IN THE SUPREME COURT
OF THE STATE OF NEVADA

FRANCISCO SILVA, AN INDIVIDUAL,

Petitioner,

vs.

THE EIGHTH JUDICIAL DISTRICT COURT, IN AND FOR THE COUNTY OF CLARK, STATE OF NEVADA, AND THE HONORABLE MARIA GALL, DISTRICT JUDGE;

Respondents,

and

ED CLAY, AN INDIVIDUAL; SCOTT NELSON, AN INDIVIDUAL; DEDDRICK PERRY, AN INDIVIDUAL; AND CPI MANAGEMENT GROUP, LLC,

Real parties in interest.

Supreme Court Case No. _____

District Court: A-25-909767-B

From the Eighth Judicial District Court, County of Clark, Dept IX.
Dist. Ct. Case: A-25-909767-B

APPENDIX TO PETITION FOR WRIT OF MANDAMUS

VOLUME 3

V.R. Bohman, Esq. Nevada Bar No. 13075
Kelly H. Dove, Nevada Bar No. 10569
Xyzlo Lee, Esq. Nevada Bar No. 16912
SNELL & WILMER L.L.P.

1700 South Pavilion Center Dr. Suite 700
Las Vegas, NV 89135
Phone: (702) 784-5200
vbohman@swlaw.com
kdove@swlaw.com
xlee@swlaw.com

Counsel for Petitioner Francisco Silva

CERTIFICATE OF SERVICE

This is to certify that on September 2, 2025, a true and correct copy of the foregoing **APPENDIX VOLUMES 1-3 TO PETITION FOR WRIT OF MANDAMUS** was served on the following by United States Mail, first class, and by the Supreme Court Electronic Filing System:

☒ **BY U.S. MAIL:** by placing the document(s) listed above in a sealed envelope with postage thereon fully prepaid, in the United States mail at Las Vegas, Nevada addressed as set forth below.

Honorable Maria Gall
Eighth Judicial District Court, Dept. XV
Regional Justice Center
200 Lewis Avenue
Las Vegas, NV 89155

☒ **BY EMAIL:**

JEFFERY A. BENDAVID, ESQ.
Nevada Bar No. 6220
jbendavid@bendavidfirm.com
JACQUELINE VOKOUN, ESQ.
Nevada Bar No. 16400
jvokoun@bendavidfirm.com
BENDAVID LAW
7301 Peak Drive, Suite 150
Las Vegas, Nevada 89128
(702) 385-6114
PETER S. CHRISTIANSEN, ESQ.
Nevada Bar No. 1656
pete@christiansenlaw.com
WHITNEY BARRETT, ESQ.
Nevada Bar No. 13662
wbarrett@christiansenlaw.com
CHRISTIANSEN TRIAL LAWYERS
710 S 7th Street
Las Vegas, Nevada 89101
(702) 240-7979
AUBREY B. HARWELL III, ESQ. *(Pro Hac Vice Forthcoming)*
TN No. 17394
trey.harwell@arlaw.com
ADAMS AND REESE LLP
1600 West End Avenue, Suite 1400
Nashville, Tennessee 37203
(616) 259-1028

Attorneys for Real Parties in Interest CPI Management Group, LLC, Clay, Nelson, and Perry

/s/Nicole Whitney
An employee of Snell & Wilmer

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DISTRICT COURT

CLARK COUNTY, NEVADA

Francisco Silva, Plaintiff, vs. Ed Clay, et al., Defendants, CPI Management Group, LLC, Nominal Defendant.	Case No.: A-25-909767-B Dept. No. IX

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

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]

I. Background

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

[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."

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

does business as "Cellular Performance Institute" and provides stem cell therapy. Silva is a biologist and was CPI's chief science officer. Clay is CPI's chief executive officer; Nelson is CPI's marketing and recruitment officer; and Perry is CPI's finance and supply chain officer.

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

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

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

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

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

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

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

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

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

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

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

II. Member Defendants' Motion to Dismiss

a. Application of the Business Judgment Rule to Silva's Breach of Fiduciary Duty Claims

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

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

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

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

> 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 . . .
>
> 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 . . .
>
> 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.

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

The court has reviewed the Operating Agreement. While the court agrees with Silva that the Operating Agreement does not expressly set forth a business judgment rule or similar presumption, the court finds that by adopting fiduciary duties at 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*).

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

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

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

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

> [I]f the agreement in question incorporates a corporate standard of care (either by reciting the corporate formulation in the document or by a statement to the effect that those in control of the unincorporated business are subject to the standards of a corporate director), and the state law applies the business judgment rule, it would be appropriate to apply the rule to the actions of those acting on behalf of the unincorporated organization. While doing so involves an assumption that the drafter meant to 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.

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

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

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

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

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

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

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

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

b. Third Claim - Breach of the Duty of Loyalty

Article 6.1 of the operating agreement limits a member's duty of loyalty as follows:

> (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.

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

Silva alleges that the Member Defendants breached their duty of loyalty by failing to properly allocate funds belonging and due to CPI and Silva,[3] failing to hold as trustee the property, profit, and/or benefits produced as a result of CPI's business, and misappropriating CPI's assets and/or misappropriating opportunities available to CPI for their own personal enrichment. Silva asserts that the Member Defendants diverted Silva's and CPI's funds to various other entities of which Silva is not a partner, including CHIPSA/TAM for a multimillion-dollar renovation and to purchase a property in Tennessee and fund mortgage payments on an apartment complex in 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.

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

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

c. Fourth Claim - Breach of the Duty of Care

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

> 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.

Silva alleges that the Member Defendants breached their duty of care "both with respect to CPI and to Silva, by acting to improperly enrich themselves." This allegation, however, invokes the duty of loyalty, not the duty of care. *See TVI Corp. v. Gallagher*, No. CV 7798-VCP, 2013 WL 5809271, at *13 (Del. Ch. Oct. 28, 2013) ("The duty of care, however, is a process-oriented duty, and merely alleging that Defendants made poor business decisions does not rebut the business judgment rule or state a claim for breach of the duty of care. The Complaint does not allege any specific facts to support an inference that Defendants' decisionmaking process was 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

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

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

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

d. Seventh Claim - Breach of Fiduciary Duty

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

> 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.

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

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

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

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

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

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

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

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

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

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

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

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

f. Tenth Claim – Accounting

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

g. Eleventh Claim – Minority Member Oppression

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

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

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

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

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

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

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

h. Twelfth Claim – Conversion

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

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

> Furthermore, a member or manager of a limited liability company cannot be held liable for the acts of the entity simply as a result of being a member or manager under Nevada law. NRS 86.381; *Gardner v. Henderson Water Park, LLC*, 133 Nev. 391, 393-94, 399 P.3d 350, 351 (2017). The Court rejects Plaintiff's interpretation of *Gardner* and concludes that Plaintiff has not identified any wrongful act committed by the Member Defendants amounting to 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.

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

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

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

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

i. Thirteenth Claim - Negligence

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

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

j. Fourteenth Claim – Misappropriation of Trade Secrets

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

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

k. Fifteenth Claim – Unjust Enrichment

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

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

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

l. Sixteenth Claim – Consumer Fraud

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

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

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

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

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

The court now addresses CPI's motion to dismiss.

III. CPI's Motion to Dismiss

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

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

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

> (i) whether the director received a material personal benefit from the alleged misconduct that is the subject of the litigation demand;
>
> (ii) whether the director faces a substantial likelihood of liability on any of the claims that would be the subject of the litigation demand; and
>
> (iii) whether the director lacks independence from someone who received a material personal benefit from the alleged misconduct that would be the subject of the litigation demand or who would face a substantial likelihood of liability on any of the claims that are the subject of the litigation demand.

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

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

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

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

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

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

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

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

***

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

Dated this 3rd day of July, 2025

801 B2C AA16 944E
Maria Gall
District Court Judge

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

CSERV

DISTRICT COURT
CLARK COUNTY, NEVADA

Francisco Silva, Plaintiff(s)	CASE NO: A-25-909767-B
vs.	DEPT. NO. Department 9
Ed Clay, Defendant(s)	

AUTOMATED CERTIFICATE OF SERVICE

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

Service Date: 7/3/2025

R. Todd Terry	tterry@christiansenlaw.com
Keely Perdue	keely@christiansenlaw.com
Jonathan Crain	jcrain@christiansenlaw.com
Chandi Melton	chandi@christiansenlaw.com
Leilani Gamboa	lgamboa@bendavidfirm.com
Norma Richter	nrichter@jfnvlaw.com
Docket Docket	docket_las@swlaw.com
Esther Barrios Sandoval	esther@christiansenlaw.com
VR Bohman	vbohman@swlaw.com
Logan Willson	Logan@jfnvlaw.com
Aileen Bencomo	ab@christiansenlaw.com

Jeffery Bendavid	jbendavid@bendavidfirm.com
Jacqueline Vokoun	jvokoun@bendavidfirm.com
Jacqueline Vokoun	jvokoun@bendavidfirm.com
Jacqueline Vokoun	jvokoun@bendavidfirm.com
Jacqueline Vokoun	jvokoun@bendavidfirm.com
Peter Christiansen	pete@christiansenlaw.com
Whitney Barrett	wbarrett@christiansenlaw.com
Peter Christiansen	pete@christiansenlaw.com
Whitney Barrett	wbarrett@christiansenlaw.com
Peter Christiansen	pete@christiansenlaw.com
Whitney Barrett	wbarrett@christiansenlaw.com
Xyzlo Lee	xlee@swlaw.com
Erika Perez	erika@jfnvlaw.com
Joanna Fung	jfung@swlaw.com
Andrew Brown	abrown@christiansenlaw.com
Amy Larsen	amy@christiansenlaw.com
Lyndsey Mosbey	lmosbey@swlaw.com
Peter Christiansen	pete@christiansenlaw.com
Whitney Barrett	wbarrett@christiansenlaw.com
Draego Burton	drburton@swlaw.com

ELECTRONICALLY SERVED
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07/18/2025 9:30 AM
CLERK OF THE COURT

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

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

AUBREY B. HARWELL III, ESQ. *(Pro Hac Vice Pending)*
TN No. 17394
Trey.harwell@arlaw.com
ADAMS AND REESE LLP
1600 West End Avenue, Suite 1400
Nashville, Tennessee 37203
(615) 259-1028
Attorneys for Defendants, Clay, Nelson, and Perry

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 DISMISS**[1]

[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.

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

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

THE COURT FURTHER ORDERS that Nominal Defendant CPI's 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) is GRANTED IN PART and DENIED IN PART in accordance with the Court's Decision dated July 3, 2025, adopted in full and appended hereto. *Id.*

IT IS SO ORDERED.

Dated this 18th day of July, 2025

Maria Gall

02D 9B0 B883 2646
Maria Gall
District Court Judge

BendavidLaw
702.385.6114
7301 Peak Drive, Suite 150
Las Vegas, Nevada 89128

Respectfully submitted by:
BENDAVID LAW

Jeffery A. Bendavid, Esq.

Jeffery A. Bendavid, Esq.
Nevada Bar No. 6220
Jacqueline Vokoun, Esq.
Nevada Bar No. 16400
7301 Peak Dr., Suite 150
Las Vegas, Nevada 89128

Peter S. Christiansen, Esq.
Nevada Bar No. 1656
Whitney Barrett, Esq.
Nevada Bar No. 13662
CHRISTIANSEN TRIAL LAWYERS
710 S 7th Street
Las Vegas, Nevada 89101

Aubrey B. Harwell III, Esq.
(Pro Hac Vice Forthcoming)
TN no. 17394
ADAMS AND REESE LLP
1600 West End Avenue, Suite 1400
Nashville, Tennessee 37203

Attorneys for Defendants, Clay, Nelson, and Perry and Nominal Defendant CPI

Approved as to form by:
SNELL & WILMER L.L.P.

_____

V.R. Bohman, Esq.
Nevada Bar No. 13075
Xyzlo Lee, Esq.
Nevada Bar No. 16912
1700 South Pavilion Center Drive, Suite 700
Las Vegas, NV 89135

Attorneys for Plaintiff

DECN

DISTRICT COURT

CLARK COUNTY, NEVADA

Francisco Silva, Plaintiff, vs. Ed Clay, et al., Defendants, CPI Management Group, LLC, Nominal Defendant.	Case No.: A-25-909767-B Dept. No. IX

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

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]

I. Background

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

[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."

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

does business as "Cellular Performance Institute" and provides stem cell therapy. Silva is a biologist and was CPI's chief science officer. Clay is CPI's chief executive officer; Nelson is CPI's marketing and recruitment officer; and Perry is CPI's finance and supply chain officer.

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

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

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

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

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

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

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

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

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

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

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

II. Member Defendants' Motion to Dismiss

a. Application of the Business Judgment Rule to Silva's Breach of Fiduciary Duty Claims

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

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

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

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

> 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 . . .
>
> 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 . . .
>
> 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.

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

The court has reviewed the Operating Agreement. While the court agrees with Silva that the Operating Agreement does not expressly set forth a business judgment rule or similar presumption, the court finds that by adopting fiduciary duties at 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*).

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

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

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

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

> [I]f the agreement in question incorporates a corporate standard of care (either by reciting the corporate formulation in the document or by a statement to the effect that those in control of the unincorporated business are subject to the standards of a corporate director), and the state law applies the business judgment rule, it would be appropriate to apply the rule to the actions of those acting on behalf of the unincorporated organization. While doing so involves an assumption that the drafter meant to 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.

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

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

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

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

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

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

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

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

b. Third Claim - Breach of the Duty of Loyalty

Article 6.1 of the operating agreement limits a member's duty of loyalty as follows:

> (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.

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

Silva alleges that the Member Defendants breached their duty of loyalty by failing to properly allocate funds belonging and due to CPI and Silva,[3] failing to hold as trustee the property, profit, and/or benefits produced as a result of CPI's business, and misappropriating CPI's assets and/or misappropriating opportunities available to CPI for their own personal enrichment. Silva asserts that the Member Defendants diverted Silva's and CPI's funds to various other entities of which Silva is not a partner, including CHIPSA/TAM for a multimillion-dollar renovation and to purchase a property in Tennessee and fund mortgage payments on an apartment complex in 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.

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

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

c. Fourth Claim - Breach of the Duty of Care

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

> 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.

Silva alleges that the Member Defendants breached their duty of care "both with respect to CPI and to Silva, by acting to improperly enrich themselves." This allegation, however, invokes the duty of loyalty, not the duty of care. *See TVI Corp. v. Gallagher*, No. CV 7798-VCP, 2013 WL 5809271, at *13 (Del. Ch. Oct. 28, 2013) ("The duty of care, however, is a process-oriented duty, and merely alleging that Defendants made poor business decisions does not rebut the business judgment rule or state a claim for breach of the duty of care. The Complaint does not allege any specific facts to support an inference that Defendants' decisionmaking process was 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

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

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

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

d. Seventh Claim - Breach of Fiduciary Duty

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

> 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.

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

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

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

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

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

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

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

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

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

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

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

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

f. Tenth Claim – Accounting

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

g. Eleventh Claim – Minority Member Oppression

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

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

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

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

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

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

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

h. Twelfth Claim – Conversion

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

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

> Furthermore, a member or manager of a limited liability company cannot be held liable for the acts of the entity simply as a result of being a member or manager under Nevada law. NRS 86.381; *Gardner v. Henderson Water Park, LLC*, 133 Nev. 391, 393-94, 399 P.3d 350, 351 (2017). The Court rejects Plaintiff's interpretation of *Gardner* and concludes that Plaintiff has not identified any wrongful act committed by the Member Defendants amounting to 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.

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

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

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

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

i. Thirteenth Claim - Negligence

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

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

j. Fourteenth Claim – Misappropriation of Trade Secrets

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

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

k. Fifteenth Claim – Unjust Enrichment

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

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

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

l. Sixteenth Claim – Consumer Fraud

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

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

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

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

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

The court now addresses CPI's motion to dismiss.

III. CPI's Motion to Dismiss

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

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

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

> (i) whether the director received a material personal benefit from the alleged misconduct that is the subject of the litigation demand;
>
> (ii) whether the director faces a substantial likelihood of liability on any of the claims that would be the subject of the litigation demand; and
>
> (iii) whether the director lacks independence from someone who received a material personal benefit from the alleged misconduct that would be the subject of the litigation demand or who would face a substantial likelihood of liability on any of the claims that are the subject of the litigation demand.

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

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

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

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

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

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

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

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

***

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

Dated this 3rd day of July, 2025

801 B2C AA16 944E
Maria Gall
District Court Judge

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

CSERV

DISTRICT COURT
CLARK COUNTY, NEVADA

Francisco Silva, Plaintiff(s)	CASE NO: A-25-909767-B
vs.	DEPT. NO. Department 9
Ed Clay, Defendant(s)	

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R. Todd Terry	tterry@christiansenlaw.com
Keely Perdue	keely@christiansenlaw.com
Jonathan Crain	jcrain@christiansenlaw.com
Chandi Melton	chandi@christiansenlaw.com
Leilani Gamboa	lgamboa@bendavidfirm.com
Norma Richter	nrichter@jfnvlaw.com
Docket Docket	docket_las@swlaw.com
Esther Barrios Sandoval	esther@christiansenlaw.com
VR Bohman	vbohman@swlaw.com
Logan Willson	Logan@jfnvlaw.com
Aileen Bencomo	ab@christiansenlaw.com

Jeffery Bendavid	jbendavid@bendavidfirm.com
Jacqueline Vokoun	jvokoun@bendavidfirm.com
Jacqueline Vokoun	jvokoun@bendavidfirm.com
Jacqueline Vokoun	jvokoun@bendavidfirm.com
Jacqueline Vokoun	jvokoun@bendavidfirm.com
Peter Christiansen	pete@christiansenlaw.com
Whitney Barrett	wbarrett@christiansenlaw.com
Peter Christiansen	pete@christiansenlaw.com
Whitney Barrett	wbarrett@christiansenlaw.com
Peter Christiansen	pete@christiansenlaw.com
Whitney Barrett	wbarrett@christiansenlaw.com
Xyzlo Lee	xlee@swlaw.com
Erika Perez	erika@jfnvlaw.com
Joanna Fung	jfung@swlaw.com
Andrew Brown	abrown@christiansenlaw.com
Amy Larsen	amy@christiansenlaw.com
Lyndsey Mosbey	lmosbey@swlaw.com
Peter Christiansen	pete@christiansenlaw.com
Whitney Barrett	wbarrett@christiansenlaw.com
Draego Burton	drburton@swlaw.com

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DISTRICT COURT
CLARK COUNTY, NEVADA

Francisco Silva, Plaintiff(s)	CASE NO: A-25-909767-B
vs.	DEPT. NO. Department 9
Ed Clay, Defendant(s)	

AUTOMATED CERTIFICATE OF SERVICE

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Service Date: 7/18/2025

R. Todd Terry	tterry@christiansenlaw.com
Keely Perdue	keely@christiansenlaw.com
Jonathan Crain	jcrain@christiansenlaw.com
Chandi Melton	chandi@christiansenlaw.com
Norma Richter	nrichter@jfnvlaw.com
Docket Docket	docket_las@swlaw.com
Leilani Gamboa	lgamboa@bendavidfirm.com
Esther Barrios Sandoval	esther@christiansenlaw.com
VR Bohman	vbohman@swlaw.com
Logan Willson	Logan@jfnvlaw.com
Aileen Bencomo	ab@christiansenlaw.com

Jeffery Bendavid	jbendavid@bendavidfirm.com
Joanna Fung	jfung@swlaw.com
Andrew Brown	abrown@christiansenlaw.com
Jacqueline Vokoun	jvokoun@bendavidfirm.com
Jacqueline Vokoun	jvokoun@bendavidfirm.com
Jacqueline Vokoun	jvokoun@bendavidfirm.com
Jacqueline Vokoun	jvokoun@bendavidfirm.com
Peter Christiansen	pete@christiansenlaw.com
Whitney Barrett	wbarrett@christiansenlaw.com
Peter Christiansen	pete@christiansenlaw.com
Whitney Barrett	wbarrett@christiansenlaw.com
Peter Christiansen	pete@christiansenlaw.com
Whitney Barrett	wbarrett@christiansenlaw.com
Peter Christiansen	pete@christiansenlaw.com
Whitney Barrett	wbarrett@christiansenlaw.com
Xyzlo Lee	xlee@swlaw.com
Amy Larsen	amy@christiansenlaw.com
Lyndsey Mosbey	lmosbey@swlaw.com
Draego Burton	drburton@swlaw.com
Amber Lasby	Amber@jfnvlaw.com

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

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

AUBREY B. HARWELL III, ESQ. *(Pro Hac Vice Pending)*
TN No. 17394
Trey.harwell@arlaw.com
ADAMS AND REESE LLP
1600 West End Avenue, Suite 1400
Nashville, Tennessee 37203
(615) 259-1028
Attorneys for Nominal Defendant CPI and Defendants Clay, Nelson, and Perry

DISTRICT COURT

CLARK COUNTY NEVADA

Francisco Silva, an individual, Plaintiff, vs. Ed Clay, an individual; Scott Nelson, an individual; Deddrick Perry, an individual; Julie Freeman, an individual; Doe Defendants 1 – 10; Defendants, CPI Management Group, LLC, a Nevada limited liability company; Nominal Defendant.	Case No. A-25-909767-B Dept. 9 **NOTICE OF ENTRY OF 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 DISMISS**

Please take notice that an **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 DISMISS** was entered in the above-captioned case on July 18, 2025.

A TRUE AND CORRECT COPY of the above-referenced document is attached hereto.

DATED this 1st day of August 2025.

BENDAVID LAW

/s/ Jeffery A. Bendavid, Esq.

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

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

Attorneys for Defendants, Clay, Nelson, and Perry

AUBREY B. HARWELL III, ESQ.
(Pro Hac Vice Pending)
TN no. 17394
trey@nealharwell.com
ADAMS AND REESE LLP
1600 West End Avenue, Suite 1400
Nashville, Tennessee 37203
(615) 259-1028

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Electronically Filed
07/18/2025 9:30 AM
CLERK OF THE COURT

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

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

AUBREY B. HARWELL III, ESQ. *(Pro Hac Vice Pending)*
TN No. 17394
Trey.harwell@arlaw.com
ADAMS AND REESE LLP
1600 West End Avenue, Suite 1400
Nashville, Tennessee 37203
(615) 259-1028
Attorneys for Defendants, Clay, Nelson, and Perry

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 DISMISS**[1]

[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.

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

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

THE COURT FURTHER ORDERS that Nominal Defendant CPI's 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) is GRANTED IN PART and DENIED IN PART in accordance with the Court's Decision dated July 3, 2025, adopted in full and appended hereto. *Id.*

IT IS SO ORDERED.

Dated this 18th day of July, 2025

Maria Gall

02D 9B0 B883 2646
Maria Gall
District Court Judge

BendavidLaw
702.385.6114
7301 Peak Drive, Suite 150
Las Vegas, Nevada 89128

Respectfully submitted by:
BENDAVID LAW

Jeffery A. Bendavid, Esq.

Jeffery A. Bendavid, Esq.
Nevada Bar No. 6220
Jacqueline Vokoun, Esq.
Nevada Bar No. 16400
7301 Peak Dr., Suite 150
Las Vegas, Nevada 89128

Peter S. Christiansen, Esq.
Nevada Bar No. 1656
Whitney Barrett, Esq.
Nevada Bar No. 13662
CHRISTIANSEN TRIAL LAWYERS
710 S 7th Street
Las Vegas, Nevada 89101

Aubrey B. Harwell III, Esq.
(Pro Hac Vice Forthcoming)
TN no. 17394
ADAMS AND REESE LLP
1600 West End Avenue, Suite 1400
Nashville, Tennessee 37203

Attorneys for Defendants, Clay, Nelson, and Perry and Nominal Defendant CPI

Approved as to form by:
SNELL & WILMER L.L.P.

_____

V.R. Bohman, Esq.
Nevada Bar No. 13075
Xyzlo Lee, Esq.
Nevada Bar No. 16912
1700 South Pavilion Center Drive, Suite 700
Las Vegas, NV 89135

Attorneys for Plaintiff

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DISTRICT COURT

CLARK COUNTY, NEVADA

Francisco Silva, Plaintiff, vs. Ed Clay, et al., Defendants, CPI Management Group, LLC, Nominal Defendant.	Case No.: A-25-909767-B Dept. No. IX

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

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]

I. Background

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

[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."

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

does business as "Cellular Performance Institute" and provides stem cell therapy. Silva is a biologist and was CPI's chief science officer. Clay is CPI's chief executive officer; Nelson is CPI's marketing and recruitment officer; and Perry is CPI's finance and supply chain officer.

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

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

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

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

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

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

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

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

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

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

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

II. Member Defendants' Motion to Dismiss

a. Application of the Business Judgment Rule to Silva's Breach of Fiduciary Duty Claims

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

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

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

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

> 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 . . .
>
> 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 . . .
>
> 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.

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

The court has reviewed the Operating Agreement. While the court agrees with Silva that the Operating Agreement does not expressly set forth a business judgment rule or similar presumption, the court finds that by adopting fiduciary duties at 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*).

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

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

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

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

> [I]f the agreement in question incorporates a corporate standard of care (either by reciting the corporate formulation in the document or by a statement to the effect that those in control of the unincorporated business are subject to the standards of a corporate director), and the state law applies the business judgment rule, it would be appropriate to apply the rule to the actions of those acting on behalf of the unincorporated organization. While doing so involves an assumption that the drafter meant to 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.

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

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

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

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

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

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

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

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

b. Third Claim - Breach of the Duty of Loyalty

Article 6.1 of the operating agreement limits a member's duty of loyalty as follows:

> (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.

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

Silva alleges that the Member Defendants breached their duty of loyalty by failing to properly allocate funds belonging and due to CPI and Silva,[3] failing to hold as trustee the property, profit, and/or benefits produced as a result of CPI's business, and misappropriating CPI's assets and/or misappropriating opportunities available to CPI for their own personal enrichment. Silva asserts that the Member Defendants diverted Silva's and CPI's funds to various other entities of which Silva is not a partner, including CHIPSA/TAM for a multimillion-dollar renovation and to purchase a property in Tennessee and fund mortgage payments on an apartment complex in 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.

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

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

c. Fourth Claim - Breach of the Duty of Care

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

> 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.

Silva alleges that the Member Defendants breached their duty of care "both with respect to CPI and to Silva, by acting to improperly enrich themselves." This allegation, however, invokes the duty of loyalty, not the duty of care. *See TVI Corp. v. Gallagher*, No. CV 7798-VCP, 2013 WL 5809271, at *13 (Del. Ch. Oct. 28, 2013) ("The duty of care, however, is a process-oriented duty, and merely alleging that Defendants made poor business decisions does not rebut the business judgment rule or state a claim for breach of the duty of care. The Complaint does not allege any specific facts to support an inference that Defendants' decisionmaking process was 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

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

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

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

d. Seventh Claim - Breach of Fiduciary Duty

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

> 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.

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

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

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

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

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

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

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

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

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

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

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

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

f. Tenth Claim – Accounting

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

g. Eleventh Claim – Minority Member Oppression

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

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

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

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

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

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

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

h. Twelfth Claim – Conversion

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

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

> Furthermore, a member or manager of a limited liability company cannot be held liable for the acts of the entity simply as a result of being a member or manager under Nevada law. NRS 86.381; *Gardner v. Henderson Water Park, LLC*, 133 Nev. 391, 393-94, 399 P.3d 350, 351 (2017). The Court rejects Plaintiff's interpretation of *Gardner* and concludes that Plaintiff has not identified any wrongful act committed by the Member Defendants amounting to 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.

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

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

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

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

i. Thirteenth Claim - Negligence

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

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

j. Fourteenth Claim – Misappropriation of Trade Secrets

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

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

k. Fifteenth Claim – Unjust Enrichment

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

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

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

l. Sixteenth Claim – Consumer Fraud

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

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

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

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

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

The court now addresses CPI's motion to dismiss.

III. CPI's Motion to Dismiss

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

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

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

> (i) whether the director received a material personal benefit from the alleged misconduct that is the subject of the litigation demand;
>
> (ii) whether the director faces a substantial likelihood of liability on any of the claims that would be the subject of the litigation demand; and
>
> (iii) whether the director lacks independence from someone who received a material personal benefit from the alleged misconduct that would be the subject of the litigation demand or who would face a substantial likelihood of liability on any of the claims that are the subject of the litigation demand.

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

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

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

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

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

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

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

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

***

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

Dated this 3rd day of July, 2025

801 B2C AA16 944E
Maria Gall
District Court Judge

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

CSERV

DISTRICT COURT
CLARK COUNTY, NEVADA

Francisco Silva, Plaintiff(s)	CASE NO: A-25-909767-B
vs.	DEPT. NO. Department 9
Ed Clay, Defendant(s)	

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Service Date: 7/3/2025

R. Todd Terry	tterry@christiansenlaw.com
Keely Perdue	keely@christiansenlaw.com
Jonathan Crain	jcrain@christiansenlaw.com
Chandi Melton	chandi@christiansenlaw.com
Leilani Gamboa	lgamboa@bendavidfirm.com
Norma Richter	nrichter@jfnvlaw.com
Docket Docket	docket_las@swlaw.com
Esther Barrios Sandoval	esther@christiansenlaw.com
VR Bohman	vbohman@swlaw.com
Logan Willson	Logan@jfnvlaw.com
Aileen Bencomo	ab@christiansenlaw.com

Jeffery Bendavid	jbendavid@bendavidfirm.com
Jacqueline Vokoun	jvokoun@bendavidfirm.com
Jacqueline Vokoun	jvokoun@bendavidfirm.com
Jacqueline Vokoun	jvokoun@bendavidfirm.com
Jacqueline Vokoun	jvokoun@bendavidfirm.com
Peter Christiansen	pete@christiansenlaw.com
Whitney Barrett	wbarrett@christiansenlaw.com
Peter Christiansen	pete@christiansenlaw.com
Whitney Barrett	wbarrett@christiansenlaw.com
Peter Christiansen	pete@christiansenlaw.com
Whitney Barrett	wbarrett@christiansenlaw.com
Xyzlo Lee	xlee@swlaw.com
Erika Perez	erika@jfnvlaw.com
Joanna Fung	jfung@swlaw.com
Andrew Brown	abrown@christiansenlaw.com
Amy Larsen	amy@christiansenlaw.com
Lyndsey Mosbey	lmosbey@swlaw.com
Peter Christiansen	pete@christiansenlaw.com
Whitney Barrett	wbarrett@christiansenlaw.com
Draego Burton	drburton@swlaw.com

CSERV

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R. Todd Terry	tterry@christiansenlaw.com
Keely Perdue	keely@christiansenlaw.com
Jonathan Crain	jcrain@christiansenlaw.com
Chandi Melton	chandi@christiansenlaw.com
Norma Richter	nrichter@jfnvlaw.com
Docket Docket	docket_las@swlaw.com
Leilani Gamboa	lgamboa@bendavidfirm.com
Esther Barrios Sandoval	esther@christiansenlaw.com
VR Bohman	vbohman@swlaw.com
Logan Willson	Logan@jfnvlaw.com
Aileen Bencomo	ab@christiansenlaw.com

Jeffery Bendavid	jbendavid@bendavidfirm.com
Joanna Fung	jfung@swlaw.com
Andrew Brown	abrown@christiansenlaw.com
Jacqueline Vokoun	jvokoun@bendavidfirm.com
Jacqueline Vokoun	jvokoun@bendavidfirm.com
Jacqueline Vokoun	jvokoun@bendavidfirm.com
Jacqueline Vokoun	jvokoun@bendavidfirm.com
Peter Christiansen	pete@christiansenlaw.com
Whitney Barrett	wbarrett@christiansenlaw.com
Peter Christiansen	pete@christiansenlaw.com
Whitney Barrett	wbarrett@christiansenlaw.com
Peter Christiansen	pete@christiansenlaw.com
Whitney Barrett	wbarrett@christiansenlaw.com
Peter Christiansen	pete@christiansenlaw.com
Whitney Barrett	wbarrett@christiansenlaw.com
Xyzlo Lee	xlee@swlaw.com
Amy Larsen	amy@christiansenlaw.com
Lyndsey Mosbey	lmosbey@swlaw.com
Draego Burton	drburton@swlaw.com
Amber Lasby	Amber@jfnvlaw.com

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

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

AUBREY B. HARWELL III, ESQ. *(Pro Hac Vice Forthcoming)*
TN No. 17394
trey.harwell@arlaw.com
ADAMS AND REESE LLP
1600 West End Avenue, Suite 1400
Nashville, Tennessee 37203
(616) 259-1028

Attorneys for CPI Management Group, LLC, and Member Defendants, Clay, Nelson, and Perry

DISTRICT COURT
CLARK COUNTY NEVADA

Francisco Silva, an individual, Plaintiff, vs. Ed Clay, an individual; Scott Nelson, an individual; Deddrick Perry, an individual; Julie Freeman, an individual; Doe Member Defendants 1 – 10; Member Defendants, CPI Management Group, LLC, a Nevada limited liability company; Nominal Defendant.	Case No. A-25-909767-B Dept. 9 **DEFENDANTS' ANSWER TO COMPLAINT AND COUNTERCLAIMS**

Defendants Ed Clay ("Clay"), Scott Nelson ("Nelson"), and Deddrick Perry ("Perry") (collectively, "Individual Defendants"), and Nominal Defendant CPI Management, LLC ("CPI") (collectively, "Defendants"), by and through their attorneys of record, hereby answer the Complaint filed by Plaintiff Francisco Silva ("Plaintiff" or "Silva") as follows:

INTRODUCTION

1. In answering Paragraph 1, Defendants deny the allegations contained therein.

2. In answering Paragraph 2, Defendants deny the allegations contained therein.

3. In answering Paragraph 3, Defendants deny the allegations contained therein.

4. In answering Paragraph 4, Defendants deny the allegations contained therein.

5. In answering Paragraph 5, Defendants deny the allegations contained therein.

6. In answering Paragraph 6, Defendants deny the allegations contained therein.

7. In answering Paragraph 7, Defendants deny the allegations contained therein.

8. In answering Paragraph 8, Defendants deny the allegations contained therein.

9. In answering Paragraph 9, Defendants admit the allegations contained therein.

10. In answering Paragraph 10, Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations contained therein and therefore deny the same.

11. In answering Paragraph 11, Defendants deny the allegations contained therein.

12. In answering Paragraph 12, Defendants deny the allegations contained therein.

13. In answering Paragraph 13, Defendants deny the allegations contained therein.

14. In answering Paragraph 14, Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations contained therein and therefore deny the same.

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7301 Peak Drive, Suite 150
Las Vegas, Nevada 89128

15. In answering Paragraph 15, Defendants deny the allegations contained therein.

16. In answering Paragraph 16, Defendants deny the allegations contained therein.

17. In answering Paragraph 17, Defendants deny the allegations contained therein.

18. In answering Paragraph 18, Defendants deny that CPI marketing materials directly attribute its success to Plaintiff. Defendants otherwise admit the remaining allegations contained therein.

19. In answering Paragraph 19, Defendants deny the allegations contained therein.

20. In answering Paragraph 20, Defendants deny the allegations contained therein.

21. In answering Paragraph 21, Defendants deny the allegations contained therein.

22. In answering Paragraph 22, Defendants deny the allegations contained therein.

23. In answering Paragraph 23, Defendants admit the allegations contained therein.

24. In answering Paragraph 24, Defendants deny the allegations contained therein.

25. In answering Paragraph 25, Defendants deny the allegations contained therein.

26. In answering Paragraph 26, Defendants deny the allegations contained therein.

27. In answering Paragraph 27, Defendants deny the allegations contained therein.

28. In answering Paragraph 28, Defendants deny the allegations contained

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Las Vegas, Nevada 89128

therein.

29. In answering Paragraph 29, Defendants deny the allegations contained therein.

30. In answering Paragraph 30, Defendants deny the allegations contained therein.

31. In answering Paragraph 31, Defendants deny the allegations contained therein.

32. In answering Paragraph 32, Defendants deny the allegations contained therein.

33. In answering Paragraph 33, Defendants deny the allegations contained therein.

PARTIES

34. In answering Paragraph 34, Defendants deny that Plaintiff is and was at all times relevant hereto a member holding a 25% interest in CPI. Defendants are otherwise without knowledge or information sufficient to form a belief as to the truth of the remaining allegations contained therein and therefore deny the same.

35. In answering Paragraph 35, Defendants deny that CPI is a necessary party to the derivative relief he seeks in this action. Defendants otherwise admit the remaining allegations contained therein.

36. In answering Paragraph 36, Defendants deny that Defendant Clay holds a 37.5% interest in CPI. Defendants otherwise admit the remaining allegations contained therein.

37. In answering Paragraph 37, Defendants deny that Defendant Nelson holds a 22.5% interest in CPI. Defendants otherwise admit the remaining allegations contained therein.

38. In answering Paragraph 38, Defendants deny that Defendant Perry holds a 15% interest in CPI. Defendants otherwise admit the remaining allegations contained therein.

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39. In answering Paragraph 39, Defendants admit the allegations contained therein.

40. In answering Paragraph 40, Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations contained therein and therefore deny the same.

41. In answering Paragraph 41, Defendants deny the allegations contained therein.

JURISDICTION AND VENUE

42. In answering Paragraph 42, Defendants admit the allegations contained therein.

43. In answering Paragraph 43, Defendants admit the allegations contained therein.

44. In answering Paragraph 44, Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations contained therein and therefore deny the same.

FACTS AND GENERAL ALLEGATIONS

A. The Formation of CPI

45. In answering Paragraph 45, Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations contained therein and therefore deny the same.

46. In answering Paragraph 46, Defendants deny the classification of "Rogue Members." Defendants otherwise admit the allegations contained therein.

47. In answering Paragraph 47, Defendants deny the allegations contained therein.

48. In answering Paragraph 48, Defendants deny the allegations contained therein.

49. In answering Paragraph 49, Defendants deny the classification of "Rogue Members." Defendants otherwise admit the allegations contained therein.

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B. CPI Clinic in Tijuana

50. In answering Paragraph 50, Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations contained therein and therefore deny the same.

51. In answering Paragraph 51, Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations contained therein and therefore deny the same.

52. In answering Paragraph 52, Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations contained therein, and therefore deny the same.

53. In answering Paragraph 53, Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations contained therein and therefore deny the same.

54. In answering Paragraph 54, Defendants deny the allegations contained therein.

55. In answering Paragraph 55, Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations contained therein and therefore deny the same.

56. In answering Paragraph 56, Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations contained therein and therefore deny the same.

57. In answering Paragraph 57, Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations contained therein and therefore deny the same.

58. In answering Paragraph 58, Defendants deny the allegations contained therein.

59. In answering Paragraph 59, Defendants deny the allegations contained therein.

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60. In answering Paragraph 60, Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations contained therein and therefore deny the same.

61. In answering Paragraph 61, Defendants deny the allegations contained therein.

62. In answering Paragraph 62, Defendants deny the allegations contained therein.

63. In answering Paragraph 63, Defendants admit the allegations contained therein.

64. In answering Paragraph 64, Defendants admit the allegations contained therein.

65. In answering Paragraph 65, Defendants deny that CPI's business expanded rapidly "due to the success of the treatment protocol," but otherwise admit the remaining allegations contained therein.

C. Potential Merger with CHIPSA/TAM

66. In answering Paragraph 66, Defendants deny the allegations contained therein.

67. In answering Paragraph 67, Defendants deny the allegations contained therein.

68. In answering Paragraph 68, Defendants deny the allegations contained therein.

D. Misappropriation of CPI Assets

69. In answering Paragraph 69, Defendants deny the classification of "Rogue Members." Defendants otherwise admit the allegations contained therein.

70. In answering Paragraph 70, Defendants deny the allegations contained therein.

71. In answering Paragraph 71, Defendants admit the allegations contained therein.

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72. In answering Paragraph 72, Defendants admit the allegations contained therein.

73. In answering Paragraph 73, Defendants deny the allegations contained therein.

74. In answering Paragraph 74, Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations contained therein, and therefore deny the same.

75. In answering Paragraph 75, Defendants deny the allegations contained therein.

76. In answering Paragraph 76, Defendants deny the allegations contained therein.

77. In answering Paragraph 77, Defendants deny the allegations contained therein.

78. In answering Paragraph 78, Defendants deny the allegations contained therein.

79. In answering Paragraph 79, Defendants deny the allegations contained therein.

80. In answering Paragraph 80, Defendants deny the allegations contained therein.

81. In answering Paragraph 81, Defendants deny the allegations contained therein.

82. In answering Paragraph 82, Defendants deny the allegations contained therein.

83. In answering Paragraph 83, Defendants deny the allegations contained therein.

84. In answering Paragraph 84, Defendants deny the allegations contained therein.

85. In answering Paragraph 85, Defendants deny the allegations contained

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therein.

E. Silva's Termination and Company Misconduct

86. In answering Paragraph 86, Defendants deny the classification of "Rogue Members." Defendants otherwise admit the allegations contained therein.

87. In answering Paragraph 87, Defendants deny the classification of "Rogue Members." Defendants otherwise admit the allegations contained therein.

88. In answering Paragraph 88, Defendants admit the allegations contained therein.

89. In answering Paragraph 89, Defendants admit the allegations contained therein.

90. In answering Paragraph 90, Defendants deny the allegations contained therein.

91. In answering Paragraph 91, Defendants deny the allegations contained therein.

92. In answering Paragraph 92, Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations contained therein and therefore deny the same.

93. In answering Paragraph 93, Defendants admit the allegations contained therein.

94. In answering Paragraph 94, Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations contained therein and therefore deny the same.

95. In answering Paragraph 95, Defendants deny the allegations contained therein.

96. In answering Paragraph 96, Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations contained therein and therefore deny the same.

97. In answering Paragraph 97, Defendants deny the allegations contained

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98. In answering Paragraph 98, Defendants deny the allegations contained therein.

99. In answering Paragraph 99, Defendants deny the allegations contained therein.

100. In answering Paragraph 100, Defendants deny the allegations contained therein.

101. In answering Paragraph 101, Defendants deny the allegations contained therein.

102. In answering Paragraph 102, Defendants deny the allegations contained therein.

103. In answering Paragraph 103, Defendants deny the allegations contained therein.

104. In answering Paragraph 104, Defendants deny that their representation is evidence of futility but otherwise admit the remaining allegations contained therein.

105. In answering Paragraph 105, Defendants deny the allegations contained therein.

106. In answering Paragraph 106, Defendants deny the allegations contained therein.

F. CPI Continues to Misappropriate Silva's Stem Cell Lines

107. In answering Paragraph 107, Defendants deny the allegations contained therein.

108. In answering Paragraph 108, Defendants deny the allegations contained therein.

109. In answering Paragraph 109, Defendants deny that use of any cells was contingent on Plaintiff's authorization.

110. In answering Paragraph 110, Defendants contend that Plaintiff sent a letter on January 10, 2025, and that the letter speaks for itself. Defendants otherwise deny the

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remaining allegations contained therein.

111. In answering Paragraph 111, Defendants admit that Plaintiff sent a letter on January 13, 2025, but otherwise deny the remaining allegations contained therein.

112. In answering Paragraph 112, Defendants deny the allegations contained therein.

113. In answering Paragraph 113, Defendants admit that Defendants sent Plaintiff a letter on January 21, 2025, but otherwise deny the remaining allegations contained therein.

114. In answering Paragraph 114, Defendants deny the allegations contained therein.

115. In answering Paragraph 115, Defendants deny the allegations contained therein.

FIRST CLAIM FOR RELIEF

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

116. In answering Paragraph 116, Defendants incorporate by reference all previous answers set forth in Paragraphs 1 through 115.

117. In answering Paragraph 117, Defendants deny the allegations contained therein.

118. In answering Paragraph 118, Defendants contend that the allegations contained therein are not factual statements but constitute statements of law requiring no answer. NRS 86.286(2)(b) speaks for itself.

119. In answering Paragraph 119, Defendants deny the allegations contained therein.

120. In answering Paragraph 120, Defendants deny the allegations contained therein.

121. In answering Paragraph 121, Defendants deny the allegations contained therein.

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SECOND CLAIM FOR RELIEF

(Breach of Covenant of Good Faith & Fair Dealing against Clay, Nelson, and Perry)

122. In answering Paragraph 122, Defendants incorporate by reference all previous answers set forth in Paragraphs 1 through.

123. In answering Paragraph 123, Defendants contend that the allegations contained therein are not factual statements but constitute statements of law requiring no answer. NRS 86.286(2)(b) speaks for itself.

124. In answering Paragraph 124, Defendants admit the allegations contained therein.

125. In answering Paragraph 125, Defendants contend that the allegations contained therein are not factual statements but constitute statements of law requiring no answer. Nevertheless, Defendants deny the same.

126. In answering Paragraph 126, Defendants contend that the allegations contained therein are not factual statements but constitute statements of law requiring no answer. Nevertheless, Defendants deny the same.

127. In answering Paragraph 127, Defendants deny the allegations contained therein.

128. In answering Paragraph 128, Defendants deny the allegations contained therein.

129. In answering Paragraph 129, Defendants deny the allegations contained therein.

130. In answering Paragraph 130, Defendants deny the allegations contained therein.

THIRD CLAIM FOR RELIEF

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

131. In answering Paragraph 131, Defendants incorporate by reference all previous answers set forth in Paragraphs 1 through.

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132. In answering Paragraph 132, Defendants contend that the allegations contained therein are not factual statements but constitute statements of law requiring no answer. Nevertheless, Defendants deny the same.

133. In answering Paragraph 133, Defendants contend that the operating agreement speaks for itself and are otherwise without knowledge or information sufficient to form a belief as to the truth of the remaining allegations contained therein. Defendants therefore deny the same.

134. In answering Paragraph 134, Defendants contend that the operating agreement speaks for itself and are otherwise without knowledge or information sufficient to form a belief as to the truth of the remaining allegations contained therein. Defendants therefore deny the same.

135. In answering Paragraph 135, Defendants deny the allegations contained therein.

136. In answering Paragraph 136, Defendants deny the allegations contained therein.

137. In answering Paragraph 137, Defendants deny the allegations contained therein.

138. In answering Paragraph 138, Defendants deny the allegations contained therein.

139. In answering Paragraph 139, Defendants deny the allegations contained therein.

140. In answering Paragraph 140, Defendants deny the allegations contained therein.

FOURTH CLAIM FOR RELIEF

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

141. In answering Paragraph 141, Defendants contend that Plaintiff's Claim was Dismissed by the Court, and no answer is required.

142. In answering Paragraph 142, Defendants contend that Plaintiff's Claim

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was Dismissed by the Court, and no answer is required.

143. In answering Paragraph 143, Defendants contend that Plaintiff's Claim was Dismissed by the Court, and no answer is required.

144. In answering Paragraph 144, Defendants contend that Plaintiff's Claim was Dismissed by the Court, and no answer is required.

145. In answering Paragraph 145, Defendants contend that Plaintiff's Claim was Dismissed by the Court, and no answer is required.

146. In answering Paragraph 146, Defendants contend that Plaintiff's Claim was Dismissed by the Court, and no answer is required.

147. In answering Paragraph 147, Defendants contend that Plaintiff's Claim was Dismissed by the Court, and no answer is required.

FIFTH CLAIM FOR RELIEF

(Conversion on behalf of CPI against Freeman)

148. In answering Paragraph 148, Defendants contend that Plaintiff's Claim was Dismissed by the Court, and no answer is required.

149. In answering Paragraph 149, Defendants contend that Plaintiff's Claim was Dismissed by the Court, and no answer is required.

150. In answering Paragraph 150, Defendants contend that Plaintiff's Claim was Dismissed by the Court, and no answer is required.

151. In answering Paragraph 151, Defendants contend that Plaintiff's Claim was Dismissed by the Court, and no answer is required.

152. In answering Paragraph 152, Defendants contend that Plaintiff's Claim was Dismissed by the Court, and no answer is required.

153. In answering Paragraph 153, Defendants contend that Plaintiff's Claim was Dismissed by the Court, and no answer is required.

154. In answering Paragraph 154, Defendants contend that Plaintiff's Claim was Dismissed by the Court, and no answer is required.

155. In answering Paragraph 155, Defendants contend that Plaintiff's Claim

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was Dismissed by the Court, and no answer is required.

156. In answering Paragraph 156, Defendants contend that Plaintiff's Claim was Dismissed by the Court, and no answer is required.

157. In answering Paragraph 157, Defendants contend that Plaintiff's Claim was Dismissed by the Court, and no answer is required.

158. In answering Paragraph 158, Defendants contend that Plaintiff's Claim was Dismissed by the Court, and no answer is required.

159. In answering Paragraph 159, Defendants contend that Plaintiff's Claim was Dismissed by the Court, and no answer is required.

160. In answering Paragraph 160, Defendants contend that Plaintiff's Claim was Dismissed by the Court, and no answer is required.

161. In answering Paragraph 161, Defendants contend that Plaintiff's Claim was Dismissed by the Court, and no answer is required.

162. In answering Paragraph 162, Defendants contend that Plaintiff's Claim was Dismissed by the Court, and no answer is required.

SIXTH CLAIM FOR RELIEF

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

163. In answering Paragraph 163, Defendants incorporate by reference all previous answers set forth in Paragraphs 1 through 162.

164. In answering Paragraph 164, Defendants deny the allegations contained therein.

165. In answering Paragraph 165, Defendants deny the allegations contained therein.

166. In answering Paragraph 166, Defendants deny the allegations contained therein.

167. In answering Paragraph 167, Defendants deny the allegations contained therein.

168. In answering Paragraph 168, Defendants deny the allegations contained

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169. In answering Paragraph 169, Defendants deny the allegations contained therein.

170. In answering Paragraph 170, Defendants deny the allegations contained therein.

SEVENTH CLAIM FOR RELIEF

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

171. In answering Paragraph 171, Defendants contend that Plaintiff's Claim was Dismissed by the Court, and no answer is required.

172. In answering Paragraph 172, Defendants contend that Plaintiff's Claim was Dismissed by the Court, and no answer is required.

173. In answering Paragraph 173, Defendants contend that Plaintiff's Claim was Dismissed by the Court, and no answer is required.

174. In answering Paragraph 174, Defendants contend that Plaintiff's Claim was Dismissed by the Court, and no answer is required.

175. In answering Paragraph 175, Defendants contend that Plaintiff's Claim was Dismissed by the Court, and no answer is required.

176. In answering Paragraph 176, Defendants contend that Plaintiff's Claim was Dismissed by the Court, and no answer is required.

EIGHTH CLAIM FOR RELIEF

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

177. In answering Paragraph 177, Defendants contend that Plaintiff's Claim was Dismissed by the Court, and no answer is required.

178. In answering Paragraph 178, Defendants contend that Plaintiff's Claim was Dismissed by the Court, and no answer is required.

179. In answering Paragraph 179, Defendants contend that Plaintiff's Claim was Dismissed by the Court, and no answer is required.

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180. In answering Paragraph 180, Defendants contend that Plaintiff's Claim was Dismissed by the Court, and no answer is required.

181. In answering Paragraph 181, Defendants contend that Plaintiff's Claim was Dismissed by the Court, and no answer is required.

182. In answering Paragraph 182, Defendants contend that Plaintiff's Claim was Dismissed by the Court, and no answer is required.

183. In answering Paragraph 183, Defendants contend that Plaintiff's Claim was Dismissed by the Court, and no answer is required.

184. In answering Paragraph 184, Defendants contend that Plaintiff's Claim was Dismissed by the Court, and no answer is required.

185. In answering Paragraph 185, Defendants contend that Plaintiff's Claim was Dismissed by the Court, and no answer is required.

NINTH CLAIM FOR RELIEF

(Negligent Hiring, Supervision, and Retention on behalf of CPI against Clay, Nelson, and Perry)

186. In answering Paragraph 186, Defendants contend that Plaintiff's Claim was Dismissed by the Court, and no answer is required.

187. In answering Paragraph 187, Defendants contend that Plaintiff's Claim was Dismissed by the Court, and no answer is required.

188. In answering Paragraph 188, Defendants contend that Plaintiff's Claim was Dismissed by the Court, and no answer is required.

189. In answering Paragraph 189, Defendants contend that Plaintiff's Claim was Dismissed by the Court, and no answer is required.

190. In answering Paragraph 190, Defendants contend that Plaintiff's Claim was Dismissed by the Court, and no answer is required.

191. In answering Paragraph 191, Defendants contend that Plaintiff's Claim was Dismissed by the Court, and no answer is required.

192. In answering Paragraph 192, Defendants contend that Plaintiff's Claim

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was Dismissed by the Court, and no answer is required.

193. In answering Paragraph 193, Defendants contend that Plaintiff's Claim was Dismissed by the Court, and no answer is required.

194. In answering Paragraph 194, Defendants contend that Plaintiff's Claim was Dismissed by the Court, and no answer is required.

TENTH CLAIM FOR RELIEF

(Accounting)

195. In answering Paragraph 195, Defendants contend that Plaintiff's Claim was Dismissed by the Court, and no answer is required.

196. In answering Paragraph 196, Defendants contend that Plaintiff's Claim was Dismissed by the Court, and no answer is required.

197. In answering Paragraph 197, Defendants contend that Plaintiff's Claim was Dismissed by the Court, and no answer is required.

198. In answering Paragraph 198, Defendants contend that Plaintiff's Claim was Dismissed by the Court, and no answer is required.

199. In answering Paragraph 199, Defendants contend that Plaintiff's Claim was Dismissed by the Court, and no answer is required.

200. In answering Paragraph 200, Defendants contend that Plaintiff's Claim was Dismissed by the Court, and no answer is required.

201. In answering Paragraph 201, Defendants contend that Plaintiff's Claim was Dismissed by the Court, and no answer is required.

ELEVENTH CLAIM FOR RELIEF

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

202. In answering Paragraph 202, Defendants contend that Plaintiff's Claim was Dismissed by the Court, and no answer is required.

203. In answering Paragraph 203, Defendants contend that Plaintiff's Claim was Dismissed by the Court, and no answer is required.

204. In answering Paragraph 204, Defendants contend that Plaintiff's Claim

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was Dismissed by the Court, and no answer is required.

205. In answering Paragraph 205, Defendants contend that Plaintiff's Claim was Dismissed by the Court, and no answer is required.

206. In answering Paragraph 206, Defendants contend that Plaintiff's Claim was Dismissed by the Court, and no answer is required.

207. In answering Paragraph 207, Defendants contend that Plaintiff's Claim was Dismissed by the Court, and no answer is required.

208. In answering Paragraph 208, Defendants contend that Plaintiff's Claim was Dismissed by the Court, and no answer is required.

209. In answering Paragraph 209, Defendants contend that Plaintiff's Claim was Dismissed by the Court, and no answer is required.

TWELFTH CLAIM FOR RELIEF

(Conversion against Clay, Nelson, and Perry)

210. In answering Paragraph 210, Defendants contend that the Court held Defendants' Motion to Dismiss Plaintiff's Claim in abeyance, and no answer is required at this time.

211. In answering Paragraph 211, Defendants contend that the Court held Defendants' Motion to Dismiss Plaintiff's Claim in abeyance, and no answer is required at this time.

212. In answering Paragraph 212, Defendants contend that the Court held Defendants' Motion to Dismiss Plaintiff's Claim in abeyance, and no answer is required at this time.

213. In answering Paragraph 213, Defendants contend that the Court held Defendants' Motion to Dismiss Plaintiff's Claim in abeyance, and no answer is required at this time.

214. In answering Paragraph 214, Defendants contend that the Court held Defendants' Motion to Dismiss Plaintiff's Claim in abeyance, and no answer is required at this time.

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215. In answering Paragraph 215, Defendants contend that the Court held Defendants' Motion to Dismiss Plaintiff's Claim in abeyance, and no answer is required at this time.

216. In answering Paragraph 216, Defendants contend that the Court held Defendants' Motion to Dismiss Plaintiff's Claim in abeyance, and no answer is required at this time.

217. In answering Paragraph 217, Defendants contend that the Court held Defendants' Motion to Dismiss Plaintiff's Claim in abeyance, and no answer is required at this time.

218. In answering Paragraph 218, Defendants contend that the Court held Defendants' Motion to Dismiss Plaintiff's Claim in abeyance, and no answer is required at this time.

219. In answering Paragraph 219, Defendants contend that the Court held Defendants' Motion to Dismiss Plaintiff's Claim in abeyance, and no answer is required at this time.

THIRTEENTH CLAIM FOR RELIEF

(Negligence against Clay, Nelson, and Perry)

220. In answering Paragraph 220, Defendants contend that Plaintiff's Claim was Dismissed by the Court, and no answer is required.

221. In answering Paragraph 221, Defendants contend that Plaintiff's Claim was Dismissed by the Court, and no answer is required.

222. In answering Paragraph 222, Defendants contend that Plaintiff's Claim was Dismissed by the Court, and no answer is required.

223. In answering Paragraph 223, Defendants contend that Plaintiff's Claim was Dismissed by the Court, and no answer is required.

224. In answering Paragraph 224, Defendants contend that Plaintiff's Claim was Dismissed by the Court, and no answer is required.

225. In answering Paragraph 225, Defendants contend that Plaintiff's Claim

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was Dismissed by the Court, and no answer is required.

226. In answering Paragraph 226, Defendants contend that Plaintiff's Claim was Dismissed by the Court, and no answer is required.

227. In answering Paragraph 227, Defendants contend that Plaintiff's Claim was Dismissed by the Court, and no answer is required.

228. In answering Paragraph 228, Defendants contend that Plaintiff's Claim was Dismissed by the Court, and no answer is required.

FOURTEENTH CLAIM FOR RELIEF

(Misappropriation of Trade Secrets against Clay, Nelson, and Perry)

229. In answering Paragraph 229, Defendants contend that the Court held Defendants' Motion to Dismiss Plaintiff's Claim in abeyance, and no answer is required at this time.

230. In answering Paragraph 230, Defendants contend that the Court held Defendants' Motion to Dismiss Plaintiff's Claim in abeyance, and no answer is required at this time.

231. In answering Paragraph 231, Defendants contend that the Court held Defendants' Motion to Dismiss Plaintiff's Claim in abeyance, and no answer is required at this time.

232. In answering Paragraph 232, Defendants contend that the Court held Defendants' Motion to Dismiss Plaintiff's Claim in abeyance, and no answer is required at this time.

233. In answering Paragraph 233, Defendants contend that the Court held Defendants' Motion to Dismiss Plaintiff's Claim in abeyance, and no answer is required at this time.

234. In answering Paragraph 234, Defendants contend that the Court held Defendants' Motion to Dismiss Plaintiff's Claim in abeyance, and no answer is required at this time.

235. In answering Paragraph 235, Defendants contend that the Court held

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Defendants' Motion to Dismiss Plaintiff's Claim in abeyance, and no answer is required at this time.

236. In answering Paragraph 236, Defendants contend that the Court held Defendants' Motion to Dismiss Plaintiff's Claim in abeyance, and no answer is required at this time.

237. In answering Paragraph 237, Defendants contend that the Court held Defendants' Motion to Dismiss Plaintiff's Claim in abeyance, and no answer is required at this time.

238. In answering Paragraph 238, Defendants contend that the Court held Defendants' Motion to Dismiss Plaintiff's Claim in abeyance, and no answer is required at this time.

239. In answering Paragraph 239, Defendants contend that the Court held Defendants' Motion to Dismiss Plaintiff's Claim in abeyance, and no answer is required at this time.

240. In answering Paragraph 240, Defendants contend that the Court held Defendants' Motion to Dismiss Plaintiff's Claim in abeyance, and no answer is required at this time.

241. In answering Paragraph 241, Defendants contend that the Court held Defendants' Motion to Dismiss Plaintiff's Claim in abeyance, and no answer is required at this time.

242. In answering Paragraph 242, Defendants contend that the Court held Defendants' Motion to Dismiss Plaintiff's Claim in abeyance, and no answer is required at this time.

243. In answering Paragraph 243, Defendants contend that the Court held Defendants' Motion to Dismiss Plaintiff's Claim in abeyance, and no answer is required at this time.

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FIFTEENTH CLAIM FOR RELIEF

(Unjust Enrichment against Clay, Nelson, and Perry)

244. In answering Paragraph 244, Defendants contend that Plaintiff's Claim was Dismissed by the Court, and no answer is required.

245. In answering Paragraph 245, Defendants contend that Plaintiff's Claim was Dismissed by the Court, and no answer is required.

246. In answering Paragraph 246, Defendants contend that Plaintiff's Claim was Dismissed by the Court, and no answer is required.

247. In answering Paragraph 247, Defendants contend that Plaintiff's Claim was Dismissed by the Court, and no answer is required.

248. In answering Paragraph 248, Defendants contend that Plaintiff's Claim was Dismissed by the Court, and no answer is required.

249. In answering Paragraph 249, Defendants contend that Plaintiff's Claim was Dismissed by the Court, and no answer is required.

SIXTEENTH CLAIM FOR RELIEF

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

250. In answering Paragraph 250, Defendants contend that Plaintiff's Claim was Dismissed by the Court, and no answer is required.

251. In answering Paragraph 251, Defendants contend that Plaintiff's Claim was Dismissed by the Court, and no answer is required.

252. In answering Paragraph 252, Defendants contend that Plaintiff's Claim was Dismissed by the Court, and no answer is required.

253. In answering Paragraph 253, Defendants contend that Plaintiff's Claim was Dismissed by the Court, and no answer is required.

254. In answering Paragraph 254, Defendants contend that Plaintiff's Claim was Dismissed by the Court, and no answer is required.

AFFIRMATIVE DEFENSES

1. Plaintiff's claims are barred to the extent they resulted from undue

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influence, duress, or exploitation.

2. Plaintiff lacks standing as he has not suffered any injury as a result of Defendants' conduct.

3. The allegations contained in the Complaint fail to state any claim or cause of action against Defendants upon which relief can be granted.

4. Plaintiff's claims are barred by the equitable doctrines of waiver, release, laches, unclean hands, and equitable estoppel.

5. Plaintiff's claims are barred, in whole or in part, by express waiver.

6. Plaintiff's claims are barred, in whole or in part, by the doctrine of estoppel.

7. Plaintiff's claims are barred due to the fraud and deceit on the part of Plaintiff.

8. Plaintiff's claims are barred by the applicable statute of limitations or statue of repose.

9. Plaintiff's claims are barred by the statute of frauds.

10. Plaintiff's claims are barred by the parol evidence rule.

11. Plaintiff assumed whatever risks or hazards existed at the time of the events alleged in the Complaint and, therefore, Plaintiff is responsible for the alleged damages and injuries suffered, if any.

12. Whatever damages were sustained by Plaintiff, if any, were caused in whole or in part or were contributed to by Plaintiff's own actions.

13. The damages and injuries, if any, incurred by Plaintiff are not attributable to any act, conduct or omission on the part of Defendants.

14. Plaintiff failed to mitigate its damages, if any.

15. Plaintiff fails to name a party necessary for full and adequate relief essential in this action.

16. Plaintiff's claims are barred, in whole or in part, because the Court lacks jurisdiction over them.

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17. At all times mentioned in the Complaint, Defendants performed and discharged in good faith each and every obligation owed to Plaintiff.

18. Defendants committed no intentional acts meant to disrupt or harm Plaintiff.

19. Defendants acted in conformity with the law and with reasonableness in discharging his duties, if any.

20. Defendants committed no deceptive acts.

21. Defendants' actions are specifically contemplated and permitted, in whole or in part, by the Operating Agreement.

22. Plaintiff's claims are barred due to Plaintiff's failure to act in good faith or deal fairly with Defendants.

23. Plaintiff's claims are barred by Plaintiff's ratification and confirmation.

24. Pursuant to NRCP Rule 8 and 11 all possible Affirmative Defenses may not have been alleged herein insofar as sufficient facts were not available after reasonable inquired upon filing of Defendants' Answer and, therefore, Defendants reserve the right to amend their Answer to allege additional Affirmative Defenses, if subsequent investigation so warrants.

25. Defendants hereby incorporate by reference those affirmative defenses enumerated in NRCP 8(c) as if fully set forth herein. In the event further investigation or discovery reveals the applicability of any such defense, Defendants reserve the right to seek leave of Court to amend their Answer to specifically assert the same. Such defenses are herein incorporated by reference for the specific purpose of not waiving them.

WHEREFORE, Defendants pray for judgment against Plaintiff as follows:

A. That Plaintiff takes nothing by way of the Complaint and that the same be dismissed with prejudice;

B. For an award of attorney's fees and costs incurred by Defendants; and

C. For such other and further relief as the Court deems just and proper.

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COUNTERCLAIMS

COMES NOW, Defendant/Counterclaimant, Ed Clay ("Clay"), Defendant/Counterclaimant, Scott Nelson ("Nelson"), Defendant/Counterclaimant, Deddrick Perry ("Perry"), and Nominal Defendant/Counterclaimant, CPI Management Group, LLC ("CPI") (together with "Clay," "Nelson," and "Perry," the "Counterclaimants") by and through their attorneys of record, and hereby file these Counterclaims against Plaintiff/Counterdefendant, Francisco Silva ("Counterdefendant" or "Silva") and allege as follows:

PARTIES

1. Defendant/Counterclaimant, CPI Management Group, LLC is a Nevada limited liability company.

2. Defendant/Counterclaimant, Edward Clay is an individual residing in Davidson County Tennessee, and a member of CPI.

3. Defendant/Counterclaimant, Scott Nelson is an individual residing in Clark County, Nevada, and a member of CPI.

4. Defendant/Counterclaimant, Deddrick Perry is an individual residing in Davidson County, Tennessee, and a member of CPI.

5. Plaintiff/Counterdefendant, Francisco Silva is an individual who upon information and belief resides in the State of Utah.

JURISDICTION AND VENUE

6. This Court has jurisdiction over these Counterclaims pursuant to NRS 13.010, as CPI is a Nevada entity, and a substantial part of the events giving rise to the Counterclaims occurred in Clark County, Nevada.

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7. Venue is proper in Clark County, Nevada, under NRS 13.010, as the cause of action arose in this district, and Silva has submitted to this Court's jurisdiction by filing his Complaint here.

8. These Counterclaims are filed in response to Silva's suit in this Court.

GENERAL ALLEGATIONS

THE CHIPSA HOSPITAL

9. This entire matter begins with Clay's personal health crisis involving his mother.

10. In the 1990's Clay's mother was diagnosed with a rare form of Rheumatoid Arthritis.

11. Despite engaging in every possible treatment available to her in the United States, Clay's mother found no respite for her affliction.

12. Out of options in the United States, Clay, in 2014, began searching for hospitals and care outside of the United States for her Rheumatoid Arthritis.

13. Desperate for a solution, Clay pursued possible alternative solutions outside the United States and discovered a treatment that was only available at the shuttered integrative cancer and autoimmune disease facility located in Tijuana, Mexico, which was then identified as the CHIPSA Hospital.

14. In October 2014, Clay and Nelson traveled to Tijuana, Mexico to negotiate the purchase of the CHIPSA Hospital that had been closed for over a year after the owner had retired.

15. These negotiations were successful and the CHIPSA Hospital was acquired.

16. Thereafter, Clay, Perry, and Nelson immediately commenced the

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extensive efforts necessary to reopen the CHIPSA Hospital to patients.

17. Accordingly, the CHIPSA Hospital was renovated extensively, and staff members were rehired.

18. By June 2015, the CHIPSA Hospital was reopened.

19. Nelson secured a loan against his personal residence to fund the TAM Center's operations.

20. During this time, Clay, Perry, and Nelson physically moved into the CHIPSA Hospital to get the facility up and running.

21. On August 15, 2015, the CHIPSA Hospital admitted its first patient for treatment.

22. On September 16, 2015, Clay's mother was admitted to the CHIPSA Hospital in a wheelchair for treatment of her Rheumatoid Arthritis.

23. On or about October 7, 2015, Clay's mother walked out of the CHIPSA Hospital after three weeks of treatment, demonstrating significant health improvement, a testament to the CHIPSA Hospital's impact and the hands-on efforts of Clay, Perry, and Nelson.

24. Thereafter, Clay, Perry, and Nelson built the CHIPSA Hospital into a world-class institution focusing on holistic healing and immunotherapy.

25. In 2025, the CHIPSA Hospital was rebranded as the TAM Center (hereinafter the "CHIPSA Hospital" may also be referred to as "TAM" or the "TAM Center").

THE DEVELOPMENT OF STEM CELL THERAPY

26. As part of the TAM Center's focus on holistic healing and immunotherapies, Clay, Perry, and Nelson began to pursue the possibilities

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surrounding the use of stem cell therapies and the use of related technology.

27. In 2016, Clay, Perry, and Nelson engaged with Maynard Howe, Ph.D., of Stemedica Cell Technologies, Inc. ("Stemedica"), a company that had developed and patented certain stem cell technologies, including, but not limited to hypoxic stem cell processes.

28. Maynard Howe of Stemedica, who provided mentorship on stem cell treatments and gifted them a book to inspire further learning.

29. In May of 2016, which was nearly five (5) years before Silva engaged in his fraudulent activities, Clay, Perry, and Nelson toured Stemedica's facilities and discussed potential collaborations with Stemedica.

30. In 2017, Dr. Thomas Ichim joined the Scientific Advisory Board and Dr. Ichim proceeded to encourage the adoption of stem cell therapies.

31. Through Clay, Perry, and Nelson's investigations into the possibilities of stem cell related therapies, Clay, Perry, and Nelson elected to pursue the development of stem cell therapies and technology.

32. Clay, Perry, and Nelson caused the acquisition of a separate building in Tijuana, Mexico, for use in the development of stem cell therapies and technology.

33. On January 28, 2020, a cellular manufacturing license was obtained from Mexico's Federal Committee for Protection from Sanitary Risks for stem cell operations.

COVID HALTS THE WORLD

34. At nearly the same time as a cellular manufacturing license was obtained from Mexico's Federal Committee for Protection from Sanitary Risks for stem cell operations, the global COVID-19 pandemic struck.

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35. The border closures and global travel restrictions resulting from the COVID-19 pandemic cause the CHIPSA Hospital to close.

36. Stage-4 cancer patients being treated had to be returned to their homes and home countries and many of whom declined rapidly or died during this closure.

37. All future treatments scheduled were canceled, and many returning patients were left stranded.

38. Despite the forced closing from the COVID pandemic, Clay, Perry, and Nelson, refused to abandon the employees, which totaled 150 at that time.

39. As many employees as possible were kept on the payroll at immense personal cost to Clay, Perry, and Nelson.

40. Clay, Perry, and Nelson also insisted on the continuation of the development of stem cell therapies and technology.

41. During this time, the initial patients receiving stem cell therapy treatment were treated at the CHIPSA Hospital by the CHIPSA Hospital staff.

42. In January 2021, Clay, Perry, and Nelson began upgrading the North Beach Lab facility located in Tijuana, Mexico, to support future development plans for providing stem cell therapies to patients.

43. A clean room and secondary laboratory were built as part of the North Beach Lab facility.

44. Advanced HEPA filtration with positive pressure was installed, significant electrical upgrades were made, as well as the installation of gas lines at the North Beach Lab.

45. Approximately 7,000 square feet of patient treatment space at the North Beach Lab facility was remodeled to provide stem cell therapies at the North Beach

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Lab.

46. The CHIPSA Hospital employed Dr. Patricia Juarez in June 2021 to lead the laboratory operations in Mexico.

47. In January 2021, Nelson and Clay commenced the development of a proprietary marketing plan for social media to attract patients for receiving stem cell therapies.

48. This development effort became the CPI brand and included a fully built out marketing platform consisting of hand-built automation, customized coding, systematic online marketing, content creation, and trained AI pixel.

SILVA'S FRAUDULENT INDUCEMENT

49. In late 2020 and in 2021, Clay, Perry, and Nelson also began to converse with Silva about their plans to develop certain stem cell therapies and technology.

50. At that time, Silva, among other things, peddled various lines of stem cells to clinical operations through Silva's company, iBiologics Consulting, LLC ("iBiologics").

51. Silva also was at that time and even though Silva later falsely represented to Counterclaimants and CPI's staff that he was resigning from BioRestorative Therapies, Inc., Silva remains employed by and a director of BioRestorative Therapies, Inc., a competitor.

52. As part of these discussions, Clay, Perry, and Nelson disclosed to Silva the existence and machinations of the CPI marketing platform that Clay, Perry, and Nelson created to market CPI's stem cell therapies to potential patients.

53. Clay, Perry, and Nelson also discussed with Silva the opportunity to

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incorporate the CPI stem cell therapy program into the existing infrastructure of the CHIPSA Hospital and North Beach Lab.

54. Beginning in late 2020, and repeatedly thereafter, Silva falsely informed Clay, Perry, and Nelson that he alone owned certain patents for the extraction of and use of umbilical cord lining stem cells and for the process to grow mesenchymal stem cells in a hypoxic environment.

55. Clay, Perry, and Nelson, to their detriment, later learned in approximately 2024, that Silva did not hold any such patents and that Silva's representations were entirely false.

56. At the time Silva made these false representations to Clay, Perry, and Nelson, Silva knew that these representations were false and that he did not hold nor ever hold these patents.

57. Undeterred by the falsity of his statements to Clay, Perry, and Nelson, Silva proposed to Clay, Perry, and Nelson that he would contribute the ownership of "his" patents for the extraction of and use of umbilical cord lining stem cells and for the process to grow mesenchymal stem cells in a hypoxic environment to a newly created entity.

58. Silva also proposed that he also would contribute and provide in-person monthly training to laboratory personnel at the North Beach Lab located in Tijuana, Mexico to implement his alleged extraction and growth processes, prepare and provide policy and training materials to laboratory personnel at the North Beach Lab for use in performing his alleged extraction and growth process.

59. At the time Silva proposed to perform these tasks, Silva knew that these promises to perform were false and that he would never perform and complete these

obligations when required.

60. In exchange for these false representations and promises, Silva further proposed to Clay, Perry, and Nelson that they grant him a 25% membership interest in CPI, which would operate as a management entity for the stem cell therapy services provided under the CPI brand.

61. Silva made these false representations and promises to Clay, Perry, Nelson, solely to induce each of them into granting him a 25% membership interest in CPI.

62. At the same time as Silva's proposal, Clay, Perry, and Nelson received a $13.8 million offer to purchase the CHIPSA Hospital from a Mexican hospital group.

63. In complete reliance upon the false representations knowingly and intentionally made by Silva to Clay, Perry, and Nelson, of which each was accepted as falsely proposed, Clay, Perry, and Nelson elected to turn down this offer and continue with their proposed plans.

64. Clay, Perry, and Nelson then agreed in early 2021 to grant Silva a 25% membership interest in CPI in exchange for him providing the patents that he falsely represented that he owned and for Silva's other promised contributions, which included providing in-person monthly training to laboratory personnel to implement his alleged extraction and growth processes, and preparing and providing policy and training materials to laboratory personnel at the North Beach Lab for use in performing his alleged extraction and growth process.

65. Silva further agreed to contribute stem cells and immediately assist with the hiring and training of new hires at the North Beach Lab.

66. In complete reliance upon the false representations knowingly made by

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Silva, Clay, Perry, and Nelson also agreed to provide funds to operate stem cell related activities, retain personnel needed in the United States, and be responsible for all marketing, content creation, and related expenses.

67. In February 2021, Nelson began the development of CPI's patient acquisition protocols.

68. In March 2021, the existing laboratory operations implemented "Quartzy" an inventory management system.

69. Also in March 2021, Clay, Perry, and Nelson acquired the domain name(s) for CPI.

70. In May 2021, Silva further promised and agreed that he would be present at the Tijuana, Mexico facilities at least one week of every calendar month, which did not happen.

71. On or about June 28, 2021, Silva, Clay, Perry, and Nelson participated in a "kickoff meeting" for CPI that focused on the intended stem cell operations.

72. During this June 28, 2021 "kickoff meeting," Silva expressly promised to deliver Scientific Advisory Board member lists, stem cell culture protocols, a Phase II lab description, standard operating procedures for the laboratory, reagents, consumables, and provide information on natural killer cells.

73. Silva also affirmed his agreed upon obligations to build and train laboratory personnel, physically visit the laboratory facilities in Tijuana, Mexico at least once per month, provide the required protocols and flowcharts, provide lists of required reagents, consumables, and other materials, and provide job descriptions for positions needing to be filled at the North Beach Lab, including a job description for a Research Nurse.

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74. In or around July of 2021, Silva also promised to develop and deliver "natural killer" cell protocols for CPI's use.

75. In reliance on these promises and the false promises made previously by Silva, Clay, Perry, and Nelson caused CPI to be organized in the State of Nevada as a limited liability company.

76. As agreed, and in reliance upon Silva's false representations made to Clay, Perry, and Nelson, Silva received a 25% membership interest in CPI and Clay received a 37.5% membership interest, Perry received a 22.5% membership interest, and Nelson received a 15% membership interest in CPI.

77. Immediately thereafter, Silva, Clay, Perry, and Nelson executed a written operating agreement for the management and operation of CPI (the "Operating Agreement").

78. In addition to the contributions of services and other personal property that Silva promised to Clay, Perry, and Nelson in order to induce them into granting Silva a membership interest in CPI, this Operating Agreement further required each Member to make an initial cash capital contribution.

79. Silva never paid his required initial cash capital contribution.

80. Beginning in July 2021, Silva also began to receive a salary from CPI for the promises that he agreed to perform, which of course, Silva did not perform.

SILVA'S FAILURE TO PERFORM

81. From the beginning, Silva failed to perform the promises he made to induce Clay, Perry, and Nelson into granting him a membership interest in CPI.

82. From the onset, Clay, Perry, Nelson, and the staff involved with CPI became increasingly frustrated with Silva's failure and often, refusal to perform any of

the promises he made to induce Clay, Perry, and Nelson into granting him a 25% membership interest in CPI.

83. Silva promised to be present at the laboratory facilities in Tijuana, Mexico, for at least a week each calendar month.

84. However, through the end of 2021, Silva had only appeared at the laboratory facilities twice.

85. In 2022 and early 2023, Silva would only be present occasionally on weekly laboratory production conference calls.

86. In 2023, that participation stopped entirely.

87. In January 2022, Silva attended CPI's quarterly/annual goal meeting for the laboratory operations.

88. At this meeting, he promised the employees and members of CPI that he would provide a plan for CPI to develop TILS and CAR-T stem cell therapies.

89. Silva further promised that he would build clinical research capabilities and launch two clinical trials.

90. Silva also promised that he would establish a functional bioinformatics laboratory serving CPI's patients.

91. Silva never commenced any of this work let alone completed any of these promises.

92. Silva again promised that he would now begin showing up at least one week each month to the Tijuana, Mexico laboratory facilities.

93. Silva again never showed up.

94. In February 2022, the staff members relying on Silva to perform his promises and obligations began to disclose to Clay that Silva's failure to perform in

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any manner was creating major operational and aspirational bottlenecks.

95. Rather than perform any task, Silva regularly responded with "I will review," which occurred so regularly that staffers began to consider it a running joke and assume that no such review would occur.

96. In April 2022, Silva did not bother to show up to CPI's quarterly meeting and it was discovered that none of his promised initiatives had been completed.

97. In July 2022, Silva again failed to appear at CPI's quarterly meeting and none of his promised initiatives were completed.

98. In October 2022, Silva again failed to appear at CPI's quarterly meeting and none of his promised initiatives were completed.

99. In December 2022, Clay met with Silva directly to discuss the members' and staff's frustration with Silva complete failure to perform any of the promises he has made and his total failure to even commence let alone complete any of the promised performance goals that he made to CPI's staff and members.

100. At this meeting, Clay specifically expressed his frustration with Silva's complete lack of involvement in the building of CPI's bioinformatics laboratory, which was promised by Silva previously.

101. This meeting did not result in any change in behavior by Silva.

102. By the end of 2022, the staff and members of CPI began to just perform their work without including Silva.

103. Clay had to develop CPI's capacity to develop and build CPI's bioinformatics laboratory in place of Silva.

104. Later, Clay became aware that despite Silva's false representations that he had specific expertise regarding next-generation gene sequencing and

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bioinformatics, Silva had no such expertise or knowledge.

105. Silva had misrepresented these facts along with the numerous other misrepresentations made to Clay, Perry, and Nelson.

106. In February 2023, Silva attended CPI's annual goals meeting.

107. At this meeting, Silva announces that he is resigning from BioRestorative Therapies, Inc., a competitor of CPI, and coming to work full time for CPI.

108. Instead of resigning from BioRestorative Therapies, Inc., and coming to work at CPI full time as Silva announced at CPI's February 2023 annual goals meeting, Clay, Perry, and Nelson later learned in 2024 that Silva instead entered into an extension of his employment agreement with BioRestorative Therapies, Inc., which included specific non-compete provisions and specific intellectual property obligations.

109. Silva's continued false representations and continued failure to perform any of the promises that Silva made.

110. At the February 2023 annual goals meeting for CPI, Silva also promised to launch new stem cell therapies at CPI.

111. At this meeting, Silva also promised to support CPI's stem cell director, Dr. Mariela Carranza, M.D., to establish patient outcomes and patient satisfaction to a degree that such results would be a market differentiator for CPI.

112. Silva also promised to develop and fully implement an in-house Stem Cell Certification Program for doctors that combined baseline standard of care with cutting edge treatment and care practices.

113. Silva further promised to ensure that the forecasted number of doctors would receive certifications under this program by the end of 2023.

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114. None of these promises were kept.

115. Dr. Carranza could not complete her annual goals because Silva only appeared at the Tijuana, Mexico laboratories on three (3) occasions in 2023, and certainly not in any full-time manner.

116. Rather than come to work for CPI, Silva contacted Clay and informed him that he had to take "a couple of months off" because he had issues with BioRestorative Therapies, Inc., even though Silva had announced previously that he was resigning from BioRestorative Therapies, Inc.

117. Confused by Silva's reasoning, Clay nonetheless agreed that Silva could take "a couple of months off" as Silva demanded.

118. Silva's return did not result in him actually performing any of his promised obligations at CPI.

119. In October 2023, Silva did not appear at CPI's quarterly meeting, none of his promised goals had been completed and in most cases, not even commenced.

120. 2024 only led to more Silva failures to perform.

121. Silva kicked off 2024 by not appearing at CPI's annual goals meeting.

122. In the first quarter of 2024, Silva agreed to provide assistance with the data collection of CPI's patient surveys because he stated he had experience with this type of data collection.

123. Silva never appeared to assist in the data collection.

124. Also in early 2024, Silva promised Dr. Carranza, the director of CPI's stem cell therapies, that he would appear and teach the floor doctors about advanced cell therapy as well as the mechanism of actions of CPI's main cellular product and others.

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125. Silva never conducted these training sessions.

126. Silva was responsible for sending chondrocytes and lysate for CPI's stem cell therapies.

127. Repeatedly, Silva never sent these products when ordered or sent them at a later date that affected the patient treatment plans.

128. In January 2024, Silva requested that he be involved in the creation of basic standard operating procedures for the cellular laboratory as part of the clean room commissioning plan for use in the ISO accreditation of the laboratories.

129. Of course, the standard operating procedures were never prepared.

130. From the onset of Silva's relationship with Clay, Perry, and Nelson and his involvement as a member of CPI, Silva promised to produce and provide personally to CPI lysate for use in cosmetic procedures for in-house patients at the North Beach Lab.

131. From the beginning, the North Beach Lab constantly had supply chain issues resulting from Silva's failure to provide the agreed upon lysate when promised, or at all.

132. In April 2024, Silva disclosed that he in fact did not produce lysate but that the lysate he provided was nothing more than diluted samples made from the more concentrated lysate that North Beach Lab already purchased from an actual provider.

133. In other words, North Beach Lab never needed Silva's "supply." The North Beach Lab always could prepare the lysate needed simply by diluting samples from its existing stock.

134. Silva intentionally misrepresented the need for only his supply of lysate to control the supply of lysate and intentionally harm business operations.

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135. In the end, Silva never performed and never had any intention of performing any of his agreed upon obligations that he owed to CPI and its other members, including, any of his promises made to induce Clay, Perry, and Nelson into granting him a 25% membership interest in CPI.

136. The failure of Silva to perform any of his promised obligations before and after he received his 25% membership interest in CPI resulted in enormous and continuing frustrations from staff and CPI's members, which resulted in numerous and continuing set-backs with the performance of every day work and in meeting agreed upon goals.

137. All of which harmed CPI's business operations to the detriment of CPI and CPI's other members.

CPI DISCOVERS THE EMBEZZLEMENT OF COMPANY FUNDS

138. Upon the commencement of operations at CPI, CPI's members began looking to retain individuals to provide accounting services to CPI.

139. In the middle of 2021, Clay came into contact with Julie Danielle Freeman, a resident of Georgia, who explained to Clay that she was a CPA and could provide the accounting services needed by CPI.

140. Beginning in the middle of 2021, CPI retained Ms. Freeman and her entity Lat29, LLC, a Georgia limited liability company to provide accounting services for CPI.

141. These accounting services provided by Ms. Freeman and her company, Lat29, LLC, included maintaining the books of CPI and other related entities, processing payroll for CPI employees, processing contractor payments owed, overseeing CPI's accounts payable and accounts receivable, managing company credit

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cards, and other general accounting responsibilities.

142. Beginning in the early part of 2024, Clay, Perry, and Nelson noticed that CPI's cash flow had unexpectedly not increased despite a significant increase in CPI's revenue.

143. At this time, Clay, Perry, and Nelson inquired with Ms. Freeman as to the reasons for this unexpected decrease in cash flow for CPI.

144. Ms. Freeman did not provide any actual explanation but instead provided bogus excuses that she had to "clean up" CPI's accounting records for 2023.

145. In the beginning of 2024, Clay met with Israel Askew, the Family Office Director for ARK Financial about setting up a family office for Clay.

146. As part of setting up this family office, Clay requested that Mr. Askew conduct an initial review of his business interests, including, but not limited to, his review of the books of CPI and its related entities.

147. As part of Mr. Askew's review, Mr. Askew questioned Ms. Freeman about certain distributions of approximately $400,000 allegedly made through Sure Payroll, a payroll payment provider.

148. Ms. Freeman falsely stated that these distributions were made to pay estimated tax payments on behalf of one or more of CPI's members.

149. Mr. Askew informed Ms. Freeman that he had never heard of Sure Payroll or any other payroll provider actually providing estimated tax payments for individuals in the manner falsely alleged by Ms. Freeman.

150. Ms. Freeman proceeded to provide Mr. Askew a falsely created chat log supposed to support her claims.

151. Mr. Askew then contacted Sure Payroll directly to attempt to verify and

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replicate the contents of the falsely created chat log.

152. Mr. Askew could not verify any of this false chat log.

153. Further, a representative of Sure Payroll informed Mr. Askew that Sure Payroll did not accept any funds to be sent to the IRS for payment of an individual's estimated tax payments.

154. Mr. Askew then requested that Ms. Freeman grant him access to the payroll reports to verify the remittances allegedly from the payroll accounts of CPI and other related entities.

155. Instead of providing Mr. Askew with this access, Ms. Freemen proceeded to provide a series of excuses for not granting him access or providing the payroll information and reports he requested.

156. Ultimately, Ms. Freeman never provided Mr. Askew with the payroll information and reports he requested.

157. At this time, Clay contacted the Internal Revenue Service in an attempt to verify Ms. Freeman's false assertions that these funds had been used to pay estimated tax payments as she alleged.

158. The Internal Revenue Service informed Clay that no such estimated tax payments were made on his behalf.

159. After Mr. Askew's inquiries, Ms. Freeman switched CPI's payroll services provider from Sure Payroll to ADP, and Ms. Freeman was listed with ADP as the sole representative for CPI and its related entities who had access to the payroll records.

160. After Mr. Askew conducted his review, which included several interactions with Ms. Freeman about CPI's books, Mr. Askew determined that there

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were several identifiable accounting discrepancies in CPI's accounting records.

161. Immediately thereafter, Clay notified CPI's legal team and the other members, including, Silva, about Mr. Askew's discovery of certain accounting discrepancies as to CPI.

162. On or about April 10, 2024, CPI's legal team began to investigate Ms. Freeman.

163. The results of this investigation uncovered that Ms. Freeman had an extensive history of actual and alleged financial crimes that ranged from passing bad checks to felony convictions of forgery.

164. On April 11, 2024, Clay, Perry and Silva. Along with Mr. Askew and members of CPI's legal team, engaged in a call with Ms. Freeman regarding the discovered accounting irregularities with CPI and its related entities and her assertions of estimated tax payments made on behalf of members that never occurred.

165. During this call, it was also demanded of Ms. Freeman that she immediately provide access to CPI's historical payroll reports and provide access to the ADP payroll account that she intentionally identified herself as the sole representative for having access thereto.

166. In response to the demands that Ms. Freeman provide access to CPI's payroll records, Ms. Freeman did not grant them access to CPI's payroll records with Sure Payroll or ADP and instead claimed that she only had access to historical records for Sure Payroll because of the move to ADP.

167. At the end of this call, Ms. Freeman failed to provide any actual answers to any of the questions asked of her regarding these phantom tax payments and continued to refuse to provide CPI and its members access to the relevant payroll

records and reports.

168. At the end of this call, Ms. Freeman was provided an opportunity to "retrieve her laptop" so that she could review her records and answer the questions originally asked.

169. Ms. Freeman agreed to do so and indicated that she needed approximately an hour to retrieve her laptop from home.

170. Ms. Freeman never "retrieved her laptop" and never called anyone back.

171. Later in the evening of April 11, 2024, CPI's attorney received an email from attorney Keith Hasson informing him that he represented Ms. Freeman and that she would not be returning any call and that she was not responsible for any "missing funds" of CPI.

172. At all times relevant, Silva, as a member of CPI, was informed immediately of the discoveries surrounding Ms. Freeman's embezzlement.

173. Silva participated in several meetings with CPI's members and CPI's legal team regarding this matter.

174. Silva also participated directly in the April 11, 2024 telephone conference with Ms. Freeman where she failed to address any of the questions asked of her regarding the obvious accounting discrepancies.

175. During this April 11, 2024 telephone conference with Ms. Freeman, Silva asked Ms. Freeman several questions directly.

176. Effective on April 12, 2024, CPI's members, including, Silva, entered into a written resolution acknowledging the termination of Julie Freeman and her company, Lat29, LLC's services for CPI.

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177. On or about July 31, 2024, CPI's members were finally able to gain access to the historical payroll records of CPI and its related entities from Sure Payroll, from which it was discovered that Ms. Freeman also was identified as the sole representative of CPI on this payroll services account as well as ADP.

178. Once CPI's members received these payroll records, a review was conducted.

179. At this time, CPI and its members discovered that Ms. Freeman had knowingly identified and placed herself as the sole point of contact, company administrator, and sole approver of the payroll accounts of CPI and its related entities.

180. Between November 27, 2021 and April 15, 2024, Ms. Freeman initiated a payroll run payable to herself on approximately 150 occasions from CPI and several related entities.

181. During this time, Ms. Freeman also initiated improper wire payments to her company, Lat 29, LLC, from CPI and several related entities.

182. These payments to Ms. Freeman and/or her company, Lat29, LLC, which in the end totaled in excess of $5,000,000, were not authorized, did not comply with the established procedures for payment, and were far beyond any previously agreed upon rates for Ms. Freeman's services.

183. Upon this discovery, CPI retained the services of Robert Nordlander, CPA, a retired career IRS criminal investigator, to conduct a complete forensic audit of CPI and its related entities' accounts.

184. After completing this forensic audit, Mr. Nordlander prepared and provided a report to CPI and a copy of which was provided to Silva.

185. As a result of this forensic audit, Mr. Nordlander stated in his report

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that he discovered that Ms. Freeman had engaged in intentional and fraudulent activities that resulted in the embezzlement of funds in excess of $5,000,000 from CPI and its related entities.

186. Nordlander also found that CPI members did not participate in Freeman's fraud.

187. Thereafter, Ms. Freeman, upon information and belief, has filed her voluntary petition for bankruptcy, which was initially dismissed, and the refiled as a petition for Chapter 11 bankruptcy (Case No. 25-57382) filed in the United States Bankruptcy Court for the Northern District of Georgia.

188. Accordingly, the automatic stay derived from this bankruptcy petition is in place.

189. Of course, formal legal proceedings have not deterred Silva from pursuing Ms. Freeman inside and outside of court.

190. As part of Silva's Complaint filed against Counterclaimants, Silva also attempted to assert claims, derivatively on behalf of CPI, against Ms. Freeman.

191. Silva's attempt to sue Ms. Freeman has been rendered moot as a result Silva's failure to sufficiently plead claims upon which relief may be granted.

192. Additionally, in May of 2025, Nelson heard Silva state that he could have Julie Freeman "hurt" for her actions against CPI, indicating a propensity for criminal threats against Ms. Freeman.

SILVA'S CONCEALMENT OF MATERIAL FACTS

193. In addition to repeatedly making false representations to Clay, Perry, and Nelson to fraudulently induce them into granting a 25% membership interest in CPI, Clay, Perry, and Nelson later discovered that Silva had knowingly concealed

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certain material facts from each of them regarding his employment and his past participation in illegal stem cell activities.

194. After Silva received his 25% membership interest in CPI, Clay, Perry, and Nelson became aware approximately two (2) years thereafter that Silva previously served as the Chief Executive Officer of DV Biologics LLC and as President of DaVinci Biosciences, LLC.

195. Clay, Perry, and Nelson learned that the District Attorney of Orange County, California sued DV Biologics LLC and their members for claims related to the illegal sale of human tissue from organs, muscle, and bones of aborted fetuses that had been donated solely for scientific research.

196. As part of the allegations in this lawsuit, it was alleged that Silva spearheaded the scheme to profit from the sale of aborted fetuses.

197. DV Biologics LLC, of which Silva was the Chief Executive Officer, boldly provided a price list of fetal tissue to its potential customers.

198. DV Biologics LLC, entered into a Final Judgment Pursuant to Stipulation in which it admitted to illegally selling fetal tissue.

199. DV Biologics LLC further agreed to close immediately, never operate any business in the State of California again, and pay a settlement of $7,785,000 and a civil penalty of $195,000.

200. At the time that Clay, Perry, and Nelson entered into its agreement with Silva, Silva intentionally and knowingly concealed his involvement in the illegal sale of aborted fetal tissue, his role as the Chief Executive Officer of DV Biologics LLC, and the subsequent lawsuit and settlement agreement entered into with the District Attorney for Orange County, California.

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201. Unequivocally, had Clay, Perry, and Nelson been informed by Silva of his role as the Chief Executive Officer of DV Biologics LLC and his involvement in the illegal sale of human tissue derived from aborted fetuses, neither Clay, Perry, nor Nelson would have even engaged in any negotiations with Silva regarding any agreement where he would be a 25% member of any limited liability company where Clay, Perry, and Nelson were also members.

202. Further, Clay, Perry, and Nelson would never have agreed to grant Silva any membership interest or employment with CPI, or any other entity engaged in the business of providing stem cell therapies to patients.

203. Aware of this reality, Silva intentionally and fraudulently concealed these material facts from Clay, Perry, and Nelson for the sole purpose of inducing them into granting him a 25% membership interest in CPI.

204. In addition to intentionally and fraudulently concealing Silva's involvement in the illegal sale of aborted fetus tissue, Silva, beginning from the onset of Silva's negotiations with Clay, Perry, and Nelson, and continuing thereafter, also intentionally and fraudulently misrepresented the material terms and conditions of his employment agreement with BioRestorative Therapies, Inc., a competitor in the stem cell therapy marketplace.

205. Although Silva made Clay, Perry, and Nelson aware of his employment with BioRestorative Therapies, Inc., Silva intentionally and fraudulently misrepresented to Clay, Perry, and Nelson that he was subject to specific non-competition provisions affecting his employment and membership in CPI and specific assignment of intellectual property rights owed to BioRestorative, Therapies, Inc., which placed CPI's intellectual property at risk solely because of Silva's obligations

under his employment agreement.

206. Silva instead falsely represented to Clay, Perry, and Nelson that his employment obligations owed to BioRestorative Therapies, Inc., did not "conflict" with CPI because BioRestorative Therapies, Inc., only concerned itself with autologous stem cells and therapies ("from the individual's body"), and the stem cell therapies pursued by CPI involved allogeneic ('from other persons") stem cells and therapies.

207. Silva's representations were false, and Silva knew they were false when he intentionally and knowingly made them to Clay, Perry, and Nelson.

208. Silva made these false representations to Clay, Perry, and Nelson to induce them into granting him a 25% membership interest in CPI and thereafter, to induce CPI and Clay, Perry, and Nelson to continue his employment and not treat his granted membership as in cessation as permitted by CPI's Operating Agreement.

209. Had Clay, Perry, and Nelson been informed by Silva of the true nature of his existing employment, Clay, Perry, and Nelson would not have entered into any agreement with Silva and would not have agreed to grant him a 25% membership interest in CPI.

210. Silva's intentional and fraudulent concealment did not cease at the time that Silva was granted his 25% membership interest in CPI.

211. Despite knowingly being employed by BioRestorative Therapies, Inc., Silva entered into and agreed to provisions in the Operating Agreement whereby Silva owed CPI and Clay, Perry, and Nelson as the other members of CPI a fiduciary duty of loyalty and care whereby Silva expressly agreed to refrain from competing in any way with CPI and its business.

212. Silva knowingly agreed to these fiduciary duties as a member owed to

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CPI and Clay, Perry, and Nelson while intentionally and fraudulently concealing from CPI and its other members that he was employed by CPI's competitor, BioRestorative Therapies, Inc.

213. In February of 2023, Silva falsely announced at CPI's annual goals meeting that was officially resigning from BioRestorative Therapies, Inc., to work for CPI full time.

214. Silva also requested that he receive or be reimbursed for his "relocation fees" as part of his full time work at CPI.

215. Based on Silva's false representations that he was resigning from BioRestorative Therapies, Inc., and coming to work at CPI full time, CPI paid for Silva's purported "relocation fees."

216. Silva never resigned from BioRestorative Therapies, Inc., nor came to work for CPI full time.

217. Clay, Perry, and Nelson later discovered in approximately later 2024 that not only did Silva not immediately terminate his employment with BioRestorative Therapies, Inc., as he falsely asserted to them, Silva instead entered into a new employment agreement with BioRestorative Therapies, Inc., which he also knowingly and intentionally concealed from CPI and Clay, Perry, and Nelson.

218. Amazingly, Silva, while he was falsely representing the nature of his employment and directorship with BioRestorative Therapies, Inc., Silva at the same time proposed to Clay that CPI engage in a hostile takeover of BioRestorative Therapies, Inc.

219. Silva proposed that CPI could buy BioRestorative Therapies, Inc., and "buy float [and] then get shareholder [BioRestorative Thereapies, Inc.] approval.

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220. Silva further proposed that CPI solicit the biggest investor in BioRestorative Therapies, Inc., who was located in Nashville, Tennessee, and combine its shares in BiorRestorative Therapies, Inc., with "what [Silva] owns" to buy the outstanding float of shares for BioRestorative Therapies, Inc., and then "be able to get aggressive [and] take over [BioRestorative Therapies, Inc.].

221. Certainly, Biorestorative Therapies, Inc., did not expect its employee and director to solicit such actions from CPI, a competitor.

222. Nonetheless, CPI did not pursue Silva's proposal for a hostile takeover of BioRestorative Therapies, Inc.

SILVA'S ONGOING FRAUD IS EXPOSED

223. Between June of 2021, and November of 2024, Silva repeatedly failed to deliver on his obligations as a member of CPI and warning signs emerged quickly.

224. On or about June 29, 2021, Silva attended a Scientific Advisory Board meeting regarding improving patient outcomes. Silva was visibly intoxicated and repeatedly misdirected the topic of conversation from patient outcomes to maximizing profits.

225. Despite his obligation to physically assist at the North Beach Lab in person at least once per month, Silva only visited a handful of times between 2021 and 2025 and failed to attend the December 2021 Christmas party where staff were eagerly waiting to finally meet him.

226. In January of 2022, Silva attended CPI's quarterly leadership meeting and promised to develop and deliver a plan to develop TILs and CAR-T therapies, build out clinical research capabilities at the North Beach Lab, launch two (2) clinical trials, and establish a functional bioinformatics lab serving patients in 2022.

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227. Silva never delivered on any of these obligations and failed to attend all of the remaining quarterly leadership meetings in 2022. Moreover, Silva repeatedly inhibited the development of programs and created delays with his consistent absence and false promises.

228. Silva would often respond to requests for action or information with the phrase "I will review." In fact, as a result of Silva's consistent failure to follow through on any requests, the phrase "I will review" became a running joke within CPI and the North Beach Lab.

229. In or around February of 2021, staff members began reporting that Silva had become a major operational impediment as he was consistently causing bottlenecks in the operation and being generally negligent and unresponsive to staff.

230. In or around August and September of 2022, CPI receives a massive influx of patients due to its successful marketing efforts.

231. As a result of this influx and complaints from staff regarding Silva's failure to be responsive to any requests or needs, Clay, Perry, and Nelson had a conversation with Silva informing him that they were overwhelmed with the substantial growth in the business and required Silva to follow through on his commitments, including his obligation to visit the North Beach Lab at least one week per month.

232. In response, Silva reaffirmed his commitment to being an active member in CPI and promised to be present and follow through on his commitments.

233. In or around December of 2022, Clay, Perry, and Nelson again discussed the ongoing problems caused by Silva's absenteeism, including his failure to meet any of his commitments, lies regarding his attendance at company meetings, and overall detachment from the company.

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234. As with 2022, Silva attended company leadership meetings on only three (3) occasions in 2023.

235. At the February 2023 leadership meeting, Silva promised to deliver new heart and liver stem cell therapies, data collection plans, and staff certifications. Silva failed to deliver on all of these promises.

236. Additionally, in 2023, Silva caused delays to a lab buildout he was overseeing ultimately leading to cost overruns, failed to produce a Quality Management System (QMS) roadmap as promised, failed to provide advanced cell therapy training to floor doctors, and misrepresented his progress on clinical protocols which stalled treatment for patients.

237. Silva's pattern of outright neglecting his obligations continued into 2024.

238. On or about March 8, 2024, Silva promised raises for North Beach Lab members but only followed through for Claudia Cruz.

239. On March 21, 2024, Silva promised to review North Beach Lab salaries but failed to follow up.

240. On March 29, 2024, Silva resisted creating an Ethics Committee proposed by Dr. Escobedo and Dr. Menes.

241. In April 2024, Silva revealed CPI's lysate was actually just diluted and not proprietary in any way, as he had falsely claimed, after years of stress caused by the supply chain problems with receiving lysate.

242. On May 8, 2024, Silva failed to finalize raises for the North Beach Lab team, except for Claudia Cruz.

243. In or around May of 2024, Silva berated a controller employed by CPI

which nearly prompted the controller's resignation.

244. On June 13, 2024, Silva failed to meet with North Beach Lab staff to create necessary purchasing systems for lab consumables.

245. On July 4, 2024, Counterclaimants discussed terminating Claudia Cruz due to multiple staff complaints.

246. On July 9, 2024, Counterclaimants discovered Claudia Cruz had not produced certificates of analysis for 2024, under Silva's oversight.

247. On July 12, 2024, Silva falsely claimed a canceled flight to avoid a QA meeting addressing Cruz's negligence.

248. It was later verified that this flight was not canceled. Silva simply never got on the flight.

249. In or around August of 2024, Silva caused further disruptions to the North Beach Lab's supply chain when he sent only two (2) of the promised fifteen (15) cell factory boxes needed by the Lab. Silva falsely claimed the shipment issue was due to shortages which damaged vendor relationships.

250. Silva knew that these cell factory boxes, or the lack thereof, was severely hampering production of stem cells and forcing the pursuit of new vendors for production in Mexico.

251. Silva was aware of this production bottle neck and was intentionally and knowingly attempting to shut down stem cell production permanently.

252. Moreover, Silva never provided the patent promised as a condition of his 25% membership interest in CPI, and Counterclaimants learned he never had an ownership interest in the patents as claimed.

253. On or about June 6, 2024, North Beach Lab staff discovered that a

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competitor was using hypoxic stem cells and competing with CPI in violation of Silva's purported patent claims.

254. Following this discovery, Counterclaimants reached out to Silva requesting proof that Silva and CPI owned the patents.

255. In response to this request, Silva stated he would provide links to his alleged patents but never followed through in a blatant attempt to stall.

256. Counterclaimants repeatedly followed up on their requests for proof of Silva's patent ownership, and Silva never provided any evidence and instead, Silva would just stall in providing any response concerning the patents.

257. Growing increasingly suspicious, Counterclaimants began further investigating the ownership of Silva's alleged patents.

258. Counterclaimants were informed that, contrary to Silva's claims of ownership in the patents, Stemedica actually owned the patent for growing stem cells in a hypoxic environment, and Armit Patel owned the patent for utilizing umbilical cord lining for stem cells.

259. These Patents now discovered to be owned and held by Stemedica and Mr. Patel, were the patents that Silva specifically falsely and continually represented to Clay, Perry, and Nelson that he owned and would contribute in exchange for his 25% membership interest in CPI.

260. Silva, on or about November 12, 2024, realizing that he could not stall out Counterclaimants' demands regarding the patents, , Silva sent CPI a purported "licensing agreement' shockingly demanding $2,000,000 and 5% of CPI's revenue, with an option to increase by 5% for 20 years.

261. CPI nor any other related entity ever agreed to any "licensing

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agreement" with Silva at any point in time.

262. In response to Counterclaimants' attempts to ascertain precisely what this newly proposed "licensing agreement" was actually intended to cover, Silva admitted that he did not own the patents as he had repeatedly represented.

263. On or about November 12, 2024, Silva's negligence caused an order placed by the North Beach Lab to go unfulfilled, resulting in delays to experiments.

264. In light of Counterclaimant's discovery of Silva's fraudulent representations regarding patent ownership and repeated failures to meet any of his obligations to CPI, Counterclaimants could no longer overlook Silva's ineptitudes.

265. On November 21, 2024, Silva was terminated.

266. On December 18, 2024, pursuant to Section 10.1 of the CPI Operating Agreement, Counterclaimants removed Silva as a member and initiated the reallocation of his shares due to his fraudulent representations, fraudulent concealments, misconduct, breaches of his fiduciary duties owed to CPI and its members, and the harm caused to CPI and its business operations.

267. On January 10, 2025, Silva filed a lawsuit against Counterclaimants, asserting numerous false and legally unsupportable claims against Clay, Perry, and Nelson either directly or derivatively, on behalf of CPI.

268. The vast majority of these claims were dismissed.

269. On March 7, 2025, Silva filed a motion for an injunction to falsely halt CPI's operations, containing multiple falsehoods.

270. Silva's motion was denied.

271. Since filing his lawsuit on January 10, 2025, Silva has, based on information and belief, lodged complaints with Mexican regulators to harm a medical

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entity owned by the Counterclaimants, as part of an orchestrated campaign to undermine their business interests extrajudicially.

SILVA'S HARASSMENT, DISPARAGEMENT, AND DEFAMATION OF CPI AND ITS MEMBERS

272. Silva has repeatedly used his public social media accounts under the user handle "@my_alt" to harass, defame, and disparage CPI and its Members with knowingly false accusations of fraud for several months.

273. Silva has also used his social media account to attempt to interfere with CPI's relationships with several of its business partners, along with making thinly veiled threats of violence against CPI and its employees.

274. On or about December 31, 2024, Silva posted a photo on his Instagram account with the caption "2024 Victor and Selma cells produced milliones [sic] of dollars in profit for @cpistemcells #cpistemcells 2025 is going to be even better #royalties #juliefreeman #fraud #willywonka."

275. On or about January 24, 2025, Silva posted an image depicting mascots for McDonald's, including one character as a "clown" and one character whose entire premise is based on "thievery" with the "#cpistemcells" hashtag on Instagram (the "January 24th Post").

276. On or about January 30, 2025, Silva left a comment on January 24th post making direct allusions to Counterclaimants, using the "#cpistemcells" and "#fraud" hashtags.

277. On or about January 30, 2025, Silva also shared the January 24th Post on his Instagram story with a caption stating that the characters, obviously intended to represent Counterclaimants Clay, Perry, and Nelson, were "on their way to the make,"

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implying that Counterclaimants were using illegitimate means to enrich themselves. In this post, Silva again used the "#fraud" and "#cpistemcells" hashtags.

278. On or about January 31, 2025, Silva posted an image to his Instagram account depicting a group of children with the caption "This little guy and his sister have healed 1000s of people. #cpistemcells #consent #theft #juliefreeman #jets #nashville #franciscosfinest."

279. On or about April 14, 2024, Silva posted a video to his Instagram account depicting CPI promotional materials aired at a live event held by CPI's business partner, UFC (the "April 14th Post"). In this original post, Silva tagged the Instagram accounts of each Counterclaimant, including CPI's official account.

280. On or about February 18, 2025, Silva left a comment on the April 14th Post stating he believed the video would "age so so so bad" and tagging the official UFC Instagram account, clearly attempting to convey to UFC that there would be negative consequences from UFC's business association with CPI.

281. On February 25, 2025, Silva posted an Instagram story that constituted a collage of images that included CPI customers and the romantic partner of a member of CPI without any prior permission to disclose these confidential images.

282. On or about May 6, 2025, Silva left a second comment on the April 14th Post stating that the "truth will be out soon" and using the "#cpistemcells," "#theft," "#conversion," "#fraud," and "#thief," hashtags. Silva further attempted to harm CPI's existing business relationships by directly tagging podcaster Joe Rogan in the comment and attempted to injure Counterclaimant Clay directly in business by explicitly referring to Clay as a "clown."

283. On or about June 9, 2025, Christina Mangino, the CEO of a non-profit

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organization with which CPI has a business partnership, posted an image celebrating the opening of CPI's new clinic (the "June 9th Post").

284. On or about June 9, 2025, Silva responded to Mangino's June 9th Post through a direct message stating "sad u [sic] guys are doing this with criminals."

285. On or about June 19, 2025, Silva posted an image depicting a press release made by the FDA titled "FDA Halts New Clinical Trials That Export Americans' Cells to Foreign Labs in Hostile Countries for Genetic Engineering" with the "#informedconsent" "#cpistemcells" and "#fraud" hashtags superimposed on the image, intentionally and falsely implying that CPI sends the living cells of American citizens to other countries for genetic engineering without the patients' knowledge or consent (the "June 19th Post").

286. On or about June 8, 2025, Silva posted an image depicting Counterclaimants and other CPI employees at an event celebrating the opening of the TAM Center and added the song "Puto" by the band Molotov to automatically play when the post is viewed (the "June 8th Post").

287. In the June 8th Post, Silva superimposed text over the image depicting Counterclaimants and other CPI employees that disparaged Counterclaimants by referring to them as clowns and thieves with the "#ladrones", "#thiefs [sic]," "#fraud," and "#clown" hashtags.

288. In the June 8th Post, Silva again used the "#cpistemcells" hashtag and attempted to tag the official Instagram accounts of both UFC and Joe Rogan.

289. The lyrics of "Puto" by Molotov that is set to automatically play when the June 8th Post is viewed call for the death of homosexuals.

290. This entirety of this song incites violence against gay individuals.

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291. On or about June 11, 2025, Mr. Silva left a comment on the June 8th Post tagging Joe Rogan's Instagram account and using a homophobic slur with the "#putito" and #edclay hashtags.

292. The use of "putito" is derogatory term in Spanish used in the most heinous and homophobic manner and is akin to the English slur of "little faggot."

293. Silva's deliberate choice to pair an image of employees with homophobic slurs and a song containing lyrics explicitly calling for the death of homosexuals was not only egregious act of defamation and harassment but also hate speech amounting to a clear threat of violence against CPI and its employees.

294. In July 2025, in direct response to Silva's harassing slurs, an employee of the TAM Center sent a letter complaining about these disgusting defamatory and harassing posts by Silva.

295. As part of this letter, that employee expressed feelings of being unsafe and afraid and great emotional distress resulting directly from Silva's intentional and knowing posting making use of homophobic slurs and harassing statements and inferences.

296. Silva's repeated use of his public social media accounts to harass, defame, and disparage CPI and its Members with knowingly false accusations of fraud has harmed Counterclaimants.

FIRST COUNTERCLAIM BY CLAY, PERRY, AND NELSON
(Fraud in the Inducement)

297. The allegations asserted in the previous paragraphs of these Counterclaims are incorporated herein by reference as if set forth in full below.

298. As part of the TAM Center's focus on holistic healing and

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immunotherapies, Clay, Perry, and Nelson began to pursue the possibilities surrounding the use of stem cell therapies and the use of related technology.

299. Through Clay, Perry, and Nelson's investigations into the possibilities of stem cell related therapies, Clay, Perry, and Nelson elected to pursue the development of stem cell therapies and technology for use at the TAM Center.

300. In furtherance of this election, Clay, Perry, and Nelson caused the acquisition of a separate building in Tijuana, Mexico, for use in the development of stem cell therapies and technology.

301. On January 28, 2020, a cellular manufacturing license was obtained from Mexico's Federal Committee for Protection from Sanitary Risks for stem cell operations.

302. In January 2021, Clay, Perry, and Nelson commenced work at the North Beach Lab for the development of stem cell therapies and technology.

303. Also, in January of 2021, Clay, Perry, and Nelson engaged in conversations with Silva about the needs of the TAM Center to develop certain stem cell therapies and technology.

304. In January or February of 2021, Silva falsely represented to Clay, Perry, and Nelson that he owned certain patents, know-how, techniques, and processes for the extraction of and use of umbilical cord lining stem cells and for the process to grow mesenchymal stem cells in a hypoxic environment.

305. These representations by Silva to Clay, Perry, and Nelson were false and Silva knew that they were false at the time they were made to Clay, Perry, and Nelson.

306. Silva knew that he did not alone own any patents, know-how,

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techniques, or processes for the extraction of and use of umbilical cord lining stem cells and for the process to grow mesenchymal stem cells in a hypoxic environment.

307. Silva, despite knowing that he did not alone own any patents, know-how, techniques, or processes for the extraction of and use of umbilical cord lining stem cells and for the process to grow mesenchymal stem cells in a hypoxic environment, knowingly represented and proposed to Clay, Perry, and Nelson that he would contribute the ownership of "his" patents for the extraction of and use of umbilical cord lining stem cells and for the process to grow mesenchymal stem cells in a hypoxic environment to a newly created entity.

308. Silva also proposed that he also would contribute and provide in-person monthly training to laboratory personnel at the North Beach Lab located in Tijuana, Mexico to implement his alleged extraction and growth know-how, processes, an techniques and prepare and provide policy and training materials to laboratory personnel at the North Beach Lab for use in performing his alleged patented extraction and growth process, and that he would provide vials of stem cells for the North Beach Lab to use in his supposedly patented growth and extraction processes by the personnel at the North Beach Lab.

309. In exchange for and in consideration of this proposal, which included the contribution of "his" patents for the extraction of and use of umbilical cord lining stem cells and for the process to grow mesenchymal stem cells in a hypoxic environment that Silva knew he did not own or hold, Silva demanded that Clay, Perry, and Nelson grant him a 25% membership interest in CPI, which would operate as a management entity.

310. Silva intentionally made these knowingly false representations that he

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owned these patents, know-how, processes, and techniques for the extraction of and use of umbilical cord lining stem cells and for the process to grow mesenchymal stem cells in a hypoxic environment to Clay, Perry, and Nelson solely to induce them into granting him a 25% membership interest in CPI.

311. In complete and justifiable reliance upon Silva's false representations knowingly and intentionally made to Clay, Perry, and Nelson that he owned the patents, know-how, processes, and techniques for the extraction of and use of umbilical cord lining stem cells and for the process to grow mesenchymal stem cells in a hypoxic environment and that he would contribute the same in exchange for a 25% membership interest in CPI, Clay, Perry, and Nelson agreed to grant him a 25% membership interest in CPI to their detriment.

312. In complete and justifiable reliance upon Silva's false representations knowingly and intentionally made to Clay, Perry, and Nelson that he owned the patents, know-how, processes, and techniques for the extraction of and use of umbilical cord lining stem cells and for the process to grow mesenchymal stem cells in a hypoxic environment and that he would contribute the same in exchange for a 25% membership interest in CPI, Clay, Perry, and Nelson further agreed to provide funds to operate stem cell related activities, retain the personnel needed in the United States, and be responsible for all marketing, content creation, and related expenses.

313. As a direct, proximate, and foreseeable result of Silva's false representations knowingly and intentionally made to Clay, Perry, and Nelson, Clay, Perry, and Nelson were fraudulently induced by Silva to provide funds to operate stem cell related activities, retain the personnel needed in the United States, and be responsible for all marketing, content creation, and related expenses and grant Silva a

25% membership interest in CPI that Silva would not have received but for the false representations knowingly and intentionally made to Clay, Perry, and Nelson, and as a result, Clay, Perry, and Nelson were damaged individually in an amount in excess of $15,000.

314. Silva's conduct was committed with fraud, oppression, and/or malice entitling Clay, Perry, and Nelson to punitive damages pursuant to NRS 42.005 in an amount to be determined at trial.

315. Clay, Perry, and Nelson have, by reason of the foregoing, been required to obtain the services of an attorney and are entitled to recover their reasonable attorneys' fees and costs from Silva.

SECOND COUNTERCLAIM BY CLAY, PERRY, AND NELSON
(Intentional Misrepresentation)

316. The allegations asserted in the previous paragraphs of these Counterclaims are incorporated herein by reference as if set forth in full below.

317. As part of the TAM Center's focus on holistic healing and immunotherapies, Clay, Perry, and Nelson began to pursue the possibilities surrounding the use of stem cell therapies and the use of related technology.

318. Through Clay, Perry, and Nelson's investigations into the possibilities of stem cell related therapies, Clay, Perry, and Nelson elected to pursue the development of stem cell therapies and technology for use at the TAM Center.

319. In furtherance of this election, Clay, Perry, and Nelson caused the acquisition of a separate building in Tijuana, Mexico, for use in the development of stem cell therapies and technology.

320. On January 28, 2020, a cellular manufacturing license was obtained

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from Mexico's Federal Committee for Protection from Sanitary Risks for stem cell operations.

321. In January 2021, Clay, Perry, and Nelson commenced work at the North Beach Lab for the development of stem cell therapies and technology.

322. Also, in January of 2021, Clay, Perry, and Nelson engaged in conversations with Silva about the needs of the TAM Center to develop certain stem cell therapies and technology.

323. In January or February of 2021, Silva intentionally misrepresented to Clay, Perry, and Nelson that he owned certain patents, know-how, techniques, and processes for the extraction of and use of umbilical cord lining stem cells and for the process to grow mesenchymal stem cells in a hypoxic environment.

324. These representations by Silva to Clay, Perry, and Nelson were false and Silva knew that they were false at the time they were made to Clay, Perry, and Nelson.

325. Silva knew that he did not alone own any patents, know-how, techniques, or processes for the extraction of and use of umbilical cord lining stem cells and for the process to grow mesenchymal stem cells in a hypoxic environment.

326. Silva, despite knowing that he did not alone own any patents, know-how, techniques, or processes for the extraction of and use of umbilical cord lining stem cells and for the process to grow mesenchymal stem cells in a hypoxic environment, knowingly represented and proposed to Clay, Perry, and Nelson that he would contribute the ownership of "his" patents for the extraction of and use of umbilical cord lining stem cells and for the process to grow mesenchymal stem cells in a hypoxic environment to a newly created entity, which became CPI.

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327. Silva also proposed that he also would contribute and provide in-person monthly training to laboratory personnel at the North Beach Lab located in Tijuana, Mexico to implement his alleged extraction and growth know-how, processes, an techniques and prepare and provide policy and training materials to laboratory personnel at the North Beach Lab for use in performing his alleged patented extraction and growth process, and that he would provide vials of stem cells for the North Beach Lab to use in his supposedly patented growth and extraction processes by the personnel at the North Beach Lab.

328. In exchange for and in consideration of this proposal, which included the contribution of "his" patents for the extraction of and use of umbilical cord lining stem cells and for the process to grow mesenchymal stem cells in a hypoxic environment that Silva knew he did not own or hold, Silva demanded that Clay, Perry, and Nelson grant him a 25% membership interest in CPI, which would operate as a management entity.

329. Silva intentionally made these knowingly false representations that he owned these patents, know-how, processes, and techniques for the extraction of and use of umbilical cord lining stem cells and for the process to grow mesenchymal stem cells in a hypoxic environment to Clay, Perry, and Nelson solely to induce them into granting him a 25% membership interest in CPI and to further induce Clay, Perry, and Nelson to provide funds to operate stem cell related activities, retain the personnel needed in the United States, and be responsible for all related marketing, content creation, and related expenses.

330. In complete and justifiable reliance upon Silva's false representations knowingly and intentionally made to Clay, Perry, and Nelson that he owned the patents,

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know-how, processes, and techniques for the extraction of and use of umbilical cord lining stem cells and for the process to grow mesenchymal stem cells in a hypoxic environment and that he would contribute the same in exchange for a 25% membership interest in CPI, Clay, Perry, and Nelson agreed to grant him a 25% membership interest in CPI to their detriment.

331. In complete and justifiable reliance upon Silva's false representations knowingly and intentionally made to Clay, Perry, and Nelson that he owned the patents, know-how, processes, and techniques for the extraction of and use of umbilical cord lining stem cells and for the process to grow mesenchymal stem cells in a hypoxic environment and that he would contribute the same in exchange for a 25% membership interest in CPI, Clay, Perry, and Nelson further agreed to provide funds to operate stem cell related activities, retain the personnel needed in the United States, and be responsible for all marketing, content creation, and related expenses.

332. As a direct, proximate, and foreseeable result of Silva's intentionally misrepresentations knowingly and intentionally made to Clay, Perry, that Silva knew to be false at the time he made them, Nelson, Clay, Perry, and Nelson were falsely induced by Silva to grant him a 25% membership interest in CPI and to provide funds to operate stem cell related activities, retain the personnel needed in the United States, and be responsible for all marketing, content creation, and related expenses.

333. As a result of the intentional misrepresentations that Silva knew to be false at the time that Silva knowingly and intentionally made them to Clay, Perry, and Nelson, each was damaged individually in an amount in excess of $15,000.

334. Silva's intentional misrepresentations were committed with fraud, oppression, and/or malice, entitling Clay, Perry, and Nelson to punitive damages

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pursuant to NRS 42.005 in an amount to be determined at trial.

335. Clay, Perry, and Nelson have, by reason of the foregoing, been required to obtain the services of an attorney and are entitled to recover their reasonable attorneys' fees and costs from Silva.

THIRD COUNTERCLAIM BY CLAY, PERRY, AND NELSON
(Negligent Misrepresentations)

336. The allegations asserted in the previous paragraphs of these Counterclaims are incorporated herein by reference as if set forth in full below.

337. As part of the TAM Center's focus on holistic healing and immunotherapies, Clay, Perry, and Nelson began to pursue the possibilities surrounding the use of stem cell therapies and the use of related technology.

338. Through Clay, Perry, and Nelson's investigations into the possibilities of stem cell related therapies, Clay, Perry, and Nelson elected to pursue the development of stem cell therapies and technology for use at the TAM Center.

339. In furtherance of this election, Clay, Perry, and Nelson caused the acquisition of a separate building in Tijuana, Mexico, for use in the development of stem cell therapies and technology.

340. On January 28, 2020, a cellular manufacturing was obtained from Mexico's Federal Committee for Protection from Sanitary Risks for stem cell operations.

341. In January 2021, Clay, Perry, and Nelson commenced work at the North Beach Lab for the development of stem cell therapies and technology.

342. Also, in January of 2021, Clay, Perry, and Nelson engaged in conversations with Silva about the needs of the TAM Center to develop certain stem

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cell therapies and technology.

343. In January or February of 2021, Silva intentionally misrepresented to Clay, Perry, and Nelson that he owned certain patents, know-how, techniques, and processes for the extraction of and use of umbilical cord lining stem cells and for the process to grow mesenchymal stem cells in a hypoxic environment.

344. These representations by Silva to Clay, Perry, and Nelson were false and Silva knew that they were false at the time they were made to Clay, Perry, and Nelson.

345. Silva knew that he did not alone own any patents, know-how, techniques, or processes for the extraction of and use of umbilical cord lining stem cells and for the process to grow mesenchymal stem cells in a hypoxic environment.

346. Silva, despite knowing that he did not alone own any patents, know-how, techniques, or processes for the extraction of and use of umbilical cord lining stem cells and for the process to grow mesenchymal stem cells in a hypoxic environment, knowingly represented and proposed to Clay, Perry, and Nelson that he would contribute the ownership of "his" patents for the extraction of and use of umbilical cord lining stem cells and for the process to grow mesenchymal stem cells in a hypoxic environment to a newly created entity, which became CPI.

347. Silva also proposed that he also would contribute and provide in-person monthly training to laboratory personnel at the North Beach Lab located in Tijuana, Mexico to implement his alleged extraction and growth know-how, processes, an techniques and prepare and provide policy and training materials to laboratory personnel at the North Beach Lab for use in performing his alleged patented extraction and growth process, and that he would provide vials of stem cells for the North Beach

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Lab to use in his supposedly patented growth and extraction processes by the personnel at the North Beach Lab.

348. Silva made of these representations for the guidance of Clay, Perry, and Nelson as part of the business transaction at issue.

349. In exchange for and in consideration of this proposal, which included the contribution of "his" patents for the extraction of and use of umbilical cord lining stem cells and for the process to grow mesenchymal stem cells in a hypoxic environment that Silva knew he did not own or hold, Silva demanded that Clay, Perry, and Nelson grant him a 25% membership interest in CPI, which would operate as a management entity.

350. As a result of Silva making this business proposal to Clay, Perry, and Nelson, in which he had a clear pecuniary interest, Silva had a duty to exercise reasonably care or competence in communicating the information regarding his proposal and the falsely asserted information regarding his "ownership" of certain patents.

351. Silva failed to exercise this duty owed to Clay, Perry, Nelson and failed to exercise the reasonable care required when Silva knowingly and intentionally made false representations to Clay, Perry, and Nelson that he owned these patents, know-how, processes, and techniques for the extraction of and use of umbilical cord lining stem cells and for the process to grow mesenchymal stem cells in a hypoxic environment to Clay, Perry, and Nelson solely to induce them into granting him a 25% membership interest in CPI and to further induce Clay, Perry, and Nelson to provide funds to operate stem cell related activities, retain the personnel needed in the United States, and be responsible for all related marketing, content creation, and related

expenses.

352. In complete and justifiable reliance upon Silva's false representations knowingly and intentionally made to Clay, Perry, and Nelson that he owned the patents, know-how, processes, and techniques for the extraction of and use of umbilical cord lining stem cells and for the process to grow mesenchymal stem cells in a hypoxic environment and that he would contribute the same in exchange for a 25% membership interest in CPI, Clay, Perry, and Nelson agreed to grant him a 25% membership interest in CPI to their detriment.

353. In complete and justifiable reliance upon Silva's false representations knowingly and intentionally made to Clay, Perry, and Nelson that he owned the patents, know-how, processes, and techniques for the extraction of and use of umbilical cord lining stem cells and for the process to grow mesenchymal stem cells in a hypoxic environment and that he would contribute the same in exchange for a 25% membership interest in CPI, Clay, Perry, and Nelson further agreed to provide funds to operate stem cell related activities, retain the personnel needed in the United States, and be responsible for all marketing, content creation, and related expenses.

354. As a result, Silva negligently misrepresented to Clay, Perry, and Nelson that Silva owned patents, know-how, techniques, or processes for the extraction of and use of umbilical cord lining stem cells and for the process to grow mesenchymal stem cells in a hypoxic environment, which Silva knew were false at the time he intentionally and knowingly made them to Clay, Perry, and Nelson.

355. As a proximate and direct result of Silva's negligent misrepresentations knowingly and intentionally made to Clay, Perry, that Silva knew to be false at the time he made them, Nelson, Clay, Perry, and Nelson were falsely induced by Silva to grant

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him a 25% membership interest in CPI and to provide funds to operate stem cell related activities, retain the personnel needed in the United States, and be responsible for all marketing, content creation, and related expenses.

356. As a result of these negligent misrepresentations that Silva knew to be false at the time that Silva knowingly and intentionally made them to Clay, Perry, and Nelson, each was damaged individually in an amount in excess of $15,000.

357. Clay, Perry, and Nelson have, by reason of the foregoing, been required to obtain the services of an attorney and are entitled to recover their reasonable attorneys' fees and costs from Silva.

FOURTH COUNTERCLAIM BY CLAY, PERRY, AND NELSON
(Fraudulent Concealment)

358. The allegations asserted in the previous paragraphs of these Counterclaims are incorporated herein by reference as if set forth in full below.

359. As part of the TAM Center's focus on holistic healing and immunotherapies, Clay, Perry, and Nelson began to pursue the possibilities surrounding the use of stem cell therapies and the use of related technology.

360. Through Clay, Perry, and Nelson's investigations into the possibilities of stem cell related therapies, Clay, Perry, and Nelson elected to pursue the development of stem cell therapies and technology for use at the TAM Center.

361. In furtherance of this election, Clay, Perry, and Nelson caused the acquisition of a separate building in Tijuana, Mexico, for use in the development of stem cell therapies and technology.

362. On January 28, 2020, a cellular manufacturing license was obtained from Mexico's Federal Committee for Protection from Sanitary Risks for stem cell

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operations.

363. In January 2021, Clay, Perry, and Nelson commenced work at the North Beach Lab for the development of stem cell therapies and technology.

364. Also, in January of 2021, Clay, Perry, and Nelson engaged in conversations with Silva about the needs of the TAM Center to develop certain stem cell therapies and technology.

365. In January or February of 2021, Silva falsely represented to Clay, Perry, and Nelson that he owned certain patents, know-how, techniques, and processes for the extraction of and use of umbilical cord lining stem cells and for the process to grow mesenchymal stem cells in a hypoxic environment.

366. These representations by Silva to Clay, Perry, and Nelson were false and Silva knew that they were false at the time they were made to Clay, Perry, and Nelson.

367. Silva knew that he did not alone own any patents, know-how, techniques, or processes for the extraction of and use of umbilical cord lining stem cells and for the process to grow mesenchymal stem cells in a hypoxic environment.

368. Nonetheless, Silva proposed to Clay, Perry, and Nelson that he would contribute the ownership of "his" patents for the extraction of and use of umbilical cord lining stem cells and for the process to grow mesenchymal stem cells in a hypoxic environment to a newly created entity.

369. Silva also proposed that he also would contribute and provide in-person monthly training to laboratory personnel at the North Beach Lab located in Tijuana, Mexico to implement his alleged extraction and growth know-how, processes, an techniques and prepare and provide policy and training materials to laboratory

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personnel at the North Beach Lab for use in performing his alleged patented extraction and growth process, and that he would provide vials of stem cells for the North Beach Lab to use in his supposedly patented growth and extraction processes by the personnel at the North Beach Lab.

370. In exchange for and in consideration of this proposal, which included the contribution of "his" patents for the extraction of and use of umbilical cord lining stem cells and for the process to grow mesenchymal stem cells in a hypoxic environment that Silva knew he did not own or hold, Silva demanded that Clay, Perry, and Nelson grant him a 25% membership interest in CPI, which would operate as a management entity.

371. As a result of Silva's proposed business transaction with Clay, Perry, and Nelson, Silva had a duty to exercise reasonable care to disclose to Clay, Perry, and Nelson before entering into the proposed business transaction to disclose to Clay, Perry, and Nelson all material facts the he knew would cause Clay, Perry, and Nelson to not enter into the proposed business transaction with Silva.

372. Unbeknownst to Clay, Perry, and Nelson at the time of Silva's proposal and when Clay, Perry, Nelson entered into the agreement with Silva whereby Silva was granted a 25% membership interest in CPI, Silva previously had served as the Chief Executive Officer of DV Biologics LLC and as President of DaVinci Biosciences, LLC.

373. The District Attorney of Orange County, California sued DV Biologics LLC and their members while Silva acted as the Chief Executive Officer for claims related to the illegal sale of human tissue from organs, muscle, and bones of aborted fetuses that had been donated solely for scientific research.

374. As part of the allegations in this lawsuit, it was alleged specifically that

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Silva spearheaded the scheme to profit from the sale of aborted fetuses.

375. DV Biologics LLC, of which Silva was the Chief Executive Officer, boldly provided a price list of fetal tissue to its potential customers.

376. DV Biologics LLC, entered into a Final Judgment Pursuant to Stipulation in which it admitted to illegally selling fetal tissue.

377. DV Biologics LLC further agreed to close immediately, never operate any business in the State of California again, and pay a settlement of $7,785,000 and a civil penalty of $195,000.

378. Silva knowingly and intentionally concealed and failed to disclose to Clay, Perry, and Nelson that he was the former Chief Executive Officer of DV Biologics LLC, who had been sued by the District Attorney for Orange County, California for illegal selling the body parts of aborted fetuses for profit.

379. Silva further concealed and failed to disclose to Clay, Perry, and Nelson that he allegedly "spearheaded" this illegal scheme to sell the body parts of aborted fetuses for profit.

380. Without question, these facts were material to the proposed transaction made by Silva to Clay, Perry, and Nelson and Silva had a duty to disclose these material facts to Clay, Perry, and Nelson as business partners to Silva's proposed business transaction.

381. The illegal sale of the body parts of aborted fetuses for profit is an absolute "red flag" for any potential business partners contemplating entering into a business transaction for the creation of stem cell therapies to provide to patients.

382. Silva knowingly and intentionally concealed these material facts from Clay, Perry, and Nelson to fraudulently induce Clay, Perry, and Nelson to provide funds

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to operate stem cell related activities, retain the personnel needed in the United States, and be responsible for all marketing, content creation, and related expenses and grant Silva a 25% membership interest in CPI that Silva would not have received but for his knowing and intentional concealment of these material facts.

383. Clay was unaware of Silva's past activities with DV Biologics LLC and had Silva disclosed to Clay these material facts, Clay would not have agreed to enter into Silva's proposed business transaction.

384. Perry was unaware of Silva's past activities with DV Biologics LLC and had Silva disclosed to Clay, Perry, and Nelson these material facts, Perry would not have agreed to enter into Silva's proposed business transaction.

385. Nelson was unaware of Silva's past activities with DV Biologics LLC and had Silva disclosed to Nelson these material facts, Nelson would not have agreed to enter into Silva's proposed business transaction.

386. As a result, Silva breached his duty of reasonable care owed to Clay, Perry, and Nelson to disclose all material facts that may have caused Clay, Perry, and Nelson not to enter into the proposed business agreement with Silva, and therefore Silva fraudulently concealed form Clay, Perry, and Nelson material facts regarding his prior activities in the illegal sale of body parts of aborted fetuses for profit.

387. As a proximate and direct result of Silva's fraudulent concealment of these material facts, Clay, Perry, and Nelson were damaged individually in an amount in excess of $15,000.

388. Silva's conduct was committed with fraud, oppression, and/or malice, entitling Clay, Perry, and Nelson to punitive damages pursuant to NRS 42.005 in an amount to be determined at trial.

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389. Clay, Perry, and Nelson have, by reason of the foregoing, been required to obtain the services of an attorney and are entitled to recover their reasonable attorneys' fees and costs from Silva.

FIFTH COUNTERCLAIM BY CLAY, PERRY, AND NELSON
(Fraud)

390. The allegations asserted in the previous paragraphs of these Counterclaims are incorporated herein by reference as if set forth in full below.

391. Beginning at the time of Silva's conversations and negotiations with Clay, Perry, and Nelson about contributing his patents, know-how, technology, and services to Clay, Perry, and Nelson in exchange for a 25% membership interest, Silva informed Clay, Perry, and Nelson that he was employed by a competitor, BioRestorative Therapies, Inc.

392. Clay, Perry, and Nelson repeatedly inquired with Silva if he was subject to any non-compete obligations or any other provisions of any employment agreement with BioRestorative Therapies, Inc., that would prohibit or affect his proposed agreement with Clay, Perry, and Nelson or would place any of CPI's intellectual property at risk solely because of Silva's obligations under his employment agreement.

393. In response to each inquiry, Silva knowingly and intentionally represented to Clay, Perry, and Nelson that no such obligations or provisions.

394. These representations were false and Silva knew they were false at the time he knowingly and intentionally made them to Clay, Perry, and Nelson.

395. Silva instead falsely represented to Clay, Perry, and Nelson that his employment obligations owed to BioRestorative Therapies, Inc., did not "conflict"

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with CPI because BioRestorative Therapies, Inc., only concerned itself with autologous stem cells and therapies ("from the individual's body"), and the stem cell therapies pursued by CPI involved allogeneic ('from other persons") stem cells and therapies.

396. Silva's representation was also false, and Silva knew it was false when he intentionally and knowingly made it to Clay, Perry, and Nelson.

397. Silva made these false representations to Clay, Perry, and Nelson to induce them into granting him a 25% membership interest in CPI and thereafter, to induce CPI and Clay, Perry, and Nelson to continue his employment and not treat his granted membership as in cessation as permitted by CPI's Operating Agreement.

398. Had Clay, Perry, and Nelson been informed by Silva of his existing employment, Clay, Perry, and Nelson would not have entered into any agreement with Silva and would not have agreed to grant him a 25% membership interest in CPI.

399. In furtherance of Silva's fraud, Silva, in or around February 2023, declared that was officially resigning from BioRestorative Therapies, Inc., to work for CPI full time.

400. This representation also was false and Silva knew it was false when in knowingly and intentionally made it.

401. Clay, Perry, and Nelson later discovered that not only did Silva not immediately terminate his employment with BioRestorative Therapies, Inc., as he falsely asserted to them, Silva instead entered into a new employment agreement with BioRestorative Therapies, Inc., which he also knowingly and intentionally concealed from CPI and Clay, Perry, and Nelson.

402. Clay, Perry, and Nelson also discovered that the terms and conditions

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of Silva's employment agreement with BioRestorative Therapies, Inc., contained specific terms and conditions prohibiting Silva from competing in any way against BioRestorative Therapies, Inc., and also contained provisions that required the assignment of any intellectual property of Silva or created by Silva to be made to BioRestorative Therapies, Inc.

403. In complete and justifiable reliance upon Silva's false representations knowingly and intentionally made to Clay, Perry, and Nelson, to their detriment, granted Silva a 25% membership interest in CPI, continued to employ Silva, and continued to pay Silva all distributions owed to Silva as a member of CPI in good standing.

404. As a result, a direct, proximate, and foreseeable result of Silva's false representations knowingly and intentionally made to Clay, Perry, and Nelson, Clay, Perry, and Nelson were damaged individually in an amount in excess of $15,000.

405. Silva's conduct was committed with fraud, oppression, and/or malice entitling Clay, Perry, and Nelson to punitive damages pursuant to NRS 42.005 in an amount to be determined at trial.

406. Clay, Perry, and Nelson have, by reason of the foregoing, been required to obtain the services of an attorney and are entitled to recover their reasonable attorneys' fees and costs from Silva.

SIXTH COUNTERCLAIM BY CLAY, PERRY, AND NELSON
(Intentional Misrepresentations)

407. The allegations asserted in the previous paragraphs of these Counterclaims are incorporated herein by reference as if set forth in full below.

408. Beginning at the time of Silva's conversations and negotiations with

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Clay, Perry, and Nelson about contributing his patents, know-how, technology, and services to Clay, Perry, and Nelson in exchange for a 25% membership interest, Silva informed Clay, Perry, and Nelson that he was employed by a competitor, BioRestorative Therapies, Inc.

409. Clay, Perry, and Nelson repeatedly inquired with Silva if he was subject to any non-compete obligations or any other provisions of any employment agreement with BioRestorative Therapies, Inc., that would prohibit or affect his proposed agreement with Clay, Perry, and Nelson or would place any of CPI's intellectual property at risk solely because of Silva's obligations under his employment agreement.

410. In response to each inquiry, Silva knowingly and intentionally represented to Clay, Perry, and Nelson that no such obligations or provisions.

411. These representations were false and Silva knew they were false at the time he knowingly and intentionally made them to Clay, Perry, and Nelson.

412. Silva instead falsely represented to Clay, Perry, and Nelson that his employment obligations owed to BioRestorative Therapies, Inc., did not "conflict" with CPI because BioRestorative Therapies, Inc., only concerned itself with autologous stem cells and therapies ("from the individual's body"), and the stem cell therapies pursued by CPI involved allogeneic ('from other persons") stem cells and therapies.

413. Silva's representation was also false, and Silva knew it was false when he intentionally and knowingly made it to Clay, Perry, and Nelson.

414. Silva made these false representations to Clay, Perry, and Nelson to induce them into granting him a 25% membership interest in CPI and thereafter, to

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induce CPI and Clay, Perry, and Nelson to continue his employment and not treat his granted membership as in cessation as permitted by CPI's Operating Agreement.

415. Had Clay, Perry, and Nelson been informed by Silva of his existing employment, Clay, Perry, and Nelson would not have entered into any agreement with Silva and would not have agreed to grant him a 25% membership interest in CPI.

416. In furtherance of Silva's fraud, Silva, in or around February 2023, declared that was officially resigning from BioRestorative Therapies, Inc., to work for CPI full time.

417. This representation also was false, and Silva knew it was false when in knowingly and intentionally made it.

418. Clay, Perry, and Nelson later discovered that not only did Silva not immediately terminate his employment with BioRestorative Therapies, Inc., as he falsely asserted to them, Silva instead entered into a new employment agreement with BioRestorative Therapies, Inc., which he also knowingly and intentionally concealed from CPI and Clay, Perry, and Nelson.

419. Clay, Perry, and Nelson also discovered that the terms and conditions of Silva's employment agreement with BioRestorative Therapies, Inc., contained specific terms and conditions prohibiting Silva from competing in any way against BioRestorative Therapies, Inc., and also contained provisions that required the assignment of any intellectual property of Silva or created by Silva to be made to BioRestorative Therapies, Inc.

420. In complete and justifiable reliance upon Silva's false representations knowingly and intentionally made to Clay, Perry, and Nelson, to their detriment, granted Silva a 25% membership interest in CPI, continued to employ Silva, and

continued to pay Silva all distributions owed to Silva as a member of CPI in good standing.

421. As a result, a direct, proximate, and foreseeable result of Silva's false representations knowingly and intentionally made to Clay, Perry, and Nelson, Clay, Perry, and Nelson were damaged individually in an amount in excess of $15,000.

422. Silva's conduct was committed with fraud entitling Clay, Perry, and Nelson to punitive damages pursuant to NRS 42.005 in an amount to be determined at trial.

423. Clay, Perry, and Nelson have, by reason of the foregoing, been required to obtain the services of an attorney and are entitled to recover their reasonable attorneys' fees and costs from Silva.

SEVENTH COUNTERCLAIM BY CLAY, PERRY, AND NELSON
(Negligent Misrepresentations)

424. The allegations asserted in the previous paragraphs of these Counterclaims are incorporated herein by reference as if set forth in full below.

425. Beginning at the time of Silva's conversations and negotiations with Clay, Perry, and Nelson about contributing his patents, know-how, technology, and services to Clay, Perry, and Nelson in exchange for a 25% membership interest, Silva informed Clay, Perry, and Nelson that he was employed by a competitor, BioRestorative Therapies, Inc.

426. Clay, Perry, and Nelson repeatedly inquired with Silva if he was subject to any non-compete obligations or any other provisions of any employment agreement with BioRestorative Therapies, Inc., that would prohibit or affect his proposed agreement with Clay, Perry, and Nelson or would place any of CPI's

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intellectual property at risk solely because of Silva's obligations under his employment agreement.

427. In response to each inquiry, Silva knowingly and intentionally represented to Clay, Perry, and Nelson that no such obligations or provisions existed in his employment agreement.

428. These representations were false, and Silva knew they were false at the time Silva knowingly and intentionally made them to Clay, Perry, and Nelson.

429. Silva instead falsely represented to Clay, Perry, and Nelson that his employment obligations owed to BioRestorative Therapies, Inc., did not "conflict" with CPI because BioRestorative Therapies, Inc., only concerned itself with autologous stem cells and therapies ("from the individual's body"), and the stem cell therapies pursued by CPI involved allogeneic ('from other persons") stem cells and therapies.

430. Silva's representation was also false, and Silva knew it was false when he intentionally and knowingly made it to Clay, Perry, and Nelson.

431. Silva made of these false representations for the guidance of Clay, Perry, and Nelson as part of the business transaction at issue.

432. Silva made these false representations to Clay, Perry, and Nelson to induce them into granting him a 25% membership interest in CPI and thereafter, to induce CPI and Clay, Perry, and Nelson to continue his employment and not treat his granted membership as in cessation as permitted by CPI's Operating Agreement.

433. In furtherance of Silva's fraud, Silva, in or around February 2023, declared that was officially resigning from BioRestorative Therapies, Inc., to work for CPI full time.

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434. This representation also was false and Silva knew it was false when in knowingly and intentionally made it.

435. Clay, Perry, and Nelson later discovered that not only did Silva not immediately terminate his employment with BioRestorative Therapies, Inc., as he falsely asserted to them, Silva instead entered into a new employment agreement with BioRestorative Therapies, Inc., which he also knowingly and intentionally concealed from CPI and Clay, Perry, and Nelson.

436. As a result of Silva making this business proposal entering into a business agreement with Clay, Perry, and Nelson, in which he had a clear pecuniary interest, Silva had a duty to exercise reasonably care or competence in communicating all of the information surrounding his employment with BioRestorative Therapies, Inc.

437. Silva failed to exercise this duty owed to Clay, Perry, Nelson and failed to exercise the reasonable care required when Silva knowingly and intentionally made these false representations to Clay, Perry, and Nelson regarding his obligations of employment with BioRestorative Therapies, Inc.

438. Clay, Perry, and Nelson justifiably relied on Silva's false representations regarding his obligations of employment with BioRestorative Therapies, Inc. to enter into the business agreement with Silva and continue performing their obligations thereunder to their detriment.

439. As a direct, proximate, and foreseeable result of Silva's negligent misrepresentations knowingly and intentionally made to Clay, Perry, that Silva knew to be false at the time he made them, Clay, Perry, and Nelson, each was damaged individually in an amount in excess of $15,000.

440. Clay, Perry, and Nelson have, by reason of the foregoing, been required

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to obtain the services of an attorney and are entitled to recover their reasonable attorneys' fees and costs from Silva.

EIGHTH COUNTERCLAIM BY COUNTERCLAIMANTS
(Breach of Duty of Loyalty)

441. The allegations asserted in the previous paragraphs of these Counterclaims are incorporated herein by reference as if set forth in full below.

442. Effective June 29, 2021, Silva entered into an Operating Agreement for CPI which set forth the respective rights, duties, and responsibilities of the Members (the "Operating Agreement").

443. Section 6.1(c) of CPI's Operating Agreement imposed a duty of loyalty on Silva to CPI and Clay, Perry, and Nelson, as the other members of CPI, that expressly obligated Silva as a Member from competing with CPI in the conduct of the Company's business before the dissolution of CPI.

444. Silva intentionally and knowingly concealed the full and complete nature of his employment with BioRestorative Therapies, Inc., from Clay, Perry, and Nelson at the time they agreed to enter into Silva's proposed business transaction from which Silva received a 25% membership interest in CPI.

445. After the effective date of CPI's Operating Agreement, Silva continued to knowingly and intentionally conceal the full nature of his employment with BioRestorative Therapies, Inc., from Counterclaimants.

446. In or around January of 2023, Silva falsely informed Counterclaimants that he had officially resigned from BioRestorative Therapies, Inc., to work for CPI full time.

447. Silva's representation of resignation was false and Silva knew this

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representation was false at the time he made it.

448. However, in reliance of this false representation, CPI paid for Silva's purported relocation fees.

449. Counterclaimants later discovered that not only did Silva not immediately terminate his employment with BioRestorative Therapies, Inc., as he falsely asserted, Silva instead entered into a new employment agreement with BioRestorative Therapies, Inc., which he also knowingly and intentionally concealed from CPI and Clay, Perry, and Nelson.

450. Counterclaimants further discovered that Silva's employment agreement with BioRestorative Therapies, Inc., subjected Silva to certain non-compete obligations and certain intellectual property assignment and ownership clauses that placed CPI's business and assets in jeopardy.

451. In falsely representing to Counterclaimants that he had resigned his employment with BioRestorative Therapies, Inc., when he in fact not only continued to be employed by BioRestorative Therapies, Inc., but entered into an extension of his employment contract, Silva acted in bad faith counter to and to the detriment of the best interests of Counterclaimants to whom he owed the fiduciary duty of loyalty.

452. In reality, Silva knowingly and intentionally concealed these material facts solely in the best of interest of Silva, who was aware that he was prohibited from competing against CPI and subject to other prohibitive terms and conditions of CPI's Operating Agreement, and his existing and renewed employment contract with BioRestorative Therapies, Inc.

453. As a direct, proximate, and foreseeable result of Silva's breach of his duty of loyalty owed to Counterclaimants, Counterclaimants were damaged

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individually in an amount in excess of $15,000.

454. Counterclaimants have, by reason of the foregoing, been required to obtain the services of an attorney and are entitled to recover their reasonable attorneys' fees and costs from Silva.

NINTH COUNTERCLAIM BY COUNTERCLAIMANTS
(Breach of Duty of Confidentiality)

455. The allegations asserted in the previous paragraphs of these Counterclaims are incorporated herein by reference as if set forth in full below.

456. Effective June 29, 2021, Silva entered into an Operating Agreement for CPI which set forth the respective rights, duties, and responsibilities of the Members for CPI (the "Operating Agreement").

457. Section 6.3 of CPI's Operating Agreement imposed a fiduciary duty on Silva to discharge any and all of his duties owed to the Company and its other members with the obligation of good faith and fair dealing.

458. Section 6.6 of CPI's Operating Agreement further imposed a fiduciary duty upon Silva to not furnish, divulge, communicate, use to the detriment of CPI, or use for the business of any other person any of CPI's confidential information, which includes any information about CPI's customers and its members.

459. On or about February 25, 2025, Silva posted images of CPI's customers through a social media account that he owned or controlled.

460. In the same post, Silva posted an image of the romantic partner of one of CPI's member.

461. Each of these images contained the confidential information of CPI and Silva had no authority to disclose or communicate the confidential information of CPI

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and its members in these images.

462. Further, Silva owed Counterclaimants a fiduciary duty of confidentiality which expressly prohibited Silva from furnishing, divulging, communicating, or using any of CPI or its members confidential information, which includes any private unauthorized images of any of CPI's customers, members, and related parties.

463. Silva knew that the posting of these confidential images was prohibited by CPI's Operating Agreement and that he owed a fiduciary duty not to disclose such images.

464. Silva also knew that he was prohibited by CPI's Operating Agreement from disclosing any confidential information regarding CPI and its members.

465. Silva nonetheless knowingly and intentionally furnished, divulged, communicated, and used these confidential images and repeatedly disclosed information regarding CPI's members to the detriment of Counterclaimants and to continue to pursue his social media campaign of the harassment, disparagement, and defamation of CPI, its employees, customers, and members.

466. Silva acted in bad faith counter to and to the detriment of the best interests of Counterclaimants to whom he owed a fiduciary duty of confidentiality.

467. As such, Silva has intentionally and knowingly breached the fiduciary duty of confidentiality owed to Counterclaimants.

468. As a direct, proximate, and foreseeable result of Silva's breach of his duty of confidentiality owed to Counterclaimants, Counterclaimants were damaged individually in an amount in excess of $15,000.

469. As a result of Silva's breach of his fiduciary duty of confidentiality

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owed Counterclaimants, Counterclaimants also have been and continue to be irreparably harmed by Silva's intentional and knowing posting of images containing confidential information of CPI and Nelson.

470. Counterclaimants have, by reason of the foregoing, been required to obtain the services of an attorney and are entitled to recover their reasonable attorneys' fees and costs from Silva.

TENTH COUNTERCLAIM BY COUNTERCLAIMANTS
(Defamation per se)

471. The allegations asserted in the previous paragraphs of these Counterclaims are incorporated herein by reference as if set forth in full below.

472. Silva has wielded his Instagram account "@my_alt" as a weapon, publishing to third parties false and defamatory statements designed to destroy the Counterclaimants' reputations and incite real-world harm.

473. On July 6, 2024, Silva shared an Instagram story with the words "When you find out people don't trust and respect. But they still use what is 100% mine" and hashtags "#lol" and "#bichhhh," tagging CPI's account, falsely implying theft and fraud.

474. On December 31, 2024, Silva posted, "2024 Victor and Selma cells produced milliones [sic] of dollars in profit for @cpistemcells #cpistemcells 2025 is going to be even better #royalties #juliefreeman #fraud #willywonka," falsely accusing Counterclaimants of fraud.

475. On January 24, 2025, Silva posted an image of McDonald's mascots, implying Counterclaimants are clowns and thieves, with "#cpistemcells".

476. On January 30, 2025, Silva commented on his January 24 post, "One

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of these guys was limping… One of these guys was so broke he was going to sell his trees… The other guy, well we will find out… financial expertise. #cpistemcells #fraud #juliefreeman," falsely depicting Counterclaimants as incompetent and fraudulent.

477. On January 30, 2025, Silva shared the January 24 post on his Instagram story, stating the characters were "on their way to the make," with "#fraud" and "#cpistemcells," implying illegitimate enrichment.

478. On January 31, 2025, Silva posted an image of children, captioned, "This little guy and his sister have healed 1000s of people. #cpistemcells #consent #theft #juliefreeman #jets #nashville #franciscosfinest," falsely accusing Counterclaimants of theft.

479. On February 18, 2025, Silva commented on an April 14, 2024, post, stating the video would "age so so so bad," tagging UFC to harm CPI's business relationships.

480. On April 24, 2025, Silva commented on a CPI post, calling Clay a "fucking clown".

481. On May 6, 2025, Silva commented on the April 14, 2024, post, stating, "Truth will be out soon… the clown #edclay told me he doesn't even know when money comes into his account. #theft #conversion #podcast #joerogan @joeroganexperience #edclay #fraud #cpistemcells #thief," falsely accusing theft and incompetence.

482. On June 8, 2025, Silva posted an image of Counterclaimants at the TAM Center's opening, with the song "Puto" by Molotov (lyrics including "kill the faggots"), using hashtags "#ladrones," "#thiefs," "#fraud," and "#clown," falsely

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accusing fraud and implying homosexuality to incite violence.

483. On June 9, 2025, Silva messaged Christina Mangino, CEO of a CPI partner nonprofit, stating, "sad u guys are doing this with criminals," falsely accusing Counterclaimants of criminality.

484. On June 19, 2025, Silva posted an FDA press release, implying CPI exports cells to hostile countries without consent, using "#informedconsent," "#cpistemcells," and "#fraud".

485. On June 22, 2025, Silva posted a fabricated Meta AI analysis alleging CPI's unethical practices and false advertising, tagging Joe Rogan and UFC with "#cpistemcells," "#fraud," and "#tamcenter".

486. The foregoing represents false and defamatory statements by Silva, which were published to the public.

487. Each of these false and defamatory statements constitute a non-privileged publication to a third party.

488. Silva knew each of these defamatory statements were false when he made them, and Silva defamed Counterclaimants, acted in reckless disregard of the truth, or otherwise acted negligently in failing to ascertain the truth.

489. Silva's false and defamatory statements regarding Counterclaimants constitute at least one false and defamatory statement that tend to injure Counterclaimants in their respective trade, business, profession, or office.

490. Silva's false and defamatory statements regarding Counterclaimants constitute at least one false and defamatory statement that each Counterclaimant lacks fitness for a particular business or profession.

491. As a direct, proximate, and foreseeable results of Silva's defamation,

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result of Silva's conduct, Counterclaimants suffered damages exceeding $15,000.00, plus interest thereon, with the exact amount to be proven at trial.

492. Silva's conduct was committed with fraud, oppression, and/ malice, entitling Counterclaimants to punitive damages pursuant to NRS 42.005 in an amount to be determined at trial.

493. Without an injunction to permanently take down, remove and delete Silva's public social media postings, Counterclaimants will suffer imminent and irreparable harm for which monetary relief is inadequate.

494. Counterclaimants have, by reason of the foregoing, been required to obtain the services of an attorney and are entitled to recover their reasonable attorneys' fees and costs from Silva.

ELEVENTH COUNTERCLAIM BY COUNTERCLAIMANTS
(Defamation)

495. The allegations asserted in the previous paragraphs of these Counterclaims are incorporated herein by reference as if set forth in full below.

496. Silva has wielded his Instagram account "@my_alt" as a weapon, publishing to third parties false and defamatory statements designed to destroy Counterclaimants' reputations and incite real-world harm.

497. On July 6, 2024, Silva shared an Instagram story with the words "When you find out people don't trust and respect. But they still use what is 100% mine" and hashtags "#lol" and "#bichhhh," tagging CPI's account, falsely implying theft and fraud.

498. On December 31, 2024, Silva posted, "2024 Victor and Selma cells produced milliones [sic] of dollars in profit for @cpistemcells #cpistemcells 2025 is

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going to be even better #royalties #juliefreeman #fraud #willywonka," falsely accusing Counterclaimants of fraud.

499. On January 24, 2025, Silva posted an image of McDonald's mascots, implying Counterclaimants are clowns and thieves, with "#cpistemcells".

500. On January 30, 2025, Silva commented on his January 24 post, "One of these guys was limping… One of these guys was so broke he was going to sell his trees… The other guy, well we will find out… financial expertise. #cpistemcells #fraud #juliefreeman," falsely depicting Counterclaimants as incompetent and fraudulent.

501. On January 30, 2025, Silva shared the January 24 post on his Instagram story, stating the characters were "on their way to the make," with "#fraud" and "#cpistemcells," implying illegitimate enrichment.

502. On January 31, 2025, Silva posted an image of children, captioned, "This little guy and his sister have healed 1000s of people. #cpistemcells #consent #theft #juliefreeman #jets #nashville #franciscosfinest," falsely accusing Counterclaimants of theft.

503. On February 18, 2025, Silva commented on an April 14, 2024, post, stating the video would "age so so so bad," tagging UFC to harm CPI's business relationships.

504. On April 24, 2025, Silva commented on a CPI post, calling Clay a "fucking clown".

505. On May 6, 2025, Silva commented on the April 14, 2024, post, stating, "Truth will be out soon… the clown #edclay told me he doesn't even know when money comes into his account. #theft #conversion #podcast #joerogan

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@joeroganexperience #edclay #fraud #cpistemcells #thief," falsely accusing theft and incompetence.

506. On June 8, 2025, Silva posted an image of Counterclaimants at TAM's opening, with the song "Puto" by Molotov (lyrics including "kill the faggots"), using hashtags "#ladrones," "#thiefs," "#fraud," and "#clown," falsely accusing fraud and implying homosexuality to incite violence.

507. On June 9, 2025, Silva messaged Christina Mangino, CEO of a CPI partner nonprofit, stating, "sad u guys are doing this with criminals," falsely accusing Counterclaimants of criminality.

508. On June 19, 2025, Silva posted an FDA press release, implying CPI exports cells to hostile countries without consent, using "#informedconsent," "#cpistemcells," and "#fraud".

509. On June 22, 2025, Silva posted a fabricated Meta AI analysis alleging CPI's unethical practices and false advertising, tagging Joe Rogan and UFC with "#cpistemcells," "#fraud," and "#tamcenter".

510. The foregoing represents false and defamatory statements by Silva, which were published to the public.

511. Each of these false and defamatory statements constitute a non-privileged publication to a third party.

512. Silva knew each of these defamatory statements were false when he made them, and Silva defamed Counterclaimants, acted in reckless disregard of the truth, or otherwise acted negligently in failing to ascertain the truth.

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513. Silva's false and defamatory statements regarding Counterclaimants constitute at least one false and defamatory statement that tend to injure Counterclaimants in their respective trade, business, profession, or office.

514. Silva's false and defamatory statements regarding Counterclaimants constitute at least one false and defamatory statement that each Counterclaimant lacks fitness for a particular business or profession.

515. As a direct, proximate, and foreseeable results of Silva's defamation, result of Silva's conduct, Counterclaimants suffered damages exceeding $15,000.00, plus interest thereon, with the exact amount to be proven at trial.

516. Silva's conduct was committed with fraud, oppression, and/or malice, entitling Counterclaimants to punitive damages pursuant to NRS 42.005 in an amount to be determined at trial.

517. Without an injunction to permanently take down, remove and delete Silva's public social media postings, Counterclaimants will suffer imminent and irreparable harm for which monetary relief is inadequate.

518. Counterclaimants have, by reason of the foregoing, been required to obtain the services of an attorney and are entitled to recover their reasonable attorneys' fees and costs from Silva.

TWELFTH COUNTERCLAIM BY COUNTERCLAIMANTS
(False Light)

519. The allegations asserted in the previous paragraphs of these Counterclaims are incorporated herein by reference as if set forth in full below.

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520. Silva's social media posts falsely portray Counterclaimants as unethical practitioners, criminals, and targets of hate, in a manner highly offensive to a reasonable person.

521. On June 8, 2025, Silva posted an image with the song "Puto" by Molotov (lyrics including "kill the faggots"), using "#ladrones," "#thiefs," "#fraud," and "#clown," and on June 11, 2025, added "#putito," falsely implying Counterclaimants are homosexuals and inciting violence.

522. On June 9, 2025, Silva messaged Christina Mangino, stating, "sad u guys are doing this with criminals," falsely portraying Counterclaimants as criminals.

523. On June 19, 2025, Silva posted an FDA press release, implying CPI exports cells to hostile countries without consent, using "#informedconsent," "#cpistemcells," and "#fraud".

524. On June 22, 2025, Silva posted a fabricated Meta AI analysis alleging CPI's unethical practices and false advertising, using "#cpistemcells," "#fraud," and "#tamcenter".

525. Silva's publications contained implicitly false statements of objective fact that Silva knew were false at the time of their publication.

526. These knowingly false publications would be highly offensive to reasonable person and were highly offensive to Counterclaimants.

527. Silva's publications were communicated to a sufficient number of people so that these publications would likely reach the general public.

528. Silva's publications are not newsworthy and serve no legitimate public interest.

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529. As such, Silva's publications gave publicity to matters concerning Counterclaimants that placed Counterclaimants before the public in a false light.

530. Silva has knowledge of or acted in reckless disregard as to the falsity of the publicized matter and the false light in which Counterclaimants were placed.

531. As a direct, proximate, and foreseeable result of Silva's publications placing Counterclaimants before the public in false light, Counterclaimants suffered damages exceeding $15,000.00, plus interest thereon, with the exact amount to be proven at trial.

532. Silva's conduct was committed with fraud, oppression, and/or malice, entitling Counterclaimants to punitive damages pursuant to NRS 42.005 in an amount to be determined at trial.

533. Counterclaimants have, by reason of the foregoing, been required to obtain the services of an attorney and are entitled to recover their reasonable attorneys' fees and costs from Silva.

534. Without an injunction to permanently take down, remove and delete Silva's public social media postings, Counterclaimants will suffer imminent and irreparable harm for which monetary relief is inadequate.

THIRTEENTH COUNTERCLAIM BY CPI
(Business Disparagement)

535. The allegations asserted in the previous paragraphs of these Counterclaims are incorporated herein by reference as if set forth in full below.

536. Silva made several false statements of fact to third parties that interferes with CPI's business or is aimed at CPI's goods or services.

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537. On July 6, 2024, Silva shared an Instagram story with the words "When you find out people don't trust and respect. But they still use what is 100% mine" and hashtags "#lol" and "#bichhhh," tagging CPI's account, falsely implying theft and fraud.

538. On December 31, 2024, Silva posted, "2024 Victor and Selma cells produced milliones [sic] of dollars in profit for @cpistemcells #cpistemcells 2025 is going to be even better #royalties #juliefreeman #fraud #willywonka," falsely accusing Counterclaimants of fraud.

539. On January 24, 2025, Silva posted an image of McDonald's mascots, implying Counterclaimants are clowns and thieves, with "#cpistemcells".

540. On January 30, 2025, Silva commented on his January 24 post, "One of these guys was limping… One of these guys was so broke he was going to sell his trees… The other guy, well we will find out… financial expertise. #cpistemcells #fraud #juliefreeman," falsely depicting Counterclaimants as incompetent and fraudulent.

541. On January 30, 2025, Silva shared the January 24 post on his Instagram story, stating the characters were "on their way to the make," with "#fraud" and "#cpistemcells," implying illegitimate enrichment.

542. On January 31, 2025, Silva posted an image of children, captioned, "This little guy and his sister have healed 1000s of people. #cpistemcells #consent #theft #juliefreeman #jets #nashville #franciscosfinest," falsely accusing Counterclaimants of theft.

543. On February 18, 2025, Silva commented on an April 14, 2024, post, stating the video would "age so so so bad," tagging UFC to harm CPI's business relationships.

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544. On April 24, 2025, Silva commented on a CPI post, calling Clay a "fucking clown".

545. On May 6, 2025, Silva commented on the April 14, 2024, post, stating, "Truth will be out soon… the clown #edclay told me he doesn't even know when money comes into his account. #theft #conversion #podcast #joerogan @joeroganexperience #edclay #fraud #cpistemcells #thief," falsely accusing theft and incompetence.

546. On June 8, 2025, Silva posted an image of Counterclaimants at the TAM Center's opening, with the song "Puto" by Molotov (lyrics including "kill the faggots"), using hashtags "#ladrones," "#thiefs," "#fraud," and "#clown," falsely accusing fraud and implying homosexuality to incite violence.

547. On June 9, 2025, Silva messaged Christina Mangino, CEO of a CPI partner nonprofit, stating, "sad u guys are doing this with criminals," falsely accusing Counterclaimants of criminality.

548. On June 19, 2025, Silva posted an FDA press release, implying CPI exports cells to hostile countries without consent, using "#informedconsent," "#cpistemcells," and "#fraud".

549. On June 22, 2025, Silva posted a fabricated Meta AI analysis alleging CPI's unethical practices and false advertising, tagging Joe Rogan and UFC with "#cpistemcells," "#fraud," and "#tamcenter".

550. Each of these false statements constituted a non-privileged publication to a third party.

551. Silva's statements were made with malice and CPI suffered special damages due to each false and defamatory statement made by Silva.

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552. As a direct, proximate, and foreseeable result of Silva's disparagement of CPI's business, CPI has suffered damages exceeding $15,000.00, plus interest thereon, with the exact amount to be proven at trial.

553. Silva's conduct was committed with fraud, oppression, and/or malice, entitling Counterclaimants to punitive damages pursuant to NRS 42.005 in an amount to be determined at trial.

554. Counterclaimants have, by reason of the foregoing, been required to obtain the services of an attorney and are entitled to recover their reasonable attorneys' fees and costs from Silva.

555. Without an injunction to permanently take down, remove and delete Silva's public social media postings, Counterclaimants will suffer imminent and irreparable harm for which monetary relief is inadequate.

PRAYER

Wherefore, Counterclaimants request judgment as follows:

1. Entry of a preliminary and permanent injunction requiring online social media posts to be permanently taken down, removed and deleted;

2. Disgorgement of Silva's 25% membership interest in CPI and the entire amount of distributions made to Silva as a result of his 25% membership interest in CPI;

3. An award of damages, including compensatory, special, and punitive damages;

4. An award of attorney fees incurred in connection with pursuing this action; and

5. Such other and further relief as deemed just and equitable.

Bendavid Law
702.385.6114
7301 Peak Drive, Suite 150
Las Vegas, Nevada 89128

DATED this 1st day of August 2025.

BENDAVID LAW

/s/ Jeffery A. Bendavid, Esq.

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

AUBREY B. HARWELL III, ESQ.
(Pro Hac Vice Forthcoming)
TN no. 17394
trey@nealharwell.com
ADAMS AND REESE LLP
1600 West End Avenue, Suite 1400
Nashville, Tennessee 37203
(615) 259-1028

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

Attorneys for Member Defendants, Clay, Nelson, and Perry

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A-25-909767-B

DISTRICT COURT
CLARK COUNTY, NEVADA

NRS Chapters 78-89	**COURT MINUTES**	**May 12, 2025**

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

May 12, 2025 **8:39 AM** **Minute Order**

HEARD BY: Gall, Maria **COURTROOM:** Chambers

COURT CLERK: Kelli Wise

JOURNAL ENTRIES

The court issues this minute order to advise that Defendants' motions to dismiss scheduled for hearing on May 13, 2025, will be heard LAST on the court's 9:00 AM law and motion calendar. The parties are free to appear at 9:00 AM, but it is unlikely the court will hear the motions before 10:30 AM.

CLERK'S NOTE: A copy of this minute order was distributed via Odyssey File and Serve/ kw 5.12.25

Register of Actions
Case No. A-25-909767-B

Francisco Silva, Plaintiff(s) vs. Ed Clay, Defendant(s)

Case Type: **NRS Chapters 78-89**
Date Filed: **01/10/2025**
Location: **Department 9**
Cross-Reference Case Number: **A909767**

Party Information

		Lead Attorneys
Defendant	**Clay, Ed**	**Jeffrey A. Bendavid** *Retained* 702-385-6114(W)
Defendant	**CPI Management Group, LLC**	**Jeffrey A. Bendavid** *Retained* 702-385-6114(W)
Defendant	**Freeman, Julie**	**Logan Gregory Willson** *Retained* 702-979-3565(W)
Defendant	**Nelson, Scott**	**Jeffrey A. Bendavid** *Retained* 702-385-6114(W)
Defendant	**Perry, Deddrick**	**Jeffrey A. Bendavid** *Retained* 702-385-6114(W)
Plaintiff	**Silva, Francisco**	**Vance R. Bohman** *Retained* 702-784-5200(W)

Events & Orders of the Court

05/13/2025 **All Pending Motions** (9:00 AM) (Judicial Officer Gall, Maria)

Minutes

05/13/2025 9:00 AM

- 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)...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) Court provided its initial thoughts on the matters at hand. Arguments by Mr. Bendavid and Mr. Lee regarding the Motion to Dismiss Plaintiff's Third, Fourth, Seventh, Eighth, and Tenth Through Sixteenth Claims for Relief. Court noted it would not render a decision today. Continued argument by Mr. Bendavid and Mr. Lee. Arguments by Mr. Bendavid and Mr. Bohman regarding the 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. COURT ORDERED, both Motions taken UNDER SUBMISSION; FURTHER, decision date SET. 06/06/2025 3:00 (CHAMBERS) DECISION

Parties Present
Return to Register of Actions

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DISTRICT COURT
CLARK COUNTY, NEVADA

NRS Chapters 78-89	**COURT MINUTES**	**July 08, 2025**

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

July 08, 2025 **8:36 AM** **Minute Order**

HEARD BY: Gall, Maria **COURTROOM:** Chambers

COURT CLERK: Kelli Wise

JOURNAL ENTRIES

In the court's decision on CPI's motion to dismiss, the court set forth its intended disposition to dismiss without prejudice Plaintiff's derivative claim against Defendant Freeman. Given the court's intended disposition, the court finds that Freeman's motion to dismiss the same claim is moot and VACATES the July 11, 2025, in chambers' hearing on the motion.

CLERK'S NOTE: A copy of this minute order was distributed via Odyssey File and Serve/ kw 7.8.25