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

**IN THE EIGHTH JUDICIAL DISTRICT COURT  
CLARK COUNTY, NEVADA**

STATE OF NEVADA, EX REL. ) CASE NO. A-15-725244-C  
COMMISSIONER OF INSURANCE, IN HIS )  
OFFICIAL CAPACITY AS STATUTORY ) DEPARTMENT 21  
RECEIVER FOR DELINQUENT DOMESTIC )  
INSURER, )  
 )  
Plaintiff, )  
 )  
vs. )  
 )  
NEVADA HEALTH CO-OP, )  
 )  
Defendant. )

**THIRTY-FOURTH STATUS REPORT**

COME NOW, Commissioner of Insurance Scott Kipper<sup>1</sup> in his capacity as Receiver of Nevada Health CO-OP (“NHC,” or the “CO-OP”), and CANTILO & BENNETT, L.L.P., Special Deputy Receiver (“SDR” - SDR and the Commissioner as Receiver are referred to collectively herein as “Receiver”) and file this Thirty-Fourth Status Report in the above-captioned receivership.

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

Greenberg Traurig, LLP  
10845 Griffith Peak, Suite 600, Las Vegas, Nevada 89135

1 **I. INTRODUCTION AND HISTORICAL BACKGROUND**

2 The CO-OP was 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  
13 nationwide health coverage to Nevadans traveling outside the state in certain circumstances. NHC began  
14 selling products on and off the Silver State Health Insurance Exchange (the “Exchange”) on January 1,  
15 2014. 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  
19 Receivership Court entered its Permanent Injunction and Order Appointing Commissioner as Permanent  
20 Receiver of Nevada Health CO-OP, appointing the law firm of CANTILO & BENNETT, L.L.P. as SDR of  
21 NHC, in 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 Status Report of the invoices  
7 approved or paid to the SDR and other receivership consultants since the last status report to this Court.<sup>2</sup>

8 **Resolution of Outstanding Receivership Matters**

9 ***Claims Adjudications & Distributions***

10 Notices of Claim Determination (“NCDs”) were mailed for healthcare claims previously  
11 submitted by providers to NHC’s Javelina Claims Processing Database (the “Provider Claims”). The  
12 total allowed amount of these approved Provider Claims is approximately \$33.7 million. The NHC  
13 members also received NCDs that showed them the amount that the SDR approved to be paid to their  
14 providers, and the amount of member responsibility (*i.e.*, the co-pays, deductibles, and coinsurance), if

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16 <sup>2</sup> 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  
23 concerning potential litigation strategy and the nature of the expert services being provided. *See, e.g., Avnet, Inc.*  
24 *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  
25 provided); *Fed. Sav. & Loan Ins. Corp. v. Ferm*, 909 F.2d 372, 374-75 (9th Cir. 1990) (considering whether or  
26 not fee information revealed counsel’s mental impressions concerning litigation strategy). Other courts that have  
27 addressed this issue have recognized that the “attorney-client privilege embraces attorney time, records and  
28 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).

The *in-camera* review should apply not only to documentation concerning attorneys’ fees, but it also  
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  
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  
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  
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 any, that they may owe on their providers' outstanding claims. The SDR received approval from the  
2 Court to make a distribution of certain estate assets for the partial payment of these Provider Claims,  
3 which have been classified by the SDR as claims made under NHC policies pursuant to  
4 NRS 696B.420(1)(b).<sup>3</sup> To the extent that funds are not used for these Provider Claims, they retain their  
5 classification as general assets of the Receivership available to pay other expenses.

6 As previously reported, the SDR must collect certain necessary documentation from the  
7 providers in advance of making any claim payments. Five hundred and nineteen (519) providers have  
8 submitted the necessary documentation and have received a distribution payment. However, the  
9 remaining one thousand two-hundred sixty four (1,264) providers either did not respond or sent back  
10 defective paperwork. The Receiver in his discretion has not paid these claims for lack of the proper  
11 documentation. The Receiver is seeking further litigation recoveries to enable additional provider claim  
12 distributions and anticipates further payment for these provider claims subject to receiving proper  
13 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 objections have been  
17 filed and remain pending.

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

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24  
25 <sup>3</sup> 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 <sup>4</sup> 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.<sup>5</sup> 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 amount<sup>6</sup>) are included in the total, NHC is owed over \$55 million  
17 for CMS Receivables.<sup>7</sup>

18           On November 30, 2021, the U.S. Court of Federal Claims granted the Receiver’s Motion for  
19 Summary Judgment and found in favor of the Receiver on questions of debt, rights to offset, and claim

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20           <sup>5</sup> 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           <sup>6</sup> 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  
27 MEMORANDUM, RISK CORRIDORS PAYMENT AND CHARGE AMOUNTS FOR THE 2015 BENEFIT  
28 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>).

<sup>7</sup> NHC sold a portion, but not all, of its interest in the Risk Corridors receivables, as detailed in the  
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 and issue preclusion matters.<sup>8</sup> The parties were ordered to, and did, file a joint stipulation on an agreed-  
2 upon sum for the damages. The U.S. Court of Federal Claims entered judgment in favor of the Receiver  
3 on January 4, 2022. The United States filed a Notice of Appeal of the court’s judgment on March 4,  
4 2022, and its opening brief was filed on July 8, 2022. Discussions concerning the Appeal to the Federal  
5 Circuit and additional developments in this matter are detailed further below.

### 6 **Engagement of Additional Legal Counsel**

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

### 11 **Asset Recovery Action Against Various Professionals and Other Firms Who Performed Services 12 for and on Behalf of NHC**

13 As previously reported by the Receiver, the Asset Recovery Action has now been fully settled  
14 among all parties, and the action by the Receiver is now closed. Those interested should refer to  
15 previously filed status reports (available at [www.nevadahealthcoop.org](http://www.nevadahealthcoop.org)) for historical information about  
16 the Asset Recovery Action.

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

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

24 In Counts I through IV, the CFC Complaint prays for relief in the form of an award of damages  
25 and monetary relief equal to the difference between the amount NHC actually received in payments  
26 under Sections 1342, 1341, 1343, and 1401 of the ACA – the statutes which describe and enact the Risk  
27

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

1 Corridors, transitional reinsurance, risk adjustment, and cost sharing reduction programs respectively –  
2 and the amount NHC should have received under those laws. Count V (breach of contract by offset)  
3 and Count VI (illegal exaction) plead alternate theories for recovery of money damages resulting from  
4 the United States, through its agents at HHS and CMS, offsetting payments that CMS owed to NHC  
5 against funds NHC allegedly owed to the government under the CO-OP start-up loan (the “Loan  
6 Agreement”).

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

10 On November 30, 2021, the U.S. Court of Federal Claims issued its Opinion and Order, denying  
11 the government’s motion to dismiss and concluding *inter alia* that the Government’s offsets were  
12 improper, and that the Receiver was entitled to summary judgment on Counts I through V<sup>11</sup> of his CFC  
13 Complaint. *Richardson v. United States*, No. 18-1731C, 2021 WL 5625391, at \*7 (Fed. Cl. Nov. 30,  
14 2021). The U.S. Court of Federal Claims ordered that the Receiver is entitled to judgment as a matter  
15 of law on his claims and that on or before December 30, 2021, the parties should file a joint stipulation  
16 or joint status report, indicating an agreed-upon sum for the purpose of entry of final judgment. The  
17 Receiver worked with counsel for the Government to prepare a Joint Status Report, filed on  
18 December 30, 2021, wherein the parties agreed that the amount of the judgment should be  
19 \$55,504,468.39 and that there were no remaining unresolved issues that would prevent entry of final  
20 judgment. Accordingly, on December 31, 2021, the U.S. Court of Federal Claims directed judgment in  
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22 <sup>9</sup> 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.

23 <sup>10</sup> On May 17, 2021, the Federal Circuit upheld on appeal the Court of Federal Claims decision in favor  
24 of the Liquidator of Colorado Health (a CO-OP program insurer), and held that (1) the Colorado set off statute  
did not afford a right to the United States to offset the risk adjustment debt of the insolvent Colorado insurer  
25 against HHS reinsurance debt, (2) the United States did not have an equitable right to offset risk adjustment debt,  
(3) the ACA and HHS regulations implementing the ACA did not preempt Colorado law fixing creditors’ rights  
26 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  
27 Court of Federal Claims could enter judgment against the United States. *Conway v. United States*, 997 F.3d 1198  
(Fed. Cir. 2021).

28 <sup>11</sup> 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 favor of the Receiver in the amount of \$55,504,468.39. On January 4, 2022, U.S. Court of Federal  
2 Claims entered judgment for the Receiver for \$55,504,468.39. The Government filed a Notice of Appeal  
3 of this judgment on March 4, 2022.

4 On July 8, 2022, the United States filed its Opening Brief for the United States in the above-  
5 described appeal, setting forth its legal arguments in support, *inter alia*, of maintaining an offset of  
6 amounts owed under the Risk Corridors program against those amounts ostensibly owed to it under the  
7 CO-OP loan program. Subsequent to a Notice of Non-Compliance, the government again filed its  
8 Opening Brief for the United States on July 18, 2022, and then again on July 19, 2022, such re-filing  
9 containing non-substantive corrections per the United States. A Corrected Opening Brief for the United  
10 States was filed as of July 22, 2022. The Receiver filed a Response Brief on October 17, 2022. The  
11 United States requested and was granted an extension of time to file its reply and did file its Reply Brief  
12 on December 5, 2022. On December 12, 2022, the parties filed their Joint Statement of Compliance  
13 with Federal Circuit Rule 33(a)(2) stating that settlement discussions have been conducted, but the  
14 discussions have not been successful. The appeal of the U.S. Court of Federal Claims decision is fully  
15 briefed and pending before the Federal Circuit. Oral Argument was previously set for September 6,  
16 2023, but was re-set due to scheduling conflicts. The Federal Circuit heard oral arguments in this matter  
17 on January 11, 2024, and the matter is now under review for a further decision by the court.

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

19 Through the filing of a Complaint dated December 14, 2021, in Case Number A-21-845440-B,  
20 in Department 5 of the Eighth Judicial District Court, the Receiver has brought an action against  
21 WellHealth Medical Associates, PLLC, Medsource Management Group, LLC, and certain individual  
22 persons or estates of persons formerly or currently in positions of authority and responsibility within  
23 these organizations, for the recovery of amounts which the NHC alleges is owed in connection with  
24 certain illegal transactions which took place with NHC in health plan years 2014 and 2015, as well as  
25 certain related business transactions which involved the transfer of CO-OP funds to persons, and through  
26 mechanisms, which are not permissible under the relevant laws and regulations. This case has been  
27 reassigned to Department 31.

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1 On August 8, 2022, Plaintiff filed a Stipulation and Order to Amend Complaint, providing  
2 additional arguments and causes of action, after consultation with opposing parties; alongside this,  
3 Plaintiff filed a First Amended Complaint in this action. Following some motion practice between the  
4 parties as covered in prior status reports, the case remains pending between the parties. Discovery is in  
5 progress and set to be completed by July 12, 2024. The trial of this case was set on a five-week trial  
6 stack for October 7, 2024. The parties met and conferred and agreed to submit the case to mediation.  
7 A stipulation and proposed order to stay the case for mediation was submitted on October 5, 2023, and  
8 the stay has now expired. The parties were not able to mediate and discovery in the case continues.

9 On November 16, 2023, the court entered its *Findings of Fact, Conclusions of Law, and Order*  
10 *Denying Defendant Nino Pedrini’s Motion to Dismiss Based on Contractual Limitations or, in the*  
11 *Alternative, for Violation of the Statute of Limitations or, in Further Alternative, for Failure to State a*  
12 *Claim*. Also on November 16, 2023, the court denied defendant Pedrini’s *Motion for Reconsideration*  
13 *to Denial of His Motion to Dismiss Based on Contractual Limitations or, in the Alternative, for Violation*  
14 *of the Statute of Limitations or, in Further Alternative, for Failure to State a Claim*. On January 12,  
15 2024, Defendant Pedrini filed his *Answer to Plaintiff’s Complaint and Joinder in Counterclaim*.

16 On December 12, 2023, the parties stipulated and agreed to consolidating the two related cases,  
17 *State of Nevada, ex rel., Commissioner of Insurance, Barbara Richardson in her official capacity as*  
18 *Receiver for Nevada Health Co-Op v. Nino Pedrini*, Case No. A- 22- 860744-C (the “*Pedrini Action*”),  
19 and *State of Nevada, ex rel., Commissioner of Insurance, Barbara Richardson in her official capacity*  
20 *as Receiver for Nevada Health Co-Op v. WellHealth Medical Associates*, Case No. A-21-845440-B (the  
21 “*WellHealth Action*”). Both cases arise out of the same series of transactions and occurrences, and  
22 involve common questions of law and fact. Based on the foregoing, the court exercised its discretion  
23 and consolidated the Pedrini Action (A-22-60744-C) into the WellHealth Action (A-21-845440-B) on  
24 December 12, 2023.

25 **Current Receivership Assets**

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



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**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that, on the **14th day of March 2024**, a true and correct copy of the foregoing **THIRTY-FOURTH 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 - 024
Exhibit 2	Cash Flow Analysis	025 - 026

Exhibits may be requested by contacting the Special Deputy Receiver at 512-478-6000