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16 **IN THE EIGHTH JUDICIAL DISTRICT COURT**

17 **CLARK COUNTY, NEVADA**

18 STATE OF NEVADA, EX REL.) CASE NO. A-15-725244-C
19 COMMISSIONER OF INSURANCE, IN HER)
20 OFFICIAL CAPACITY AS STATUTORY) DEPARTMENT 1
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1 **THIRTY-FIRST STATUS REPORT**

2 COME NOW, Commissioner of Insurance Scott Kipper¹ in his capacity as Receiver of Nevada
3 Health CO-OP (“NHC,” or the “CO-OP”), and CANTILO & BENNETT, L.L.P., Special Deputy Receiver
4 (“SDR” - SDR and the Commissioner as Receiver are referred to collectively herein as “Receiver”) and
5 file this Thirty-First Status Report in the above-captioned receivership.

6
7 ¹ Barbara D. Richardson resigned from her position as Commissioner of Insurance effective
8 December 30, 2022. Scott Kipper assumed the role of Nevada Insurance Commissioner in February 2023.
9 Pursuant to NRCP 25(d), when a public officer ceases to hold office while an action is pending, “[t]he officer’s
10 successor is automatically substituted as a party.”

1 **I. INTRODUCTION AND HISTORICAL BACKGROUND**

2 The CO-OP is a state-licensed health insurer, formed in 2012 as a Health Maintenance
3 Organization, with a Certificate of Authority granted by the State of Nevada Division of Insurance
4 effective January 2, 2013. NHC was an Internal Revenue Code 501(c)(29) Qualified Non-Profit Health
5 Insurance Issuer, entitled to tax exemption by the Internal Revenue Service. NHC was formed under a
6 provision of the Patient Protection and Affordable Care Act (“ACA”) providing for the formation of
7 Consumer Operated and Oriented Plans. Having received from the Centers for Medicare and Medicaid
8 Services (“CMS”) of the United States Department of Health and Human Services (“HHS”) a start-up
9 loan of \$17,080,047, and a “solvency” loan of \$48,820,349, NHC was required to operate as a non-
10 profit, consumer-driven health insurance issuer for the benefit of the public. The CO-OP’s primary
11 business was to provide ACA-compliant health coverage to residents of Nevada, and it operated its
12 business for the benefit of Nevadans within the state, save for certain arrangements to provide nationwide
13 health coverage to Nevadans traveling outside the state in certain circumstances. NHC began selling
14 products on and off the Silver State Health Insurance Exchange (the “Exchange”) on January 1, 2014.
15 Its products included individual, small group, and large group health care coverages.

16 On October 1, 2015, this Court issued its Order Appointing the Acting Insurance Commissioner,
17 Amy L. Parks as Temporary Receiver of NHC Pending Further Orders of the Court and Granting
18 Temporary Injunctive Relief Pursuant to NRS 696B.270. Further, on October 14, 2015, the Receivership
19 Court entered its Permanent Injunction and Order Appointing Commissioner as Permanent Receiver of
20 Nevada Health CO-OP, appointing the law firm of CANTILO & BENNETT, L.L.P. as SDR of NHC, in
21 accordance with Chapter 696B of the Nevada Revised Statutes.

22 This Court, through its Final Order Finding and Declaring Nevada Health CO-OP to be Insolvent
23 and Placing Nevada Health CO-OP into Liquidation (the “Final Order”) dated September 20, 2016,
24 adjudged NHC to be insolvent on grounds that it was unable to meet obligations as they mature. The
25 Final Order also authorized the Receiver to liquidate the business of NHC and wind up its ceased
26 operations pursuant to applicable Nevada law. The Receiver has since transitioned the receivership
27 estate from rehabilitation to liquidation.

28 The Receiver continues to file quarterly status reports as ordered by this Court.

1 **II. RECEIVERSHIP ADMINISTRATION**

2 **Receivership Administrative Services and Oversight**

3 CANTILO & BENNETT, L.L.P., as SDR of NHC, manages the receivership estate and conducts its
4 affairs. PALOMAR FINANCIAL, LC (“Palomar”), an affiliate of the SDR, performs administration,
5 information technology, and other related services for the Receiver under the supervision of the SDR.
6 The Receiver has included an informational copy, as **Exhibit 1** to this Thirty-First Status Report of the
7 invoices approved or paid to the SDR and other receivership consultants since the last status report to
8 this Court.²

9 **Resolution of Outstanding Receivership Matters**

10 ***Claims Adjudications & Distributions***

11 Notices of Claim Determination (“NCDs”) were mailed for healthcare claims previously
12 submitted by providers to NHC’s Javelina Claims Processing Database (the “Provider Claims”). The
13 total allowed amount of these approved Provider Claims is approximately \$33.7 million. The NHC
14 members also received NCDs that showed them the amount that the SDR has approved to be paid to
15

16 ² The *in camera* materials are being submitted in a separate envelope that reflect paid invoices.

17 Certain billings submitted to the Court are appropriate for *in camera* review (as opposed to being made
18 part of a public filing). More particularly, and as discussed in further detail below, certain consultants in this
19 matter are providing expert witness related services. As such, the billing entries relating thereto should be
20 considered confidential and/or otherwise not subject to discovery.

21 In this regard, courts have held that the bills of legal counsel and experts may be withheld from legal
22 discovery and are not subject to legal disclosure, as this information may provide indications or context concerning
23 potential litigation strategy and the nature of the expert services being provided. *See, e.g., Avnet, Inc. v. Avana
Technologies Inc.*, No. 2:13-cv-00929- GMN-PAL, 2014 WL 6882345, at *1 (D. Nev. Dec. 4, 2014) (finding
that billing entries were privileged because they reveal a party’s strategy and the nature of services provided);
Fed. Sav. & Loan Ins. Corp. v. Ferm, 909 F.2d 372, 374-75 (9th Cir. 1990) (considering whether or not fee
information revealed counsel’s mental impressions concerning litigation strategy). Other courts that have
addressed this issue have recognized that the “attorney-client privilege embraces attorney time, records and
statements to the extent that they reveal litigation strategy and the nature of the services provided.” *Real v. Cont’l
Grp., Inc.*, 116 F.R.D. 211, 213 (N.D. Cal. 1986).

24 The *in-camera* review should apply not only to documentation concerning attorneys’ fees, but it also
25 extends to “details of work revealed in [an] expert’s work description [which] would relate to tasks for which she
[or he] was compensated[.]” a situation which is “analogous to protecting attorney-client privileged information
26 contained in counsel’s bills describing work performed.” *See DaVita Healthcare Partners, Inc. v. United States*,
128 Fed. Cl. 584, 592-93 (2016); *see also Chaudhry v. Gallerizzo*, 174 F.3d 394, 402 (4th Cir. 1999) (recognizing
27 that “correspondence, bills, ledgers, statements, and time records which also reveal the motive of the client in
seeking representation, litigation strategy, or the specific nature of the services provided, such as researching
28 particular areas of law,” are protected from disclosure) (quoting *Clarke v. Am. Commerce Nat’l Bank*, 974 F.2d
127, 129 (9th Cir. 1992)).

1 their providers, and the amount of member responsibility (*i.e.*, the co-pays, deductibles, and
2 coinsurance), if any, that they may owe on their providers' outstanding claims. The SDR received
3 approval from the Court to make a distribution of certain estate assets for the partial payment of these
4 Provider Claims, which have been classified by the SDR as claims made under NHC policies pursuant
5 to NRS 696B.420(1)(b).³ To the extent that funds are not used for these Provider Claims, they retain
6 their classification as general assets of the Receivership available to pay other expenses.

7 As previously reported, the SDR must collect certain necessary documentation from the
8 providers in advance of making any claim payments. Five hundred and eighteen (518) providers have
9 submitted the necessary documentation and have received a distribution payment. However, the
10 remaining 1,265 providers either did not respond or sent back defective paperwork. The Receiver in her
11 discretion has not paid these claims for lack of the proper documentation. The Receiver is seeking further
12 litigation recoveries to enable additional provider claim distributions and anticipates further payment for
13 these provider claims subject to receiving proper documentation.

14 The SDR also mailed NCDs for those Proofs of Claim submitted to the SDR relating to Policy
15 Claims (*i.e.*, Class B claims pursuant to NRS 696B.420(1)(b)). The total allowed amount for the
16 members' claims, \$5,102.64, is subject to a potential small increase as two NCD appeals have been filed
17 and remain pending.

18 In addition to the two member appeals described above, there are twenty-eight (28) outstanding
19 appeals sent by NHC members of the NCDs that were mailed for outstanding healthcare claims
20 submitted by providers to NHC's Javelina Claims Processing Database.⁴ The Receiver will request by
21 separate motion that the Court set a hearing for the remaining appeals, pursuant to NRS 696B.330.

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25 ³ As detailed in the Receiver's Seventeenth Status Report, within the section of the report titled "Sale of
26 Risk Corridors Receivable," the Court entered an order permitting the distribution of certain funds on October 16,
2019.

27 ⁴ Members received a copy of the claim determinations that were sent to their providers, so that the
28 members could see any denied claims, and the deductible, co-pay, and coinsurance that was applied to each of the
allowed provider claims (*i.e.*, the amount of the member's responsibility on each claim) and have an opportunity
to appeal.

1 There are fifty-one proofs of claim (“POC”) assigned to a priority Class “C” (*i.e.*,
2 NRS 696B.420(1)(c)) or lower.⁵ The SDR has now issued NCDs to nearly all of these claimants. It
3 appears unlikely at this time that the estate will have sufficient assets to make distributions to claims
4 assigned priority below Class B.

5 ***CMS Receivables***

6 As explained in prior status reports, and throughout the pendency of the receivership, the
7 Receiver has worked to resolve certain outstanding matters relating to the collection of amounts due
8 under the various federal receivables programs, of which the CO-OP was a participant, and which are
9 administered primarily by CMS. The recovery of these assets will allow the SDR to make further claim
10 payments to estate creditors—to include the payment of additional provider claim distributions. The
11 Receiver also disputed the government’s asserted right to be paid ahead of all other creditors in the estate
12 (including providers and members). CMS maintained the position that any monies deemed owed to
13 NHC (and thus the receivership estate) are to be offset against the amounts CMS asserts it is owed under
14 the start-up loan awarded to NHC. CMS offset approximately \$12.9 million against the start-up loan
15 that should have instead been paid to NHC. When the full amount of 2014 - 2015 Risk Corridors
16 payments (*i.e.*, not just the prorated amount⁶) are included in the total, NHC is owed over \$55 million
17 for CMS Receivables.⁷

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20 ⁵ This does not include a claim by the U.S. Department of Health and Human Services, which the SDR
21 has previously reported to this Court. The government did not file an appeal of the SDR’s determination of its
22 claim.

23 ⁶ Due to a shortfall in risk corridor collections, CMS asserted it could only pay a prorated percentage of
24 issuers’ 2014 Risk Corridors payments and that it would use all collections in subsequent years towards the 2014
25 payments (*i.e.*, they are unable to make payments for the subsequent years at all). DEP’T OF HEALTH &
26 HUMAN SERVICES & CENTERS FOR MEDICARE & MEDICAID SERVICES (“CMS”), CCIIO
MEMORANDUM, RISK CORRIDORS PAYMENT AND CHARGE AMOUNTS FOR THE 2015 BENEFIT
YEAR (November 18, 2016) (available at <https://www.cms.gov/CCIIO/Resources/Regulations-and-Guidance/Downloads/2015-RC-Issuer-level-Report-11-18-16-FINAL-v2.pdf>); CMS, CCIIO MEMORANDUM,
RISK CORRIDORS PAYMENT AND CHARGE AMOUNTS FOR THE 2016 BENEFIT YEAR (November 15,
2017) (available at <https://www.cms.gov/CCIIO/Programs-and-Initiatives/Premium-Stabilization-Programs/Downloads/Risk-Corridors-Amounts-2016.pdf>).

27 ⁷ NHC sold a portion, but not all, of its interest in the Risk Corridors receivables, as detailed in the
28 Receiver’s Seventeenth Status Report to this Court. A portion of the total Risk Corridors receivables will be due
NHC, as well as the full portion of non-Risk Corridors receivables owed by CMS.

1 On November 30, 2021, the U.S. Court of Federal Claims granted the Receiver’s Motion for
2 Summary Judgment and found in favor of the Receiver on questions of debt, rights to offset, and claim
3 and issue preclusion matters.⁸ The parties were ordered to, and did, file a joint stipulation on an agreed-
4 upon sum for the damages. The U.S. Court of Federal Claims entered judgment in favor of the Receiver
5 on January 4, 2022. The United States filed a Notice of Appeal of the court’s judgment on March 4,
6 2022, and its opening brief was filed on July 8, 2022. No oral argument has been set by the U.S. Circuit
7 Court of Appeals concerning the United States appeal, but the Receiver anticipates that oral argument
8 should be scheduled by the appeals court sometime before September 30, 2023. The court’s opinion and
9 additional developments in this matter are detailed further below.

10 **Engagement of Additional Legal Counsel**

11 The Receiver has engaged the law firm of Greenberg Traurig LLP (“Greenberg Traurig”), as
12 outside counsel in various litigation matters. As reported in the prior status report, the Receiver has
13 retained the Lewis Roca firm as conflicts counsel and to address other matters that may arise in which
14 Greenberg Traurig is not representing the receivership estate.

15 **Asset Recovery Action Against Various Professionals and Other Firms Who Performed Services**
16 **for and on Behalf of NHC**

17 On August 25, 2017, Counsel for the Receiver had filed in Clark County District Court a
18 complaint (Case No. A-17-760558-C in Department No. 18) against various persons, third-party
19 vendors, and professional service firms which are alleged to have contributed to NHC’s losses by, among
20 other things, failing to adhere to applicable standards of professional care and requirements imposed by
21 law, misrepresentation concerning quality and standard of care for services performed, and breaches of
22 contract, duty, and implied covenants of good faith and fair dealing (the “Asset Recovery Action”). The
23 complaint had named, among others, NHC’s former actuaries, accountants, auditors, and providers of
24 certain business operations and utilization review services, as well as those individuals who specifically
25 performed, or who were in the role of supervising the performance of, those services. The complaint
26 also names several NHC former directors and executive management. The Asset Recovery Action has
27 now been fully settled among all parties, and the action by the Receiver is now closed.

28 ⁸ *Richardson v. United States*, No. 18-1731C, 2021 WL 5625391 (Fed. Cl. Nov. 30, 2021).

1 **Opinion and Order in the Action Against the United States in the Court of Federal Claims**

2 On November 8, 2018, the Receiver filed a Complaint in the United States Court of Federal
3 Claims (“CFC Complaint”) against the United States for monetary amounts owed to NHC under the
4 Consumer Operated and Oriented Plan program organized pursuant to the ACA. The Receiver
5 determined that such litigation was necessary in order to advance the interests of the receivership estate’s
6 creditors and to protect and conserve assets that rightfully belong to the estate (*i.e.*, over \$55M, as
7 mentioned in the “CMS Receivables” section, *supra*).

8 In Counts I through IV, the CFC Complaint prays for relief in the form of an award of damages
9 and monetary relief equal to the difference between the amount NHC actually received in payments
10 under Sections 1342, 1341, 1343, and 1401 of the ACA – the statutes which describe and enact the Risk
11 Corridors, transitional reinsurance, risk adjustment, and cost sharing reduction programs respectively –
12 and the amount NHC should have received under those laws. Count V (breach of contract by offset) and
13 Count VI (illegal exaction) plead alternate theories for recovery of money damages resulting from the
14 United States, through its agents at HHS and CMS, offsetting payments that CMS owed to NHC against
15 funds NHC allegedly owed to the government under the CO-OP start-up loan (the “Loan Agreement”).

16 The United States filed a motion to dismiss, and the Receiver filed a cross-motion for partial
17 summary judgment in the U.S. Court of Federal Claims.⁹ Oral argument on the motions was held on
18 May 24, 2021, and supplemental legal authority was noticed to the court.¹⁰

19 On November 30, 2021, the U.S. Court of Federal Claims issued its Opinion and Order, denying
20 the government’s motion to dismiss and concluding *inter alia* that the Government’s offsets were
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22

23 ⁹ A detailed procedural summary of the various motions filed in this matter, and the United States
Supreme Court’s rulings in related cases, can be found in the previous 24th Status Report to this Court.

24 ¹⁰ On May 17, 2021, the Federal Circuit upheld on appeal the Court of Federal Claims decision in favor
25 of the Liquidator of Colorado Health (a CO-OP program insurer), and held that (1) the Colorado set off statute
26 did not afford a right to the United States to offset the risk adjustment debt of the insolvent Colorado insurer
27 against HHS reinsurance debt, (2) the United States did not have an equitable right to offset risk adjustment debt,
28 (3) the ACA and HHS regulations implementing the ACA did not preempt Colorado law fixing creditors’ rights
during insolvency, (4) a significant conflict did not exist between an identifiable federal policy or interest and the
operation of state law, (5) the Court of Federal Claims fulfilled its obligations under the Tucker Act; and (6) the
Court of Federal Claims could enter judgment against the United States. *Conway v. United States*, 997 F.3d 1198
(Fed. Cir. 2021).

1 improper, and that the Receiver was entitled to summary judgment on Counts I through V¹¹ of her CFC
2 Complaint. *Richardson v. United States*, No. 18-1731C, 2021 WL 5625391, at *7 (Fed. Cl. Nov. 30,
3 2021). The U.S. Court of Federal Claims ordered that the Receiver is entitled to judgment as a matter
4 of law on her claims and that on or before December 30, 2021, the parties should file a joint stipulation
5 or joint status report, indicating an agreed-upon sum for the purpose of entry of final judgment. The
6 Receiver worked with counsel for the Government to prepare a Joint Status Report, filed on
7 December 30, 2021, wherein the parties agreed that the amount of the judgment should be
8 \$55,504,468.39 and that there were no remaining unresolved issues that would prevent entry of final
9 judgment. Accordingly, on December 31, 2021, the U.S. Court of Federal Claims directed judgment in
10 favor of the Receiver in the amount of \$55,504,468.39. On January 4, 2022, U.S. Court of Federal
11 Claims entered judgment for the Receiver for \$55,504,468.39. The Government filed a Notice of Appeal
12 of this judgment on March 4, 2022.

13 On July 8, 2022, the United States filed its Opening Brief for the United States in the above-
14 described appeal, setting forth its legal arguments in support, *inter alia*, of maintaining an offset of
15 amounts owed under the Risk Corridors program against those amounts ostensibly owed to it under the
16 CO-OP loan program. Subsequent to a Notice of Non-Compliance, the government again filed its
17 Opening Brief for the United States on July 18, 2022, and then again on July 19, 2022, such re-filing
18 containing non-substantive corrections per the United States. A Corrected Opening Brief for the United
19 States was filed as of July 22, 2022. The Receiver filed a Response Brief on October 17, 2022. The
20 United States requested and was granted an extension of time to file its reply and did file its Reply Brief
21 on December 5, 2022. On December 12, 2022, the parties filed their Joint Statement of Compliance
22 with Federal Circuit Rule 33(a)(2) stating that settlement discussions have been conducted, but the
23 discussions have not been successful. The appeal of the U.S. Court of Federal Claims decision is fully
24 briefed and pending before the Federal Circuit. The Commissioner anticipates oral argument will take
25 place by September 30, 2023. As directed by the Federal Circuit, the parties have advised of any
26 scheduling conflicts during the months of March through August 2023.

27
28 ¹¹ As Counts V and VI presented alternate legal theories for the recovery of the same amounts sought in
Counts II–IV, it was not necessary for the U.S. Court of Federal Claims to address Count VI.

1 **Civil Action Against WellHealth Medical Associates, Medsource, and Certain Persons**

2 Through the filing of a Complaint dated December 14, 2021, in Case Number A-21-845440-B,
3 in Department 5 of the Eighth Judicial District Court, the Receiver has brought an action against
4 WellHealth Medical Associates, PLLC, Medsource Management Group, LLC, and certain individual
5 persons or estates of persons formerly or currently in positions of authority and responsibility within
6 these organizations, for the recovery of amounts which the NHC alleges is owed in connection with
7 certain illegal, negligent, and intentionally fraudulent transactions which took place with NHC in health
8 plan years 2014 and 2015, as well as certain related business transactions which involved the transfer of
9 CO-OP funds to persons, and through mechanisms, which are not permissible under the relevant laws
10 and regulations.

11 The case was reassigned to Department 22 by notice dated January 6, 2022. Subsequent to the
12 conducting and certification of service for defendants on or about April 13, 2022, the WellHealth
13 defendants WellHealth Medical Associates, Medsource Management Group, and Robert Baratta filed,
14 as of May 3, 2022, their Motion to Dismiss for Failure to Comply with Statute of Limitations or, in the
15 Alternative, Motion to Dismiss for Failure to State a Claim. On June 17, 2022, Plaintiff filed her Motion
16 to Amend Complaint. Through a minute order dated July 12, 2022, the court approved the Motion to
17 Amend Complaint. On July 19, 2022, Plaintiff filed her Notice of Withdrawal of Motion to Amend
18 Complaint, stating that she no longer intends to file, and instead seeks to withdraw, her proposed
19 Amended Complaint. The court then rescinded its order via a filing on July 15, 2022. As well, on
20 July 19, 2022, Plaintiff made a Peremptory Challenge as to the judicial officer overseeing the case, with
21 a resulting Notice of Department Reassignment entered on July 20, 2022. On August 8, 2022, Plaintiff
22 filed her Stipulation and Order to Amend Complaint, providing additional arguments and causes of
23 action, after consultation with opposing parties; alongside this, Plaintiff filed her First Amended
24 Complaint in this action. Following some motion practice between the parties as covered in prior status
25 reports, the case remains pending between the parties. Discovery is in progress currently.

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1 **Current Receivership Assets**

2 The Receiver’s evaluation of the assets and liabilities of the CO-OP is ongoing, and adjusted
3 periodically to accommodate new authorized payments, receipts, and transfers. Below is an overview
4 of some key asset matters thus far identified by the Receiver (other than those already mentioned herein):

5 1. The currently available, unrestricted cash assets of the CO-OP as of April 30, 2023, were
6 approximately \$2,350,115. The majority of NHC’s currently available and liquid assets are held in bank
7 deposits.

8 2. The financial information of NHC in this Thirty-First Status Report provides estimates.
9 NHC’s financials may materially vary depending upon the estate’s receipt of the promised federal
10 receivables payments under the various ACA programs described in this report, and future litigation
11 recoverables.

12 3. The Receiver is including, as **Exhibit 2** attached hereto, a cash flow report for NHC for
13 the period covering the inception of the receivership through April 30, 2023. This report reflects a
14 summary of disbursements and collections made by NHC during this period.

15 **CONCLUSION**

16 The Receiver has submitted this report in compliance with the Receivership Court’s instructions
17 for a status report on NHC. The Receiver requests that the Court approve this Thirty-First Status Report
18 and the actions taken by the Receiver.

19 DATED this 12th day of June 2023.

20 Respectfully submitted:

21 Scott Kipper, Commissioner of Insurance
22 of the State of Nevada, in his Official
23 Capacity as Statutory Receiver of
24 Delinquent Domestic Insurer

24 By: */s/ Cantilo & Bennett, L.L.P.*
25 Special Deputy Receiver
26 By Its Authorized Representative
27 MARK F. BENNETT
28

1 Respectfully submitted by:
2 GREENBERG TRAURIG, LLP

3 */s/ Donald L. Prunty*

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*Counsel for Scott Kipper,
Commissioner of Insurance, as the
Permanent Receiver for Nevada Health
CO-OP*

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that, on the **12th day of June 2023**, a true and correct copy of the foregoing **THIRTY-FIRST STATUS REPORT** was submitted for service using the Odyssey eFileNV Electronic Service system and served on all parties with an email address on record, pursuant to Administrative Order 14-2 and Rule 9 of the N.E.F.C.R. The date and time of the electronic proof of service is in place of the date and place of deposit in the United States mail.

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

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INDEX OF EXHIBITS		
EXHIBIT	DESCRIPTION	BATES RANGE
Exhibit 1	Summaries	001-051
Exhibit 2	Cash Flow Analysis	052-053