to compete in the stem
28 cell industry and secure license agreements with other, non-Nevada biotechnology companies.

PARTIES

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9. Silva, an individual, resides in Salt Lake City, Utah. Prior to Member Defendants improperly purporting to both remove him as an officer of CPI and subsequently strip his membership interest, Silva was responsible for overseeing the biological and scientific aspects of CPI’s operations.

10. CPI is a limited-liability company organized under Nevada law and registered with Nevada’s Secretary of State, Entity No. E15681742021-0. CPI has its registered office in Las Vegas, Nevada.

11. Upon information and belief, defendant Edward Clay (“Clay”), an individual, resides in Nashville, Tennessee. At all relevant times, Clay was, and upon information and belief is, CPI’s acting Chief Executive Officer responsible for overseeing licensing and regulatory compliance.

12. Upon information and belief, defendant Scott Nelson (“Nelson”), an individual, resides in Las Vegas, Nevada. At all relevant times, Nelson was, and upon information and belief is, CPI’s officer in charge of marketing and patient recruitment.

13. Upon information and belief, defendant Deddrick Perry (“Perry”), an individual, resides in Nashville, Tennessee. At all relevant times, Perry was, and upon information and belief is, CPI’s officer in charge of finance and supply chain management.

14. Silva does not know the true names and capacities of the defendants sued herein as DOES 1-10, inclusive, and will amend this complaint to allege such facts as soon as they are ascertained. Silva is informed and believes that the defendants, and each of them designated herein as DOES 1-10, inclusive, are in some manner responsible for the misappropriation and/or misuse of CPI’s and/or Silva’s funds or other assets. Silva is informed and believes that members of CPI’s former finance team, CPI’s current officers including its current CEO and CFO, and other unknown individuals have acted in concert with Defendants to the detriment of Silva and CPI.

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JURISDICTION & VENUE

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

16. Venue is appropriate in this Court because CPI’s principal place of business and registered offices are located in Las Vegas, Nevada.

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

GENERAL ALLEGATIONS

A. The Formation of CPI

18. Prior to meeting Silva, the Member Defendants had worked together on multiple business projects. One such project was Centro Hospitalario Internacional del Pacifico, S.A (“CHIPSA”), an alternative cancer treatment facility located in Tijuana, Mexico. CHIPSA is now the Translational and Advanced Medical Center (“TAM”). CHIPSA/TAM are owned exclusively by the Member Defendants.

19. In approximately January of 2021, Silva became aware that CHIPSA/TAM and Member Defendants were struggling financially, and appeared to be on the verge of insolvency. Thus, it was not surprising to Silva that the formation of CPI to operate a new cutting-edge medical clinic utilizing his expertise was attractive to all parties.

20. Silva and the Member Defendants executed CPI’s Operating Agreement effective June 29, 2021.

21. CPI is a member-managed LLC, typically requiring a 51% vote for most decisions and acts, although there are notable exceptions requiring a unanimous or 100% vote, or permitting certain acts only under other specified circumstances.

///

1 22. At all relevant times Silva and Member Defendants held, and upon information and
2 belief still hold, the voting and financial rights listed in Exhibit A to the Operating Agreement.
3 Specifically, Silva and Member Defendants hold:

- 4 a. Clay: 37.5%
- 5 b. Silva: 25%
- 6 c. Nelson: 22.5%
- 7 d. Perry: 15%

8 23. Those interests were provided in exchange for the following capital contributions,
9 as listed in Exhibit A to the Operating Agreement.

- 10 a. Clay: \$375
- 11 b. Silva: \$250
- 12 c. Nelson: \$225
- 13 d. Perry: \$150

14 24. CPI and Member Defendants never issued any amendment to Exhibit A, nor did
15 they purport to recognize any additional capital contributions at any time, doing so for the first time
16 as part of this litigation.

17 25. CPI's stated purpose is to operate a biotech business, doing business as the "Cellular
18 Performance Institute," widely known for treating high-performance athletes and many others
19 through stem cell therapy using Silva's cells.

20 26. CPI's stem cell therapies exclusively used Silva's cells at least through the date
21 Defendants improperly locked Silva out of CPI and converted his cells. Upon information and
22 belief, Defendants continue to exclusively use Silva's cells.

23 27. 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 customers given intradiscal injections have experienced tissue remodeling.

26 28. Silva's stem cells were derived from the umbilical cords resulting from the
27 conception and birth of his two (still-minor) children.
28

1 29. Silva is the owner and developer of the stem cell lines and has sole authority to
2 license or otherwise control use of the stem cell lines and resulting stem cells.

3 30. At all relevant times Silva held, and continues to hold, all rights relative to his cells.

4 31. Shortly after CPI's formation, Silva gave gratuitous consent for CPI to use his cells.
5 That consent was revocable at any time in Silva's sole and unlimited discretion.

6 32. Silva did not transfer and has not transferred any ownership of or rights in the cells
7 to Defendants or to any other individual or entity.

8 33. Had Defendants desired to acquire any ownership of or rights in the cells, including
9 limiting Silva's ability to revoke his consent, they were capable of negotiating such an agreement
10 with Silva.

11 34. There is no such agreement.

12 **B. CPI's Initial Operations**

13 35. CPI hired an experienced local medical director and opened a small clinic in
14 Tijuana, Mexico.

15 **i. Licensing and Regulation**

16 36. Clay was responsible for ensuring the necessary licenses and approval were
17 obtained, including through the Federal Committee for Protection from Sanitary Risks, for CPI's
18 and CHIPSA/TAM's operations.

19 **ii. CPI's Treatments**

20 37. Silva created his "Phase 1" cell lines at BioRestorative Therapies, Inc. A true and
21 correct letter from BioRestorative Therapies acknowledging Silva's ownership of these stem cell
22 lines is attached as **Exhibit 2**. Phase 1 stem cell lines are not used for therapeutic purposes, rather
23 they are the starting point for "Phase 2" cells.

24 38. The Phase 1 stem cell lines were never shared with CPI or any other individual or
25 entity, and remain in Silva's exclusive possession.

26 39. Phase 2 stem cells are the intermediate phase, used for generating "Phase 3" stem
27 cells. Phase 2 stem cells are not used for therapeutic purposes. Silva supplied CPI with Phase 2
28 stem cells derived from his Phase 1 cell lines labeled #VJS040119FS and #041321FS.

1 40. Phase 3 stem cells are derived from Phase 2 stem cells, and are the only cells used
2 for therapeutic purposes. Phase 3 stem cells are administered via injection into CPI's customers.
3 A single injection typically contains hundreds of millions of Phase 3 cells.

4 41. Silva oversaw and directed CPI's formation of Phase 3 stem cells from the Phase 2
5 stem cells using protocols and techniques developed prepared by Silva that require a low-oxygen
6 environment.

7 42. To expedite CPI's launch, Silva brought five vials of Phase 2 stem cells to CPI for
8 use in creating Phase 3 stem cells. These Phase 2 vials are stored frozen and individually unfrozen
9 to initiate the duplication process. Each vial can be duplicated multiple times in a months-long
10 process that generates billions of Phase 3 stem cells.

11 43. Silva's cells provide significant economic value and business advantage to
12 Defendants for at least three reasons.

- 13 a. First, Silva's cells are already available at a time when relatively few
14 competitors have stem cell therapies ready for market;
- 15 b. Second, Silva's cells are a proven product, making them particularly
16 desirable by high-level athletes and many others;
- 17 c. Third, Defendants' ongoing misappropriation of Silva's cells has resulted in
18 other biotechnology companies declining to enter license agreements with
19 him, as they primarily are interested in exclusive licensing opportunities.

20 44. As a result, CPI's *weekly* revenue from Silva's cells exceeds \$1 million.

21 45. At all relevant times Silva's cells were, and upon information and belief are,
22 CPI's *sole* source of revenue.

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1 46. CPI, in marketing materials posted by CPI’s official YouTube account, directly
2 attributes its success to Silva. It describes Silva as “one of the top cellular scientists, stem cell
3 scientists, in the world . . . [after] Francisco agreed to partner . . . the stem cell aspect just blew up.
4 We [CPI] are now the largest manufacturer of mesenchymal stem cells in the world. We’re making
5 more stem cells than anybody, by far.”¹

6 47. Defendants exercised and continue to exercise dominion over Silva’s cells in
7 multiple ways and capacities beyond their injection into CPI’s customers. For example, Silva
8 shipped certain vials of stem cells directly to Clay’s house, while Nelson transported cells from San
9 Diego into Tijuana. Moreover, Member Defendants would frequently inject Silva’s cells in various
10 parts of their bodies, including facial, discal, and penile injections. Member Defendants would also
11 provide injections to their friends and family members.

12 48. As a result of Silva’s cells, and Defendants’ ongoing misappropriation of those cells,
13 Member Defendants and CHIPSA/TAM have experienced a financial turnaround, moving from the
14 brink of bankruptcy to nearly unprecedented financial success.

15 **C. Stalled Merger with CHIPSA/TAM**

16 49. Beyond providing a financial turn-around for CHIPSA/TAM, CPI also generated
17 significant revenue for itself. Due to the success of CPI, and its positive effect on CHIPSA/TAM’s
18 finances, the Member Defendants proposed merging CHIPSA/TAM and CPI.

19 50. In July 2023, Silva requested CPI’s and CHIPSA/TAM’s financials and other
20 materials to fully review the proposed transaction. But the Member Defendants 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 the requested list of assets purchased using CPI
23 funds. The proposed merger stalled.

24 51. Silva later learned that CHIPSA/TAM had no financial statements and that
25 CHIPSA/TAM needed to hire an accountant to prepare rudimentary financials after reviewing years
26 of invoices.

27
28 ¹ Cellular Performance Institute, “‘Curing Cancer Became an Obsession’ – CPI Stem Cells & The
TAM Center”; last accessed August 6, 2025 at <https://www.youtube.com/watch?v=faUXymrht2Y>

1 52. The interpersonal relationship between Silva and the Member Defendants
2 deteriorated around this time. Communication from the Member Defendants to Silva began to
3 decrease in both frequency and substance.

4 **D. Silva Learns of Freeman's Embezzlement**

5 53. Member Defendants hired Freeman as CPI's Chief Financial Officer shortly after
6 CPI's inception. Upon information and belief, Freeman filled that role from 2021 through April
7 2024.

8 54. At an April 2024 CPI members' meeting shortly after Freeman's departure, Member
9 Defendants informed Silva that Freeman had embezzled nearly \$5 million dollars from CPI and
10 CHIPSA/TAM between 2022 and 2024. That amount is in addition to the \$1,021,161 she was paid
11 for her work at CPI. Defendants did not investigate if there was additional fraud relative to
12 payments for her work.

13 55. Defendants acknowledged Freeman disbursed these funds directly to herself or an
14 entity she controlled called LAT29 LLC between 2021 and 2024, using approximately eight
15 different bank accounts.

16 56. Defendants acknowledged in writing that Freeman's embezzlement could have been
17 reasonably avoided if they had taken steps such as:

- 18 a. Conducting a criminal background check, as Freeman had previously pled
19 guilty to 28 counts of forgery and grand theft from an employer, resulting in
20 criminal convictions;
- 21 b. Verifying credentials of new hires;
- 22 c. Periodic oversight by managers such as reviewing bank statements and
23 payroll records;
- 24 d. Periodic review of bank reconciliation reports to avoid hidden transactions;
25 and
- 26 e. Periodic audits.

27 57. While the account information and total dollar amount of Freeman's embezzlement
28 can be determined with specificity, the details of each bank account and transaction are presently

1 unknown to Silva because the Member Defendants have refused to provide access to the financial
2 information that he is entitled to as a member of CPI and under Nevada law.

3 58. Upon information and belief, Member Defendants directed Freeman to make these
4 and many other improper transfers, including to Member Defendants and their entities.

5 **E. Silva Learns of Defendants' Embezzlement and Other Misconduct**

6 59. Upon information and belief, the Member Defendants routinely and improperly used
7 and use Silva's and CPI's funds and other assets for their own personal benefit and the benefit of
8 their entities without Silva's knowledge or consent. Member Defendants seek to hide and withhold
9 these transactions and their benefits from Silva and CPI.

10 60. When Silva inquired about such misconduct, Defendants refused to answer Silva's
11 questions. They also declined to explain whether Defendants used funds to purchase assets through
12 shell companies owned by the Member Defendants. Defendants could or would not explain who
13 approved the transactions to these other entities, and why they failed to inform Silva about them.

14 61. Silva believes that the Member Defendants diverted more than \$9,000,000 from CPI
15 for the Member Defendants' own benefit and to the detriment of CPI and Silva.

16 62. The full extent to which Defendants have improperly enriched themselves with
17 CPI's and Silva's assets remains unknown to Silva as Defendants refuse to provide Silva such
18 information.

19 **i. Defendants Misappropriated CPI's Funds and Other Assets**

20 63. Upon information and belief, these misappropriations were directed by Member
21 Defendants.

22 **a. CPI Funds Transferred to Member Defendants' U.S. Entities**

23 64. CPI funds were spent to purchase a property in Tennessee and to fund mortgage
24 payments on an apartment complex in Texas. Both properties are owned by entities controlled or
25 owned by the Member Defendants.

26 65. Silva believes that the Tennessee property purchased with CPI funds is located at
27 408 and 409 Russell St. in Nashville, Tennessee. According to property records, the Tennessee
28 property is owned by a Tennessee limited liability company, Russell & Fifth, LLC ("Russell &

1 Fifth”). On information and belief, Russell & Fifth is owned by the Member Defendants. It does
2 not include Silva as a member.

3 66. Upon information and belief, the Texas property is located at 336-342 Eden Dr. in
4 Longview, Texas. The Texas property is wholly owned by Advanced Integrated Medical Solutions,
5 LLC (“AIMS”), a Nevada limited-liability company. AIMS is wholly owned by the Member
6 Defendants.

7 67. Silva believes that Member Defendants use Russell & Fifth, AIMS, and other
8 entities such as CNP Management Partnership LLC (“CNP”) as shell companies to hide assets from
9 Silva. The Member Defendants acknowledge their control over Russell & Fifth and AIMS.

10 **b. CPI Funds Transferred to Member Defendants’ Mexican Entities**

11 68. Member Defendants also began diverting Silva’s and CPI’s funds to various
12 Mexican entities of which Silva is not a partner, including a multi-million dollar renovation for
13 CHIPSA/TAM. Member Defendants admit doing so during the same YouTube video the
14 acknowledge Francisco’s impact on CPI: “And the stem cells have funded our cancer research . . .
15 I can’t wait for you to see the lab we’re building.”²

16 69. Silva further discovered that Defendants transferred CPI assets to other Mexican
17 entities Member Defendants control, such as FirstMedic and Servicios Medicos. Defendants’
18 transfers to FirstMedic and Servicios Medicos were not authorized under CPI’s Operating
19 Agreement.

20 **c. Member Defendants Use Silva’s Cells for Personal Gain**

21 70. Member Defendants frequently injected, and upon information and belief still inject
22 Silva’s cells in various parts of their bodies, including facial, discal, and penile injections without
23 payment. Member Defendants also would, and upon information and belief still do, provide
24 injections to their friends and family members without payment.

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² *Id.*

1 d. **Defendants Steal Silva’s Distributions**

2 71. The Operating Agreement requires that “all distributions to the Members must be
3 made simultaneously to each of the Members and must be made in proportion to the Members’
4 Financial Rights.”

5 72. Silva held at all relevant times, and still holds, 25% of the Financial Rights in CPI.

6 73. On at least one occasion prior to April 2024, Defendants made and Member
7 Defendants took a \$900,000 distribution without providing Silva his 25% share, \$225,000.

8 74. The full extent to which Defendants have stolen Silva’s assets remains unknown to
9 Silva as Defendants refuse to provide Silva such information.

10 ii. **Defendants Serially Breached the Operating Agreement**

11 75. Defendants’ ongoing refusal to provide information to Silva violates not only
12 Section 14.1 of the Operating Agreement, but also NRS 86.241.

13 a. **Defendants Improperly Purport to Remove Silva as an Officer**

14 76. The Operating Agreement requires approval and exercise of 100% of the Voting
15 Rights in CPI to appoint or remove an officer.

16 77. Silva held at all relevant times, and still holds, 25% of the Voting Rights in CPI.

17 78. Member Defendants confirmed that CPI would remunerate Silva for Freeman’s
18 embezzlement and for Defendants’ financial misconduct, including unauthorized distributions and
19 improper diversion of CPI’s and Silva’s funds to entities controlled by the Member Defendants.

20 79. Instead, and in retaliation for raising these issues, on November 21, 2024, the
21 Member Defendants purported to terminate Silva from his position as an officer of CPI and shut
22 off his access to CPI’s financial records. This was in violation of the Operating Agreement, which
23 requires approval and exercise of 100% of the Voting Rights in CPI to appoint or remove an officer.

24 80. That same day, Member Defendants locked Silva out from access to all CPI chat
25 groups (including CPI’s WhatsApp group), Google Docs, bank records, and QuickBooks.

26 81. Upon information and belief, Silva was terminated by the Member Defendants to
27 prevent further investigation of their own misappropriation and diversion of CPI’s and Silva’s funds
28

1 and other assets for themselves, including to entities in which they have substantial financial
2 interests.

3 **b. Defendants Improperly Purport to “Redeem” Silva’s Interest**

4 82. On December 18, 2024, Silva met with the Member Defendants to discuss the future
5 of CPI. The Member Defendants announced a surprise vote whereby they voted 3 to 1 to “redeem”
6 Silva’s ownership interest in CPI without compensation. This vote breached CPI’s Operating
7 Agreement and Nevada law.

8 83. The Member Defendants have not, and do not even purport to have compensated
9 Silva for his interest in CPI, again in violation of the Operating Agreement and Nevada law.

10 84. All of CPI’s conduct and business is now directed and controlled by the Member
11 Defendants, and has been since at least December 18, 2024, despite Silva’s 25% Voting Rights.

12 85. Silva has been wholly excluded from the conduct of CPI’s business since at least
13 December 18, 2024.

14 86. Since that time, Defendants admit under oath they have improperly withheld Silva’s
15 portion of distributions in violation of the Operating Agreement.

16 **c. Defendants Improperly Compensate Themselves**

17 87. The Operating Agreement requires both that (1) compensation to any Member for
18 services to CPI must be approved by 100% of the Disinterested Members, and (2) that
19 compensation for services to CPI must be provided prior to making any further distributions.

20 88. Upon information and belief, Defendants continue to compensate Member
21 Defendants for services to CPI without Silva’s approval as a Disinterested Member. Defendants
22 also continue to make distributions but withhold Silva’s portion.

23 **F. CPI and Member Defendants Continue to Misappropriate Silva’s Stem Cells**

24 89. Shortly after Member Defendants purported to redeem Silva’s interest, Silva clearly
25 and unequivocally revoked his consent for Defendants to use his stem cells or cells derived
26 therefrom, or to permit or facilitate others’ use of the same.

27 90. Upon information and belief, Defendants continue to use Silva’s stem cells as
28 alleged above despite Silva’s withdrawal of consent.

1 101. Members owe a duty of care to CPI and the other members, defined as requiring
2 each member to act in the best interests of CPI and with the care an ordinarily prudent person in a
3 like position would exercise under similar circumstances.

4 102. Members owe a duty of good faith and fair dealing to the other members and CPI,
5 and CPI owes an implied duty of good faith and fair dealing to each member.

6 103. Member Defendants breached their duty of loyalty as defined in the Operating
7 Agreement as alleged above. Those allegations include, but are not limited to:

- 8 a. Seeking to hide and failing to hold as trustee for CPI the property, profit, and
9 benefits derived from Member Defendants' improper transfers to themselves
10 and their entities, including but not limited to AIMS, CNP, Russell & Fifth,
11 FirstMedic, and Servicios Medicos.
- 12 b. Failing to hold as trustee for CPI the profit and benefits derived from
13 Member Defendants' personal use of Silva's cells, whether for themselves,
14 family members, or friends, including facial, discal, and penile injections.
- 15 c. Abusing their majority position and oppressing Silva by withholding Silva's
16 portion of distributions, purporting to remove him as an officer and
17 subsequently to strip him of his membership interest, operating CPI without
18 recognizing Silva's 25% Voting Rights, misappropriating and directing the
19 misappropriation of Silva's cells, and locking Silva out of all access to CPI's
20 operations and records.

21 104. Member Defendants breached their duty of care as defined in the Operating
22 Agreement as alleged above. Those allegations include, but are not limited to:

- 23 a. Failing to act in the best interests of the company by, among other things,
24 hiring a convicted embezzler as CPI's CFO.
- 25 b. Failing to exercise the care an ordinarily prudent person in a like position
26 would exercise under similar circumstances by, among other things, failing
27 to conduct a background check on Freeman prior to hiring her; failing to
28 verify Freeman's credentials prior to hiring her; and failing to provide

1 meaningful supervision or oversight including failure to review bank
2 documents and perform audits.

3 105. Defendants breached their duty of good faith and fair dealing as alleged above.
4 Those allegations include, but are not limited to:

- 5 a. Purporting to “redeem” Silva’s membership interest without compensation
6 and withholding Silva’s portion of CPI’s distributions despite lacking any
7 good faith basis for any of these actions.
- 8 b. Claiming CPI owns Silva’s cells and refusing to acknowledge Silva’s
9 withdrawal of consent despite lacking any good faith basis for any of these
10 actions.
- 11 c. Improper transfers to Member Defendants and their entities, including but
12 not limited to AIMS, CNP, Russell & Fifth, FirstMedic, and Servicios
13 Medicos.

14 **B. Other Breaches of the Operating Agreement**

15 106. The Defendants have breached their duties and obligations under the Operating
16 Agreement, thereby breaching the Operating Agreement itself as alleged above and as follows:

- 17 a. Making distributions to Member Defendants, including compensation for
18 services provided to CPI under Article 8.1(a) in violation of Article 5.6,
19 which requires exercise of Silva’s voting rights as a Disinterested Member
20 before any such distribution or compensation can be made.
- 21 b. Making distributions to Member Defendants without making simultaneous
22 distribution to Silva in violation of Article 8.1.
- 23 c. Purporting to remove Silva as an officer of CPI in violation of Article 5.7.
- 24 d. Purporting to “redeem” Silva’s membership interest despite there being no
25 provision for redemption in the Operating Agreement.
- 26 e. Refusal to provide Silva documents under Article 14.1.

27 107. As a result of Defendants’ misconduct, Silva believes he has been damaged in excess
28 of \$9,000,000. Further, Silva has been damaged by the serial trampling of his rights and

1 expectations as a 25% owner of CPI, holding voting rights in that same amount.

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

5 **SECOND CLAIM FOR RELIEF**

6 **(Breach of Operating Agreement, including Fiduciary Duties, On Behalf of CPI, against**
7 **Clay, Nelson, and Perry)**

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

9 110. Silva has standing to pursue derivative actions on CPI's behalf against Member
10 Defendants because he is, and at all relevant times was, a 25% owner of CPI.

11 111. Unlike corporate derivative claims, the requirements for LLC derivative actions are
12 set by statute rather than the common law.

13 112. A derivative claim is available if members with authority to bring the claim at issue
14 have refused to do so, regardless of the reason, or if an effort to cause the members to bring the
15 action is not likely to succeed.

16 113. Any effort to cause the Member Defendants to bring this claim against themselves
17 is not likely to succeed for at least two reasons, as explained in greater detail below.

18 a. Member Defendants received material personal benefits from their
19 misconduct that is the subject of this claim;

20 b. Member Defendants face a substantial likelihood of liability on this claim.

21 **A. Breaches of Fiduciary Duties**

22 114. CPI's Operating Agreement could have limited or eliminated any and all liabilities
23 for breach of contract and breach of duties with the exception of good faith and fair dealing.

24 115. Instead, the parties chose to create, define, and impose multiple fiduciary duties
25 via the Operating Agreement.

26 116. Member Defendants breached their duty of loyalty as defined in the Operating
27 Agreement as alleged above. Those allegations include, but are not limited to:
28

- 1 a. Seeking to hide and failing to hold as trustee for CPI the property, profit,
2 and benefits derived from Member Defendants' improper transfers to
3 themselves and their entities, including but not limited to AIMS, CNP,
4 Russell & Fifth, FirstMedic, and Servicios Medicos.
- 5 b. Failing to account to CPI and hold as trustee for CPI the profit and benefits
6 derived from Member Defendants' personal use of Silva's cells, whether
7 for themselves, family members, or friends, including facial, discal, and
8 penile injections.
- 9 c. Member Defendants received a material personal benefit from their
10 misconduct in breach of their duty of loyalty to CPI.

11 117. Member Defendants breached their duty of care as defined in the Operating
12 Agreement as alleged above. Those allegations include, but are not limited to:

- 13 a. Failing to act in the best interests of the company by, among other things,
14 hiring a convicted embezzler as CPI's CFO.
- 15 b. Failing to exercise the care an ordinarily prudent person in a like position
16 would exercise under similar circumstances by, among other things, failing
17 to conduct a background check on Freeman prior to hiring her; failing to
18 verify Freeman's credentials prior to hiring her; and failing to provide
19 meaningful supervision or oversight including failure to review bank
20 documents and perform audits.
- 21 c. Serially breaching the plain language of the Operating Agreement as
22 detailed in the following subsection.
- 23 d. Member Defendants face a substantial likelihood of liability for breach of
24 their duty of care as defined by the Operating Agreement.

25 118. Member Defendants breached their duty of good faith and fair dealing as alleged
26 above. Those allegations include, but are not limited to:

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- 1 a. Improper transfers of CPI's assets to Member Defendants and their entities,
2 including but not limited to AIMS, CNP, Russell & Fifth, FirstMedic, and
3 Servicios Medicos.
- 4 b. Member Defendants received a material personal benefit and face a
5 substantial likelihood of liability for breach of their duty of good faith and
6 fair dealing,

7 **B. Other Breaches of the Operating Agreement**

8 119. Member Defendants face a substantial likelihood of liability for each of the below
9 breaches of the plain language of the Operating Agreement.

10 120. Member Defendants have breached their duties and obligations under the Operating
11 Agreement, thereby breaching the Operating Agreement itself as alleged above and as follows:

- 12 a. Directing distributions to Member Defendants, including compensation for
13 services provided to CPI under Article 8.1(a) in violation of Article 5.6,
14 which requires exercise of Silva's voting rights as a Disinterested Member
15 before any such distribution or compensation can be made.
- 16 b. Directing distributions to Member Defendants without making simultaneous
17 distribution to Silva in violation of Article 8.1.
- 18 c. Purporting to remove Silva as an officer of CPI in violation of Article 5.7.
- 19 d. Purporting to "redeem" Silva's membership interest despite there being so
20 provision for redemption in the Operating Agreement.
- 21 e. Refusal to provide Silva documents under Article 14.1.

22 121. As a result of Defendants' misconduct, CPI has been damaged in excess of
23 \$5,000,000. Further, CPI has been damaged by the serial trampling of the requirements and
24 procedures of its Operating Agreement.

25 122. As a result of the Member Defendants' conduct, Silva is entitled to recover on CPI's
26 behalf an award of compensatory damages, punitive damages, attorney fees and costs, interest,
27 injunctive relief, and all other relief deemed appropriate by this Court.

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THIRD CLAIM FOR RELIEF

(Declaratory Relief against Clay, Nelson, and Perry)

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

124. There is an actual, ripe, and justiciable controversy between Silva on the one hand and Clay, Nelson, and Perry on the other over whether Member Defendants engaged in Wrongful Conduct as defined in Article 1.1(f) of the Operating Agreement.

125. Clay, Nelson, and Perry engaged in illegal conduct, including but not limited to fraud, theft, and/or embezzlement by, among other conduct, serially conspiring with and/or directing Freeman to make distributions and other transfers as alleged above in violation of NRS 86.341, the Operating Agreement, and NRS 205.300 et. seq. Such distributions and transfers diverted funds that should and otherwise would have gone to Silva. The value of Silva’s portion of each such distribution and transfer is significantly in excess of \$1,200, making Member Defendants’ deprivation a felony and therefore Wrongful Conduct.

126. Clay, Nelson, and Perry have engaged in illegal conduct, including but not limited to theft by, among other conduct, depriving Silva of his interest in CPI, which is personal property, in violation of NRS 205.0832. The value of Silva’s interest is significantly in excess of \$1,200, making Member Defendants’ deprivation a felony and therefore Wrongful Conduct.

127. Clay, Nelson, and Perry have engaged in illegal conduct, including but not limited to theft by, among other conduct, depriving Silva of his share of distributions under Article 8.1 of the Operating Agreement in violation of NRS 205.0832. The value of Silva’s share of distributions is significantly in excess of \$1,200, making Member Defendants’ deprivation a felony and therefore Wrongful Conduct.

128. Clay, Nelson, and Perry have engaged in illegal conduct, including but not limited to theft by, among other conduct, depriving Silva of his cells in violation of NRS 205.0832. The value of Silva’s cells is significantly in excess of \$1,200, making Member Defendants’ deprivation a felony and therefore Wrongful Conduct.

129. A declaration of whether Member Defendants engaged in Wrongful Conduct is necessary for the parties to ascertain their rights, obligations, and liabilities.

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b. Purporting to “redeem” Silva’s interest in CPI without compensation, despite lacking any legal basis for that act and thereafter operating CPI as if Silva did not hold his 25% voting and financial rights.

138. 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.

PRAYER FOR RELIEF

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

- (a) For damages in an amount in excess of \$15,000;
- (b) For the imposition of a receiver and other injunctive relief;
- (c) For the imposition of a constructive trust over Silva’s cells, distributions, and membership interest;
- (d) For punitive damages;
- (e) For costs of suit and attorneys’ fees;
- (f) For a court-ordered accounting;
- (g) For pre- and post-judgment interest; and
- (h) For such other and further relief as the Court deems just and proper.

DATED this 18th day of August 2025.

SNELL & WILMER L.L.P.

/s/ V.R. Bohman
 V.R. Bohman, Esq.
 Xyzlo Lee, Esq.
 Erin M. Gettel, Esq.
 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

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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 18th day of August 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.

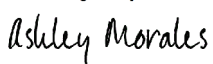
In the event that any party (“Defaulting Party”) defaults in an obligation under this Agreement and, as a result thereof, the other party (“Non-defaulting Party”) seeks to legally enforce rights hereunder against the Defaulting Party, then, in addition to all damages and other remedies to which the Non-defaulting 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

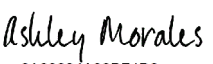
IN WITNESS WHEREOF, the undersigned have executed, with the intent to seal, this Operating Agreement as of the day and year first above written.

WITNESSES:

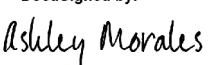
MEMBERS:

DocuSigned by:


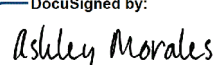
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DocuSigned by:



 6A80994A08D74D3...


DocuSigned by:


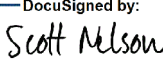
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DocuSigned by:


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DocuSigned by:

 _____ (L.S.)
 A82D668F692D424...
 ELIZABETH CLAY

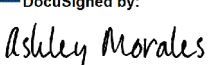
DocuSigned by:

 _____ (L.S.)
 D4EB7D2EBE29416...
 FRANCISCO SILVA

DocuSigned by:

 _____ (L.S.)
 F18262F8636C42C...
 SCOTT NELSON

DocuSigned by:

 _____ (L.S.)
 6783C1BB6ED14C0...
 JERRY

COMPANY:

CPI MANAGEMENT GROUP, LLC

DocuSigned by:


 6A80994A08D74D3...

By  _____ (SEAL)
 A82D668F692D424... , 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%
Deddrick 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: _____
71EF60FA21034EC...
Lance Alstodt
Chief Executive Officer

Agreed:

DocuSigned by:
Francisco Silva
96ACAD65663446F...
Francisco Silva _____

RA088

8490089.2
032

Case Information

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

Case Number
A-25-909767-B
File Date
01/10/2025

Court
Department 9
Case Type
NRS Chapters 78-89

Judicial Officer
Gall, Maria
Case Status
Open

Party

Plaintiff
Silva, Francisco

Active Attorneys ▼
Attorney
Austin, Bradley
Retained

Lead Attorney
Bohman, Vance R.
Retained

Attorney
Lee, Xyzlo
Retained

Attorney
Gettel, Erin M
Retained

Inactive Attorneys ▼
Attorney
Austin, Bradley
Retained

Counter Defendant
Silva, Francisco

Active Attorneys ▼
Attorney
Austin, Bradley
Retained

Lead Attorney
Bohman, Vance R.
Retained

Attorney
Lee, Xyzlo
Retained

Attorney
Gettel, Erin M
Retained

Inactive Attorneys ▼
Attorney
Austin, Bradley
Retained

Defendant
Clay, Ed

Active Attorneys ▼
Attorney
Christiansen, Peter James
Retained

Lead Attorney
Bendavid, Jeffrey A.
Retained

Attorney
Vokoun, Jacqueline
Retained

Attorney
Barrett, Whitney
Retained

Counter Claimant
Clay, Ed

Active Attorneys ▼
Attorney
Christiansen, Peter James
Retained

Lead Attorney
Bendavid, Jeffrey A.
Retained

Attorney
Vokoun, Jacqueline
Retained

Attorney
Barrett, Whitney
Retained

Defendant
Nelson, Scott

Active Attorneys ▼
Attorney
Christiansen, Peter James
Retained

Lead Attorney
Bendavid, Jeffrey A.
Retained

Attorney
Vokoun, Jacqueline
Retained

Attorney
Barrett, Whitney
Retained

Counter Claimant
Nelson, Scott

Active Attorneys ▼
Attorney
Christiansen, Peter James
Retained

Lead Attorney
Bendavid, Jeffrey A.
Retained

Attorney
Vokoun, Jacqueline
Retained

Attorney
Barrett, Whitney
Retained

Defendant
Perry, Dedrick

Active Attorneys ▼
Attorney
Christiansen, Peter James
Retained

Lead Attorney
Bendavid, Jeffrey A.
Retained

Attorney
Vokoun, Jacqueline
Retained

Attorney
Barrett, Whitney
Retained

Counter Claimant
Perry, Dedrick

Active Attorneys ▼
Attorney
Christiansen, Peter James
Retained

Lead Attorney
Bendavid, Jeffrey A.
Retained

Attorney

Vokoun, Jacqueline
Retained

Attorney
Barrett, Whitney
Retained

Defendant
Freeman, Julie

Active Attorneys ▼
Lead Attorney
Willson, Logan Gregory
Retained

Defendant
CPI Management Group, LLC

Active Attorneys ▼
Attorney
Christiansen, Peter James
Retained

Lead Attorney
Bendavid, Jeffrey A.
Retained

Attorney
Barrett, Whitney
Retained

Counter Claimant
CPI Management Group, LLC

Active Attorneys ▼
Attorney
Christiansen, Peter James
Retained

Lead Attorney
Bendavid, Jeffrey A.
Retained

Attorney
Barrett, Whitney
Retained

Events and Hearings

01/10/2025 Complaint (Business Court) ▼

Complaint (Business Court) - COMPB (CIV)

Comment

[1] Verified Complaint

01/10/2025 Initial Appearance Fee Disclosure ▼

Initial Appearance Fee Disclosure - IAFD (CIV)

Comment

[2] Initial Appearance Fee Disclosure

01/10/2025 Summons Electronically Issued - Service Pending ▼

Comment

[3] Summons-Civil

02/24/2025 Initial Appearance Fee Disclosure ▼

Initial Appearance Fee Disclosure - IAFD (CIV)

Comment

[4] Initial Appearance Fee Disclosure

02/24/2025 Motion to Strike ▼

Motion to Strike - MSTR (CIV)

Comment

[5] Nominal Defendant, CPI Management Group, LLC, and Defendants Ed Clay, Scott Nelson, and Deddrick Perry's Motion to Strike Plaintiff's Scandalous Allegations Pursuant to NRCP 12(f)

02/24/2025 Clerk's Notice of Hearing ▼

Clerk's Notice of Hearing - CNOC (CIV)

Comment

[6] Clerk's Notice of Hearing

02/24/2025 Motion to Dismiss ▼

Motion to Dismiss - MDSM (CIV)

Comment

[7] Nominal Defenat, CPI Management Group, LLC's Motion to Dismiss Plaintiff's Verified Complaint for a Derivative Action and/or Motion to Dismiss Plaintiff's Fifth and Sixth Claims for Relief Pursuant to NRCP 12(b)(5)

02/24/2025 Motion to Dismiss ▼

Motion to Dismiss - MDSM (CIV)

Comment

[8] Defendants, Ed Clay, Deddrick Perry, And Scott Nelsons Motion to Dismiss Plaintiffs First Through Fourth And Seventh Through Tenth Claims for Relief Pursuant To N.R.C.P. 12(b)(5).

02/24/2025 Clerk's Notice of Hearing ▼

Clerk's Notice of Hearing - CNOC (CIV)

Comment

[9] Clerk's Notice of Hearing

02/25/2025 Clerk's Notice of Hearing ▼

Clerk's Notice of Hearing - CNOC (CIV)

Comment

[10] Notice of Hearing

02/25/2025 Clerk's Notice of Hearing ▼

Clerk's Notice of Hearing - CNOC (CIV)

Comment

[11] Notice of Change of Hearing

02/27/2025 Joinder ▼

Joinder - JOIN (CIV)

Comment

[12] DEFENDANTS, ED CLAY, DEDDRICK PERRY, AND SCOTT NELSONS JOINDER TO NOMINAL DEFENDANT, CPI MANAGEMENT GROUP, LLCS MOTION TO DISMISS PLAINTIFFS VERIFIED COMPLAINT FOR A DERIVATIVE ACTION AND/OR MOTION TO DISMISS PLAINTIFFS FIFTH AND SIXTH CLAIMS FOR RELIEF PURSUANT TO N.R.C.P. 12(b)(5)

02/27/2025 Clerk's Notice of Hearing ▼

Clerk's Notice of Hearing - CNOC (CIV)

Comment

[13] Clerk's Notice of Hearing

02/28/2025 Joinder ▼

Joinder - JOIN (CIV)

Comment

[14] Nominal Defendant, CPI Management Group, LLC'S Joinder to Defendants, Ed Clay, Deddrick Perry, and Scott Nelsons Motion to Dismiss Plaintiffs First Through Fourth and Seventh through Tenth Claims for Relief Pursuant to N.R.C.P. 12(B)(5)

02/28/2025 Clerk's Notice of Hearing ▼

Clerk's Notice of Hearing - CNOC (CIV)

Comment

[15] Notice of Hearing

03/07/2025 First Amended Complaint ▼

First Amended Complaint - FAC (CIV)

Comment

[16] Verified First Amended Complaint

03/07/2025 Motion for Preliminary Injunction ▼

Motion for Preliminary Injunction - MPRI (CIV)

Comment

[17] Application for Preliminary Injunction

03/10/2025 Clerk's Notice of Hearing ▼

Clerk's Notice of Hearing - CNOC (CIV)

Comment

[18] Notice of Hearing

03/10/2025 Motion ▼

Motion - MOT (CIV)

Comment

[19] Motion to Serve Julie Freeman by Publication

03/13/2025 Order Shortening Time ▼

Order Shortening Time

Comment

[20] Nominal Defendant CPI Management Group, LLC, and Defendants Ed Clay, Scott Nelson, and Deddrick Perry's Motion to Continue Preliminary Injunction Hearing and Extend Time for Filing an Opposition Thereto on Order Shortening Time

03/17/2025 Opposition to Motion ▼

Opposition to Motion - OPPI (CIV)

Comment

[21] Plaintiff's Opposition to Nominal Defendant, CPI Management Group, LLC, and Defendants Ed Clay, Scott Nelson, and Deddrick Perrys Motion to Continue Preliminary Injunction Hearing and Extend Time for Filing an Opposition Thereto on an Order Shortening Time

03/18/2025 Reply in Support ▼

Reply - RPLY (CIV)

Comment

[22] Reply In Support of nominal Defendant, CPI Management Group, LLC, and Defendant's d Clay Scott Nelson, and Deddrick Perry's motion to continue preliminary injunction hearing and extend time for filing an opposition thereto on an order shortening time

03/19/2025 Motion to Continue ▼

Minutes - Motion to Continue

Judicial Officer

Yeager, Bitá

Hearing Time

9:30 AM

Result

Granted

Comment

Nominal Defendant CPI Management Group, LLC, and Defendants Ed Clay, Scott Nelson, and Deddrick Perry's Motion to Continue Preliminary Injunction Hearing and Extend Time for Filing an Opposition Thereto on Order Shortening Time

Parties Present ▲

Plaintiff

Attorney: Austin, Bradley

Attorney: Lee, Xyzlo

Attorney: Austin, Bradley

Defendant

Attorney: Christiansen, Peter James

Attorney: Bendavid, Jeffrey A.

Defendant

Attorney: Christiansen, Peter James

Attorney: Bendavid, Jeffrey A.

Defendant

Attorney: Christiansen, Peter James

Attorney: Bendavid, Jeffrey A.

Defendant

Attorney: Christiansen, Peter James

Attorney: Bendavid, Jeffrey A.

03/20/2025 Notice of Withdrawal of Motion ▼

Notice of Withdrawal of Motion - NWM (CIV)

Comment

[23] Notice of Withdrawal of Nominal Defendant, CPI Management Group, LLC and Defendants Ed Clay, Scott Nelson, and Deddrick Perry's Motion to Strike Plaintiff's Scandalous Allegations Pursuant to N.R.C.P. 12(f)

03/20/2025 Notice of Withdrawal of Motion ▼

Notice of Withdrawal of Motion - NWM (CIV)

Comment

[24] Notice of Withdrawal of Nominal Defendant, CPI Management Group. LLC's Motion to Dismiss Plaintiff's Verified Complaint for a Derivative Action and/or Motion to Dismiss Plaintiff's Fifth and Sixth Claims for Relief Pursuant to N.R.C.P. 12(b)(5)

03/20/2025 Notice of Withdrawal of Motion ▼

Notice of Withdrawal of Motion - NWM (CIV)

Comment

[25] Notice of Withdrawal of Defendants Ed Clay, Scott Nelson, and Deddrick Perry's Motion to Dismiss Plaintiff's First through Fourth and SEventh through Tenth Claims for Relief Pursuant to N.R.C.P. 12(b)(5)

03/21/2025 Notice of Withdrawal of Motion ▼

Notice of Withdrawal of Motion - NWM (CIV)

Comment

[26] Notice of Withdrawal of Defendants, Ed Clay, Deddrick Perry, and Scott Nelson's Joinder to Nominal Defendant, CPI Management Group. LLC's Motion to Dismiss Plaintiff's Verified Complaint for a Derivative Action and/or Motion to Dismiss Plaintiff's Fifth and Sixth Claims for Relief Pursuant to N.R.C.P. 12(b)(5)

03/21/2025 Notice of Withdrawal of Motion ▼

Notice of Withdrawal of Motion - NWM (CIV)

Comment

[27] Nominal Defendant, CPI MAnagement Group, LLC's Joinder to Defendants, Ed Clay, Deddrick Perry, and Scott Nelson's Motion to Dismiss Plaintiff's First through Fourth and Seventh through Tenth Claims for Relief Pursuant to N.R.C.P. 12(b)(5)

03/21/2025 Motion to Dismiss ▼

Motion to Dismiss - MDSM (CIV)

Comment

[28] 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).

03/21/2025 Motion to Dismiss ▼

Motion to Dismiss - MDSM (CIV)

Comment

[29] 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)

03/21/2025 Clerk's Notice of Hearing ▼

Clerk's Notice of Hearing - CNOG (CIV)

Comment

[30] Notice of Hearing

03/24/2025 Clerk's Notice of Hearing ▼

Clerk's Notice of Hearing - CNOG (CIV)

Comment

[31] Clerk's Notice of Hearing

03/25/2025 Affidavit of Service ▼

Affidavit of Service - AOS (CIV)

Comment

[32] Affidavit/Declaration of Service of Julie Freeman

03/25/2025 Withdrawal of Motion ▼

Withdrawal of Motion - WDM (CIV)

Comment

[33] Withdrawal of Motion to Serve Julie Freeman by Publication

03/27/2025 Motion to Strike ▼

Judicial Officer

Gall, Maria

Hearing Time

9:00 AM

Cancel Reason

Vacated

Comment

Nominal Defendant, CPI Management Group, LLC, and Defendants Ed Clay, Scott Nelson, and Deddrick Perry's Motion to Strike Plaintiff's Scandalous Allegations Pursuant to NRCP 12(f)

03/27/2025 Motion to Dismiss ▼

Judicial Officer
Gall, Maria

Hearing Time
9:00 AM

Cancel Reason
Vacated

Comment
Nominal Defendant, CPI Management Group, LLC's Motion to Dismiss Plaintiff's Verified Complaint for a Derivative Action and/or Motion to Dismiss Plaintiff's Fifth and Sixth Claims for Relief Pursuant to NRCP 12(b)(5)

03/27/2025 Motion to Dismiss ▼

Judicial Officer
Gall, Maria

Hearing Time
9:00 AM

Cancel Reason
Vacated

Comment
Defendants, Ed Clay, Deddrick Perry, And Scott Nelsons Motion to Dismiss Plaintiffs First Through Fourth And Seventh Through Tenth Claims for Relief Pursuant To N.R.C.P. 12(b)(5).

03/27/2025 Joinder ▼

Judicial Officer
Gall, Maria

Hearing Time
9:00 AM

Cancel Reason
Vacated

Comment
Defendants, Ed Clay, Deddrick Perry, and Scott Nelson's Joinder to Nominal Defendant, CPI Management Group, LLC's Motion to Dismiss Plaintiff's Verified Complaint for a Derivative Action and / or Motion to Dismiss Plaintiff's Fifth and Sixth Claims for Relief Pursuant to NRCP 12(b)(5)

03/27/2025 Joinder ▼

Judicial Officer
Gall, Maria

Hearing Time
9:00 AM

Cancel Reason
Vacated

Comment

Nominal Defendant, CPI Management Group, LLC'S Joinder to Defendants, Ed Clay, Deddrick Perry, and Scott Nelsons Motion to Dismiss Plaintiffs First Through Fourth and Seventh through Tenth Claims for Relief Pursuant to N.R.C.P. 12(B)(5)

03/31/2025 Opposition ▼

Opposition - OPPS (CIV)

Comment

[34] Nominal Defendant, Cpi Management Group, Llc, And Member Defendants Ed Clay, Scott Nelson, And Deddrick Perry's Opposition To Plaintiffs Application For Preliminary Injunction

04/04/2025 Opposition to Motion ▼

Opposition to Motion - OPPM (CIV)

Comment

[35] Plaintiff's Response to Defendants' Motion to Dismiss Plaintiff's Third, Fourth, Seventh, Eighth, and Tenth Through Sixteenth Claims for Relief

04/04/2025 Opposition to Motion ▼

Opposition to Motion - OPPM (CIV)

Comment

[36] Plaintiff's Response to Defendants' Motion to Dismiss Plaintiffs' Fifth, Sixth, and Ninth Claims for Relief

04/07/2025 Stipulation and Order ▼

Stipulation and Order

Comment

[37] Stipulation and Order to Continue Hearing on Defendants' Motions to Dismiss

04/07/2025 Notice of Entry of Stipulation and Order ▼

Notice of Entry of Stipulation and Order - NTSO (CIV)

Comment

[38] Notice of Entry of Stipulation and Order to Continue Hearing on Defendants Motions to Dismiss

04/08/2025 Reply in Support ▼

Reply in Support - RIS (CIV)

Comment

[39] Reply in Support of Plaintiff's Application for Preliminary Injunction

04/09/2025 Minute Order ▼

Minute Order

Judicial Officer

Gall, Maria

Hearing Time

11:41 AM

Result

Minute Order - No Hearing Held

Comment

Re: April 15, 2025, Hearing Time Change

04/10/2025 Motion ▼

Judicial Officer

Gall, Maria

Hearing Time

9:00 AM

Cancel Reason

Vacated

Comment

Application for Preliminary Injunction

04/15/2025 Preliminary Injunction Hearing ▼

Minutes - Preliminary Injunction Hearing

Judicial Officer

Gall, Maria

Hearing Time

11:00 AM

Result

Denied

Parties Present ▲

Plaintiff

Attorney: Bohman, Vance R.

Attorney: Lee, Xyzlo

Defendant

Attorney: Christiansen, Peter James

Attorney: Bendavid, Jeffrey A.

Defendant

Attorney: Christiansen, Peter James

Attorney: Bendavid, Jeffrey A.

Defendant

Attorney: Christiansen, Peter James

Attorney: Bendavid, Jeffrey A.

Defendant

Attorney: Christiansen, Peter James

Attorney: Bendavid, Jeffrey A.

04/16/2025 Court Recorders Invoice for Transcript ▼

Court Recorders Invoice for Transcript

Comment

[40]

04/16/2025 Recorders Transcript of Hearing ▼

Recorders Transcript of Hearing - RTRAN (CIV)

Comment

[41] Recorder's Transcript of Hearing: Preliminary Injunction Hearing. Heard on April 15, 2025

04/25/2025 Motion to Dismiss ▼

Motion to Dismiss - MDSM (CIV)

Comment

[42] Defendant Julie Freeman's Motion to Dismiss

04/25/2025 Clerk's Notice of Hearing ▼

Clerk's Notice of Hearing - CNOC (CIV)

Comment

[43] Notice of Hearing on [42] Defendant Julie Freeman's Motion to Dismiss

04/30/2025 Order Denying ▼

Order Denying

Comment

[44] Order Denying Plaintiff's Application for Preliminary Injunction

05/02/2025 Status Check ▼

Judicial Officer

Gall, Maria

Hearing Time

3:00 AM

Cancel Reason

Vacated

Comment

Status Check: Submission of Order (Preliminary Injunction)

05/05/2025 Notice of Entry of Order ▼

Notice of Entry of Order - NEOJ (CIV)

Comment

[45] Notice of Entry of Order Denying Plaintiff's Application for Preliminary Injunction

05/06/2025 Reply ▼

Reply - RPLY (CIV)

Comment

[46] Reply In Support Of Defendants Ed Clay, Deddrick Perry, And Scott Nelsons Motion To Dismiss Plaintiffs Third, Fourth, Seventh, Eighth, And Tenth Through Sixteenth Claims For Relief Pursuant To N.R.C.P. 12(B)(5)

05/06/2025 Reply ▼

Reply - RPLY (CIV)

Comment

[47] Nominal Defendant, CPI Management Group, LLC's Reply In Support of Its Motion To Dismiss Plaintiffs First Amended Verified Complaint For A Derivative Action And/Or Motion To Dismiss Plaintiffs Fifth, Sixth, And Ninth Claims For Relief Pursuant To N.R.C.P. 12(B)(5)

05/07/2025 Errata ▼

Errata - ERR (CIV)

Comment

[48] Errata to Nominal Defendant, CPI Management Group, LLC's Reply in Support of its 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)

05/07/2025 Reply ▼

Reply - RPLY (CIV)

Comment

[49] NOMINAL DEFENDANT, CPI MANAGEMENT GROUP, LLC'S REPLY IN SUPPORT OF ITS MOTION TO DISMISS PLAINTIFFS FIRST AMENDED VERIFIED COMPLAINT FOR A DERIVATIVE ACTION AND/OR MOTION TO DISMISS PLAINTIFFS FIFTH, SIXTH, AND NINTH CLAIMS FOR RELIEF PURSUANT TO N.R.C.P. 12(b)(5)

05/09/2025 Opposition to Motion to Dismiss ▼

Opposition to Motion to Dismiss - OMD (CIV)

Comment

[50] Plaintiff's Opposition to Defendant Julie Freeman's Motion to Dismiss

05/12/2025 Minute Order ▼

Minute Order

Judicial Officer

Gall, Maria

Hearing Time

8:39 AM

Result

Minute Order - No Hearing Held

Comment

Re: May 13, 2025, Hearing

05/13/2025 Motion to Dismiss ▼

Judicial Officer

Gall, Maria

Hearing Time

9:00 AM

Result

Granted in Part

Comment

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)

05/13/2025 Motion to Dismiss ▼

Judicial Officer

Gall, Maria

Hearing Time

9:00 AM

Result

Granted in Part

Comment

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)

05/13/2025 All Pending Motions ▼

Minutes - All Pending Motions

Judicial Officer

Gall, Maria

Hearing Time

9:00 AM

Result

Matter Heard

Parties Present ▲

Plaintiff

Attorney: Bohman, Vance R.

Attorney: Lee, Xyzlo

Defendant

Attorney: Bendavid, Jeffrey A.

Attorney: Vokoun, Jacqueline

Attorney: Barrett, Whitney

Defendant

Attorney: Bendavid, Jeffrey A.

Attorney: Vokoun, Jacqueline

Attorney: Barrett, Whitney

Defendant

Attorney: Bendavid, Jeffrey A.

Attorney: Vokoun, Jacqueline

Attorney: Barrett, Whitney

Defendant

Attorney: Willson, Logan Gregory

Defendant

Attorney: Bendavid, Jeffrey A.

Attorney: Barrett, Whitney

05/16/2025 Notice of Appeal ▼

Notice of Appeal - NOAS (CIV)

Comment

[51] Notice of Appeal

05/16/2025 Case Appeal Statement ▼

Case Appeal Statement - ASTA (CIV)

Comment

[52] Case Appeal Statement

05/19/2025 Notice of Change of Hearing ▼

Notice of Change of Hearing - NOCH (CIV)

Comment

[53] Notice of Change of Hearing

05/29/2025 Minute Order ▼

Minute Order

Judicial Officer

Gall, Maria

Hearing Time

10:32 AM

Result

Minute Order - No Hearing Held

Comment

Re: Case Management Conference Set

06/04/2025 Reply in Support ▼

Reply - RPLY (CIV)

Comment

[54] Reply in Support of Defendant Julie Freeman's Motion to Dismiss

06/05/2025 Hearing ▼

Minutes - Hearing

Judicial Officer

Gall, Maria

Hearing Time

9:30 AM

Result

Matter Heard

Comment

Case Management Conference

Parties Present ▲

Plaintiff

Attorney: Bohman, Vance R.

Defendant

Attorney: Bendavid, Jeffrey A.

Attorney: Vokoun, Jacqueline

Attorney: Barrett, Whitney

Defendant

Attorney: Bendavid, Jeffrey A.

Attorney: Vokoun, Jacqueline

Attorney: Barrett, Whitney

Defendant

Attorney: Bendavid, Jeffrey A.

Attorney: Vokoun, Jacqueline

Attorney: Barrett, Whitney

Defendant

Attorney: Willson, Logan Gregory

Defendant

Attorney: Bendavid, Jeffrey A.

Attorney: Barrett, Whitney

06/05/2025 Reply in Support ▼

Reply in Support - RIS (CIV)

Comment

[55] Reply in Support of Defendant Julie Freemans Motion to Dismiss

06/25/2025 Court Recorders Invoice for Transcript ▼

Court Recorders Invoice for Transcript

Comment

[56]

06/27/2025 Recorders Transcript of Hearing ▼

Recorders Transcript of Hearing - RTRAN (CIV)

Comment

[57] Recorder's Transcript of Hearing: All Pending Motions. Heard on May 13, 2025

07/03/2025 Decision ▼

Decision

Comment

[58] Decision on the Member Defendants' and the Company's Motions to Dismiss

07/08/2025 Minute Order ▼

Minute Order

Judicial Officer

Gall, Maria

Hearing Time

8:36 AM

Result

Minute Order - No Hearing Held

Comment

Re: July 11, 2025, Hearing Vacated

07/11/2025 Motion to Dismiss ▼

Judicial Officer

Gall, Maria

Hearing Time

3:00 AM

Cancel Reason

Vacated

Comment

Defendant Julie Freeman's Motion to Dismiss

07/18/2025 Status Check ▼

Judicial Officer

Gall, Maria

Hearing Time

3:00 AM

Cancel Reason

Vacated

Comment

Order on Member Defts' and CPI's order on motions to dismiss

07/18/2025 Order ▼

Order

Comment

[59] Order Implementing Court's Decision Date July 3, 2025 Granting in Part Denying in Part, and Holding in Abeyance in Part Member Defendants' Motion to Dismiss and Granting in Part and Denying in Part CPI's Motion to Dismiss

08/01/2025 Notice of Entry ▼

Notice of Entry - NEO (CIV)

Comment

[60] Notice of Entry of Order Implementing Court's Decision Date July 3, 2025 Granting in Part Denying in Part, and Holding in Abeyance in Part Member Defendants' Motion to Dismiss and Granting in Part and Denying in Part CPI's Motion to Dismiss

08/01/2025 Answer and Counterclaim ▼

Answer and Counterclaim - AACC (CIV)

Comment

[61] Defendants Answer To Complaint And Counterclaims

08/04/2025 Business Court Order ▼

Business Court Order

Comment

[62] Business Court Order

08/18/2025 Amended Complaint ▼

Amended Complaint - ACOM (CIV)

Comment
[63] Verified Second Amended Complaint

08/22/2025 Notice of Appearance ▼

Notice of Appearance - NOTA (CIV)

Comment
[64] Notice of Appearance

08/22/2025 Motion to Dismiss ▼

Motion to Dismiss - MDSM (CIV)

Comment
[65] Plaintiff/Counterdefendant Francisco Silva's Motion for Partial Dismissal of Counterclaims

08/22/2025 Appendix ▼

Appendix - APEN (CIV)

Comment
[66] Appendix of Exhibits to Plaintiff/Counterdefendant Francisco Silva's Motion for Partial Dismissal of Counterclaims

08/23/2025 Clerk's Notice of Hearing ▼

Clerk's Notice of Hearing - CNOC (CIV)

Comment
[67] Clerk's Notice of Hearing on [65] Plaintiff/Counterdefendant Francisco Silva's Motion for Partial Dismissal of Counterclaims

08/26/2025 Mandatory Rule 16 Conference ▼

Minutes - Mandatory Rule 16 Conference

Judicial Officer
Gall, Maria

Hearing Time
9:00 AM

Result
Scheduling Order Will Issue

Parties Present ▲

Plaintiff

Attorney: Bohman, Vance R.

Defendant

Attorney: Vokoun, Jacqueline

Attorney: Barrett, Whitney

Defendant

Attorney: Vokoun, Jacqueline

Attorney: Barrett, Whitney

Defendant

Attorney: Vokoun, Jacqueline

Attorney: Barrett, Whitney

Defendant

Attorney: Barrett, Whitney

08/28/2025 Demand for Jury Trial ▼

Demand for Jury Trial - DMJT (CIV)

Comment

[68] Plaintiff/Counterdefendant Francisco Silva's Demand for Jury Trial

09/02/2025 Scheduling and Trial Order ▼

Scheduling and Trial Order

Comment

[69] Scheduling Order and Order Setting Civil Jury Trial and Status Check Trial Readiness

09/02/2025 Notice ▼

Notice - NOTC (CIV)

Comment

[70] Notice of Filing of Petition of Writ of Mandamus in Nevada Supreme Court

09/02/2025 Motion to Dismiss ▼

Motion to Dismiss - MDSM (CIV)

Comment

[71] Defendants' Motion to Dismiss Plaintiff's Third, Claim for Relief and Partially Dismiss Plaintiffs First, Second, and Fourth Claims for Relief Pursuant to N.R.C.P. 12(b)(5)

09/03/2025 Clerk's Notice of Hearing ▼

Clerk's Notice of Hearing - CNOC (CIV)

Comment

[72] Notice of Hearing on [71] Defendants' Motion to Dismiss Plaintiff's Third, Claim for Relief and Partially Dismiss Plaintiffs First, Second, and Fourth Claims for Relief Pursuant to N.R.C.P. 12(b)(5)

09/05/2025 Counterclaim ▼

Counterclaim - CTCM (CIV)

Comment

[73] Amended Counterclaims

09/08/2025 Stipulation and Order ▼

Stipulation and Order

Comment

[74] Stipulation and Order to Extend Deadline for Initial Disclosures

09/11/2025 Minute Order ▼

Minute Order

Judicial Officer

Gall, Maria

Hearing Time

1:14 PM

Result

Minute Order - No Hearing Held

Comment

Re: Hearing on Motion to Dismiss VACATED

09/11/2025 Notice of Withdrawal of Motion ▼

Notice of Withdrawal of Motion - NWM (CIV)

Comment

[75] Notice of Withdrawal of Plaintiff/Counterdefendant Francisco Silva's Motion for Partial Dismissal of Counterclaims [Doc No. 65]

09/16/2025 Opposition to Motion to Dismiss ▼

Opposition to Motion to Dismiss - OMD (CIV)

Comment

[76] Francisco Silva's Opposition to Defendants' Motion to Dismiss Plaintiff's Third Claim for Relief and Partially Dismiss Plaintiff's First, Second, and Fourth Claims for Relief Pursuant to N.R.C.P. 12(b)(5)

09/18/2025 Motion to Dismiss ▼

Motion to Dismiss - MDSM (CIV)

Comment

[77] Plaintiff/Counterdefendant Francisco Silva's Motion for Partial Dismissal of Defendants' Amended Counterclaims [Doc No. 73]

09/18/2025 Appendix ▼

Appendix - APEN (CIV)

Comment

[78] Appendix of Exhibits to Plaintiff/Counterdefendant Francisco Silva's Motion for Partial Dismissal of Defendants' Amended Counterclaims [Doc No. 73]

09/18/2025 Clerk's Notice of Hearing ▼

Clerk's Notice of Hearing - CNOG (CIV)

Comment

[79] Notice of Hearing on [77] Plaintiff/Counterdefendant Francisco Silva's Motion for Partial Dismissal of Defendants' Amended Counterclaims [Doc No. 73]

09/23/2025 Motion to Dismiss ▼

Judicial Officer

Gall, Maria

Hearing Time

9:30 AM

Cancel Reason

Vacated

Comment

Plaintiff/Counterdefendant Francisco Silva's Motion for Partial Dismissal of Counterclaims

10/02/2025 Opposition to Motion to Dismiss ▼

Opposition to Motion to Dismiss - OMD (CIV)

Comment

[80] Defendants Oppositon To Motion For Partial Dismissal Of Defendants Amended Counterclaims

10/07/2025 Reply ▼

Reply - RPLY (CIV)

Comment

[81] REPLY IN SUPPORT OF DEFENDANTS MOTION TO DISMISS PLAINTIFFS THIRD CLAIM FOR RELIEF AND PARTIALLY DISMISS PLAINTIFFS FIRST, SECOND, AND FOURTH CLAIMS FOR RELIEF PURSUANT TO N.R.C.P. 12(b)(5)

10/14/2025 Motion to Dismiss ▼

Minutes - Motion to Dismiss

Judicial Officer

Gall, Maria

Hearing Time

9:30 AM

Result

Granted in Part

Comment

Defendants' Motion to Dismiss Plaintiff's Third, Claim for Relief and Partially Dismiss Plaintiffs First, Second, and Fourth Claims for Relief Pursuant to N.R.C.P. 12(b)(5)

Parties Present ▲

Plaintiff

Attorney: Bohman, Vance R.

Attorney: Gettel, Erin M

Defendant

Attorney: Christiansen, Peter James

Attorney: Bendavid, Jeffrey A.

Attorney: Barrett, Whitney

Defendant

Attorney: Christiansen, Peter James

Attorney: Bendavid, Jeffrey A.

Attorney: Barrett, Whitney

Defendant

Attorney: Christiansen, Peter James

Attorney: Bendavid, Jeffrey A.

Attorney: Barrett, Whitney

Defendant

Attorney: Christiansen, Peter James

Attorney: Bendavid, Jeffrey A.

Attorney: Barrett, Whitney

10/14/2025 Reply to Opposition ▼

Reply in Support - RIS (CIV)

Comment

[82] Plaintiff/Counterdefendant Francisco Silva's Reply to Opposition [Doc No. 80] to Motion for Partial Dismissal of Defendants' Amended Counterclaims [Doc No. 77]

10/21/2025 Motion to Dismiss ▼

Minutes - Motion to Dismiss

Judicial Officer

Gall, Maria

Hearing Time

9:30 AM

Result

Granted in Part

Comment

Plaintiff/Counterdefendant Francisco Silva's Motion for Partial Dismissal of Defendants' Amended Counterclaims [Doc No. 73]

Parties Present ▲

Plaintiff

Attorney: Bohman, Vance R.

Attorney: Gettel, Erin M

Defendant

Attorney: Christiansen, Peter James

Attorney: Bendavid, Jeffrey A.

Attorney: Vokoun, Jacqueline

Defendant

Attorney: Christiansen, Peter James

Attorney: Bendavid, Jeffrey A.

Attorney: Vokoun, Jacqueline

Defendant

Attorney: Christiansen, Peter James

Attorney: Bendavid, Jeffrey A.

Attorney: Vokoun, Jacqueline

Defendant

Attorney: Christiansen, Peter James

Attorney: Bendavid, Jeffrey A.

10/21/2025 Stipulation and Order ▼

Stipulation and Order

Comment

[83] First Stipulation and Order to Extend Motion Deadline

10/27/2025 Stipulated Protective Order ▼

Stipulated Protective Order

Comment

[84] Stipulated Protective and Confidentiality Order

10/27/2025 Stipulation and Order ▼

Stipulation and Order

Comment

[85] Stipulation and Order Regarding Discovery of Electronically Stored Information

11/17/2025 Minute Order ▼

Minute Order

Judicial Officer

Gall, Maria

Hearing Time

8:00 AM

Result

Minute Order - No Hearing Held

Comment

Re: Decision Date on Motions to Dismiss Extended

12/02/2025 Minute Order ▼

Minute Order

Judicial Officer

Gall, Maria

Hearing Time

4:34 PM

Result

Minute Order - No Hearing Held

Comment

Re: DECISION - Defendants' Motion to Dismiss Plaintiff's Third Claim for Relief and Partially Dismiss Plaintiff's First, Second, and Fourth Claims for Relief Pursuant to N.R.C.P. 12(b)(5)

12/04/2025 Minute Order ▼

Minute Order

Judicial Officer

Gall, Maria

Hearing Time

8:49 AM

Result

Minute Order - No Hearing Held

Comment

Re: Decision (PLAINTIFF/COUNTERDEFENDANT FRANCISCO SILVA S MOTION FOR PARTIAL DISMISSAL OF DEFENDANTS AMENDED COUNTERCLAIMS)

12/04/2025 Minute Order ▼

Minute Order

Judicial Officer

Gall, Maria

Hearing Time

8:49 AM

Result

Minute Order - No Hearing Held

Comment

Re: Supplemental Minute Order

12/04/2025 Decision ▼

Decision

Comment

[86] Order Striking Duplicative Minute Order Entered on 12/4/2025 and Decision on Plaintiff/Counterdefendant Francisco Silva's Motion for Partial Dismissal of Defendants' Amended

Counterclaims

12/19/2025 Status Check ▼

Judicial Officer
Gall, Maria

Hearing Time
3:00 AM

Comment
Status Check: Submission of Order (Defendants' Motion to Dismiss Plaintiff's Third Claim for Relief and Partially Dismiss Plaintiff's First, Second, and Fourth Claims for Relief Pursuant to N.R.C.P. 12(b)(5))

12/19/2025 Status Check ▼

Judicial Officer
Gall, Maria

Hearing Time
3:00 AM

Comment
Status Check: Submission of Order (PLAINTIFF/COUNTERDEFENDANT FRANCISCO SILVA S MOTION FOR PARTIAL DISMISSAL OF DEFENDANTS AMENDED COUNTERCLAIMS)

09/08/2026 Status Check: Discovery ▼

Judicial Officer
Gall, Maria

Hearing Time
9:00 AM

02/23/2027 Status Check: Trial Readiness ▼

Judicial Officer
Gall, Maria

Hearing Time
9:00 AM

04/19/2027 Jury Trial ▼

Judicial Officer
Gall, Maria

Hearing Time
9:00 AM

Comment
Jury Trial (5-7 Days)

Financial

Silva, Francisco

Total Financial Assessment	\$1,554.00
Total Payments and Credits	\$1,554.00

1/10/2025	Transaction Assessment			\$1,530.00
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1/10/2025	Efile Payment	Receipt # 2025-03293-CCCLK	Silva, Francisco	(\$1,530.00)
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5/16/2025	Transaction Assessment			\$24.00
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5/16/2025	Efile Payment	Receipt # 2025-39719-CCCLK	Silva, Francisco	(\$24.00)
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CPI Management Group, LLC

Total Financial Assessment	\$2,510.27
Total Payments and Credits	\$2,510.27

2/24/2025	Transaction Assessment			\$1,573.00
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2/24/2025	Efile Payment	Receipt # 2025-14311-CCCLK	CPI Management Group, LLC	(\$1,573.00)
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4/16/2025	Transaction Assessment			\$272.87
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4/16/2025	Online Payment	Receipt # 2025-29963-CCCLK	Christiansen Trial Lawyers	(\$272.87)
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6/25/2025	Transaction Assessment			\$664.40
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6/27/2025	Online Payment	Receipt # 2025-50513-CCCLK	Bendavid Law	(\$664.40)
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