

210401331, RX2NAPLES LLC, et al. vs. RX2LIVE INC, et al.

UT District - Provo

UTAH, STATE OF UTAH

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Header

Case Number: 210401331

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Status: Unknown

Misc: (53) Arbitration Award; Civil

Summary

Judge: ROBERT LUND

CaseType: Civil

Participants

Litigants

LESLIE DEAN

Plaintiff

Address: UNKNOWN

MELVIN DRURY

Plaintiff

Address: UNKNOWN

RX2NAPLES LLC

Plaintiff

Address: UNKNOWN

BRIAN HAZELGREN

Defendant

Address: UNKNOWN

DALLAS BALDRI

Defendant

Address: UNKNOWN

DAN OLSEN

Defendant

Address: UNKNOWN

ERIC FOSTER

Defendant

Address: UNKNOWN

GARRETT BLOOD

Defendant

Address: UNKNOWN

RICHARD SCOTT

Attorneys

WILLIAM INGRAM

Plaintiff

WILLIAM MORRIS

Plaintiff

WILLIAM INGRAM

Plaintiff

WILLIAM MORRIS

Plaintiff

WILLIAM INGRAM

Plaintiff

WILLIAM MORRIS

Plaintiff

Litigants**Defendant**

Address: UNKNOWN

RX2LIVE INC

Defendant

Address: UNKNOWN

RX2LIVE LLC

Defendant

Address: UNKNOWN

Attorneys**Fees**

REVENUE DETAIL - TYPE: AWARD OF ARBITRATION

Amount Due:\$35.00

Amount Paid:\$35.00

Amount Credit:\$0.00

Balance: \$ 0.00

REVENUE DETAIL - TYPE: JURY DEMAND - CIVIL

Amount Due:\$250.00

Amount Paid:\$250.00

Amount Credit:\$0.00

Balance: \$ 0.00

Proceedings

Date	#	Proceeding Text	Details
09/28/2021		Case filed by efiler	
09/28/2021		Fee Account created	
09/28/2021		Fee Account created	
09/28/2021		Fee Payment,CaseNumber:18447592	
09/28/2021	1	Filed: Complaint Petition to Confirm Arbitration Award and Entry of Judgment	
09/28/2021	2	Filed: Exhibit 1 in Support of Petition	
09/28/2021	3	Filed: Exhibit 2 in Support of Petition	
09/28/2021	4	Filed: Return of Electronic Notification	

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IN THE FOURTH JUDICIAL DISTRICT COURT

IN AND FOR UTAH COUNTY, STATE OF UTAH

RX2NAPLES, LLC, a Florida limited liability company; LESLIE DEAN, an individual; and MELVIN DRURY, an individual,

Petitioners,

vs.

RX2LIVE, INC., a Wyoming corporation, DALLAS BALDRI, an individual; ERIC FOSTER, an individual; GARRETT BLOOD, an individual; BRIAN HAZELGREN, an individual; RICHARD SCOTT, an individual; DAN OLSEN, an individual; and RX2LIVE, LLC, a Delaware limited liability company,

Respondents.

**PETITION TO CONFIRM
ARBITRATION AWARD AND
ENTRY OF JUDGMENT**

Civil No.

Judge:

Pursuant to the Utah Uniform Arbitration Act, Utah Code Ann. §§ 78B-11-101 et seq. (the “Act”), Petitioners RX2Naples, LLC, Leslie Dean, and Melvin Drury (collectively “Petitioners”), by and through its undersigned counsel Strong & Hanni law firm, respectfully petition the Court for an order to confirm a final arbitration award (the “Award”) granted in favor of Petitioners

against RX2Live, Inc., RX2Live, LLC, Dan Olsen, Eric Foster, Richard Scott, Brian Hazelgren, and Dallas Baldri (collectively “Respondents”), jointly and severally, by the American Arbitration Association (the “AAA”) in matter no. 01-19-0002-7987 (the “Arbitration”) and to enter judgment. A copy of the Award is attached as **Exhibit 1**.

Petitioners make this Petition based upon the following facts:

DESCRIPTION OF THE PARTIES

1. Petitioner RX2Naples, LLC is a Florida limited liability company, in good standing, with a principal place of business located in Naples, Florida.

2. Petitioner Leslie Dean is an attorney and a member of the Kentucky Bar. In addition to practicing law, Ms. Dean has owned and operated a title company that was originally owned and operated by her husband, Petitioner Melvin Drury.

3. Petitioner Melvin Drury is a certified public accountant who formed, and for over twenty years, owned and operated a national mortgage lending company, American Lending Group, as its President and Chief Executive Officer.

4. Respondent RX2Live, Inc. is a registered Wyoming corporation with a principal place of business located at 5255 West 11000 North, Suite 225, Highland, Utah, 84003.

5. Respondent RX2Live, LLC is a registered Delaware limited liability company with a principal place of business located at 5255 West 11000 North, Suite 225, Highland, Utah 84003. Both entities shall be referred to as “RX2Live.”

6. Respondent Richard Scott was the Chief Executive Officer of RX2Live from its inception in 2016 until July or August of 2018.

7. Respondent Brian Hazelgren became the Chief Executive Officer of Rx2Live after Richard Scott, and continues to hold that position.

8. Respondent Dan Olsen has never been an officer of RX2Live, but is the leader and motivational force behind RX2Live and had significant management responsibility.

9. Respondent Garrett Blood was an employee of RX2Live from 2017 until March 2020.

10. Respondents Eric Foster and Dallas Baldri are partners in their own company, HD Group LLC, and were the salesmen who sold the RX2Live franchise units to Petitioners.

JURISDICTION AND VENUE

11. This Court has jurisdiction pursuant Utah Code Ann. § 78A-5-102(2) and Section 127 of the Act, Utah Code Ann. § 78B-11-127(1), because Petitioners and Respondent RX2Live are parties to written agreements (the “Agreements”) that require resolution of disputes by arbitration. A copy of the Agreements are attached as **Exhibit 2**.

12. Venue is proper in this Court pursuant to Utah Code Ann. §§ 78B-3-304(2) and 78B-3-307(2) because Respondent has its principal office and/or a place of business in Highland, Utah and is a resident of Utah County, and because Respondent signed the Agreements in Utah County.

13. Service of this Petition is being accomplished in accordance with Utah Rule of Civil Procedure 5.

FACTS

14. On or about November 27 and November 28, 2018, the parties entered into the Agreements.

15. Pursuant to Section 17.9 of the Agreements, the parties agreed to arbitrate any dispute arising from or related to the Agreement and their relationship.

16. Petitioners performed under the terms of Agreements and Respondent subsequently breached, whereupon Petitioners filed a claim against Respondent with AAA in accordance with Section 17.9 of the Agreements.

17. The Arbitration was conducted via Zoom by the AAA due to the COVID-19 pandemic.

18. As a result of the Arbitration proceedings, the arbitrator found that Respondents breached the Agreements and entered the Award on September 22, 2021.

19. The Award is a “Final Award” that resolves all claims and counterclaims submitted by the parties in the Arbitration.

20. The Award describes the arbitrator’s findings and decision, and calculates the total award as follows:

- a. Actual damages for breach of contract, violation of the Little FTC Act and fraud in the amount of \$78,401.73;

- b. Costs of \$1,817.35; and
- c. The administrative fees and expenses of AAA totaling \$25,019.66.

21. Thus, according to the Award, Respondents shall pay to Petitioners a total of \$105,238.74.

FIRST CLAIM FOR RELIEF
Confirmation of Award

22. Petitioner incorporates the preceding paragraphs by reference as though fully set forth herein.

23. Section 123 of the Act, Utah Code Ann. § 78B-11-123, provides that “[a]fter a party to an arbitration proceeding receives notice of an award in a matter not pending before a court, the party may petition the court for an order confirming the award.”

24. As described above, Petitioners have received notice of the Award against Respondent in the total amount of \$105,238.74, which remains unpaid.

25. Pursuant to Section 123 of the Act, Petitioners are entitled to an order confirming the Award.

26. Pursuant to Utah Code Ann. §§ 15-1-1 and 15-1-4, Petitioners are further entitled to prejudgment and post judgment interest at the rates agreed by the parties and/or allowed by law.

PRAYER FOR RELIEF

WHEREFORE, Petitioners pray for confirmation of the Award and entry of judgment against Respondent as follows:

- a. For \$105,238.74;

- b. For post-judgment interest;
- c. For attorney fees and costs incurred herein and to collect the Award and final judgment as authorized by contract commanded by law; and
- d. For other such and further relief as the Court deems just and equitable.

A proposed form of judgment is submitted herewith.

DATED this 28th day of September, 2021.

STRONG & HANNI

/s/ William B. Ingram
William T. Morris
Attorneys for Petitioners

EXHIBIT 1

AMERICAN ARBITRATION ASSOCIATION
Commercial Arbitration Tribunal

In the Matter of the Arbitration between

Re:

Case Number: 01-19-0002-7987

RX2Naples, LLC; Leslie Dean
and Melvin Drury

-vs-

Dallas Baldri; Eric Foster; Garrett Blood
Brian Hazelgren; Richard Scott
RX2Live, LLC
Dan Olsen; Kevin Harrington; RX2LIVE Inc

FINAL AWARD OF ARBITRATOR

I, THE UNDERSIGNED ARBITRATOR, having been designated in accordance with the arbitration agreement entered into between RX2Naples, LLC (“RX2Naples”) and RX2 Live, LLC n/k/a RX2Live, Inc. (collectively “RX2Live”)¹ and effectively dated November 26, 2018, and having been duly sworn, and having duly heard the proofs and allegations of the Parties, do hereby issue this Final Award as follows:

I. FINDINGS OF FACT

A. The Parties

1. Claimant RX2Naples is a Florida limited liability company.

¹ The arbitration clauses in the Franchise Agreements are sufficiently broad in scope to bind all of the individual Claimants and Respondents named in this arbitration. Additionally, none of the individual parties objected to this Arbitrator’s jurisdiction at hearing or in the post-hearing briefing.

2. Claimants Leslie Dean and Melvin Drury are business people. Ms. Dean is an attorney and a member of the Kentucky Bar since 1998. She has been practicing since her admission, both as part of a family firm and as a solo practitioner.

3. In addition to being a practicing attorney, Ms. Dean has owned and operated a title company that was originally owned and operated by her husband, claimant Melvin Drury. Until recently, she was also a licensed insurance agent in the state of Florida.

4. Claimant Melvin Drury is a certified public accountant who formed, and for over 20 years, owned, and operated a national mortgage lending company, American Lending Group, as its President and Chief Executive Officer. American Lending Group had a lending portfolio of \$15 million and was in the business of selling loans in the secondary market. After closing American Lending Group, Mr. Drury worked as a branch manager for Envoy Mortgage for approximately five years.

5. After leaving the mortgage lending business, Mr. Drury worked in real estate with his father (a real estate broker for 30-plus years), selling real estate, and flipping houses. Upon moving to Florida, Mr. Drury became a licensed real estate broker, started his own brokerage, and then moved his real estate license to a worldwide brokerage company, eXp Realty. Mr. Drury also had several other businesses that primarily owned and operated commercial and residential buildings, in addition to the title company he eventually turned over to his wife, Ms. Dean.

6. Respondent RX2Live was created on September 19, 2016. Its co-founders are Respondents Dan Olsen, Richard Scott and Brian Hazelgren.

7. Richard Scott was the Chief Executive Officer of RX2Live from its inception in 2016 until July or August of 2018, and was disclosed as the CEO in the Franchise Disclosure Document received by Mr. Drury and Ms. Dean.

8. Brian Hazelgren became the Chief Executive Officer of RX2Live after Richard Scott, and he continues to hold that position.

9. Although Dan Olsen is not now, and has never been, an officer of RX2Live, he is the leader and motivational force behind RX2Live, and was portrayed to franchisees and, in particular, the Claimants, as having significant management responsibility. In fact, Mr. Olsen was appointed Chairman of the Board of RX2Live in August of 2018, prior to the Claimants being disclosed with a Franchise Disclosure Document in October 2018. Additionally, as testified by RX2Live Sales Director, Scott Peterson, Dan Olsen was involved in RX2Live operations, including being involved in RX2Live meetings, email streams, and discovery days. Mr. Olsen also had sufficient management responsibility to ask Mr. Peterson to become RX2Live's sales director. Finally, Mr. Olsen was also listed as RX2Live's Chairman on RX2Live's public Facebook page.

10. Respondent Garrett Blood was an employee of RX2Live from 2017 until March 2020. He was first employed to help support franchise owners with the chronic care management ("CCM") service they were selling to healthcare practitioners, and eventually became the Chief Operating Officer in or about the end of 2018.

11. Respondents Eric Foster and Dallas Baldri are partners in their own company, HD Group LLC. Mr. Foster and Mr. Baldri were the salesmen who sold the RX2Live franchise units to Claimants.

12. Respondent Kevin Harrington is known among the business community and public at large for having started the "As-Seen-On-TV" business, where he sold "millions of different gadgets." He is also known for his appearance on the popular television show "Shark Tank."

13. Having shifted his expertise from television marketing to digital marketing, Mr. Harrington acted as an advisor, pursuant to a consulting arrangement with RX2Live, in connection with customer acquisition through social media and digital marketing on Facebook, Instagram, Twitter, and YouTube. Mr. Harrington was also promoted as a public figure by RX2Live.

14. Respondent RX2Live offers Unit Franchises and Regional Developer Franchises for sale to persons or legal entities to own and operate businesses offering medical products and services to

healthcare professionals, as well as weight loss and wellness products and services to the general public, under the trademark RX2Live™.

15. The products and services that RX2Live, Mr. Olsen, Mr. Scott, Mr. Hazelgren, Mr. Foster, and Mr. Baldri represented to the Claimants which were available to be offered to the healthcare industry by RX2Live franchisees included medication dispensing services, allergy therapy services, DNA testing PGX testing, weight loss products and services, corporate wellness programs, and senior services.

B. Claimants Learn of RX2Live

16. In or about September 2018, Mr. Drury received solicitation emails regarding RX2Live franchises. The email received by Mr. Drury contained a link to an on-line video, which he viewed. Drury also viewed the RX2Live website and called the phone number shown thereon for information.

17. Mr. Drury also spoke early on with Respondent Garrett Blood. Mr. Blood indicated to Mr. Drury that he should further speak with Eric Foster concerning the RX2Live franchises. Mr. Drury also looked at the RX2Live website on-line where he saw flyers announcing the addition of Kevin Harrington to RX2Live's advisory board, and to its Board of Directors, as well as a video of Dan Olsen and Kevin Harrington being on the Board.

18. Kevin Harrington's represented high-level involvement led to Mr. Drury and Ms. Dean to further investigate RX2Live and, in particular, other publically available information disseminated by RX2Live and its management including Facebook, and YouTube. One particular representation on the website, Facebook and YouTube that influenced RX2Naples to proceed with its franchise purchase confirmed to Mr. Drury and Ms. Dean that Kevin Harrington from the show "Shark Tank" was on RX2Live's Board of Directors.

19. Additionally, Dan Olsen stated in a publicly advertised RX2Live's press release (published on the internet/Claimant's "Exhibit 1") that "... We're excited to have a person of the caliber and reputation of Kevin Harrington join the RX2Live team... His vision and gift for helping businesses succeed is an

invaluable addition to the RX2Live team.” Olsen also recorded a video published on RX2Live’s Facebook page, which displayed Kevin Harrington’s picture and represented that Harrington was on RX2Live’s Board of Directors along with the statement that people are what make a company successful.

20. Additionally, CEO Hazelgren stated in RX2Live’s internet-published press release/Claimant’s “Exhibit 1” that “[w]e welcome Kevin Harrington to the advisory board at RX2Live. His knowledge in the marketplace and enthusiasm for helping others succeed fits right in with the culture and mission at RX2Live.” Mr. Hazelgren also stated in an online recorded discovery day video that RX2Live had over 750 practices signed up and over 45,000 patients utilizing RX2Live’s chronic care management system, and that RX2Live was going to double that next month.

21. Richard Scott and Dan Olsen were both visible and audible in Mr. Hazelgren’s video, and thereby supported Mr. Hazelgren’s representations regarding 750 practices and 45,000 patients.

22. Ms. Dean and Mr. Drury, on behalf of RX2Naples, both testified credibly that they viewed said public advertisements and information, and reasonably relied on the representations before purchase. Further, they credibly testified that they would never have purchased any RX2Live units but-for Kevin Harrington being on the RX2Live board of directors and there being 750 practices and 45,000 patients in the franchise system.

23. On October 19, 2018, Eric Foster sent Mr. Drury a pro forma and email containing RX2Live performance representations despite the fact that Item 19 of RX2Live’s 2018 FDD stated that no performance representations were being made.

24. Mr. Foster testified that he would have shared what online information RX2Live had made available with Ms. Dean and Mr. Drury and that Mr. Foster and Mr. Baldri’s point of contact in everything was “Dan” (Dan Olsen). Mr. Foster also spoke with Ms. Dean and Mr. Drury together via an internet video meeting at which time he informed them of various informational sources about RX2Live to induce a purchase, which included RX2Live’s online press release dated August 10, 2018 marked Claimant’s

“Exhibit 1” which stated that Kevin Harrington is on RX2Live’s Board of Directors and Advisory Board as well as the online advertisement of RX2Live marked Claimant’s “Exhibit 5” which stated that Kevin Harrington is a member of RX2Live’s Advisory Board.

25. Additionally, between September, 2018 and December, 2018, (when RX2Naples purchased two franchise units), RX2Live agents Mr. Foster and Mr. Baldri told Mr. Drury that they had signed-up double-digit doctors using RX2Live’s CCM system, earning \$2,000.00 each, per month, per doctor, and that RX2Live was going to be the next McDonalds, proclaiming and projecting lucrative RX2Live revenue from RX2Naples’ Medicare-reimbursable screening program, constituting RX2Live performance representations.

26. Except for getting a nominal commission on a few iPads, however, Mr. Baldri and Mr. Foster earned zero revenue from the RX2Live CCM program (or any other RX2Live program), evidencing that their prior statements of \$2,000.00 per doctor each month, and double-digit doctors, were false and deceptive, and which Mr. Drury and Ms. Dean reasonably relied thereon in acquiring franchises in the name of RX2Naples.

27. Further, RX2Live agents Mr. Baldri and Mr. Foster falsely represented to Claimant that Claimant would be able to market and sell PGX and other lab testing as an RX2Live franchise as set forth in “Exhibit 11” delivered to Claimant and “Exhibit 31,” as well as allergy therapy and medication dispensing services as set forth in RX2Live’s 2018 FDD.

C. The Franchise Disclosure Document

28. The Franchise Disclosure Document (“FDD”) Claimants received on October 19, 2018 was dated March 16, 2018.

29. The FDD was not updated as of the third quarter of 2018 despite some significant events.

30. Brian Hazelgren replaced Richard Scott as the Chief Executive Officer.

31. Dan Olsen was not listed under Item 2 of the FDD even though he had management, operations, and decision-making responsibilities over RX2Live or its franchisees, and was the lead founder of RX2Live, and also had become Chairman of the Board of RX2Live.

32. In Item 19 of the FDD, RX2Live represented as follows:

We do not make any representations about a franchisee's future financial performance or the past financial performance of company-owned or franchised outlets. We also do not authorize our employees or representatives to make such representations either orally or in writing. If you are purchasing an existing outlet, however, we may provide you with the actual records of that outlet. If you receive any other financial performance information or projections of your future income, you should report it to our management by contacting Richard Scott, Chief Executive Officer. . .the Federal Trade Commission, and any appropriate state regulatory agencies.

33. Nevertheless, Mr. Drury and Ms. Dean received numerous financial performance representations including: a) the pro forma in Exhibit 11 that contained financial performance numbers made up with no factual basis whatsoever by Mr. Foster and Mr. Baldri; b) in a video viewed by the Claimants, Mr. Olsen represented that RX2Live was part of a ½ trillion dollar industry, and that it had no known competition; c) that the services being offered were in high demand by physicians; d) that franchisees would make decent money; and e) the franchises would immediately generate income monies (collectively the "Earnings Claims"). The FDD disclosed that the Operation Manual was not yet complete, and that when it was complete it could "be composed of or include, audiotapes, computer disks, compact disks, and/or other written or intangible materials.

D. The Franchise Agreements

34. On November 26 and 28, 2018, claimant RX2Naples entered into two Franchise Agreements with RX2Live (the "Franchise Agreements").

35. Prior to entering into the Franchise Agreements, Ms. Dean and Mr. Drury conducted a reasonable amount of due diligence with regard to the franchise opportunity.

36. RX2Naples paid RX2Live \$69,900.00 for the two franchises.

37. The Franchise Agreements are identical except for the zip codes encompassed by each Franchise Agreement, and the person who signed the Franchise Agreement on behalf of RX2Naples.

38. The Franchise Agreements contain a general integration clause that states:

This Agreement, together with the introduction and exhibits to it, constitutes the entire agreement between us, and there are no other oral or written understandings or agreements between us concerning the subject matter of this Agreement. This Agreement may be modified only by written agreement signed by both you and us, except that we may modify the Operations Manual at any time as provided herein. However, nothing in this Agreement or any addendum shall have the effect of disclaiming any of the representations made in the Franchise Disclosure Document or any of its exhibits.

39. The Franchise Agreements allow for termination of the franchise by RX2Live upon written notice if the franchisee breaches the franchise agreement or engages in the conduct defined in the Franchise Agreement in twelve enumerated paragraphs.

40. The Franchise Agreements do not allow the franchisee to terminate the Franchise Agreements.

41. The Franchise Agreements do not require any monthly fees or royalties.

42. Section 17:10 of the Franchise Agreements provides “you and we hereby waive to the fullest extent permitted by law, any right to or claim for any punitive or exemplary damages against the other, and agree that, except to the extent provided to the contrary in this Agreement, in the event of a dispute between you and us, each party will be limited to the recovery of any actual damages sustained by it.”

E. Most of Claimants’ Allegations of Fraudulent Inducement Are Supported by the Evidence

43. RX2Live, Mr. Olsen, Mr. Foster, Mr. Baldri, Mr. Scott, and Mr. Hazelgren made directly or were responsible for making numerous misstatements of material fact, and concealing material information from the Claimants.

44. Mr. Olsen stated that RX2Live was in a ½ trillion dollar industry when RX2Live and its franchisees had not materially entered the healthcare industry.

45. RX2 Live, Mr. Olsen, Mr. Scott and Mr. Hazelgren were responsible for the false and material representation that Mr. Harrington was on the Board of Directors of RX2Live when he was not and when, in fact, RX2Live did not have a functioning Board of Directors. There is a material difference in representing that someone is on the Board of Directors of a company as opposed to representing that a person is merely an advisor or paid endorser.

46. RX2Live, Mr. Olsen, Mr. Scott and Mr. Hazelgren were responsible for the false and material representation that the franchise system had signed up 750 practices to participate in the franchised programs and that those practices constituted 45,000 patients.

47. RX2Live, Mr. Olsen, Mr. Scott and Mr. Hazelgren were responsible for the false and material representation that the franchise system was turnkey when it was far from it and when its only marginally successful franchisee, the Campbells, while making some revenues, were barely profitable. In fact, Ms. Campbell testified that she and her husband were inventing procedures and best practices on the fly with no help from the franchisor.

48. There were also numerous other issues that demonstrate that the franchise system was not turnkey including the inability of franchisees to obtain E&O insurance, constantly shifting LinkedIn marketing protocols, the propriety of sales affiliate and franchise commissions, obsolete and outdated materials on the franchise system's portal and improper CPT survey codes. In addition, RX2Live's behavior survey screenings were disjointed and non-operable (billing and other defects & illegal aspects) and the billing codes were wrong. In fact, Mr. Hazelgren had taught RX2Live the wrong billing codes at training which resulted in RX2Live's system being inoperable. RX2Live had no operations handbook, which Scott admitted to in Exhibit 57, stating that one would be created in the future. RX2Live's programs

for obtaining revenue for franchisees and sales associates were of questionable legality and thus, not turnkey or built, supplied, or installed, complete and ready to operate.

49. RX2Live, Mr. Olsen, Mr. Scott and Mr. Hazelgren were responsible for concealing the material fact that Mr. Olsen's previous company, Franchise Growth Systems, took a multi-million dollar judgment in Nevada. This Nevada judgment from 2016 should have been disclosed in the FDD but was not.

50. RX2Live, Mr. Olsen, Mr. Scott and Mr. Hazelgren were responsible for concealing the material fact that Mr. Olsen and Franchise Growth Systems were cited in 2015 by the Department of Business Oversight for the state of California for offering and selling unregistered franchises, making untrue statements of material fact to franchisees and making untrue statements to the Commissioner with the intent to impede, obstruct and influence. Mr. Olsen and Franchise Growth Systems were both fined and issued a cease and desist letter. Given Mr. Olsen's deep day to day involvement in RX2Live, the California Citation and Cease and Desist Order should have been disclosed in the FDD.

51. RX2Live, Mr. Olsen, Mr. Scott and Mr. Hazelgren were responsible for concealing that Mr. Hazelgren had become Chief Executive Officer. Mr. Hazelgren becoming Chief Executive Officer was material because he had a conviction for securities fraud.

52. RX2Live, Mr. Olsen, Mr. Scott and Mr. Hazelgren were responsible for recklessly representing the false material fact that franchisee overhead would be negligible because the franchisee's sales force could be comprised of 1099 employees, including physicians, when applicable government regulations required that Medicare or Medicaid monies earned as a result of services offered by affiliated physicians be paid only to W2 employees.

53. Indeed, Claimant's Exhibit 27, issued long after the execution of the Franchise Agreements, concedes that "Medicare views paying sales representatives based on value or volume of referrals as a violation of the Anti-Kickback Statute unless they are W2 employees and disingenuously

reclassifies what was previously referred to as commissions to franchisees as “dividends.” In fact, whether franchisees could be paid by RX2Live was questionable causing RX2Live to reclassify the franchises payments made to as dividends.

54. RX2 Live, Mr. Olsen, Mr. Scott and Mr. Hazelgren were responsible for the materially false Earning Claims made.

55. Mr. Olsen, Mr. Scott, Mr. Hazelgren, Mr. Foster and Mr. Baldri were responsible for the materially false representation that the franchise system had developed 17 profit centers including medication dispensing services, allergy therapy services, DNA testing PGX lab service testing, weight loss products and services, corporate wellness programs and senior services energy drip and micro-current. In reality, there were less than a handful of programs that RX2Live had marginally developed.

56. Mr. Foster and Mr. Baldri falsely represented the material fact to Mr. Drury and Ms. Dean that the services offered by franchisees were in high demand among physicians when they were not and, in particular, when their own franchise could not make any meaningful sales to physicians. Indeed, Mr. Foster and Mr. Baldri have abandoned their franchise.

57. Mr. Baldri also falsely represented to Mr. Drury and Ms. Dean that material fact that exclusive features of being an RX2Live franchisee would be “immediate income generation” and low risk.

58. Mr. Foster and Mr. Baldri falsely and/or recklessly represented to Mr. Drury and Ms. Dean the material fact that franchisees would be able to legally market and sell PGX and other lab testing when, in fact, Consultative Genomix (the lab who performed the PGX and other testing) did not authorize RX2Live to perform tests through it at all. Indeed, Consultative Genomix issued RX2Live a cease and desist (Claimant’s “Exhibit 17”).

59. Mr. Harrington inaccurately represented in the publicly accessible June 15, 2018 (recorded) advertising video that he was on RX2Live’s Advisory Board/video marked Claimant’s “Exhibit 8,” said video which Claimant’s agents viewed and reasonably relied on and which induced RX2Naples to

purchase two franchise units. There is no dispute that Harrington's representation was false because Harrington testified at the final hearing that he has never been on RX2Live's Advisory Board, at any time. In fact, Harrington testified that RX2Live never even formed an advisory board.

60. However, whether Mr. Harrington was on something formally called an advisory board or was merely an advisor of RX2Live, which he certainly was, is not a material representation of fact.

61. Similarly, Mr. Harrington's statement on Facebook that he was an "executive" of RX2Live is too vague to be a material misrepresentation of fact.

62. There is no evidence that Mr. Blood made any material misrepresentation or concealed any material fact with regard to the Respondents nor did he violate any statute. Mr. Blood merely repeated what he believed to be true and what Mr. Olsen, Mr. Scott, and Mr. Hazelgren told him to represent regarding Mr. Harrington.

63. Although RX2Live offered to assist Claimants in selling their franchises, the Claimants were rightly concerned about the ethics and the liability of participating in the sale of franchises to a third party in a system that lacked viability for the franchisee.

F. RX2Live Wrongfully Terminates the Franchises

64. In June, 2019, Ms. Dean contacted Scott Bennett because RX2Live represented that he was an agent of Consultative Genomix re lab re RX2Live's lab program. Ms. Dean had an appointment with a physician who had lab network billing questions, and that is why Ms. Dean contacted Bennett, to get answers to the questions. RX2Live had expressly authorized franchisees to contact Mr. Bennett for any lab questions per RX2Live's recorded May webinar marked Claimant's "Exhibit 35." When Ms. Dean attempted to contact Mr. Bennett at Consultative Genomix (CG), she was told by a representative of CG that no Scott Bennett worked for them.

65. Shortly thereafter, Dan O'Neill of CG called Ms. Dean back and advised her that CG did not know who RX2Live was, that RX2Live did not have the legal right to market and sell CG's lab

products, and that RX2Live's actions violated the law, including the AKS and EKRA. In particular, O'Neil and CG objected to RX2Live and RX2Naples' marketing and selling CG's products without authority.

66. Later, CG sent RX2Live a "Cease and Desist Letter" (Claimant's "Exhibit 17") which stated "there is neither a relationship between the two today nor has there ever been that would have allowed such an action." At no time had RX2Live ever been a lab partner with Consultative Genomix. RX2Live had improperly and unlawfully puts its logo on Consultative Genomix's advertising materials per "Exhibit 20," pretending to be lab partners with Consultative Genomix.

67. Ms. Dean, however, had obtained the RX2Live-Consultative Genomix lab advertising materials: from RX2Live's franchisee LMS portal. *See* Exhibit 86 (showing unlawful materials posted on RX2Live LMS franchise portal for franchisees to download and use).

68. Nevertheless, as a result of Ms. Dean's efforts to ascertain the facts regarding the falsely represented relationship between RX2Live and CG, Mr. Hazelgren sent Ms. Dean and Mr. Drury an email on June 20, 2019 in which he threatened the Claimants' franchises. In particular, Mr. Hazelgren claimed that Ms. Dean had circumvented the RX2Live system and that such action would lead to RX2Live taking "appropriate action after speaking with counsel." Further, Mr. Hazelgren put Ms. Dean and Mr. Drury "on notice not to speak with any franchisee or sales affiliate of RX2Live, any vendor partner, nor any potential client of RX2Live," and concluded by stating "We will resolve this with you soon."

69. Ms. Dean responded to Mr. Hazelgren on June 20, 2019 via e-mail with a reasonable explanation of her actions.

70. In addition, on June 21, 2019, Ms. Dean and Mr. Drury sent Mr. Hazelgren a letter, the stated purpose of which was to enter into settlement negotiations "prior to civil action is filed [sic]." The letter states that "RX2Naples, LLC hereby gives notice of demand for rescission. . . ," and further warns that if settlement negotiations don't come to a "prompt resolution," RX2Naples would be filing a civil

action in five days. This letter was not a termination of the franchises by the Claimants but rather as stated, a demand for rescission that predated the filing of this arbitration.

71. Nevertheless, without providing the notice required by the Franchise Agreements, RX2Live cut the Claimants off from the franchise system including deleting RX2 Naples' RX2Live corporate email account (which also gave access to RX2Live corporate calendar events and meetings), and otherwise effectively terminated RX2Naples franchises without the required notice and without specifying any of the reasons required in the Franchise Agreements for immediate termination or providing a cure period for those defaults of the Franchise Agreements that allowed for a cure upon written notice.

72. The fact that Mr. Hazelgren in September 2019 wrote to CG that "Leslie Dean is no longer affiliated with RX2Live" verifies that RX2Live deemed the franchises terminated.

II. CONCLUSIONS OF LAW

A. RX2Live breached the Franchise Agreements

1. Under Utah law, to make out a prima facie claim for breach of contract, the claimant must show, "(1) a contract, (2) performance by the party seeking recovery, (3) breach of the contract by the other party, and (4) damages." *America West Bank Members, L.C. v. State*, 342 P.3d 224, 230-31 (Utah 2014).

2. The Franchise Agreements were contracts and RX2Live has not asserted that RX2Naples did not perform under the Franchise Agreements.

3. Further a demand for rescission does not constitute abandonment of the Franchise Agreements.

4. RX2Live breached the Franchise Agreements by failing to follow Section 15 of the Franchise Agreements regarding franchise termination when it terminated RX2Naples franchises. Such termination is evidenced by: 1) cutting off RX2Naples corporate email account which was needed in order

to access RX2Live meetings and calendar events; 2) CEO Hazelgren writing on September 18, 2019 per Claimant's "Exhibit 85" that Leslie Dean was no longer affiliated with RX2Live; and 3) RX2Live cutting off Claimant's franchise account online access (LMS), RX2Live's LMS franchisee portal in February, 2020.

5. While RX2Naples alleges other breaches of contract, it is unnecessary for the Arbitrator to reach those additional claims of breach of contract as the damages for breach of contract against RX2Live for the wrongful termination of the Franchise Agreements are identical as the damages for any of the other breaches alleged.

6. Accordingly, RX2Naples is awarded against RX2Live \$78,401.73 representing the amount paid for the franchises and the arbitrator allowed expenses incurred in operating the franchise through June 21, 2019.

B. Unjust Enrichment and Breach of the Implied Covenant of Good Faith and Fair Dealing

7. As there is an express contract between RX2Live and RX2Naples, there is no basis for RX2Naples to recover based on unjust enrichment. *See United States Fid. & Guar. Co. v. United States Sports Specialty Ass'n*, 270 P.3d 464, 468 (Utah 2012) (a claim of unjust enrichment cannot arise where there is an express contract governing the subject matter of a dispute).

8. Even if RX2Naples were to recover from RX2Live for unjust enrichment, the damages would be the same as for recovery by RX2Naples for breach of contract.

9. Similarly, there are no different damages available to RX2Naples for any breach of the implied covenant of good faith and fair dealing by RX2Live as there would be for breach of contract. As breach of contract damages have been awarded, it is unnecessary to determine whether RX2Live breached the implied covenant of good faith and fair dealing.

10. RX2Naples' claims for unjust enrichment and breach of the implied covenant of good faith and fair dealing are, therefore, dismissed with prejudice.

C. Fraud – RX2Live, Olsen, Foster, Scott, Hazelgren and Baldri

11. To prove fraudulent misrepresentation, one must establish nine elements: (1) that a representation was made; (2) concerning a presently existing material fact; (3) which was false; (4) which the representor either: (a) knew to be false; or (b) made recklessly, knowing that there was insufficient knowledge upon which to base such a representation; (5) for the purpose of inducing the other party to act upon it; and (6) that the other party, acting reasonably and in ignorance of its falsity; (7) did in fact rely upon it; (8) and was thereby induced to act; (9) to that party's injury and damage. *State v. Apotex Corp.*, 282 P.3d 66 (Utah 2012) and *Cardon v. Jean Brown Research*, 327 P.3d 22 (Utah Ct. App. 2014).

12. Moreover, each element must be established by clear and convincing evidence. *Id.*; *Cheever v. Schramm*, Utah, 577 P.2d 951, 954 (1978).

13. RX2Live, Mr. Olsen, Mr. Foster, Mr. Scott, Mr. Hazelgren and Mr. Baldri clearly and convincingly made the false representations, concealed material facts and made the false Earnings Claims, all of which are set forth in paragraphs 43 through 58 in the Findings of Fact.

14. The integration clause of the Franchise Agreements does not bar the misrepresentations and concealments from forming the foundation of the fraud and concealment claims as integration clauses must be specific in Utah to function in the manner that RX2Live argues. A general disclaimer is not effective to disclaim misrepresentations of material fact not specifically disclaimed in the integration clause. *See Interwest Constr. v. Palmer*, 923 P.2d 1350, 1356 (Utah 1996) (while parties to a contract may generally exempt themselves from negligence liability, the language they use must "clearly and unequivocally" express an intent to limit tort liability in the contract itself). Without such an expression of intent, the presumption is against any such intention and it is not achieved by inference or implication from general language. No specific integration clause disclaimer exists in the Franchise Agreements such that a general disclaimer is not effective.

15. Except for the representation about RX2Live being the next McDonalds, the misrepresentations and Earning Claims clearly and convincingly are not puffery but were a calculated effort to deceive the Claimants into believing, without any factual basis, that the RX2Live franchise concept was, for example, materially part of a ½ trillion dollar industry, turnkey, in high demand by physicians (750 practices signed up covering 45,000 patients), would allow RX2Naples to make some decent money without the risk of paid employee overhead and would result in immediate income generation. *See Kinnear v. Prows*, 16 P.2d 1094, 1096 (Utah 1932) (statements that are not puffery pertain to an objective and quantifiable fact as opposed to non-testable statements such as mere expressions of opinion).

16. Indeed, the fact that there were misrepresentations and concealments regarding not providing earnings claims and, in the FDD, the failure to properly disclose Mr. Olsen's checkered litigation past as well as Mr. Hazelgren as the CEO obviates any claim that the misrepresentations were puffery.

17. Nor does the disclaimer in Item 19 of the FDD give RX2Live a safe harbor to make earnings claims. This is because 16 C.F.R. Section 436.9(c) holds that when a franchisor makes performance representations but disclaims them in Item 19 such conduct is deemed false, misleading, and deceptive.

18. RX2Live, Mr. Olsen, Mr. Foster, Mr. Scott, Mr. Hazelgren and Mr. Baldri clearly and convincingly knew such false representations and concealments of material fact were false and/or were clearly and convincingly reckless in making such false representations and concealments of material fact.

19. RX2Live, Mr. Olsen, Mr. Foster, Mr. Scott, Mr. Hazelgren and Mr. Baldri clearly and convincingly made such false representations and concealments of material fact for the purpose of inducing RX2Naples into executing the Franchise Agreements.

20. The Claimants clearly and convincingly acted reasonably and in ignorance of the falsity of the representations and concealments.

21. The Claimants did in fact clearly and convincingly rely upon the false representations and concealments

22. The Claimants clearly and convincingly were thereby induced to act.

23. The Claimants were clearly and convincingly injured and damaged in the amount of \$78,401.73, the same \$78,401.73 awarded for breach of contract.

24. As the Claimants can only recover once for the same harm against RX2Live, no additional damages are awarded against RX2Live.

25. However, Mr. Olsen, Mr. Foster, Mr. Scott, Mr. Hazelgren and Mr. Baldri are jointly and severally liable with RX2Live to RX2Naples for the \$78,401.73 awarded based on the finding of fraud and concealment liability.

D. Utah Code Ann. §13-11-1, et. seq. (“Little FTC Act”) against RX2Live

26. RX2Naples, Ms. Dean and Mr. Drury are consumers under the Little FTC Act in that Utah Code Ann. §13-11-3 provides that one is a consumer if involved in a “consumer transaction.” In turn, a consumer transaction includes per subsection (2)(a)(ii) a business opportunity that requires (a) expenditure of money or property by the person prescribed in Subsection (2)(a); and (b) the person described in Subsection (2)(a) performs personal services on a continuing basis in which the person had not been previously engaged.

27. Additionally, RX2Live is a supplier under Utah’s Little FTC Act. *See* Utah Code Ann. §13-11-3(6) (“Supplier” means a seller, lessor, assignor, offeror, broker, or other person who regularly solicits, engages in, or enforces consumer transactions, whether or not he deals directly with the consumer”).

28. Utah Code Ann. §13-11-4(1) provides that “[a] deceptive act or practice by a supplier in connection with a consumer transaction violates this chapter whether it occurs before, during, or after the transaction.”

29. The Little FTC Act mirrors the FTC Franchise Disclosure Rule as expressly set forth in Utah Code Ann. §13-11-2 which states that the purpose is “...(4) to make state regulation of consumer sales practices not inconsistent with the policies of the Federal Trade Commission Act relating to consumer protection.”

30. Additionally, per Utah Code Ann. §13-11-3(2), said Act is to be construed liberally to promote the following policies including “(4) to make state regulation of consumer sales practices not inconsistent with the policies of the Federal Trade Commission Act relating to consumer protection.” Also, “(1) to simplify, clarify, and modernize the law governing consumer sales practices; (2) to protect consumers from suppliers who commit deceptive and unconscionable sales practices; (3) to encourage the development of fair consumer sales practices; and (5) to make uniform the law, including the administrative rules, with respect to the subject of this act among those states which enact similar laws.”

31. RX2Live violated the Little FTC Act by engaging in deceptive acts and practices under Section 13-11-4 by representing to Claimant’s agents that RX2Live was lab partners with Consultative Genomix, when in-fact the same was false and RX2Live and their agents knew of the falsity and acted in reckless disregard of the truth of said representation. As evidenced by the “Cease and Desist” Letter to RX2Live from Consultative Genomix marked Claimant’s “Exhibit 17,” RX2Live did not have the sponsorship, approval, performance characteristics, uses, or benefits of being a partner with Consultative Genomix. Deceptively, however, RX2Live falsely placed its logo on the advertising materials of Consultative Genomix without CG’s knowledge, permission, or consent and falsely portrayed being partners with CG per Claimant’s “Exhibit 20” and otherwise represented to the Claimants that RX2Live was lab partners with Consultative Genomix.

32. Additionally, RX2Live failed to comply with Item 2 of the Franchise Rule, which Utah's Little FTC Act mirrors as set forth hereinabove is not inconsistent with the Federal Trade Commission Act.

33. RX2Live failed to include Dan Olsen's name as a person having business management authority under Item 2 of the 2018 FDD (Claimant's "Exhibit 14") as required by Item 2, "Business Experience," Section 436.5(b) of the Franchise Rule. Under said regulation, franchisors are required to disclose the business experience of their directors, trustees, general partners, principal officers, and any other individuals who will have management responsibility relating to the sale or operations of the franchises. Each person's positions and employers during the past five years must be disclosed, including the starting date, ending date, and locations of each employment position. Under the FTC Rule, individuals who do not necessarily possess the title of "officers" or "director" but who will, in practice, exercise management responsibility relating to the operation of franchises must be disclosed. (FTC Compliance Guide, page 33). Also, see "The FTC Franchise Rule," 3rd edition, Susan Gruenberg, 2019, American Bar Association, page 64).

34. RX2Live also violated Item 19 of the Franchise Rule, actionable under the Little FTC Act. Under Item 19 of RX2Live's 2018 FDD (Claimant's "Exhibit 14"/see also Claimant's "Exhibit 11"), RX2Live stated that no performance representations were being made. However, RX2Live, via its agents, delivered to Claimant, among other things, a pro forma with performance representations that had no factual basis. As a result and as a matter of law, the representation is deemed false, misleading, and deceptive. 16 C.F.R. §436.9(c).

35. Pursuant to Utah Code Ann. §13-11-19(2) RX2Naples is awarded its actual damages of \$78,401.73 against RX2Live, the same amounts awarded for breach of contract and fraud.

E. Punitive Damages

36. Section 17:10 of the Franchise Agreement disclaims punitive damages.

37. There has been no argument as to why the disclaimer regarding punitive damages is unenforceable.

38. Accordingly, no punitive damages are awarded RX2Naples against any of the Respondents.

F. RX2Live's Counterclaims

39. At the close of the hearing, RX2Live, through counsel, indicated it would not be presenting evidence on its counterclaims.

40. RX2Naples did not consent to the dismissal of the counterclaims and has persuasively argued why the Counterclaims are not viable.

41. Accordingly, RX2Live's counterclaims are dismissed with prejudice.

G. Attorney Fees and Costs

42. "In *Smith v. Batchelor*, 832 P.2d 467, 473 (Utah 1992), we recognized the 'general rule that pro se litigants should not recover attorney fees for successful litigation.'" See *Jones, Waldo, Holbrook & McDonough v. Dawson*, 923 P.2d 1366, 1374-75 (1996) (citing policy reasons for not awarding attorney fees to law firm for time incurred in its pro se representation of itself collecting fees owed by a former client for an underlying divorce action).

43. Ms. Drury represented RX2Naples, her husband and herself pro se. There is no evidence of any engagement letter or any payments made by RX2Naples or Mr. Drury to Ms. Drury.

44. Accordingly, Ms. Drury may not recover as attorney fees for any of her time expended for the mediation or the arbitration.

45. RX2Naples, however, is awarded its costs in the amount of \$1817.35 independent of any amounts paid to the American Arbitration Association.

46. Additionally, the administrative fees and expenses of the American Arbitration Association total \$19,475.00 and compensation and expenses of the arbitrator total \$43,439.28. According to

information obtained from the American Arbitration Association \$25,019.66 of those AAA costs were paid by RX2Naples. RX2Naples is thus awarded an additional \$25,019.66 in costs.

III. FINAL AWARD

47. All claims against Garrett Blood and Kevin Harrington are denied and dismissed with prejudice.

48. RX2Live, Inc., RX2Live, LLC, Dan Olsen, Eric Foster, Richard Scott, Brian Hazelgren and Dallas Baldri are jointly and severally liable to RX2Naples in the amount of \$78,401.73 for breach of contract, violation of the Little FTC Act and fraud.

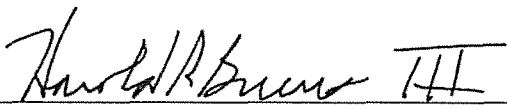
49. RX2Naples is also awarded its costs of \$1817.35 to be paid by RX2Live, Inc. RX2Live, LLC, Dan Olsen, Eric Foster, Richard Scott, Brian Hazelgren and Dallas Baldri, jointly and severally.

50. RX2Live, Inc., RX2Live, LLC, Dan Olsen, Eric Foster, Richard Scott, Brian Hazelgren and Dallas Baldri are jointly and severally obligated to pay RX2Naples, LLC \$25,019.66.

51. The total amount of the award is, accordingly, \$105,238.74, to be paid jointly and severally by RX2Live, Inc., RX2Live, LLC, Dan Olsen, Eric Foster, Richard Scott, Brian Hazelgren and Dallas Baldri.

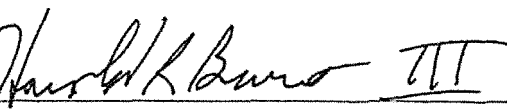
52. This Award is in full settlement of all claims and counterclaims submitted to this Arbitration. All claims not expressly granted herein are hereby denied.

September 22, 2021
Date


Harold R. Bruno III

I, Harold R. Bruno III, do hereby affirm upon my oath as Arbitrator that I am the individual described in and who executed this instrument, which is my Award.

September 22, 2021
Date


Harold R. Bruno III