

# **EXHIBIT D**

## CARTER LEDYARD &amp; MILBURN LLP

*Counselors at Law**2 Wall Street  
New York, NY 10005-2072**Tel (212) 732-3200  
Fax (212) 732-3232**570 Lexington Avenue  
New York, NY 10022-6856  
(212) 371-2720*Stephen M. Plotnick  
PartnerDirect Dial: 212-238-8772  
E-mail: [plotnick@clm.com](mailto:plotnick@clm.com)

January 31, 2017

Via E-Mail and Hand DeliveryJames M. Felix, Esq.  
Kilhenny & Felix  
350 West 31<sup>st</sup> Street, Suite 401  
New York, NY 10001

Re: ENS Health LLC/Robert Shapiro

Dear Jim:

As you know, in connection with the matter entitled *Robert Shapiro v. Gabriel Ettenson, et al.*, Index No. 653571/14, the First Department has now affirmed unanimously the Order and Judgment of the Supreme Court, New York County, entered on September 2, 2015 (the "Order and Judgment"), adjudging and declaring, among other things, that:

Gabriel Ettenson and David Newman were authorized to adopt the Limited Liability Company Operating Agreement of ENS Health, LLC, dated December 13, 2013, that [the] operating agreement was duly and properly adopted in accordance with New York's Limited Liability Company Law, and its provisions are valid and binding upon ENS Health, LLC and its members: Robert Shapiro, Gabriel Ettenson, and David Newman.

Order and Judgment at 13. We write pursuant to Article XIII of the Limited Liability Company Operating Agreement of ENS Health, LLC, dated December 13, 2013 (the "Operating Agreement") to advise that a Majority of the Members, comprised of Gabriel Ettenson and David Newman, has voted to expel Robert Shapiro from ENS Health, LLC ("ENS" or the "Company") pursuant to Sections 13.03(a)(ii) and (iv) of the Operating Agreement.

In particular, in the reasonable determination of Messrs. Ettenson and Newman, Mr. Shapiro has failed or refused to perform his duties and responsibilities as a Member or Manager, and has engaged in unauthorized and other bad faith conduct that has had (and is continuing to have) a material adverse impact on the business or affairs of the Company. Without assuming any obligation to do so, we offer the following as just a few of the many examples of Mr. Shapiro's conduct, actions, and inactions that have led to this determination:

Mr. James M. Felix  
January 31, 2017

-2-

- Despite being responsible for marketing and business development, Mr. Shapiro has failed to engage in any meaningful marketing or business development efforts – or, indeed, any other activities – for the Company. Since the formation of ENS, Mr. Shapiro has repeatedly disappeared from the business, remained out of contact and unreachable, and ignored his duties and responsibilities for long periods without authorization, justification, or legitimate excuse. In fact, in several instances, it was apparent to the other Members that, during these periods, Mr. Shapiro was dedicating his time to other businesses he owns, at the expense and to the exclusion of ENS, and in disregard of his duties and responsibilities to the Company.
- Moreover, far from actually developing (or even attempting to develop) any business for the Company, ENS has actually *lost out* on business opportunities as a result of Mr. Shapiro's derelictions of his duties – including, by way of example, the opportunity to participate in a Costco roadshow. Mr. Shapiro was responsible for arranging for ENS's participation in that roadshow, but because of Mr. Shapiro's failures and conscious neglect, ENS lost out on the opportunity and one of the Company's competitors ended up participating in the roadshow instead.
- Mr. Shapiro's absence from, and unwillingness to participate in, ENS has translated into a palpable lack of even basic knowledge or understanding of the Company's business or its products, and he has at this point become nothing more than a dangerous liability. In virtually every instance in which Mr. Shapiro has been requested to undertake any responsibilities on behalf of ENS, he has proven to be totally unwilling and/or incapable of being an effective (or even competent) representative of the Company. He has obstructed the Company's ability to carry out its business and affairs, and his conduct has threatened the viability of ENS.
- For example, Mr. Shapiro was responsible for preparing the business plan required pursuant to the Company's exclusive distributorship agreement with HyperVibe Pty. Ltd. ("HyperVibe"). His intentional, protracted disregard of that responsibility placed that agreement, which is easily the Company's most valuable asset, in jeopardy. It was only when ENS was on the precipice of having its agreement with HyperVibe terminated that Mr. Shapiro finally took any action. Even then, Mr. Shapiro was totally unwilling and/or incapable of executing on his responsibility to prepare the business plan. He hired a third-party to prepare the plan for him – but because that third party had the same level of knowledge as Mr. Shapiro about the Company (none), it was ultimately Mr. Newman who, in addition to his other responsibilities, had to step in and work with that third-party to prepare and finalize the business plan. If Mr. Newman had not done so, ENS could easily have lost its distributorship agreement with HyperVibe, and the Company would have been ruined.

Mr. James M. Felix  
January 31, 2017

-3-

These are, of course, just a few of the many examples of Mr. Shapiro's failures and refusals to perform his duties and responsibilities, and his unauthorized and other bad faith conduct, and are being provided without prejudice to my clients' rights to raise additional and further examples should they need or determine that it is appropriate to do so. Indeed, there are countless other examples that are part and parcel of an overall pattern of conduct by Mr. Shapiro that has had, and continues to have, a negative and damaging impact on the Company, its business, and its affairs, including (without limitation) his unauthorized attempts to give away the Company's merchandise without any business purpose, and his refusals to engage with the other Members in important Company actions, such as the adoption of the Company's Operating Agreement. And it has now become apparent in recent months that Mr. Shapiro has in fact officially abandoned the Company altogether. In the early days of ENS, Mr. Shapiro at least attended some of the meetings of the Members from time to time and picked his head up sporadically to feign interest and participation in the business. But he has now abandoned any pretense that he is involved or wishes to be involved in ENS, having failed to attend any meetings, engage with any of the other Members, or do anything for the Company for many months.

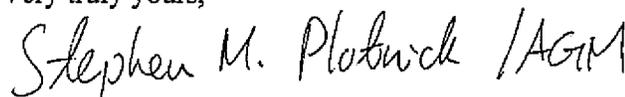
Although, pursuant to Section 13.03(a)(ii), Mr. Shapiro does technically have the right to cure an expulsion for his failure and refusal to perform his duties and responsibilities, there is no such right to cure with respect to the additional grounds for his expulsion, pursuant to Section 13.03(a)(iv), for having engaged in unauthorized and other bad faith conduct. Accordingly, pursuant to Section 13.03(b)(ii), his expulsion is deemed effective immediately.

In accordance with Section 13.03(c), the Company is prepared to completely redeem Mr. Shapiro's former membership interest in ENS by paying him an amount equal to the Fair Value Amount. The parties are required to endeavor in good faith to reach an agreement upon the Expulsion Redemption Terms by not later than thirty days of the date of this letter, and in that regard I have been authorized to offer Mr. Shapiro \$76,900, payable within sixty days of confirmation of Mr. Shapiro's agreement to this Fair Value Amount, for his former membership interest in ENS.

Finally, I note that, in light of the notice provisions of Section 15.01 of the Operating Agreement, we are simultaneously transmitting a copy of this letter by personal delivery to Mr. Shapiro at the address set forth on Schedule A of the Operating Agreement, 610 West 42<sup>nd</sup> Street, Apt. 28A, New York, NY 10036. We are also transmitting a courtesy copy to what we understand to be his current address in Boynton Beach, Florida.

Capitalized terms used but not specifically defined herein have the meanings ascribed to them in the Operating Agreement.

Very truly yours,

Handwritten signature of Stephen M. Plotnick in black ink, with the initials 'AGM' written to the right of the signature.

Stephen M. Plotnick

Mr. James M. Felix  
January 31, 2017

-4-

cc: Mr. Robert Shapiro  
610 West 42<sup>nd</sup> Street  
Apt. 28A  
New York, NY 10036  
**(By Hand Delivery)**

Mr. Robert Shapiro  
11538 Briarwood Circle  
Apt. 2  
Boynton Beach, FL 33437  
**(Via Federal Express)**