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IN THE COURT OF COMMON PLEAS OF LANCASTER COUNTY, PA
CIVIL ACTION-LAW

PRESTIGE FUND A, LLC, et al., Plaintiffs,	No. CI-24-06012
v.	Hon. Leonard G. Brown, III
PARAMOUNT MANAGEMENT GROUP, LLC, Defendant.	

PLAINTIFFS' BRIEF IN SUPPORT OF EMERGENCY PETITION TO <u>STRIKE DISCONTINUANCE</u>

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I. INTRODUCTION

The joint praecipe to discontinue benefits just one person: Daryl Heller. It had no value for the Funds, regardless of who represents them.[1] Indeed, the praecipe purports to end a civil action where the Defendant—Paramount Management Group, LLC—**has already admitted** it owes payments to the Funds and admitted it failed to pay the Funds for several months (and counting). In other words, whether Paramount is in significant indebtedness to the Funds is resolved, and only the amount of liability needs to be determined (a sum the Funds aver presently exceeds $80 million). The confessor of this liability was none other than Daryl Heller, who signed the verification to the Answer on behalf of Paramount.

Nevertheless, a mystery exists before the Court, at least on the present record: Who "authorized" attorneys Eli Segal and John Stapleton to enter their appearance "for the Funds" and "authorized" them to collude with Paramount to save Paramount from its **admitted** liability?

This mystery is significant because it puts the undersigned counsel in a procedurally strange position: we are forced to prove we are the "true" attorneys for the Funds, while the "new" counsel need only sit back and challenge our authority.

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[1] Plaintiffs are Prestige Fund A, LLC; Prestige Fund A II, LLC; Prestige Fund A IV, LLC; Prestige Fund A V, LLC; Prestige Fund A VI, LLC; Prestige Fund A VII, LLC; Prestige Fund A IX, LLC; Prestige Fund B, LLC; Prestige Fund B II, LLC; Prestige Fund B IV, LLC; Prestige Fund B V, LLC; Prestige Fund B VI, LLC; Prestige Fund B VII, LLC; Prestige Fund B BTM I, LLC; Prestige Fund D, LLC; Prestige Fund D III, LLC; Prestige Fund D IV, LLC; Prestige Fund D V, LLC; Prestige Fund D VI, LLC; Prestige Fund D BTM I, LLC; WF Velocity I, LLC; WF Velocity Fund IV, LLC; WF Velocity Fund V, LLC; WF Velocity Fund VI, LLC; and WF Velocity Fund VII, LLC (collectively, **the Funds**).

Respectfully, the order of business should be the reverse. "New" counsel should be compelled by the Court to show who, exactly, purported to give them their claimed authority. And if that authority source is who we reasonably believe it is—Daryl Heller—then the infirmity of the actions by the new counsel to date will be plain, as set forth more fully below. Nevertheless, this brief will (as requested by the Court at the September 16, 2024 conference) explain the legal and factual basis upon which the undersigned rightfully initiated and continue to pursue this civil action on behalf of the Funds.[2]

II. FACTS

A. The Fund Managers

Each of the Funds is managed by one or more of four managers: (1) Prestige Funds Management, LLC; (2) Prestige Funds Management II, LLC; (3) Prestige Funds Management III, LLC; and (4) WF Velocity Funds Management, LLC (collectively, the Managers). Each of those Managers, in turn, has constituent members. The common relationship for each Manager is that Prestige Investment

[2] The need for urgent relief for the Funds from Paramount has not diminished since this case began. Indeed, just since August 23, 2024, at least three new actions have been initiated against Paramount: (1) *Customers Bank v. Paramount Management Group, LLC*, No. 2024-07793-CT (C.P. Chester Aug. 30, 2024); (2) *First National Bank of Pa. v. Paramount Management Group, LLC*, No. CI-24-06459 (C.P. Lancaster Sept. 10, 2024); (3) *Traditions Bank v. Paramount Management Group, LLC*, No. 2024-SU-002697 (C.P. York Sept. 12, 2024). Additionally, Paramount (and several other defendants) failed to defend pending litigation in Michigan, and defaults have now been entered and a motion lodged seeking in excess of $6 million from Paramount. *See* Plaintiff's Motion for Entry of Default Judgment Against Defendants, *Superior Group ATM, LLC v. Paramount Management Group, et al.*, No. 24-209106-CB (Mich. Cir. Ct. Oakland Cty. Sept. 16, 2024).

Group, LLC (hereafter, Prestige) is the sole or majority member, with other members having stakes as follows:

- Prestige Funds Management: Prestige (100%);
- Prestige Funds Management II: Prestige Investment Group (51%), The Real Asset Investor, LLC (44%), and William Poole (5%);
- Prestige Funds Management III: Prestige (51%) and The Real Asset Investor, LLC (49%); and
- WF Velocity Funds Management: Prestige (51%) and Celerity Ventures, LLC (49%).

Against the above, actions by Prestige are sufficient to control the conduct on the Managers, which, in turn, control the conduct of the Funds. Thus, understanding the operation of Prestige is key to understanding the matter presently before the Court.

B. Prestige Investment Group

Prestige is governed by the Amended and Restated Operating Agreement, effective April 1, 2012 (hereafter, the PIG Operating Agreement) (attached as Exhibit A). The PIG Operating Agreement identifies its two members as Daryl Heller and Jerry Hostetter. *Id.* at 14. Both are "Class A members," as that term is defined, at 60% and 40%, respectively. *Id.* at 2, 15. Jerry Hostetter is the President of Prestige while Daryl Heller is the CEO. Upon information and belief, in 2014, Daryl Heller conveyed his membership interest in Prestige to Heller Capital, LLC under an Irrevocable Transfer Power, Joinder, and Consent (attached as Exhibit B).

Management of Prestige is described in Article V of the PIG Operating Agreement. Section 5.01(a) of Article V speaks in terms of actions by three different groups: (1) the members; (2) the Class A members; and (3) a majority of the Class A membership. Indeed, as is material, Section 5.01(a) of Article V states as follows (bolding added):

> 5.01. Power and Authority of the Members.
>
> (a) Management of the business and affairs of the Company shall be vested in **the Class A members**. The Company may act only by actions taken by or under the direction of **the Class A members** in accordance with this Agreement. **The Class A members** shall have all rights and powers relating to the Company, including, but not limited to, the following:
>
> > (1) to appoint, and remove with or without cause, a chief executive officer, a president, one or more vice presidents, a secretary, a treasurer, and such other officers of the Company as **the members** deem appropriate to carry out and execute the decisions and instructions of the members in the day-to-day operations of the business of the Company, with such duties and powers as are from time to time specified by **the members**;
> >
> > ...
> >
> > (5) to institute any legal action or proceeding on behalf of the Company;
> >
> > ...
> >
> > (8) to vote at any election or meeting of any corporation, partnership, limited liability company, joint venture, or other entity, in person or by proxy, to appoint agents to do so in the place and stead of the members, and to exercise all rights (including without limitation approval and consent rights) that the Company may have with respect to such entity, whether pursuant to applicable law, governing documents, contracts, or otherwise;
> >
> > ...
> >
> > (10) to retain and pay custodians, accountants, counsel, and other agents and to incur any other expenses that are reasonably related to the operation of the Company;
> >
> > ....

> (b) Binding Effect of Actions. Each **member** shall be bound by, and hereby consents to, any and all actions taken and decisions made by **the Class A members** in accordance with the terms of this Agreement. Any act taken by, or any document executed by, **members** holding **a majority of the Class A membership** interests shall be binding on the Company with the same force and effect as if the action, or the execution of the document, were approved by a vote of the **Class A members.**

PIG Operating Agreement at 6-7, § 5.01 (emphasis added). The PIG Operating Agreement also has a provision regarding conflicts of interest and interested transactions, making certain transactions "void or voidable" **unless** one of two conditions are satisfied:

> (b) Interested Transactions. A contract or transaction between the Company and one or more of its members or officers, or between the Company and another domestic or foreign association in which one or more of its members or officers has a management role or a financial or other interest, **shall not be void or voidable** solely for that reason, or solely because the member or officer is present at or participates in the meeting of the members that authorizes the contract or transaction, or solely because the vote of the member is counted for that purpose, **if** (1) the material facts as to the relationship or interest and as to the transaction are disclosed or known to the members entitled to vote thereon and the contract or transaction is specifically approved in good faith by vote of those members; or (2) the contract or transaction is fair to the Company as of the time it is authorized, approved, or ratified by the members.

PIG Operating Agreement at 7-8, § 5.02(b) (emphasis added).

C. The Present Litigation

The Funds initiated this case by filing a Complaint seeking in excess of $80 million from Paramount and control of the ATM network owned by the Funds, but presently managed by Paramount. The Complaint was filed by the undersigned counsel. It was verified by Jerry Hostetter, who stated as follows:

> I, Jerry D. Hostetter, hereby state that I am President of Prestige Investment Group, LLC, the sole member of Prestige Funds Management, LLC, President of Prestige Funds Management II, LLC, President of Prestige Funds Management III, LLC, and President of Prestige Investment Group, LLC, the Class A Designee Manager of WF Velocity Funds Management, LLC, that I am authorized to make this verification on behalf of Plaintiffs[.]

Complaint at p.24 (verification).

Paramount did not file preliminary objections to the Complaint, but rather filed an Answer with New Matter and Counterclaim. As is material, Paramount made the following liability admissions in its Answer:

> 73. But in April 2024, Paramount failed to pay the Monthly Revenue Remittance to any of the Funds. The Funds made repeated demands to Paramount that it distribute the Monthly Revenue Remittance to the Funds.
>
> ANSWER: **Paramount admits that Paramount made no payment in April 2024**; otherwise denied.
>
> 74. Paramount likewise did not pay the Monthly Revenue Remittance to any of the Funds for the months of May, June, and July 2024. The Funds made repeated demands to Paramount that it distribute the Monthly Revenue Remittance to the Funds.
>
> ANSWER: **Paramount admits that Paramount made no payment in April, May, and June 2024**; otherwise denied.
>
> ....
>
> 78. On August 22, 2024, Paramount did not remit the past due payments to any of the Funds.
>
> ANSWER: **Paramount admits only that it did not make any payments to the Funds on August 22, 2024**, and otherwise denies the allegations in this Paragraph.
>
> ....
>
> 82. As of the date of this Complaint, Paramount has neither remitted any of the past due Monthly Revenue Remittances nor

> transmitted the items necessary to allow the Funds to assume operations of their own ATMs.
>
> ANSWER: **Paramount admits that it has not made payments for April through August 2024** and Paramount admits that it did not turn over such alleged information, but denies that it had any obligation to do so.

Answer at ¶¶ 73-74, 78, 82 (emphasis added).

The Funds also filed a Petition for Special and Preliminary Injunctive Relief, which was also verified by Jerry Hostetter. The Court heard argument on that Petition on August 26, 2024 at a transcribed hearing. Both Daryl Heller and Jerry Hostetter testified regarding a variety of topics, including Hostetter's authority to act through Prestige. The Court ultimately denied the Funds' request for a Special Injunction but later scheduled a Preliminary Injunction hearing for October 15, 2024.

On September 12, 2024, Attorneys Eli Segal and John Stapleton separately entered appearances for the Funds. Before filing those appearances, neither Segal nor Stapleton contacted the undersigned, Jerry Hostetter, or any of the minority members of the four Managers (The Real Asset Investor, Poole, or Celerity Ventures). Then, that same day, Attorneys Segal and Stapleton—jointly with Paramount—filed a praecipe to discontinue the litigation. Before filing the discontinuance, neither Segal nor Stapleton contacted the undersigned, Jerry Hostetter, or any of the minority members of the four Managers. Not only did they not give prior notice of their filing, but also Attorneys Segal and Stapleton only served it after it had already been accepted and docketed by the Prothonotary.

III. PROCEDURAL HISTORY

By praecipes dated September 12, 2024, attorneys Stapleton and Segal entered their appearances for the Funds. That same day, attorneys Stapleton and Segal filed a joint praecipe to discontinue the litigation with counsel for Paramount. The undersigned then filed the Emergency Petition to Strike Discontinuance. The Court held an initial Zoom conference about the Emergency Petition on September 16, 2024. The Court then entered an Order, dated September 16, 2024, setting a briefing schedule on the Emergency Petition.

IV. QUESTION INVOLVED

Should the Court strike the joint praecipe to discontinue where the discontinuance is prejudicial to the Funds' claims against Paramount?

Suggested answer: Yes.

V. ARGUMENT

The matter before the Court is a petition to strike a discontinuance under Pennsylvania Rule of Civil Procedure 229(c). That Rule provides as follows: "The court, upon petition and after notice, may strike off a discontinuance in order to protect the rights of any party from unreasonable inconvenience, vexation, harassment, expense, or prejudice." Pa.R.C.P. 229(c). The authority to strike a discontinuance is "'vested in the sound discretion of the trial court[.]'" *Nastasiak v. Scoville Enterprises, Ltd.*, 618 A.2d 471, 472 (Pa. Super. 1993) (quoting *Hopewell v. Hendrie*, 562 A.2d 899, 900 (Pa. Super. 1989)). "A discontinuance that is prejudicial to the rights of others should not be permitted to stand even if it was originally entered with the expressed consent of the court." *Pohl v. NGK Metals Corp.*, 936

A.2d 43, 47 (Pa. Super. 2007) (quotations removed). Where a lawyer discontinues an action without the client's knowledge or consent, particularly where the discontinuance does not achieve any procedural advantage for the client, the discontinuance should be struck. *See Nastasiak*, 618 A.2d at 473; *see also Hopewell*, 562 A.2d at 900-01.

Against the foregoing standards, the Court should immediately grant the Emergency Petition because it is prejudicial to the very clients Attorneys Segal and Stapleton claim to represent.

A. The praecipe to discontinue the litigation was prejudicial to the Funds and any authority claimed by Attorneys Segal and Stapleton to justify the act was void ab initio.

The prejudice to the Funds here is manifest. Attorneys Segal and Stapleton ended litigation in which the Defendant, Paramount, admitted its liability (though not the precise amount) to their claimed clients, a liability that presently exceeds $80 million. Before taking this action, they did not consult with current counsel nor Jerry Hostetter. For that matter, they also did not consult with any of the minority owners of the four respective Managers. As it stands, **we don't even know who authorized Segal and Stapleton to do anything**, let alone enter a case they didn't file (for a client they never previously represented) and dismiss it.

As equally important, **assuming** that Attorneys Segal and Stapleton received their "authority" to file from Daryl Heller—which can only be assumed at this point because neither attorney has told the Court or the undersigned the basis for their claimed power—that authority was void ab initio. The reason for this is the above-quoted conflicts of interest provision in the PIG Operating Agreement. To illuminate, Section 5.02(b) provides that a transaction between a member of Prestige and another entity in which that member has a management role or financial interest is void or voidable **unless** "(1) the material facts as to the relationship or interest and as to the transaction are disclosed or known to the members entitled to vote thereon and the contract or transaction is specifically approved in good faith by vote of those members; or (2) the contract or transaction is fair to the Company as of the time it is authorized, approved, or ratified by the members." PIG Operating Agreement at 7-8, § 5.02(b).

Here—again, assuming Heller is the source of authority for Attorneys Segal and Stapleton to act—Heller violated this provision and engaged in a void act by "authorizing" Segal and Stapleton to enter into a transaction with Paramount, a business in which Heller has a financial interest, to end the litigation. That transaction (the praecipe to discontinue) was not disclosed to Jerry Hostetter beforehand nor was the transaction fair to Prestige. On the latter front, the transaction was acutely prejudicial to Prestige because Prestige relies on revenues generated by the Funds' ATM business, managed by Paramount, to generate revenue for Prestige. The transaction was also prejudicial to Prestige because it caused Prestige to take action contrary to its fiduciary obligations to the Funds as the sole manager of Prestige Fund Management and as the majority manager of Prestige Fund Management II, Prestige Fund Management III and WF Velocity Funds Management. Thus, by "authorizing" the Funds' litigation to end, Heller benefited only himself, to the detriment of (1) the Funds, (2) the four Managers, and

(3) Prestige. It was a quintessential self-interested transaction, one which Attorneys Segal and Stapleton willingly facilitated, to the extreme prejudice of the clients they claim to represent. Moreover, because of Heller's inherently split duties—to Paramount and to the Funds as a manager fiduciary through Prestige—Heller couldn't unilaterally act to authorize this case to begin or to end.

And all of the foregoing doesn't even take into account that the Funds were already represented, by the undersigned, and new counsel had no right or authority to do anything in the case. Because the Court requested briefing on the basis for the undersigned's authority, we turn to that analysis now. But we, once again, note the unusual posture this case is in, where interloper counsel enters an appearance and dismisses an existing case, but where that counsel is not forced, through a show cause order or otherwise, to justify its claimed standing.

B. Hostetter has authority to authorize litigation by the Funds.

Jerry Hostetter had, and continues to have, authority to direct the undersigned to file suit on behalf of the Funds for at least three reasons: (1) the PIG Operating Agreement expressly permitted him to take such action as a Class A member; (2) he was authorized to direct the Funds to act, in his capacity as president of Prestige; and (3) Heller otherwise consented to Hostetter's actions on behalf of the Funds.

1. Under the plain language of the PIG Operating Agreement, Hostetter, as a Class A member, is permitted to take all actions specifically enumerated in Section 5.01(a), including hiring counsel and authorizing the Funds to file litigation.

An operating agreement is a contract; as such, it is subject to interpretation by a reviewing court as a question of law. *See Vendetti v. McDavid*, No. 15052156, 52 Pa. D. & C.5th 114, 2015 WL 13780215, at *3 (C.P. Phila. July 9, 2015); *see also Toth v. Toth*, ___A.3d____, 2024 WL 3944443, at *11-14 (Pa. Super. 2024) (*en banc*); *Saltzer v. Rolka*, No. 702 MDA 2017, 2018 WL 5603050, at *3 (Pa. Super. Oct. 30, 2018); *see generally* 15 Pa.C.S. § 8816(a) ("A limited liability company is bound by and may enforce the operating agreement, whether or not the company has itself manifested assent to the agreement."). When the language of a contract is "clear and unambiguous, a court is required to give effect to that language." *Prudential Property and Cas. Ins. Co. v. Sartno*, 903 A.2d 1170, 1174 (Pa. 2006) (quotations removed).

Here, under the express language of the PIG Operating Agreement, Hostetter had authority to hire counsel and direct that counsel to file suit on behalf of the Funds. To illuminate, Section 5.01(a) grants management rights to **all** Class A members—not just the majority Class A members—providing, expressly, that "[t]he Class A members shall have all rights and powers relating to the Company, including, but not limited to [various enumerated rights.]" *See* PIG Operating Agreement at 6, § 5.01(a). A Class A member is defined as "[a] holder of Class A membership interest." *See* PIG Operating Agreement at 2, § 1.01. Hostetter is a holder of a Class A membership interest, holding a 40% interest in Prestige.

Further, the rights and powers that Class A members have include, expressly, instituting legal actions, taking action through entities in which the Company has an interest or right, and retaining counsel. *See* PIG Operating Agreement at 6-7, § 5.01(a)(5), (8) & (9). Finally, paragraph (b) of Section 5.01 expressly states that actions by Class A members are binding on the members.

In sum, therefore, the plain and unambiguous text of the PIG Operating Agreement permitted Hostetter to do every act presently at issue before the Court. More specifically still, the PIG Operating Agreement permitted him to hire Kleinbard and direct the filing of the present suit on behalf of the Funds.

2. Hostetter, as President of Prestige, was authorized to permit the Funds to file suit.

In addition to his rights as a Class A member, Hostetter also has rights he exercises through Prestige as its President. Section 5.01(a)(1) of the PIG Operating Agreement provides that the Class A members can appoint officers, including a President, and that such officers shall "carry out and execute the decision and instructions of the members in the day-to-day operations of the Company, with such duties and powers as are from time to time specified by the members." *See* PIG Operating Agreement at 6, § 5.01(a)(1). Hostetter is presently the President of Prestige. Thus, under the foregoing prevision, he can perform acts in furtherance of the day-to-day operations of the business of Prestige. Such day-to-day business operations by the President include authorizing suit by the entities under management.

Pennsylvania law is in accord with affording such authority to the president of a company. Indeed, in *McGuire Performance Solutions, Inc. v. Massengill*, 904 A.2d 971 (Pa. Super. 2006), the president of a Pennsylvania corporation filed suit in the corporation's name against a debtor who was also a shareholder. The debtor-defendant asserted the president could not maintain the suit because the board had not voted to authorize it. *Id.* at 977. The Superior Court rejected this defense for each of three reasons. *First*, it held Pennsylvania law does not require proof that a corporation approved a suit by the corporation's president. *See id. Second*, the Court specifically noted the defendant was not sued in his capacity as a shareholder, but in his capacity "***as a third-party debtor to the corporation***[.]" *See id.* (bolding and italics in original). Thus, the Court noted no Pennsylvania authority exists giving a debtor-defendant standing "to assert as a legal defense that [the corporation's] president acted beyond his authority, where the lawsuit was instituted to recover monies owed to the corporation by Appellant in Appellant's role as a third-party debtor to the corporation." *See id. Third,* and finally, the Court noted the board had taken no action to end the lawsuit during the three years it had been pending, signaling acquiescence in the action. *See id.* at 978.[3]

[3] A corporate president's presumptive authority to bring suit in the name of the company, as endorsed by the Superior Court in *McGuire*, is echoed in two Pennsylvania treatises. *See* 6 Goodrich-Amram 2d § 2177:1 ("Prosecution in corporate name") ("A president of a corporation has presumptive power and authority to prosecute and defend actions on behalf of a corporation."); 13 Summ. Pa. Jur. 2d Business Relationships § 8:50 (2d ed.) ("Power of officers and agents regarding litigation") ("Where there is no direct prohibition, the president of the corporation has presumptive authority, in the discharge of the president's duties, to defend and prosecute suits in the name of the corporation.").

Applying the principles of *McGuire* here, Hostetter had presumptive authority in his capacity as President of Prestige to cause the Funds to initiate suit. Just as in *McGuire*, Hostetter didn't authorize a suit by the Funds against Heller—a fellow Class A member—but instead against Paramount, a debtor to each of the Funds and a party having no membership interest in Prestige. Further, this case presents relationships even more distant than the relationships in *McGuire*, in that Hostetter didn't even authorize Prestige to file suit against Paramount, but rather merely authorized entities in which the company had management authority to initiate suit. In other words, because Pennsylvania law permits the president of a company to authorize the company's suit against a company's own shareholder, Pennsylvania law surely permits a company president to authorize a different company to file suit against yet another company still.

In sum, therefore, not only was Hostetter permitted to authorize this litigation, through the undersigned, in his capacity as a Class A member, but also he was authorized to do so under Pennsylvania law in his capacity as President of Prestige.

3. Heller consented to Hostetter's actions, taken on behalf of Prestige and the Funds, to enforce the Paramount MSAs.

The following is undisputed: Heller consented to Hostetter's August 2, 2024 letter to Paramount on behalf of the Funds. 8/26/24 Hr'g Tr. at 83:14-84:15, 85:21-88:16, 158:17-160:7. The contents of that letter are clear:

> (b) Pursuant to Sections 6 and 7 of each ATM Agreement, PMG has failed to make required monthly distributions to any of the Funds since April, 2024 ("Required Distributions"). In accordance with

> Section 9 of each ATM Agreement, each Fund is entitled immediately terminate its applicable ATM Agreement if the Required Distributions due the Fund are not made within twenty days' of written notice.
>
> (c) PF Management, PF Management II, PF Management III and WF Velocity Management (Collectively the "Managers") each hereby direct PMG to make the Required Distributions to each Fund of which it [is] a manager (as set forth above) by August 22, 2024 ("Required Distribution Date").
>
> (d) In the event that the Required Distributions are not made by the Required Distribution Date, this correspondence will serve as written notification by each Manager to PMG that the ATM Agreements are immediately terminated and in the case of each Fund, PMG is directed to immediately take all required actions under Section 9 of the ATM Agreements related to such termination, which includes, without limitation, the transfer of PMG's right, title and interest to the ATM Units, the location agreements, permits, ATM passwords and combinations, and all vendor and other contracts or agreements relating to the ATM Units (excluding the communication modems installed in any ATM Units) to each applicable Fund.

8/2/24 Letter to Paramount (emphasis added) (attached to Complaint as Exhibit Y).

Accordingly, the August 2, 2024 letter conveyed three things to Paramount:

(1) Paramount had defaulted on its payment obligations under the MSAs;

(2) Paramount needed to cure its default by making the required payments by August 22, 2024; and (3) if the required payments were not made by August 22, 2024, the MSAs would automatically terminate. *Id.* at 2, ¶¶ (b)-(d).

By authorizing Hostetter to send the August 2, 2024 letter to Paramount, Heller unequivocally consented to Hostetter's authority to enforce the actions outlined therein. Heller does not genuinely dispute this. Instead, he offers two responses, neither of which undermines his consent.

First, Heller claims he did not realize that the letter contained termination language because he either did not review the draft sent to him or did not review it carefully. 8/26/24 Hr'g Tr. at 88:2-16. He purportedly thought it only contained language concerning default. This argument is easily resolved by reference to basic contract principles because the dispute currently before the Court is, at its core, a contract dispute. Heller undoubtedly consented to Hostetter's exercise of authority to take certain actions. That consent is defined in a writing (*i.e.*, the August 2, 2024 letter) and it was circulated to Heller prior to sending to Paramount. Thus, the letter defines the scope of consent Heller provided.

Normally, contracting parties are bound by their written agreements, without regard to whether the terms thereof were fully read and understood. *See Samuel-Bassett v. Kia Motors Am., Inc.,* 34 A.3d 1, 25 (Pa. 2011); *Standard Venetian Blind Co. v. American Empire Insurance Co.*, 469 A.2d 563, 566 (Pa. 1983) (failure to read a contract does not warrant avoidance or nullification of its provisions); *Bollinger v. Central Pennsylvania Quarry Stripping & Construction Co.*, 229 A.2d 741, 742 (Pa. 1967) ("Once a person enters into a written agreement he builds around himself a stone wall, from which he cannot escape by merely asserting he had not understood what he was signing."). Simply put, ignorance is not a defense.[4]

Based upon these principles, the terms of the August 2, 2024 letter must be regarded as binding, without regard to whether the terms were fully understood by Heller. Thus, Heller's alleged failure to appreciate that he had consented to Hostetter's authority to enforce the MSAs, and consequently institute this legal action for enforcement, is irrelevant.

[4] *Simeone v. Simeone,* 581 A.2d 162, 166 (Pa. 1990) ("*Ignorantia non excusat.*").

Second, Heller claims his consent was limited to Hostetter declaring a default against Paramount because Heller knew that Paramount would seek to terminate the MSAs before the cure period would expire, *i.e.*, before August 22, 2024. 8/26/24 Hr'g Tr. at 83:21-84:15, 88:9-16. This position is absurd. Heller's undisclosed knowledge that he intended to take action on behalf of Paramount to try to deprive the Funds of their remedies for Paramount's default cannot constrain the consent Heller **actually** provided. Heller never conveyed this purported limitation to Hostetter.[5]

To the contrary, Heller was likely obligated to authorize the actions that he ultimately delegated to Hostetter. 8/26/24 Hr'g Tr. at 133:7-19 (Heller testifying that he carried the fiduciary duty to direct counsel to file a lawsuit on behalf of the Funds). He likely could not have directly authorized this lawsuit without breaching his fiduciary obligations to Paramount and its related entities. At the same time, his fiduciary obligations to the Funds prohibited him from stopping them from instituting this legal action.

Against this backdrop, it makes sense that when Hostetter raised the issues to be addressed by the August 2, 2024 letter, Heller admittedly responded that he

[5] Additionally, applying basic contract principles again, the implied duty of good faith and fair dealing prevented Heller from authorizing Hostetter to enforce the MSAs and then taking steps to prevent Hostetter from actually accomplishing just that. *Murphy v. Duquesne Univ. Of The Holy Ghost*, 777 A.2d 418, 434 n.11 (Pa. 2001) (explaining that the law will "imply an agreement by the parties to a contract to do and perform those things that according to reason and justice they should do in order to carry out the purpose for which the contract was made and to refrain from doing anything that would destroy or injure the other party's right to receive the fruits of the contract").

told Hostetter, "you have to do what you need to do. I can't stop you from doing anything." 8/26/24 Hr'g Tr. at 85:23-86:2; *see also id.* at 88:5-8 (Heller testifying "there was even a verbal exchange between [Hostetter] and I that I communicated he needs to do what he wants to do"). Accordingly, Heller's consent must be viewed to include institution of the present lawsuit.

Finally, it is anticipated that Heller, through Attorneys Segal and Stapleton, will attempt to distract from the issue of his consent by mischaracterizing Hostetter's injunction hearing testimony. But, of course, Hostetter could not testify as to whether he had legal authority to bring this lawsuit because that is a legal conclusion, as the Court correctly noted while sustaining an objection on precisely that ground at the hearing. 8/26/24 Hr'g Tr. at 166:15-167:15. So, instead, at the hearing, Hostetter was asked whether he **believed**, in his non-legal opinion, he had authority to file a lawsuit on behalf of the Funds. To that, he responded: "technically, no." *Id.* at 167:20-168:4. This testimony has no bearing on whether Hostetter actually has such authority as a matter of law.

Moreover, context shows that Hostetter actually did believe he had authority to authorize this litigation. He verified both the Complaint and the Injunction Petition, signaling his belief he could do so. Against this—and especially against the clear authority for Hostetter in the PIG Operating Agreement, confirmed by his role as President, and reinforced by Heller's express consent—Hostetter's single response about his belief as to a legal issue is immaterial. Indeed, whether Hostetter believed he had authority to institute this lawsuit is irrelevant. The pertinent question is whether he actually had authority as a matter of law, and that must be answered in the affirmative.

VI. CONCLUSION

The joint praecipe to discontinue is prejudicial to the Funds, and the justification for Attorneys Segal and Stapleton filing it is utterly missing from the record. They had no such authority. In contrast, the undersigned had and have full authority to represent the Funds, for each and all of the reasons above. Accordingly, the Court should grant the Emergency Petition to Strike the Discontinuance.

Respectfully submitted,

Dated: September 20, 2024

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CERTIFICATE OF COMPLIANCE

I certify that this filing complies with the provisions of the *Public Access Policy of the United Judicial System of Pennsylvania: Case Records of the Appellate and Trial Courts* that require filing confidential information and documents differently from non-confidential information and documents.

Dated: September 20, 2024

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Exhibit A

PRESTIGE INVESTMENT GROUP, LLC
(A Pennsylvania Limited Liability Company)

AMENDED AND RESTATED OPERATING AGREEMENT
Effective as of April 1, 2012

AMENDED AND RESTATED OPERATING AGREEMENT

OF

PRESTIGE INVESTMENT GROUP, LLC

This Amended and Restated Operating Agreement is made effective as of the 1st day of April, 2012, by and among, Daryl F. Heller and Jerry D. Hostetter, as members.

RECITALS

A. The Company was formed on July 12, 2011, as a limited liability company under the Act, in order to transact the business of the Company.

B. In order to set forth the terms and conditions which would govern the operations of the Company and the ownership and disposition of interests in the Company, the original members entered into an Operating Agreement dated July 12, 2011 ("Original Agreement").

C. On or about April 1, 2012, Hostetter contributed the securities identified on Exhibit C and agreed to provide various services to the Company ("Hostetter Contributions") in exchange for the various membership interests described herein.

D. Effective with the Hostetter Contributions, Heller's spouse, Charlene R. Heller, transferred her membership interests in the Company to Heller.

E. Hostetter and Heller now desire to amend and restate the Original Agreement and replace it in its entirety with this Agreement.

NOW, THEREFORE, in consideration of the mutual covenants and agreements set forth herein, and intending to be legally bound hereby, the Company and the members agree as follows:

ARTICLE I—DEFINITIONS

1.01. Definitions. In addition to the terms defined in other provisions of this Agreement, the following terms shall have the meanings set forth below unless the context requires otherwise:

"Act." The Pennsylvania Limited Liability Company Law of 1994, 15 Pa.C.S. §8901 *et seq.*, and any successor statute, as amended from time to time.

"Agreement." This Operating Agreement, as amended, modified, supplemented, or restated from time to time.

"Capital account." The individual account maintained by the Company with respect to each member as provided in Exhibit B.

"Capital contribution." The aggregate amount of cash and the agreed value of any property or services (as determined in writing by the member and the Company) contributed by each member to the Company as provided in Section 4.01.

"Certificate." The certificate of organization of the Company and any and all amendments thereto and restatements thereof filed on behalf of the Company with the Department of State of the Commonwealth of Pennsylvania pursuant to the Act.

"Class A member." A holder of Class A membership interests.

"Class B member." A holder of Class B membership interests.

"Code." The Internal Revenue Code of 1986, as amended.

"Company." Prestige Investment Group, LLC.

"Member" and "Members." Member means any person who at the time is a member of the Company. Members means two or more persons when acting in their capacities as members of the Company.

"Membership interest." The interest of a member in the Company, including, without limitation, interests in items of income, gain, loss, deduction, credit, rights to distributions (liquidating or otherwise), allocations, information, and to consent to or approve actions by the Company, all in accordance with the provisions of this Agreement and the Act. The membership interests are divided into:

(a) "Class A membership interests." Those membership interests issued to the Class A members designated on Exhibit A, attached hereto, as that schedule may be amended from time to time pursuant to the provisions of this Agreement.

(b) "Class B membership interests." Those membership interests issued to the Class B members designated on Exhibit A, attached hereto, as that schedule may be amended from time to time pursuant to the provisions of this Agreement.

"Percentage interest." The proportionate Class A membership interests of a member expressed as a percentage, as shown on Exhibit A.

"Person." A natural person, corporation, general or limited partnership, limited liability company, joint venture, trust, estate, association, or other legal entity or organization.

"Tax matters member." The member designated to serve as the tax matters member as that term is used in Section 6231(a)(7) of the Code.

"Treasury Regulations" or "Treas. Reg." The income tax regulations, including temporary regulations, promulgated under the Code, as those regulations may be amended from time to time (including corresponding provisions of successor regulations).

ARTICLE II—ORGANIZATION

2.01. <u>Principal Place of Business; Other Offices</u>. The principal place of business of the Company shall be at 415 N. Prince Street, Suite 200, Lancaster, PA 17603 or at such other place as the members may designate from time to time, which need not be in the Commonwealth of Pennsylvania. The Company may have such other offices as the members may designate from time to time.

2.02. <u>Purpose</u>. The object and purpose of, and the nature of the business to be conducted and promoted by, the Company is to engage in any lawful act or activity for which limited liability companies may be organized under the Act and to engage in any and all lawful activities necessary, convenient, desirable, or incidental to the foregoing.

ARTICLE III—MEMBERSHIP INTERESTS

3.01. <u>Initial and Subsequent Members</u>. The members of the Company are the persons listed on Exhibit A. A person who is not already a member and who acquires a previously outstanding membership interest in accordance with this Agreement shall automatically be admitted as a member; other persons may be admitted as members from time to time on such terms as are fixed by then existng Class A members. When any person is admitted as a member or ceases to be a member, or when a member's Class A or Class B percentage interest changes, the members shall cause such change to be reflected on the books of the Company and prepare a revised version of Exhibit A. Any member subsequently admitted shall automatically be a party and be subject to and bound by all of the terms, provisions, conditions, restrictions and obligations of this Agreement. This provision shall be self-effectuating. Notwithstanding the foregoing, every such member shall be obligated to execute a written instrument joining in this Agreement and becoming a party hereto as a condition to admission as a member and as a condition to receiving any distributions of cash or other property from the Company.

3.02. <u>Profits Interests Authorized</u>. The members may provide in connection with a grant of a membership interest ("profits interest") to a person providing services to the Company that the profits interest shall not constitute an interest in the then-existing capital of the Company (including any gain attributable to appreciation of Company assets before the date of the grant, which shall therefore be allocated only to membership interests other than those that are the subject of the grant). The Company shall identify on Exhibit A those membership interests that are profits interests and the date of grant of each such profits interest.

3.03. <u>Record Holders of Membership Interests</u>. The Company shall be entitled to treat the person in whose name a membership interest stands on the books of the Company as the absolute owner thereof and as a member of the Company. The Company shall not be bound to recognize any equitable or other claim to, or interest in, such membership interest on the part of any other person, whether or not the Company has express or other notice of any such claim.

3.04. <u>Transfers and Assignments of Membership Interests</u>. A member shall not transfer all or any portion of his, her or its membership interest except in accordance with the terms of Exhibit D. Any transfer that does not comply with the provisions of Exhibit D shall be void and does not transfer any interest, including any economic interest.

(a) Dissociation. A member who is dissociated from the Company shall not have the right under Section 8933 of the Act to be paid the fair value of the membership interest of the member and as a result of the dissociation shall be deemed to be an Unadmitted Member. Any member who acts to dissociate from the Company shall be deemed to have offered the member's interest for sale under Section D.2. of Exhibit D.

(b) Unadmitted Members. Any person who acquires one or more interests in the Company other than as permitted by this Agreement but whom the Company is nevertheless required by law to recognize as a member ("Unadmitted Member") shall be entitled only to allocations and distributions with respect to such interests in accordance with this Agreement, and shall have no right to any information or accounting of the affairs of the Company, shall not be entitled to inspect the books or records of the Company, shall not be entitled to a vote of any kind under this Agreement (the interest of such member shall not be counted for any purpose required to vote of the members) and shall not have any of the rights of a members or member under the Act or this Agreement.

3.05. No Right of Partition. A member shall not have the right to seek or obtain partition by court decree or operation of law of any Company property, or the right to own or use particular assets of the Company.

ARTICLE IV—FINANCIAL AND TAX MATTERS

4.01. Capital Contributions. The Company shall keep a record of the capital contributions made by the members. A member shall not be required to make any capital contribution to the Company not specifically agreed to in writing between the member and the Company, or be obligated or required under any circumstances to restore any negative balance in his, her, or its capital account.

4.02. Return of Contributions. A member is not entitled to the return of any part of the member's capital contribution, or to be paid interest in respect of the member's capital account or capital contribution. An unrepaid capital contribution is not a liability of the Company or of any member. A member is not required to contribute or to lend any cash or property to the Company to enable the Company to return any member's capital contributions.

4.03. Advances by Members. A member may agree, with the consent of the members, to loan funds to or guarantee obligations of the Company. A loan to the Company or guarantee of its obligations by a member is not a capital contribution.

4.04. Capital Accounts. A capital account shall be established and maintained on the books of the Company for each member as provided in Exhibit B.

4.05. Profits and Losses. At all times while there is more than one member, items of income, gain, loss, deduction, and credit shall be allocated to the members as provided in Exhibits B and C.

4.06. Distributions.

(a) General Rule. Except as otherwise provided in Article IX, the members may authorize, in the members' sole discretion, the Company to make distributions to the members. Except as otherwise provided in this Agreement, including, without limitation, Exhibit C, all distributions, other than liquidating distributions, shall be made to the members in proportion to their Class A membership interests.

(b) Tax Distributions. With respect to any taxable year of the Company in which members are allocated taxable income for federal income tax purposes (and for this purpose all items of income, gain, loss, or deduction required to be separately stated pursuant to Section 703 of the Code shall be included in the calculation of taxable income (other than the amount, if any, by which capital losses exceed capital gains)), the Company shall attempt to distribute to each member, within 90 days after the close of that taxable year (and, if practicable, at such times during the taxable year as are required to fund the payment of estimated taxes), no less than the amount determined by multiplying the Company's taxable income (computed as set forth in this sentence) allocated to such member by the highest composite federal, state, and local income tax rate applicable to any member (including, in the case of a member that is a pass-through entity, any other person taxable on Company income). For purposes of the preceding sentence, the Company's taxable income for a year shall be reduced by any net loss of the Company in prior years that has not previously been so taken into account under this Section 4.06(b). Nothing herein shall require the Company to borrow money or reduce its cash flow so as to restrict its ability to operate the day-to-day activities of the business in order to make such distributions. All distributions to a member pursuant to this Section 4.06(b) shall be treated as advances of, and offset against, amounts otherwise distributable to such member under this Agreement.

4.07. Establishment of Reserves. The members shall have the right to establish reasonable reserves for maintenance, improvements, acquisitions, capital expenditures, and other contingencies, such reserves to be funded with such portion of the operating revenues of the Company as the members may deem necessary or appropriate for that purpose, in the members' sole discretion.

4.08. Tax Returns. The members shall arrange for the preparation of all tax returns required to be filed for the Company. Each member shall be entitled to receive, upon written request to the Company, copies of all federal, state, and local income tax returns and information returns, if any, that the Company is required to file. All information needed by the members and other persons who were members during the applicable taxable year for income tax purposes shall be prepared by the Company's accountants and furnished to each such person after the end of each taxable year of the Company. Each such person shall report consistently with the partnership information returns of the Company, as filed.

4.09. Tax Elections.

(a) Elections to be Made. To the extent permitted by applicable tax law, the Company shall make the following elections on the appropriate tax returns:

(1) to adopt the calendar year as the Company's taxable year;

(2) to adopt the accrual method of accounting and to keep the Company's books and records on the same method;

(3) if a transfer of a membership interest as described in Section 743 of the Code occurs, on written request of the transferee, or if a distribution of Company property is made on which gain described in Section 734(b)(1)(A) of the Code is recognized or there is an excess of adjusted basis as described in Section 734(b)(1)(B) of the Code, to elect, pursuant to Section 754 of the Code, to adjust the basis of Company properties; and

(4) any other election the members may deem appropriate and in the best interests of the members.

(b) No Election of Corporate Taxation. Neither the Company nor any member may make an election for the Company to be taxable as a corporation for federal income tax purposes or to be excluded from the application of the provisions of subchapter K of chapter 1 of subtitle A of the Code or any similar provisions of applicable state law, and no provision of this Agreement shall be construed to sanction or approve such an election.

ARTICLE V—MANAGEMENT

5.01. Power and Authority of the Members.

(a) Management of the business and affairs of the Company shall be vested in the Class A members. The Company may act only by actions taken by or under the direction of the Class A members in accordance with this Agreement. The Class A members shall have all rights and powers relating to the Company, including, but not limited to, the following:

(1) to appoint, and remove with or without cause, a chief executive officer, a president, one or more vice presidents, a secretary, a treasurer, and such other officers of the Company as the members deem appropriate to carry out and execute the decisions and instructions of the members in the day-to-day operations of the business of the Company, with such duties and powers as are from time to time specified by the members;

(2) to retain all or any part of the Company's assets as long as the members deem advisable, and to invest, reinvest, and keep invested all or any part thereof, without being restricted in any way with respect to the type of assets retained or invested in or with respect to the portion of the assets devoted to any investment;

(3) to purchase, lease, or otherwise acquire the ownership, use, or benefit of assets, properties, rights, or privileges, real or personal, tangible or intangible, of any kind or description, whether income producing or not;

(4) to sell, pledge, mortgage, lease without limit of time, exchange, or to grant options for the purchase, lease, or exchange of any Company assets, on such terms and conditions as the members may determine;

(5) to institute any legal action or proceeding on behalf of the Company;

(6) to assign, transfer, pledge, compromise, or release any claims or debts due the Company;

(7) to make, execute, or deliver any assignment for the benefit of creditors or any confession of judgment, mortgage, deed, guarantee, indemnity, or surety bond;

(8) to vote at any election or meeting of any corporation, partnership, limited liability company, joint venture, or other entity, in person or by proxy, to appoint agents to do so in the place and stead of the members, and to exercise all rights (including without limitation approval and consent rights) that the Company may have with respect to such entity, whether pursuant to applicable law, governing documents, contracts, or otherwise;

(9) to borrow money for any purpose that the members consider to be for the benefit of the Company or to facilitate its administration, and to mortgage or pledge Company assets to secure the repayment thereof;

(10) to retain and pay custodians, accountants, counsel, and other agents and to incur any other expenses that are reasonably related to the operation of the Company;

(11) to enter into agreements with, and to fix and adjust the compensation of, employees of the Company; and

(12) to invest in time deposits and savings accounts and to maintain banking accounts in any institutions determined by the members].

(b) Binding Effect of Actions. Each member shall be bound by, and hereby consents to, any and all actions taken and decisions made by the Class A members in accordance with the terms of this Agreement. Any act taken by, or any document executed by, members holding a majority of the Class A membership interests shall be binding on the Company with the same force and effect as if the action, or the execution of the document, were approved by a vote of the Class A members.

5.02. Conflicts of Interest.

(a) Other Business Interests. Any member or affiliate thereof may engage in or possess an interest in other business ventures of any nature or description, independently or with others, similar or dissimilar to the business of the Company, and the Company and the members shall have no rights by virtue of this Agreement in and to such independent ventures or the income or profits derived therefrom, and the pursuit of any such venture, even if competitive with the business of the Company, shall not be deemed wrongful or improper. No member or affiliate thereof shall be obligated to present any particular investment opportunity to the Company even if the opportunity is of a character that, if presented to the Company, could be taken by the Company, and any member or affiliate thereof shall have the right to take for its own account (individually or as a partner or fiduciary) or to recommend to others any such particular investment opportunity.

(b) Interested Transactions. A contract or transaction between the Company and one or more of its members or officers, or between the Company and another domestic or foreign association in which one or more of its members or officers has a management role or a financial or other interest, shall not be void or voidable solely for that reason, or solely because the member or officer is present at or participates in the meeting of the members that authorizes the contract or transaction, or solely because the vote of the member is counted for that purpose, if (1) the material facts as to the relationship or interest and as to the transaction are disclosed or known to the members entitled to vote thereon and the contract or transaction is specifically approved in good faith by vote of those members; or (2) the contract or transaction is fair to the Company as of the time it is authorized, approved, or ratified by the members.

ARTICLE VI—MEMBERS

6.01. Voting Rights of Members. A Class A member, except as provided herein, shall be entitled to vote on all matters submitted to, or requiring a vote by, the members. No Class B member shall be entitled to vote. A Class A member shall have that number of voting rights as equals the Class A member's percentage interest in all the Class A membership interests. For purposes of this Article VI and for clarification purposes only, if a Class A member also owns Class B membership interests, such Class B membership shall be disregarded for purposes of determining such member's voting rights.

6.02. Action by Members. Except as otherwise provided in the Act, the certificate, or this Agreement, whenever any action is to be taken by vote of the Class A members, it shall be authorized upon receiving the affirmative vote of a majority of the votes cast by all members entitled to vote thereon.

6.03. Meetings of Members.

(a) Quorum. A meeting of the members shall not be organized for the transaction of business unless a quorum is present. The presence of members entitled to cast at least a majority of the votes that all members are entitled to cast on a particular matter to be acted upon at the meeting shall constitute a quorum for the purposes of consideration and action on the matter.

(b) Location. All meetings of the members shall be held at the principal place of business of the Company or at such other place within or outside the Commonwealth of Pennsylvania as shall be specified or fixed in the notice thereof.

(c) Adjournment. The chair of the meeting or the members present and entitled to vote shall have the power to adjourn a meeting from time to time, without any notice other than announcement at the meeting of the time and place at which the adjourned meeting will be held.

(d) Call of Meetings. A meeting of the members for any proper purpose or purposes may be called at any time by the members or by members entitled to cast at least 10% of the votes that all members are entitled to cast at the particular meeting. Only business within the purpose or purposes described in the notice of the meeting may be conducted at a meeting of the members. The notice shall specify the time and location of the meeting.

(e) Notices. Notice of a meeting shall be given as provided in Section 10.01.

(f) Waiver of Notice. A waiver of notice of a meeting signed by the member entitled to the notice, whether before or after the meeting, shall be deemed equivalent to the giving of the notice. Attendance of a member at a meeting constitutes a waiver of notice of the meeting, except where a member attends a meeting for the express purpose of objecting to the transaction of any business on the ground that the meeting is not lawfully called or convened.

6.04. Conduct of Meetings. All meetings of the members shall be presided over by the members, an individual designated by the members, or, in the absence of the members or an individual designated by the members, an individual chosen by the members present. The person presiding at the meeting shall determine the order of business and the procedure at the meeting, including such regulation of the manner of voting and the conduct of discussion as seem to him or her in order.

6.05. Action by Consent. Any action required or permitted to be taken at a meeting of members may be taken without a meeting, without prior notice, and without a vote, upon the consent of members who would have been entitled to cast the minimum number of votes that would be necessary to authorize the action at a meeting at which all members entitled to vote thereon were present and voting. The consents shall be in writing or in electronic form and shall be filed with the members. An action taken by less than unanimous consent of the members shall not become effective until after at least 10 days' written notice of the action has been given to each member entitled to vote thereon who has not consented thereto.

6.06. Liability of Members. The members, as such, shall not be liable for the debts, obligations, or liabilities of the Company except to the extent required by the Act.

ARTICLE VII—INDEMNIFICATION OF OFFICERS, AND OTHER AUTHORIZED REPRESENTATIVES

7.01. Indemnification. The Company shall indemnify any person who was or is a party to or is threatened to be made a party to or is otherwise involved in any threatened, pending, or completed action or proceeding, including without limitation actions by or in the right of the Company, whether civil, criminal, administrative, or investigative, by reason of the fact that the person is or was a member or an officer of the Company, or is or was serving while a member or an officer of the Company at the request of the Company as a director, members, officer, employee, agent, fiduciary, or other representative of another corporation (for-profit or not-for-profit), limited liability company, partnership, joint venture, trust, employee benefit plan, or other enterprise, against all liabilities, expenses (including without limitation attorneys' fees), judgments, fines, excise taxes, and amounts paid in settlement in connection with the action or proceeding unless the act or failure to act by the person giving rise to the claim for indemnification is determined by a court to have constituted willful misconduct or recklessness. The Company shall have the power to indemnify employees and agents of the Company on the same basis as provided in this Section with respect to members and officers, and to advance expenses to employees and agents on the same basis as provided in Section 7.02, as the members may from time to time determine or authorize.

7.02. Advancement of Expenses. Expenses (including without limitation attorneys' fees) incurred by any person who was or is a member or an officer of the Company in defending any action or proceeding referred to in Section 7.01 shall automatically be paid by the Company, without the need for action by the members, in advance of the final disposition of the action or proceeding upon receipt of an undertaking by or on behalf of the person to repay the amount advanced if it shall ultimately be determined that the person is not entitled to be indemnified by the Company.

7.03. Exception. Notwithstanding anything in this Article VII to the contrary, the Company shall not be obligated to indemnify any person under Section 7.01 or advance expenses under Section 7.02 with respect to proceedings, claims, or actions commenced by that person, other than mandatory counterclaims and affirmative defenses.

7.04. Interpretation. The indemnification and advancement of expenses provided by or pursuant to this Article VII shall not be deemed exclusive of any other rights to which any person seeking indemnification or advancement of expenses may be entitled under any insurance policy, agreement, vote of members, or otherwise, both as to actions in the person's official capacity and as to actions in another capacity while holding an office, and shall continue as to a person who has ceased to be a member or an officer and shall inure to the benefit of the heirs, executors, and administrators of the person. If the Act is amended to permit a Pennsylvania limited liability company to provide greater rights to indemnification and advancement of expenses for its members and officers than the express terms of this Article VII, this Article VII shall be construed to provide for such greater rights.

ARTICLE VIII—BOOKS, RECORDS, REPORTS; BANK ACCOUNTS; INFORMATION RIGHTS

8.01. Maintenance of Books. The Company shall keep books and records of accounts that shall be maintained on an accrual basis, or such other method as is required for federal income tax purposes, in accordance with the terms of this Agreement, except that the capital accounts of the members shall be maintained in accordance with Section 4.04. In addition, the Company shall keep a copy of the certificate and all amendments thereto, copies of all of the Company's federal, state, and local income tax returns and annual financial statements (if any), and copies of the currently effective written operating agreement, and all amendments thereto.

8.02. Reports. The Class A members shall be responsible for the preparation of financial reports of the Company and for the coordination of the financial matters of the Company with the Company's certified public accountants. All financial statements shall be prepared in accordance with accounting principles generally employed when financial records are kept on an accrual basis. The Company shall bear the costs of preparing the reports prepared by the Company.

8.03. Financial Accounts. The Class A members shall establish and maintain one or more separate bank and investment accounts in the Company's name with financial institutions and firms that the Class A members determine. The members may not commingle the Company's funds with the funds of any member.

ARTICLE IX—DISSOLUTION, LIQUIDATION, AND TERMINATION

9.01. Dissolution. The Company shall dissolve, and its affairs shall be wound up, only upon the first to occur of (a) the affirmative vote, consent, or agreement of the members holding a majority of the outstanding Class A membership interests; or (b) the entry of an order of judicial dissolution of the Company under Section 8972 of the Act.

9.02. Liquidation and Termination.

(a) Procedure. On dissolution of the Company, the members shall appoint one or more representatives or members as liquidator. The liquidator shall proceed diligently to wind up the affairs of the Company and make final distributions as provided herein and in the Act. The costs of liquidation shall be borne as a Company expense. Until final distribution, the liquidator shall continue to operate the Company properties with all of the power and authority of the members. The steps to be accomplished by the liquidator are as follows:

(1) as promptly as possible after dissolution and again after final liquidation, the liquidator shall cause a proper accounting to be made by a recognized firm of certified public accountants of the Company's assets, liabilities, and operations through the last day of the calendar month in which the dissolution occurs or the final liquidation is completed, as applicable;

(2) the liquidator shall first pay, satisfy, or discharge from Company funds all of the debts, liabilities, and obligations of the Company to its creditors (including, without limitation, all expenses incurred in liquidation and any advances described in Section 4.03) or otherwise make adequate provision for payment and discharge thereof (including, without limitation, the establishment of a cash escrow fund for contingent liabilities in such amount and for such term as the liquidator may reasonably determine), all in accordance with the provisions of the Act as may be applicable;

(3) after all of the payments required by subsection (2) have been made, any remaining assets of the Company shall be distributed to the members as follows:

(i) the liquidator may sell any or all Company property, including to members, and any resulting gain or loss from each sale shall be computed and allocated to the capital accounts of the members;

(ii) with respect to all Company property that has not been sold, the fair market value of that property shall be determined and the capital accounts of the members shall be adjusted to reflect the manner in which the unrealized income, gain, loss, and deduction inherent in property that has not been reflected in the capital accounts previously would be allocated among the members if there were a taxable disposition of that property for the fair market value of that property on the date of distribution; and

(iii) after completion of the steps in subsections (i) and (ii), the remaining assets shall be distributed to the members in an amount equal to the credit balance in each of their capital accounts, after giving effect to all contributions, distributions, and allocations for all periods.

(b) Distributions. All distributions in kind to the members under this Section shall be made subject to the liability of each distributee for costs, expenses, and liabilities relating to the assets distributed in kind theretofore incurred or for which the Company has committed prior to the date of termination and those costs, expenses, and liabilities shall be allocated to the distributees pursuant to this Section. The distribution of cash and/or property to a member in accordance with the provisions of this Section constitutes a complete return to the member of its capital contributions and a complete distribution to the member of its membership interest in all the Company's property. To the extent that a member returns funds to the Company, it has no claim against any other member for those funds.

9.03. **Deficit Capital Accounts.** Notwithstanding anything to the contrary contained in this Agreement, and notwithstanding any custom or rule of law to the contrary, to the extent that the deficit, if any, in the capital account of any member results from or is attributable to deductions and losses of the Company (including non-cash items such as depreciation), or distributions of money pursuant to this Agreement to all members in proportion to their respective interests, upon dissolution of the Company such deficit shall not be an asset of the Company and such members shall not be obligated to contribute such amount to the Company to bring the balance of such member's capital account to zero.

9.04. **Certificate of Dissolution.** On completion of the liquidation of Company assets as provided herein, the Company is terminated, and the members (or such other person or persons as the Act may require or permit) shall file a certificate of dissolution with the Department of State of the Commonwealth of Pennsylvania and take such other actions as may be necessary to terminate the existence of the Company.

ARTICLE X—GENERAL PROVISIONS

10.01. **Notices.**

(a) To the Members. Any notice required to be given to a menber shall be given to the member either personally or by sending a copy thereof (1) by first-class or express mail, postage prepaid, or courier service, charges prepaid, to the postal address or street address of the member appearing on the books of the Company or (2) by facsimile transmission, e-mail, or other electronic communication to the facsimile number or address for e-mail or other electronic communications supplied by a member to the Company for the purpose of notice. Notice pursuant to this subsection shall be deemed to have been given when sent.

(b) To the Company. Any notice to the Company must be given at the principal place of business of the Company. Notice pursuant to this subsection may be given in any manner described in subsection (a), but shall not be deemed to have been given to the Company unless it is actually received at the principal place of business of the Company.

10.02. **Entire Agreement.** This Agreement constitutes the entire agreement among the members and the Company with respect to the subject matter hereof and supersedes all prior agreements, express or implied, oral or written, with respect thereto. The express terms of this agreement control and supersede any course of performance or usage of trade inconsistent with any of the terms hereof.

10.03. **Effect of Waiver or Consent.** A waiver or consent, express or implied, to or of any breach or default by any person in the performance by that person of its obligations with respect to the Company is not a consent or waiver to or of any other breach or default in the performance by that person of the same or any other obligations of that person with respect to the Company. Failure on the part of a person to complain of any act of any person or to declare any person in default with respect to the Company, irrespective of how long that failure continues, does not constitute a waiver by that person of its rights with respect to that default until the period of the applicable statute of limitations has run.

10.04. Amendment. This Agreement or the certificate may be amended from time to time only if the amendment is approved by the vote, consent, or agreement of all of the members. An amendment to this Agreement must be in writing and shall take effect when executed by all of the members. A revision of Exhibit A pursuant to Section 3.01 of this Agreement shall not be considered an amendment of this Agreement requiring a vote.

10.05. Binding Effect and Rights of Third Parties. This Agreement has been adopted to govern the operation of the Company, and shall be binding on and inure to the benefit of the members and their respective heirs, personal representatives, successors, and assigns. This Agreement is expressly not intended for the benefit of any creditor of the Company or any other person, except a person entitled to indemnification, contribution, or advancement of expenses under Article VII. Except and only to the extent provided by applicable statute, no such creditor or other person shall have any rights under this Agreement.

10.06. Governing Law. This Agreement is made in and shall be governed by and construed in accordance with the laws of the Commonwealth of Pennsylvania exclusive of any conflicts of law principle that would apply the law of another jurisdiction. The parties hereto consent and agree that any legal proceedings related to this Agreement shall be brought and maintained in a court of competent jurisdiction located in Lancaster County, Pennsylvania, and the parties hereto agree that jurisdiction and venue for any such proceedings shall be exclusively within the courts of the Commonwealth of Pennsylvania, or the United States District Court for the Eastern District of the Commonwealth of Pennsylvania. If any provision of this Agreement or the application thereof to any Person or circumstance is held invalid or unenforceable to any extent, the remainder of this Agreement and the application of that provision to other Persons or circumstances is not affected thereby and that provision shall be enforced to the greatest extent permitted by law.

10.07. Severability. If any provision of this Agreement or the application thereof to any person or circumstance is held invalid or unenforceable to any extent, the remainder of this Agreement and the application of that provision to other persons or circumstances shall not be affected thereby and that provision shall be enforced to the greatest extent permitted by law.

10.08 Construction. Whenever the context requires, the gender of any word used in this Agreement includes the masculine, feminine, or neuter, and the number of any word includes the singular or plural. All references to articles and sections refer to articles and sections of this Agreement, and all references to exhibits are to exhibits attached hereto, each of which is made a part hereof for all purposes. The headings in this Agreement are for convenience only and do not form a part of this Agreement and shall not affect its interpretation.

[Signature page follows]

IN WITNESS WHEREOF, the Company and initial members of the Company have caused this Agreement to be executed as of the day and year first above written.

MEMBERS:

____
Daryl F. Heller

____
Jerry D. Hostetter

COMPANY:

Prestige Investment Group, LLC

By:___________________________
Daryl F. Heller, Chief Executive Officer

EXHIBIT A

Membership Interests

(As of April 1, 2012)

Class A Membership Interests

Name and Address of Each Class A Member	Class A Membership Interest
Daryl F. Heller 415 N. Prince Street Suite 200 Lancaster, PA 17603	60.00%
Jerry D. Hostetter 121 Eshelman Road Lancaster, PA 17601	40.00% *Profits Interest granted April 1, 2012*

Class B Membership Interests

Name and Address of Each Class B Member	Class B Membership Interest
Daryl F. Heller 415 N. Prince Street Suite 200 Lancaster, PA 17603	40.00%
Jerry D. Hostetter 121 Eshelman Road Lancaster, PA 17601	60.00% *Profits Interest granted April 1, 2012*

EXHIBIT B

Certain Financial and Tax Matters

B.1. Definitions. In addition to the terms defined in other provisions of this Agreement, including without limitation Section 1.01, the following terms shall have the meanings set forth below:

"Adjusted capital account deficit." The deficit balance, if any, with respect to any member, in the member's capital account as of the end of the relevant taxable year, after giving effect to the following adjustments: (i) increasing the capital account by any amounts that the member is obligated to restore or is deemed to be obligated to restore pursuant to Treas. Reg. §§1.704-1(b)(2)(ii)(c), 1.704-2(g)(1), and 1.704-2(i)(5); and (ii) reducing the capital account by the items described in Treas. Reg. §§1.704-1(b)(2)(ii)(d)(4), (5), and (6). The foregoing definition of adjusted capital account deficit is intended to comply with the provisions of Treas. Reg. §1.704-1(b)(2)(ii)(d) and shall be interpreted consistently therewith.

"Business day." Any day other than a Saturday, a Sunday, or a holiday on which national banking associations in the Commonwealth of Pennsylvania are closed.

"Company minimum gain." See the definition of "partnership minimum gain" set forth in Treas. Reg. §§1.704-2(b)(2) and 1.704-2(d).

"Depreciation." For each taxable year or other period, an amount equal to the depreciation, amortization, or other cost recovery deduction allowable with respect to an asset for such year or other period, except that if the gross asset value of an asset differs from its adjusted basis for federal income tax purposes at the beginning of such year or other period, depreciation shall be an amount that bears the same ratio to such beginning gross asset value as the federal income tax depreciation, amortization, or other cost recovery deduction for such year or other period bears to such beginning adjusted tax basis; provided, however, that if the federal income tax depreciation, amortization, or other cost recovery deduction for such year is zero, depreciation shall be determined with reference to such beginning gross asset value using any reasonable method selected by the Class A members, and if the Company uses the "remedial allocation method" under Treas. Reg. §1.704-3(d) with respect to any asset, depreciation for that asset shall be computed in accordance with Treas. Reg. §1.704-3(d)(2).

"Excess nonrecourse liabilities." Liabilities having the meaning set forth in Treas. Reg. §1.752-3(a)(3).

"Gross asset value." The adjusted basis for federal income tax purposes of an asset, except as follows:

(1) The initial gross asset value of any asset contributed by a member to the Company shall be the gross fair market value of the asset, as determined by the contributing member and the Company.

(2) The gross asset values of all Company assets shall be adjusted to equal their respective gross fair market values, as determined by the Class A members, as of the following times:

(i) the acquisition of an additional interest in the Company by any new or existing member in exchange for more than a de minimis contribution of money, other property, or services;

(ii) the distribution by the Company to a member of more than a de minimis amount of money or other property as consideration for an interest in the Company; or

(iii) the liquidation of the Company for federal income tax purposes within the meaning of Treas. Reg. §1.704-1(b)(2)(ii)(g);

except that the adjustments pursuant to clauses (i) and (ii) above shall be made only if the Class A members reasonably determine that such adjustments are necessary or appropriate to reflect the relative economic interests of the members in the Company.

(3) The gross asset value of any Company asset distributed to any member shall be the gross fair market value of such asset on the date of distribution.

(4) The gross asset values of Company assets shall be increased (or decreased) to reflect any adjustments to the adjusted basis of those assets pursuant to Code §734(b) or Code §743(b), but only to the extent that the adjustments are taken into account in determining capital accounts pursuant to Treas. Reg. §1.704-1(b)(2)(iv)(m) and Section B.2, except that gross asset values shall not be adjusted pursuant to this subsection (4) to the extent the Class A members determine that an adjustment pursuant to subsection (2) is necessary or appropriate in connection with a transaction that would otherwise result in an adjustment pursuant to this subsection (4).

(5) If the gross asset value of an asset has been determined pursuant to subsection (1), (2), or (4), that gross asset value shall thereafter be adjusted by the depreciation taken into account with respect to that asset for purposes of computing profits and losses.

"Member nonrecourse debt." See the definition of "partner nonrecourse debt" set forth in Treas. Reg. §§1.704-2(b)(4) and 1.704-2(i).

"Member nonrecourse debt minimum gain." See the definition of "partner nonrecourse debt minimum gain" set forth in Treas. Reg. §1.704-2(i).

"Member nonrecourse deductions." See the definition of "partner nonrecourse deductions" set forth in Treas. Reg. §§1.704-2(i)(1) and 1.704-2(i)(2).

"Nonrecourse deductions." Deductions having the meaning set forth in Treas. Reg. §§1.704-2(b)(1) and 1.704-2(c).

"Profits and losses." For each taxable year or other period, an amount equal to the Company's taxable income or loss for that year or period, determined in accordance with Code §703(a) (for these purposes, all items of income, gain, loss, or deduction required to be stated separately pursuant to Code §703(a)(1) shall be included in taxable income or loss), with the following adjustments:

(1) Any income of the Company that is exempt from federal income tax and not otherwise taken into account in computing profits and losses pursuant to the foregoing shall be added to such taxable income or loss.

(2) Any expenditures of the Company described in Code §705(a)(2)(B) or that are treated as Code §705(a)(2)(B) expenditures pursuant to Treas. Reg. §1.704-1(b)(2)(iv)(i) and not otherwise taken into account in computing profits and losses pursuant to the foregoing shall be subtracted from such taxable income or loss.

(3) In the event the gross asset value of any Company asset is adjusted pursuant to subsection (2), (3), or (4) of the definition of gross asset value, the amount of the adjustment shall be taken into account as gain or loss from the disposition of the asset for purposes of computing profits and losses.

(4) Gain or loss resulting from any disposition of Company property with respect to which gain or loss is recognized for federal income tax purposes shall be computed by reference to the gross asset value of the property disposed of, notwithstanding that the adjusted tax basis of the property differs from its gross asset value.

(5) In lieu of the depreciation, amortization, and other cost recovery deductions taken into account in computing such taxable income or loss, there shall be taken into account depreciation for the taxable year or other period, computed in accordance with the definition of depreciation under this Agreement.

(6) Notwithstanding the above, any items that are specially allocated to certain members shall not be taken into account in computing profits and losses.

B.2. <u>Preparation and Maintenance of Capital Accounts.</u>

(a) The capital account for each member shall:

(1) be increased by (i) the amount of money contributed by that member to the Company, (ii) the fair market value of property contributed by that member to the Company (net of liabilities secured by the contributed property that the Company is considered to assume or take subject to under Section 752 of the Code), and (iii) allocations to that member of profits and any other Company income and gain (or items thereof), including income and gain exempt from tax and income and gain described in Treas. Reg. §1.704-1(b)(2)(iv)(g), and

(2) be decreased by (i) the amount of money distributed to that member by the Company, (ii) the fair market value of property distributed to that member by the Company (net of liabilities secured by the distributed property that the member is considered to assume or take subject to under Section 752 of the Code), and (iii) allocations of losses and any other Company loss and deduction (or items thereof), including loss and deduction described in Treas. Reg. §1.704-1(b)(2)(iv)(g).

(b) The members' capital accounts also shall be maintained and adjusted as permitted by the provisions of Treas. Reg. §1.704-1(b)(2)(iv)(f) and as required by the other provisions of Treas. Reg. §§1.704-1(b)(2)(iv) and 1.704-1(b)(4), including adjustments to reflect the allocations to the members of depreciation, depletion, amortization, and gain or loss as computed for book purposes rather than the allocation of the corresponding items as computed for tax purposes, as required by Treas. Reg. §1.704-1(b)(2)(iv)(g). On the transfer of all or part of a membership interest, the capital account of the transferor that is attributable to the transferred membership interest or part thereof shall carry over to the transferee member in accordance with the provisions of Treas. Reg. §1.704-1(b)(2)(iv)(1).

B.3. **Profits.** After giving effect to the special allocations set forth in Sections B.5 and B.6 and the distributions under Exhibit C, profits for any taxable year shall be allocated to the members, first, in proportion to their deficit capital account balances, if any, until such deficits are eliminated, and the remainder, if any, in such manner as to cause, to the extent possible, each member's capital account balance to equal the amount such member would be distributed under the terms of this Agreement, other than Section 9.02, if the Company were to sell all its assets for their gross asset value and distribute the net proceeds of the sale to the members.

B.4. **Losses.** After giving effect to the special allocations set forth in Sections B.5 and B.6, losses for any taxable year shall be allocated, first, in such manner as to cause, to the extent possible, each member's positive capital account balance to equal the amount such member would be distributed under the terms of this Agreement, other than Section 9.02, if the Company were to sell all its assets for their gross asset value and distribute the net proceeds of the sale to the members, and the remainder, if any, to the members in proportion to their percentage interests other than profits interests, except that the losses allocated to any member shall not exceed the maximum amount of losses that can be so allocated without causing the member to have an adjusted capital account deficit at the end of any taxable year. In the event some but not all of the members would otherwise have adjusted capital account deficits as a consequence of an allocation of losses, the limitation set forth at the end of the preceding sentence shall be applied on a member-by-member basis so as to allocate the maximum permissible losses to each member under Treas. Reg. §1.704-1(b)(2)(ii)(d).

B.5. **Special Allocations.** The following special allocations shall be made in the following order:

(a) Minimum Gain Chargeback. Notwithstanding any other provision of this Annex B, if there is a net decrease in Company minimum gain during any Company taxable year, each member shall be specially allocated items of Company income and gain for such year (and, if necessary, subsequent years) in accordance with Treas. Reg. §1.704-2(f). Allocations pursuant to the previous sentence shall be made in proportion to the respective amounts required to be allocated to each member pursuant thereto. This Section B.5(a) is intended to comply with the minimum gain chargeback requirement in Treas. Reg. §1.704-2(f) and shall be interpreted consistently therewith.

(b) Member Minimum Gain Chargeback. Notwithstanding any other provision of this Agreement except Section B.5(a), if there is a net decrease in member nonrecourse debt minimum gain attributable to a member nonrecourse debt during any Company taxable year, each member who has a share of the member nonrecourse debt minimum gain attributable to such member nonrecourse debt, determined in accordance with Treas. Reg. §1.704-2(i)(5), shall be specially allocated items of Company income and gain for such year (and, if necessary, subsequent years) in accordance with Treas. Reg. §1.704-2(i)(4). Allocations pursuant to the previous sentence shall be made in proportion to the respective amounts required to be allocated to each member pursuant thereto. The items to be so allocated shall be determined in accordance with Treas. Reg. §1.704-2(i)(4). This Section B.5(b) is intended to comply with the minimum gain chargeback requirement in Treas. Reg. §1.704-2(i)(4) and shall be interpreted consistently therewith.

(c) Qualified Income Offset. In the event any member unexpectedly receives any adjustments, allocations, or distributions described in Treas. Reg. §1.704-1(b)(2)(ii)(d)(4), 1.704-1(b)(2)(ii)(d)(5), or 1.704-1(b)(2)(ii)(d)(6) that would create an adjusted capital account deficit for such member, items of Company income and gain shall be specially allocated to each such member in an amount and manner sufficient to eliminate, to the extent required by the Treasury Regulations, the adjusted capital account deficit of such member as quickly as possible, provided that an allocation pursuant to this Section B.5(c) shall be made if and only to the extent that such member would have an adjusted capital account deficit after all other allocations provided for in this Agreement have been tentatively made as if this Section B.5(c) were not in the Agreement.

(d) Gross Income Allocation. In the event any member has at the end of any Company taxable year a deficit capital account balance that is in excess of the amount such member is obligated to restore or deemed obligated to restore pursuant to Treas. Reg. §§1.704-2(g)(1) and 1.704-2(i)(5), each such member shall be specially allocated items of Company income and gain in the amount of such excess as quickly as possible, provided that an allocation pursuant to this Section B.5(d) shall be made if and only to the extent that such member would have a deficit capital account in excess of such amount after all other allocations provided for in this Agreement have been tentatively made as if Section B.5(c) and this Section B.5(d) were not in the Agreement.

(e) Nonrecourse Deductions. Nonrecourse deductions for any taxable year or other period shall be allocated among the members in proportion to their respective percentage interests.

(f) Member Nonrecourse Deductions. Any member nonrecourse deductions for any taxable year or other period shall be specially allocated to the member who bears the economic risk of loss with respect to the member nonrecourse debt to which such member nonrecourse deductions are attributable in accordance with Treas. Reg. §1.704-2(i).

(g) Excess Nonrecourse Liabilities. The excess nonrecourse liabilities of the Company shall be allocated among the members in accordance with their respective percentage interests.

B.6. Curative Allocations. The allocations set forth in Section B.5 ("Regulatory Allocations") are intended to comply with certain requirements of Treas. Reg. §1.704-1(b). Notwithstanding any other provisions of this Agreement (other than the Regulatory Allocations), the Regulatory Allocations shall be taken into account in allocating profits, losses, and items of income, gain, loss, and deduction among the members so that, to the extent possible, the net amount of such allocations of profits, losses, and other items and the Regulatory Allocations to each member shall be equal to the net amount that would have been allocated to each such member if the Regulatory Allocations had not occurred. Notwithstanding the preceding sentence, Regulatory Allocations relating to (i) nonrecourse deductions shall not be taken into account except to the extent that there has been a reduction in Company minimum gain, and (ii) member nonrecourse deductions shall not be taken into account except to the extent that there has been a reduction in member nonrecourse debt minimum gain.

B.7. <u>Tax Allocations; Code §704(c)</u>.

(a) In accordance with Code § 704(c) and the Treasury Regulations thereunder, income, gain, loss, and deduction with respect to any property contributed to the capital of the Company shall, solely for tax purposes, be allocated among the members so as to take account of any variation between the adjusted basis of such property to the Company for federal income tax purposes and its initial gross asset value.

(b) In the event the gross asset value of any Company asset is adjusted pursuant to subsection (2) of the definition of gross asset value, subsequent allocations of income, gain, loss, and deduction with respect to such asset shall take account of any variation between the adjusted basis of such asset for federal income tax purposes and its gross asset value in the same manner as under Code §704(c) and the Treasury Regulations thereunder.

(c) Any elections or other decisions relating to allocations pursuant to this Section B.7 shall be made by the Class A members in any manner that reasonably reflects the purpose and intention of this Agreement. Allocations pursuant to this Section B.7 are solely for purposes of federal, state, and local taxes and shall not affect, or in any way be taken into account in computing, any member's capital account or share of profits, losses, other items, or distributions pursuant to any provision of this Agreement.

B.8. <u>Miscellaneous Allocation Provisions</u>.

(a) For purposes of determining the profits, losses, or any other items allocable to any period, profits, losses, and any such other items shall be determined on a daily, monthly, or other basis, as determined by the Class A members using any permissible method under Code § 706 and the Treasury Regulations promulgated thereunder.

(b) Except as otherwise provided in this Agreement, all items of Company income gain, loss, deduction, and any other allocations not otherwise provided for shall be divided among the members in the same proportions as the Class A members share profits or losses, as the case may be, for the year.

(c) Depreciation recapture income (including amounts treated as ordinary income under Code §§1245 and 1250 and unrecaptured Section 1250 gain as defined in Code §1(h)(6)) shall, to the extent permitted under applicable Treasury Regulations, be allocated to the members to whom the corresponding amounts of depreciation were allocated.

B.9. <u>Election of Liquidation Value Safe Harbor</u>. Each member, by executing this Agreement, hereby agrees to the following:

(a) The Company is authorized and directed to elect the safe harbor, in accordance with proposed Treas. Reg. §1.83-3(l) and the proposed revenue procedure thereunder (once such regulations and revenue procedure become effective), under which the fair market value of each interest in the Company that is transferred in connection with the performance of services shall be treated as being equal to the liquidation value of that interest (the "safe harbor election");

(b) The Company and each member (including any person to whom an interest in the Company is transferred in connection with the performance of services) agree to comply with all requirements of the safe harbor election with respect to all interests in the Company transferred in connection with the performance of services while the safe harbor election remains effective, including the requirement that all relevant federal income tax items be reported consistently with the safe harbor election;

(c) The effective date of the safe harbor election shall be the earliest permitted such date under the applicable regulations and revenue procedure, once those become effective, and the safe harbor election shall continue to apply until such time (if ever) as all members affected by the safe harbor election shall agree to terminate it and the Company shall affirmatively terminate it under applicable procedures;

(d) The tax matters member shall file, with the Company's federal income tax return for the taxable year in which the safe harbor election becomes effective, a document, executed by the tax matters member, stating that the Company is electing, on behalf of the Company and the members, to have the safe harbor election apply irrevocably with respect to all interests in the Company transferred in connection with the performance of services while the safe harbor election is in effect; and

(e) The Company shall comply with the applicable record-keeping requirements for the safe harbor election, and the Company and the members shall take all other actions, if any, required to comply with the requirements of such safe harbor election as ultimately promulgated, to the extent practicable.

EXHIBIT C

Profits and Losses; Distributions

C.1. Profits and Losses. Items of income, gain, loss, deduction, and credit shall be allocated to the members as follows:

(a) first, the Regulatory Allocations (as defined in Exhibit B) shall be made to the extent applicable. The purpose of this subparagraph is to ensure compliance with all applicable provisions of the Code;

(b) second, the Class B Income shall be allocated to the Class B members in accordance with their Class B membership interests;

(c) third, any remaining income, gain, loss, deduction, and credit shall be allocated to the Class A members in accordance with their Class A membership interests.

C.2. Distributions. Subject to the following, all distributions shall be made in a manner to ensure consistency with the allocations of profits and loss set forth above; subject to the following:

(a) Upon the sale or deemed sale of the appMobi Holdings, Hostetter shall receive a preferred distribution equal to the lessor of (a) One Hundred Fifty Thousand Dollars ($150,000) or the (b) the gross proceeds received by the Company (in the case of an actual sale) or the fair market value of the appMobi Holdings (in the case of a deemed sale); and

(b) Heller shall receive a preferred distribution equal to any principal paid to the Company by Heller in connection with any loan owed to the Company by Heller and existing as of the date of this Agreement.

C.3. Definitions.

(a) "Class B Income" means, for any taxable period, the excess, if any, of the Company's items of income and gain for such taxable period over the Company's items of loss and deduction for such taxable period in connection with the appMobi Holdings, the ATM Venture to the extent directly attributable to investors successfully solicited by Hostetter, the Luna Venture or any equity interest in or loan owed to the Company by the Cornwall Entities. The items included in the calculation of Class B Income shall be determined by the Company's certified public accountants in accordance with generally accepted accounting principles.

(b) "Cornwall Entities" shall mean Cornwall Associates LP, a Pennsylvania limited partnership and all affiliates, subsidiaries and otherwise related entities.

EXHIBIT D

Restrictions on Transfers

D.1. **General Restriction on Transfers**. A member shall not voluntarily or involuntarily sell, assign, transfer, give, bequeath, devise, donate, or otherwise dispose of, or pledge, deposit, or otherwise encumber, in any manner (any of the foregoing, a "transfer"), any of the member's interests except as expressly provided in this Exhibit D and in accordance with its terms and conditions. A transfer of an interest must include both the governance and economic rights associated with the interest.

D.2. **Member's Limited Right to Transfer Interests**. If any member desires to sell his membership interests ("Selling Member"), after receiving a bona fide written offer which the Selling Member desires to accept from an independent third party, the Selling Member shall deliver a written offer ("Offer") to the other members ("Non-Selling Members") offering to sell his membership interests to the Non-Selling Members, pro rata, on the same terms and conditions. The Non-Selling Members together may not elect to purchase less than all of the offered membership interests unless the Selling Member consents. If the Non-Selling Members elect not to purchase the Selling Member's Interest within thirty (30) business days notice of the Offer, the Selling Member shall be free to sell his member interests at the price and on the terms and conditions of said Offer; provided that the sale is completed within one-hundred and eighty (180) days.

D.3 **Death of a Member.**

(a) Except as otherwise provided below in this Section, within ninety (90) days after the death of a member, his personal representative shall offer all of the deceased member's membership interests to the other members, pro rata, at the price and on the terms set forth below. The other members together may not elect to purchase less than all of the offered membership interests unless the personal representative of the deceased member consents. If the other members elect not to purchase the deceased member's interest within sixty (60) business days of the offer, the personal representative of the deceased member shall be free to transfer the deceased member's interests to the deceased member's heirs. Settlement shall be made on the purchase of the membership interests within six (6) months after the date of the offer.

(b) The price at which the deceased member's membership interest shall be purchased under subsection (a) above shall be the price of the membership interests as of the last day of the month in which the member dies as determined by a qualified, independent certified public accounting firm familiar with valuing businesses selected by the Company's certified public accountants with the advice of the Company's legal counsel. In valuing the Company, the accounting firm shall not consider any life insurance proceeds received or to be received by the Company or apply any discounts for minority, lack of marketability, lack of liquidity and other factors. The accounting firm shall be provided with all available financial statements of the Company and any other information reasonably necessary to make such appraisal and shall have full access to all books, records and property of the Company. The determination of the accounting firm shall be final and unappealable. The fees and other costs of the accounting firm shall be borne by the Company.

(c) In the case of any purchase of a membership interest in this Section D.3, the purchaser shall pay in cash at settlement an amount not less than the proceeds received by the purchaser under any policies of insurance owned by the purchaser and insuring the life of the deceased Member (up to the purchase price). To the extent the purchase price is not covered by insurance, the purchaser may settle for up to twenty-five percent (25%) of the purchase price with a promissory note of the purchaser dated the date of settlement and bearing interest on unpaid balances, payable quarterly at the applicable federal rate. The balance of the purchase price shall be paid in cash at settlement. The principal balance of the promissory note shall be payable over five (5) years in twenty (20) equal quarterly installments, commencing on the first day of the fourth month following settlement. The promissory note shall be due in full upon: (i) any sale or liquidation of the Company or substantially all of its assets; (ii) the occurrence of any transaction or series of transactions that result in a majority of the membership interests of the Company being held by any person or entity not related to or controlled by a party to this Agreement on the date of this Agreement, or (iii) any default in payment of any installment of principal or interest on the indebtedness evidenced by the promissory note. The purchaser shall have the right at any time to prepay all or any part of the unpaid balance without penalty. The membership interest so purchased shall be pledged to the seller (under and subject to all restrictions upon transfer contained in this Agreement) to secure payment of the indebtedness evidenced by the promissory note.

The promissory note and pledge agreement shall authorize confession of money judgment upon the occurrence of any event of default and shall contain terms and conditions relating to defaults, remedies, waiver of rights, rights of acceleration, and rights of sale of collateral, consistent with those customarily employed by commercial banking institutions in connection with commercial term lending transactions.

D.4 <u>Permanent Disability; Insolvency; Divorce; Non-voluntary Transfer</u>. In the event of permanent disability, bankruptcy or other insolvency of a Member, or transfer of his Membership interest to a divorcing spouse or other non-voluntary transfer of a Member's Membership Interest, the Membership Interest shall be deemed to be offered for sale at the price and on the terms set forth in Section D.3 of this Agreement as of the date of such event. For purposes of this Exhibit D, "permanent disability" means the inability because of illness or injury, which (a) has existed or is reasonably expected to exist for a period of more than one hundred eighty (180) days, to engage in the usual duties customarily performed by the member for the Company. Disability shall be determined by a physician of good standing and reputation, selected in good faith by the Company's independent certified public accountant with the advice of the Company's legal counsel.

D.5. <u>Heller Option</u>. Effective March 31, 2022 and continuing thereafter until terminated by the parties, Heller shall have the right and option ("Option"), exercisable by written notice ("Notice") delivered to Hostetter by registered mail or by overnight courier, to cause Hostetter to sell to Heller all, but not less than all, of Hostetter's membership interests in the Company as of the last day of the month in which the Notice is given ("Transfer Date") for the price determined as of the last day of the month in which the Notice is given. On the Transfer Date or as soon thereafter as practical, Hostetter will deliver the membership interests to Heller, free and clear of any and all liens, encumbrances, pledges, security interests or defects in title, subject to payment of the purchase price, in lawful money of the United States of America, in immediately available funds, by check or by wire transfer to an account of Hostetter (which account shall be identified in writing by Hostetter).

EXHIBIT E

Hostetter Contributions

Effective as of the date of the Agreement, Hostetter agrees and acknowledges that:

(a) BroadClip, Inc. Hostetter has contributed the following shares of stock in BroadClip, Inc. d/b/a appMobi ("appMobi") to the Company:

(1) 192,310 shares of Series B-5 Preferred Stock of appMobi which Hostetter and Heller acknowledge and agree have a current value of One Hundred Thousand Dollars ($100,000); and

(2) 50,505 shares of Series B-6 Preferred Stock of appMobi which Hostetter and Heller acknowledge and agree have a current value of Fifty Thousand Dollars ($50,000).

The shares referenced above shall be collectively referred to as the appMobi Holdings.

(b) ATM Private Portfolio Placement. Hostetter shall actively promote the Company's ATM Private Portfolio Placement Venture ("ATM Venture") which entails the sale, deployment, maintenance and general operation of automated teller machines.

(c) Pennsylvania Distribution Rights. Hostetter shall pursue, solely through the Company, the distribution of the products of Luna Vineyards within the Commonwealth of Pennsylvania ("Luna Venture").

(d) Cornwall Associates LP. Hostetter, Heller and Company shall enter into the Option Agreement attached to this Exhibit E as Schedule 1.

SCHEDULE 1

OPTION AGREEMENT
(Cornwall Associates LP)

This Option Agreement ("Agreement") is made this 5 day of May, 2012, effective April 1, 2012, by and between Jerry D. Hostetter, an adult individual ("Hostetter"), Prestige Investment Group, LLC, a Pennsylvania limited liability company ("Prestige") and Daryl F. Heller, an adult individual ("Heller"). The parties hereto are sometimes hereinafter referred to collectively as the "parties" and individually as a "party".

Background. Hostetter is a member of Prestige. In exchange for various membership interests in Prestige, Hostetter has agreed to enter into this Option Agreement giving Prestige the ability to purchase from Hostetter the Cornwall Interests, as defined below, in the manner described herein. In the event that Prestige fails to purchase from Hostetter the Cornwall Interests, as defined below, in the manner described herein, Heller shall have the right to purchase one-half of the Cornwall Interests in the manner described herein.

NOW, THEREFORE, with the foregoing background paragraph incorporated by reference and the mutual covenants and agreements set forth herein, and intending to be legally bound, the parties agree as follows:

1. Definitions. Wherever used in this Agreement, unless the context otherwise requires, the following terms shall have the following meanings:

(a) "Cornwall Entities" shall mean Cornwall Associates LP, a Pennsylvania limited partnership and all affiliates, subsidiaries and otherwise related entities.

(b) "Cornwall Interests" shall mean all equity interests of Hostetter in the Cornwall Entities and all outstanding loans payable to Hostetter by any Cornwall Entity.

(c) "Purchase Price" shall mean the total of all contributions and all outstanding loans made to the Cornwall Entities by Hostetter which as of the date of this Agreement are estimated at Four Hundred Fifty Thousand Dollars ($450,000).

2. Purchase Option.

(a) Prestige.

(i) Upon the terms and subject to the conditions of this Agreement, Prestige shall have the right and option ("Prestige Option"), exercisable by written notice ("Prestige Notice") delivered to Hostetter by registered mail or by overnight courier at any time after the date hereof and on or before December 31, 2012 ("Prestige Exercise Period"), to purchase from Hostetter and to cause Hostetter to sell to Prestige the Cornwall Interests for the Purchase Price. The Notice shall also specify the Prestige Exercise Date (as hereinafter defined). The Prestige Notice shall be deemed to have been delivered (A) five business days after being mailed by registered mail (return receipt requested and postage prepaid) to the recipient or (B) one business day after being sent by overnight courier (receipt confirmation requested).

(ii) Prestige shall fix the date ("Prestige Exercise Date") for the exercise of the Prestige Option no earlier than ten (10) but not more than thirty (30) business days after the Prestige Notice is deemed to be delivered as set forth in Section 2.(a)(i) hereof.

(iii) On the Prestige Exercise Date, Hostetter will deliver all certificates, notes and other documents representing the Cornwall Interests, free and clear of any and all liens, encumbrances, pledges, security interests or defects in title, to Prestige, subject to payment of the Purchase Price, in lawful money of the United States of America, in immediately available funds, by check or by wire transfer to an account of the Hostetter (which account shall be identified in writing by the Hostetter).

(b) Heller.

(i) Upon the terms and subject to the conditions of this Agreement, Heller shall have the right and option ("Heller Option"), exercisable by written notice ("Heller Notice") delivered to Hostetter by registered mail or by overnight courier at any time after the expiration of the Prestige Option and on or before December 31, 2013 ("Heller Exercise Period"), to purchase from Hostetter and to cause Hostetter to sell to Heller fifty percent (50%) of the Cornwall Interests for Two Hundred Fifty Thousand Dollars ($250,000) ("Heller Purchase Price"), provided that the Heller Purchase Price shall be increased to account for any additional contributions or loans to any Cornwall Entity by Hostetter, as determined in good faith by Heller and Hostetter. The Heller Notice shall also specify the Heller Exercise Date (as hereinafter defined). The Heller Notice shall be deemed to have been delivered (A) five business days after being mailed by registered mail (return receipt requested and postage prepaid) to the recipient or (B) one business day after being sent by overnight courier (receipt confirmation requested).

(ii) Heller shall fix the date ("Heller Exercise Date") for the exercise of the Heller Option no earlier than ten (10) but not more than thirty (30) business days after the Heller Notice is deemed to be delivered as set forth in Section 2.(b)(i) hereof.

(iii) On the Heller Exercise Date, Hostetter will deliver all certificates, notes and other documents representing fifty percent (50%) of the Cornwall Interests, free and clear of any and all liens, encumbrances, pledges, security interests or defects in title, to Heller, subject to payment of the Heller Purchase Price, in lawful money of the United States of America, in immediately available funds, by check or by wire transfer to an account of the Hostetter (which account shall be identified in writing by the Hostetter).

3. Irrevocability of Notice. The delivery of a notice by Prestige or Heller exercising an option hereunder shall irrevocably commit the applicable parties to the sale and purchase of the applicable Cornwall Interests, subject to the terms and provisions of this Agreement.

4. Termination/Extension.

(a) Subject to Section 4.(d), Prestige's rights hereunder shall terminate if Prestige has not provided the Prestige Notice during the Prestige Exercise Period and Heller's rights hereunder shall terminate if Heller has not provided the Heller Notice during the Heller

Exercise Period. This Agreement shall terminate in its entirety and no longer be binding or of further force or effect with respect to the Cornwall Interests thirty-one (31) business days after the expiration of the Heller Exercise Period.

(b) The parties acknowledge and agree that the rights of Prestige and Heller shall be subject to any restrictions on the sale or transfer of the Cornwall Interests as set forth in any agreements governing the sale or transfer of such interests ("Transfer Restrictions"). In the event of any Transfer Restrictions, Hostetter shall use all reasonable commercial efforts to facilitate the transfer of the Cornwall Interests and all applicable time periods herein shall be extended to allow Hostetter to comply with the Transfer Restrictions. The failure to compete any transfer required hereunder due the Transfer Restrictions shall not be a default hereunder.

(c) NOTWITHSTANDING ANY OTHER PROVISION OF THIS AGREEMENT, THIS AGREEMENT SHALL BE IMMEDIATELY, NULL AND VOID AB INITIO, IF THIS AGREEMENT OR THE TRANSFER OF THE CORNWALL INTERESTS IS DETERMINED TO BE IN VIOLATION OF ANY AGREEMENT, PROVISION, OR RESTRICTION PROHIBITING THE TRANSFER OF THE CORNWALL INTERESTS AND, IN SUCH CASE, THE PARTIES SHALL HAVE NO FURTHER OBLIGATIONS HEREUNDER.

(d) If Prestige fails to exercise the Prestige Option and Heller fails to exercise the Heller Option, Prestige and Hostetter shall negotiate in good faith to provide Prestige with an additional exercise period hereunder, subject to the adjustment of the Purchase Price to account for any material changes to the financial condition of the Cornwall Entities (provided that if the parties are unable to negotiate an additional exercise period or a change to the Purchase Price within ninety (90) days of the end of the Heller Exercise Period, this Agreement shall terminate and no longer be binding or of further force or effect with respect to the Cornwall Interests).

5. Severability. Whenever possible, each provision of this Agreement will be interpreted in such a manner as to be effective and valid under applicable law. The parties agree that (a) the provisions of this Agreement shall be severable in the event that any of the provisions hereof are held by a court of competent jurisdiction to be invalid, void or otherwise unenforceable, (b) such invalid, void or otherwise unenforceable provisions shall be automatically replaced by other provisions which are as similar as possible in terms to such invalid, void or otherwise unenforceable provisions but are valid and enforceable and (c) the remaining provisions shall remain enforceable to the extent permitted by law.

6. Notices. All notices and other communications in respect of this Agreement (including, without limitation, any modifications of, or requests, waivers or consents under, this Agreement) shall be given or made in writing (a) in the case of Heller and Hostetter, at the address specified below his name on the signature page hereof, (b) in the case of the Prestige, at the address specified below Prestige's name on the signature page hereof, and (c) as to Heller, Hostetter or Prestige, at such other address as shall be designated by such party in a notice to the other parties. Except as otherwise provided in this Agreement, all such communications shall be deemed to have been duly given when transmitted by telecopier or personally delivered or, in the case of a mailed notice, upon receipt, in each case given or addressed as aforesaid.

7. Parties in Interest. This Agreement and all of the provisions hereof shall be binding upon and inure to the benefit of, and be enforceable by, the parties and their respective successors and permitted assigns; provided, however, that neither this Agreement nor any of the rights, interests or obligations herein may be assigned, including by operation of law or otherwise, by any party without the prior written consent of the other parties.

8. Amendment. This Agreement may be amended, modified or waived in whole or in part only by a duly authorized written agreement that refers to this Agreement and is signed by each of the parties hereto or by their duly appointed representatives or successors. No waiver of any of the provisions of this Agreement shall be deemed or shall constitute a waiver of any other provision hereof (whether or not similar), nor shall such waiver constitute a continuing waiver unless otherwise expressly provided therein.

9. Governing Law; Submission to Jurisdiction; Venue; Waiver of Jury Trial. This Agreement shall be governed by, and construed in accordance with, the law of the Commonwealth of Pennsylvania. Heller, Hostetter and Prestige hereby submit to the nonexclusive jurisdiction of the United States District Court for the Eastern District of Pennsylvania and of any Pennsylvania state court sitting in Lancaster County for the purposes of all legal proceedings arising out of or relating to this Agreement or the transactions contemplated hereby. Heller, Hostetter and Prestige irrevocably waive, to the fullest extent permitted by applicable law, any objection which it may now or hereafter have to the venue of any such proceeding brought in such a court and any claim that any such proceeding brought in such a court has been brought in an inconvenient forum.

10. Entire Agreement. This Agreement sets forth all of the agreements and understandings between the parties relative to the Cornwall Interests and there are no other promises, agreements conditions or understandings, either oral or written, between them with respect to the Cornwall Interests, other than the Amended and Restated Operating Agreement of Prestige.

11. Paragraph Headings. Paragraph headings are for convenience of reference only and do not constitute a part of this Agreement.

IN WITNESS WHEREOF, the parties have executed this Agreement on the day first written above.

[*Signatures of the following page*]

Jerry D. Hostetter

Address for Notice:

121 Eshelman Road
Lancaster, PA 17601

PRESTIGE INVESTMENT GROUP, LLC

By: ______________________
Daryl F. Heller, Chief Executive Officer

Address for Notice:

415 North Prince Street
Suite 200
Lancaster, PA 17603

____
Daryl F. Heller

Address for Notice:

415 North Prince Street
Suite 200
Lancaster, PA 17603

Exhibit B

IRREVOCABLE TRANSFER POWER, JOINDER, AND CONSENT
PRESTIGE INVESTMENT GROUP, LLC

This Irrevocable Transfer Power, Joinder and Consent Agreement (this "**Agreement**") is entered into and made effective as of the 1st day of January, 2014, by and among DARYL F. HELLER ("**Assignor**"), HELLER CAPITAL GROUP, LLC, a Delaware limited liability company ("**Assignee**"), JERRY D. HOSTETTER (the "**Remaining Member**") and PRESTIGE INVESTMENT GROUP, LLC, a Pennsylvania limited liability company (the "**Company**").

BACKGROUND

A. Assignor owns a sixty percent (60%) Class A membership interest and a forty percent (40%) Class B membership interest in the Company (together the "**Membership Interest**").

B. Assignor owns a ninety-nine and one-half percent (99.5%) membership interest in Assignee and desires to transfer the Membership Interest to Assignee.

C. Assignee desires to accept the transfer of the Membership Interest, and the Remaining Member and the Company desire to consent to the transfer of the Membership Interest, subject to the terms and conditions contained herein.

AGREEMENT

In consideration of the foregoing background, which is incorporated herein, and for other good and lawful consideration, the receipt and sufficiency of which is hereby acknowledged, and intending to be legally bound, the parties hereto agree as follows:

1. Assignor does hereby convey, assign and transfer to Assignee all of his right, title and interest in and to the Membership Interest and hereby constitutes and appoints the members of the Company as his true and lawful attorney, irrevocably and in his name and stead, to transfer all of said Membership Interest on the books of the Company with full power of substitution.

2. The Assignee does hereby accept the transfer of the Membership Interest and does hereby agree to become a party to, and to be bound as a member of the Company under and pursuant to, the terms and conditions of the Company's Operating Agreement, dated April 1, 2012, as amended (the "**Operating Agreement**"). Any notice required or permitted by the Operating Agreement shall be given to the Assignee at the following address: 415 North Prince Street, Suite 200, Lancaster, PA 17603.

3. The Remaining Member and the Company hereby consent to the transfer of the Membership Interest described herein and hereby waive any right of first refusal, option, or other right the Remaining Member or the Company may have with respect to the Membership Interest, if any.

4. The parties agree that if Assignor desires to transfer control of Assignee to any other person or entity, or if events occur which effect or make imminent a change of control of Assignee from Assignor to any other person or entity, then the Company and the Remaining Member shall have the same rights and obligations (including any right of first refusal, option, or any other similar right), if any, with respect to Assignee's interest in the Company as those they would have had if the

assignment evidenced hereby had never taken place. For purposes of the proceeding provisions, the term "control" means the possession, directly or indirectly, of the power or ability to direct or cause the direction of the management and policies of Assignee, whether through the ownership of membership interests in Assignee, by contract, as manager of Assignee, or otherwise.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date first set forth above.

ASSIGNOR:

____
Daryl F. Heller

ASSIGNEE:

HELLER CAPITAL GROUP, LLC

By: ______________________________
Daryl F. Heller, CEO

COMPANY:

PRESTIGE INVESTMENT GROUP, LLC

By: ______________________________
Daryl F. Heller, Member

By: ______________________________
Jerry D. Hostetter, Member

REMAINING MEMBER:

____
Jerry D. Hostetter

CERTIFICATE OF SERVICE

I hereby certify that on the date below, I caused a true and correct copy of Plaintiffs' Brief in Support of Emergency Petition to Strike Discontinuance to be served upon the following counsel of record by email:

Nathan P. Heller, nathan.heller@us.dlapiper.com;
Joseph Roselius, joseph.roselius@us.dlapiper.com; and
Jeffrey S. Torosian, jeffrey.torosian@us.dlapiper.com.

John Stapleton, jstapleton@levanstapleton.com
Eli Segal, esegal@levanstapleton.com

Dated: September 20, 2024

Matthew H. Haverstick (No. 85072)
KLEINBARD LLC
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1717 Arch Street, 5th Floor
Philadelphia, PA 19103
Ph: 215-568-2000 | Fax: 215-568-0140
Eml: mhaverstick@kleinbard.com

Attorneys for Plaintiffs