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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF WYOMING

HEALTH ADVANCE, INC.,	)	
	)	
Plaintiff,	)	
	)	
v.	)	Civil Number: 17-CV-132-SWS
	)	
JORDAN STARKMAN,	)	
	)	
Defendant.	)	

Defendant Jordan Starkman's Motion to Dissolve Temporary Restraining Order

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Pursuant to Rule 65(b)(4) of the Federal Rules of Civil Procedure, Defendant Jordan Starkman, by and through his counsel, hereby respectfully moves the Court to dissolve the August 7, 2017 Order Granting Temporary Restraining Order, ECF No. 6, *as amended*, and to deny Plaintiff's request for a preliminary injunction as follows:

I. Preliminary Statement

A hostile takeover of a company is typically when one company attempts to acquire another company by going directly at the target company's shareholders or

fighting to replace the management of the target company to get the acquisition approved. This case involves a completely different kind of attempted hostile takeover. Here, Micro Medtech entered into an agreement with Health Advance, Inc. in which it received a certain amount of shares. The amount of shares Micro Medtech received never made it a majority shareholder. However, Micro Medtech and its agents ignore this fact, and, while a minority shareholder, have unilaterally attempted to remove Health Advance, Inc.'s founder Jordan Starkman from the Company and have even attempted to void at least one agreement which closed prior to Micro Medtech even becoming a shareholder.

Such conduct by a minority shareholder is disconcerting enough; however, Micro Medtech and its agents have made further false accusations and fraudulent filings resulting in a temporary restraining order being placed on Jordan Starkman, the President and founder of the Company. And, this temporary restraining order has granted a minority shareholder complete access to and apparent control of Health Advance, Inc. despite never having authority to do so. The Court should not allow the judicial system to be used by a minority shareholder to improperly and illegally seize control of a publically traded company. Swift action against Micro Medtech and its agents is needed to not only protect Health Advance, Inc. and Jordan Starkman but also to protect the public. The first step in the necessary swift action is this Court dissolving the August 7, 2017 Order Granting Temporary Restraining Order, ECF No. 6, *as amended*, and denying Plaintiff's request for a preliminary injunction.

II. Relevant Background

Health Advance, Inc. is a Wyoming corporation, which was incorporated on April 14, 2014 by Defendant Jordan Starkman. (Ex. C). Jordan Starkman incorporated Health Advance as a for-profit, publically traded company. (Ex. A). The Company operates as an online retailer of home medical products with operations in Canada and the United States. (Ex. A). Pursuant to its Articles of Incorporation, Health Advance has 500,000,000 authorized common shares. (Ex. C).

Jordan Starkman, as incorporator, was the sole director on the Board of Directors at the time of its incorporation, and later served and continues to serve as President and Director of the Company. (Ex. A). In March 2011, Domenico Pascazi was appointed as a director; however, he later resigned his position in February 2013. (Ex. A).

As of January 31, 2016, the Company had 24,520,000 shares of common stock outstanding. (Ex. D). On October 13, 2016, Health Advance entered into an agreement with Hantian Labs Limited, a private UK corporation (hereinafter referred to as "Hantian" or "Hantian Labs") whereby Health Advance agreed to acquire 100% interest in Hantian. (Ex. E). On October 14, 2016, the Company issued a press release in which it wrote:

> . . . As a result of the acquisition, Health Advance will also control 99% of JT Hantian LLC representing the revenue arm of Hantian. Pursuant to the Definitive Agreement, on closing Health Advance will use 1.5 common shares of the Company for each share of Hantian Labs outstanding at the time of closing, representing the purchase price of Hantian. Accordingly, the Company's issued and outstanding number of common shares will increase from 24,520,000 to 39,520,000 shares. In addition, Hantian shall undertake to raise a minimum financing of $250,000 for marketing of Hantian's product line prior to the closing of the transaction.

> On closing the Company will appoint Mr. Christian Diesveld as a director of Health Advance. Mr. Diesveld is currently the Managing Director of Hantian. . . .

(Ex. F).

Prior to closing the deal to acquire Hantian, the two parties executed and agreed to various amendments to the original agreement. (Ex. G). One of those amendments was waiving the requirement that Hantian undertake to raise a minimum financing of $250,000 for marketing of Hantian's product line. (Ex. G). Health Advance issued a press release on January 16, 2017, in which it announced the close of the Hantian deal including the waiver of the $250,000 minimum financing requirement. (Ex. H).

On January 26, 2017, Health Advance had Issuer Direct, a third-party filing agent, file an 8-K with the SEC. (Ex. I). However, Issuer Direct made an error in this filing. (Ex. A). Issuer Direct has acknowledged its error stating that the "error happened as there was confusion with the instructions provided to have parts of the document pulled from the October 19, 2016 8-K filing . . . and the entire October 19 2016 8-K document was pulled over instead and was then filed on January 26, 2017." (Ex. J). "Upon realization of this error, the Health Advance Inc. filed an amended form 8-K with the SEC on April 24, 2017 . . . with another filing agent to file the documents that were intended to be filed on January 26, 2017." *Id.* In a letter to Mr. Starkman, Issuer Direct writes, "[t]he purpose of this letter is to show that Health Advance Inc. did intend to file the 8-K showing that Hatian (sic) Labs Closing date of January 16, 2017. That 8-K was intended to be filed on January 26, 2017." *Id.*

On March 1, 2017, Health Advance entered into an employment agreement with

Jordan Starkman. (Ex. K). On the same date, it entered into an employment agreement with Christian Diesveld. (Ex. L). Pursuant to these employment agreements, both Mr. Starkman and Mr. Diesveld were given the option to elect to receive a one-time payment of shares of the Company in lieu of salary over the next three years. (Exs. K & L). Mr. Starkman and Mr. Diesveld both elected to receive the shares in lieu of compensation. (Exs. A & B). Mr. Diesveld was issued his shares from this employment agreement on May 23, 2017, and Mr. Starkman was issued his shares from this employment agreement on June 12, 2017. (Exs. A & B).

As of March 16, 2017, Health Advance had a total of 50,320,000 shares issued. (Ex. M). On March ???, 2017, Health Advance closed a deal with Micro Medtech, Ltd. in which Micro Medtech was to be issued 40,000,000 shares of Health Advance stock. (Exs. A & D1). These shares were issued to Micro Medtech on March 23, 2017. (Ex. A). Following the issuance of the shares to Micro Medtech, it would not have been and was not the majority stock owner of Health Advance as there was approximately 95,000,000 shares issued at that time.

On or about April 18, 2017, a conference call was held between members of Micro Medtech and Jordan Starkman. (Ex. A). This was not a formal meeting of the shareholders or of Health Advance. *Id.* Instead, the conference call was to discuss Health Advance business in general. *Id.* Members of Micro Medtech voiced their position that they desired Mr. Starkman to file a 10-Q with the SEC; however, Mr. Starkman indicated he could not file the requested 10-Q until the audit of Hantian Labs' books was completed. *Id.* He also informed members of Micro Medtech that filing a 10-

Q with the unaudited books of Hantian Labs would be improper. *Id.*

As of April 19, 2017, Health Advance had issued 113,797,500 shares of stock in the Company of which Micro Medtech had only 40,000,000 shares. (Ex. N). Despite being a minority shareholder by itself, Micro Medtech, by and through Wendell Abraham and Greg Shusterman, allegedly began taking certain actions to hostilely takeover Health Advance from Jordan Starkman.

Allegedly, on or about April 19, 2017, Micro Medtech put Mr. Starkman on leave of absence, and put him on notice of such leave of absence. (Ex. O). Despite being a shareholder of Health Advance for less than a month, Micro Medtech listed alleged failures of Mr. Starkman as justification for the alleged leave of absence. *Id.* The April 19th *Leave of Absence Notice* was allegedly sent to both Jordan Starkman and Christian Diesveld, as both were the sole members of the Board of Directors at the time. *Id.* Mr. Starkman and Mr. Diesveld never received this notice, and they assert such leave of absence never occurred and certainly was never proper since Micro Medtech was never a majority shareholder by itself. (Exs. A & B).

As of June 2, 2017, Health Advance had issued 125,797,500 shares of stock in the Company of which Micro Medtech had only 40,000,000 shares. (Ex. P). Despite being a minority shareholder by itself, Micro Medtech continued its hostile takeover of Health Advance, and on June 6, 2017, an alleged *Health Advance, Inc. Board Resolution from Control Stock Committee Meeting* was signed. (Ex. Q). In this document, Micro Medtech admits it is asserting that it is the "sole-party holding control stock of Health Advance Incorporated." *Id.* This could not be further from the truth as Micro Medtech's

40,000,000 shares by themselves do not amount to over fifty percent of the Company's 125,797,500 shares.

In its June 6th *Health Advance, Inc. Board Resolution from Control Stock Committee Meeting*, Micro Medtech allegedly took numerous actions including, but not limited to, removing Jordan Starkman and Christian Diesveld from the Board of Directors, appointing new members of the Board of Directors and officers of Health Advance, changing the current registered office of the Company, and even changing the website domain address of Health Advance. *Id.* Micro Medtech's hand-picked individuals then began attempting to publicly take Health Advance away from its founder, Jordan Starkman, including, but not limited to, filing paperwork with the Wyoming Secretary of State and filing a 10-Q. (*See e.g.*, Ex. R and C1).

On or about June 12, 2017, Gregory Shusterman – acting as the alleged Chairman of the Board of Directors – sent a cease and desist letter to Jordan Starkman. (Ex. T). Mr. Shusterman emailed this cease and desist letter along with the alleged April 2017 leave of absence to Jordan Starkman on June 14, 2017. (Ex. U). This email was the first time Mr. Starkman had received notice of any alleged leave of absence. (Ex. A). In response, Mr. Starkman immediately informed Mr. Shusterman – and thus also Micro Medtech – that the actions of Micro Medtech and its agents would be "ignored as you [(Micro Medtech)] do not have over 50%. . . ." (Ex. U). Mr. Starkman also exercised Health Advance's right under the agreement with Micro Medtech to terminate the Micro Medtech deal. *Id.*

Micro Medtech and its agents (including Gregory Shusterman) did not and have

not had access to Health Advance's internal finances. (Exs. A & B). They also did not have authority to file any filings/reports with the SEC on behalf of the Company. *Id.* Further, as admitted by Gregory Shusterman in a letter to the SEC, Micro Medtech did not even have a current list of the shareholders. (Ex. V). Instead, Micro Medtech had a shareholder list dated March 16, 2017. *Id.* Tellingly, even this shareholder list demonstrates that Micro Medtech knew in March 2017 that it was not the majority shareholder of Health Advance even with its 40,000,000. *Id.*

To correct the improper and fraudulent representations of Micro Medtech, Jordan Starkman filed an 8-K with the SEC on June ???, 2017, in which he informed the public that Gregory Shusterman was not an officer, director, or employee of Health Advance, Inc. and did not have access to the Company's internal financial statements or authority to file any reports on behalf of the Company. (Ex. W). He also advised the public that the Micro Medtech deal was terminated. *Id.* Mr. Starkman also filed necessary paperwork with the Wyoming Secretary of State to correct the improper removal of him as the proper President of the Company. (Ex. X).

Mr. Starkman also issued a press release on behalf of Health Advance on June 15, 2017 in which he advised the public of the improper filing of a 10-Q by Gregory Shusterman. (Ex. Y). The public was also advised that "[t]he company is still compiling the financial statements for the quarter ended January 31, 2017 and intends to file a Quarterly Report on Form 10-Q for the period ended January 31, 2017 once the financial statements have been completed and the Company's independent auditor has had a chance to review them." *Id.* A notice to disregard Mr. Starkman's June 15th press release

was issued when Gregory Shusterman called Marketwire and threatened to sue them if the press release was not disregarded. (Exs. A & Z).

On July 2, 2017, Gregory Shusterman filed a civil lawsuit against Jordan Starkman in the United States District Court for the District of Wyoming, which was assigned to the Honorable Judge Freudenthal. (CITE). Judge Freudenthal denied Mr. Shusterman's and Health Advance's motions for temporary restraining order twice, and that case was subsequently closed. *Id.*

On or about July 12, 2017, the SEC sent a letter to Health Advance care of Gregory Shusterman. (Ex. A1). Mr. Shusterman responded to this letter on July 26, 2017. (Ex. V). While Mr. Shusterman sent this letter, it is not attached to the *Verified Complaint*. In his response letter to the SEC, Mr. Shusterman makes numerous misrepresentations to the SEC. For example, he asserts that "[t]ermination notices to Mr. Starkman and Mr. Diesveld were not necessary due to the fact that they had no employment agreement on record for the Company." (Ex. V). This is not true as both Jordan Starkman and Christian Diesveld had signed employment agreements effective March 1, 2017, which is **prior** to the closing of the Micro Medtech deal. (Exs. K & L). Interestingly, Mr. Shusterman admits Micro Medtech and its agents had a copy of the "[c]ompany stock ownership registry statement dated March 16, 2017 from First American Stock Transfer, Inc." (Ex. V). A review of this March 16, 2017 registry clearly demonstrates – and thus Micro Medtech and its agents would know – that Micro Medtech could not have and did not have the majority of the shares of the Company at any time and thus its actions were improper, fraudulent, and illegal.

On August 4, 2017, Plaintiff Health Advance (really Micro Medtech) filed this lawsuit against Jordan Starkman. (*See Verified Complaint*, ECF No. 1). It also sought and was granted a temporary restraining order, *as amended*, against Mr. Starkman on August 7, 2017. (*See Motion for TRO*, ECF No. 3; TRO, ECF No. 6; *Motion to Amend TRO*, ECF No.14; & Amended TRO, ECF No. 19).

Following the entry of the temporary restraining order by this Court, Gregory Shusterman filed another 10-Q with the SEC on August 11, 2017. (Ex. B1). In it, Mr. Shusterman makes numerous fraudulent misrepresentations to the public. For example, on page 2, it is written that "[a]s of March 16, 2016, there were 90,320,000 shares of the issuer's common stock issued and outstanding." *Id.* Later, on page 12, it is written that "[a]s of April 30, 2017 the Company has 64,520,000 shares of commons stock issued and outstanding." *Id.* These numbers are clearly inconsistent, and as indicated above are not correct. Additionally, Mr. Shusterman reports to the public that the $250,000 financial requirement for the Hantian Labs deal was never waived and that "[t]his condition has not been met and it was resolved by majority vote at the Board of Directors and Shareholder Minutes of Meeting on June 6, 2017 to terminate the Share Exchange Agreement . . . ." *Id.* This is false as the $250,000 financing requirement was expressly waived and the Hantian Labs deal closed on January 16, 2017. (Ex. G). Furthermore, the reported financials of the company in Mr. Shusterman's August 2017 10-Q cannot be accurate as Micro Medtech and him do not have access to the internal financial records of the Company as they are in the possession and control of Jordan Starkman. (Exs. A & B).

The *Verified Complaint* and subsequent temporary restraining order are based on misrepresentations and fraudulent filings. Micro Medtech and its agents do not and have not ever had control of Health Advance, Inc. Jordan Starkman and Christian Diesveld are the only members of the Board of Directors and are the proper individuals who have control of Health Advance. The Court should thus dissolve the temporary restraining order, deny Plaintiff a preliminary injunction, and enter any further relief as it deems justified to remedy this situation.

III. Standard of Review

The Tenth Circuit addressed the extraordinary remedy of a preliminary injunction in *Awad v. Ziriax*, 670 F.3d 1111, 1125 (10th Cir. 2012). It held that in order for a movant to obtain the extraordinary remedy of a preliminary injunction, it must demonstrate four (4) factors weigh in its favor: 1) it is substantially likely to succeed on the merits; 2) it will likely suffer irreparable injury if the injunction is denied; 3) its threatened injury outweighs the injury the opposing party will suffer under the injunction; and 4) the injunction would not be adverse to the public interest. *Id.* (citing *Winter v. Natural Res. Def. Council*, 555 U.S. 7, 20 (2008).

> . . . "Because a preliminary injunction is an extraordinary remedy, the movant's right to relief must be clear and unequivocal." *Fundamentalist Church of Jesus Christ of Latter-Day Saints v. Horne*, 698 F.3d 1295, 1201 (10th Cir. 2012) (internal quotations and citations omitted). Preliminary injunctions that alter the status quo are disfavored and must be "more closely scrutinized." *Awad*, 670 F.3d at 1125. In such instances, the moving party must make "a strong showing both with regard to the likelihood of success on the merits and with regard to the balance of harms." *Id.* The status quo is the last uncontested status between the parties which preceded the controversy until the outcome of the final hearing. *Dominton Video Satellite,*

> *Inc. v. EchoStar Satellite Corp.*, 269 F.3d 1149, 1155 (10th Cir. 2001).
>
> Whether or not to grant preliminary injunction is within the sound discretion of the district court. *Int'l Snowmobile Mfrs. Ass'n v. Norton*, 304 F.Supp.2d 1278, 1286 (D.Wyo. 2004); *see also Awad*, 670 F.3d at 1125 (appellate court review district court's grant or denial of preliminary injunction under abuse of discretion standard).

Alarm Funding Assoc. v. Security Prod. Co., LLC, Order on Motions for Preliminary Injunction, 14-cv-125-SWS (D.Wyo. Feb. 13, 2015).

IV. Argument

In order for Plaintiff to prevail and a preliminary injunction to be entered, it must demonstrate the four (4) *Awad* factors weigh in its favor. *Awad*, 670 F.3d at 1125. These factors are: 1) it is substantially likely to succeed on the merits; 2) it will likely suffer irreparable injury if the injunction is denied; 3) its threatened injury outweighs the injury the opposing party will suffer under the injunction; and 4) the injunction would not be adverse to the public interest. *Id.* All four (4) of these factors weigh in favor of Defendant Jordan Starkman. Thus, the Court should dissolve the August 7, 2017 Order Granting Temporary Restraining Order, ECF No. 6, *as amended*, and deny Plaintiff a preliminary injunction.

A. Plaintiff is not entitled to either a temporary restraining order or a preliminary injunction as it is not substantially likely to succeed on the merits of this case.

The first *Awad* factor is that the Plaintiff must have a substantial likelihood to succeed on the merits. *Awad*, 670 F.3d at 1125. In its *Verified Complaint*, Plaintiff brought the following claims against Defendant Jordan Starkman: 1) intentional

interference with prospective business relationships; 2) fraud; 3) negligent misrepresentation; 4) breach of fiduciary duty – duty of loyalty; 5) breach of fiduciary duty – duty of care; 6) declaratory relief; and 7) permanent injunction. Plaintiff is not substantially likely to succeed on the merits of any of these claims.

Plaintiff's first claim is for an alleged intentional interference with prospective business relationships. Wyoming has recognized the claims for intentional or tortious interference with a contract, business expectancy, or prospective economic advance. It is not exactly clear which one of these separate torts Plaintiff is pleading in its *Verified Complaint*. Nonetheless, Plaintiff is not substantially likely to succeed on the merits of any of these claims.

In Wyoming, a plaintiff must demonstrate that it had: (1) a valid contractual relationship, business expectancy, or prospective economic advantage, **in existence**, (2) knowledge of the existing contractual relationship, expectancy or advantage by the defendant, (3) intentional and improper interference by the inducing or otherwise cause of the breach of the existing relationship, and (4) which breach caused damage to plaintiff. *First Wyoming Bank, Casper v. Mudge*, 748 P.2d 713 (Wyo. 1988); *see also* 5 A.L.R.4th 9, *Liability for interference with at will business relationship* & Wyo.Civ.P.J.I. 21.02 (2015). Wyoming has adopted the Restatement (Second) of Torts § 766 (1979) for the elements of this claim. *Id.*

Plaintiff's *Verified Complaint* does not alleged that there was a valid contractual relationship, business expectancy, or prospective economic advantage that was <u>then in existence</u>. Accordingly, Plaintiff is unlikely to succeed on this claim. More importantly,

as discussed above in the relevant background section, Defendant Jordan Starkman has not made any unauthorized or untrue press releases or filings. He was always acting pursuant to and within his authority as President and member of the Board of Directors of Health Advance. Accordingly, Plaintiff is not substantially likely to prevail on its first claim. Plaintiff is also unlikely to prevail on its second and third claims.

Plaintiff's second and third claims – claims for fraud and negligent misrepresentation – share common elements. *Birt v. Wells Fargo Home Mortg., Inc.*, 2003 WY 102, ¶ 42, 75 P.3d 640, 656 (Wyo. 2003) (quoting *Dewey v. Wentland*, 2001 WY 2, ¶ 10, 38 P.3d 402, 409-410 (Wyo. 2002)). In *Birt*, the Wyoming Supreme Court described these two claims as follows:

> Intentional misrepresentation (fraud) is established when the following elements are proven: "(1) the defendant made a false representation intended to induce action by the plaintiff; (2) the plaintiff reasonably believed the representation to be true; and (3) the plaintiff relied on the false representation and suffered damages." *Sundown, Inc. v. Pearson Real Estate Company, Inc.*, 8 P.3d 324, 330 (Wyo. 2000). Intentional misrepresentation must be stablished by clear and convincing evidence. *Id.* Quite similarly, a plaintiff in a claim for negligent misrepresentation must show:
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> > "One who, in the course of his business, profession or employment, or in any other transaction in which he has a pecuniary interest, supplies false information for the guidance of others in their business transactions, is subject to liability for pecuniary loss caused to them by their justifiable reliance upon the information, if he fails to exercise reasonable care or competence in obtaining or communicating the information."

Hulse v. First American Title Company of Crook County,

> 2001 WY 95, ¶ 52, 33 P.3d 122, ¶ 52 (Wyo. 2001) (quoting *Richey v. Patrick*, 904 P.2d 798, 802 (Wyo. 1995)). A fundamental difference between the two causes of action is, a plaintiff need only prove negligence misrepresentation by a preponderance of the evidence, not unlike any other plaintiff in any other action sounding in negligence, while a plaintiff must prove intentional misrepresentation by clear and convincing evidence. *Verschoor v. Mountain West Farm Bureau Mutual Insurance Company*, 907 P.2d 1293, 1299 (Wyo. 1995).

Id. Thus, to prevail on these claims, Plaintiff must prove: 1) Jordan Starkman made a false representation intended to induce action by Health Advance; 2) Health Advance reasonably believed the representation to be true; and 3) Health Advance relied on the false representation and suffered damages. *See also Excel Const., Inc. v. HKM Eng'g, Inc.*, 2010 WY 34, ¶ 33, 228 P.3d 40, 48-49 (Wyo. 2010) (citations omitted). Plaintiff is not substantially likely to prevail on these claims.

It is not substantially likely to prevail on these claims because Jordan Starkman did not make false (negligent or intentionally) representations. His statements complained of by Plaintiff were authorized and truthful as he was and is the current President of Health Advance and one of two (2) members of the Board of Directors. Micro Medtech never had authority to take the actions it did. Moreover, both of these claims relate to false representations made ***to Health Advance*** which are intended to induce action by ***Health Advance*** and which ***Health Advance*** believed to be true and relied upon to its detriment. Clearly, Health Advance (by and through Micro Medtech and its agents) never reasonably believed the statements by Jordan Starkman and never relied upon them. In fact, Plaintiff never alleges that it did. (*See Verified Complaint*). Thus, Health Advance is not substantially likely to prevail on either of these claims.

Similar to its other claims, Plaintiff's claims for breach of fiduciary duty are also likely to fail. The Wyoming standards regarding the establishment of a fiduciary duty explain a fiduciary duty is defined as: a person having duty, created by his own undertaking, to act primarily for another's benefit in matters connected with such undertaking. *Martinez v. Associated Financial Services of Colorado, Inc.*, 891 P.2d 785, 790 (Wyo. 1995) (emphasis added). "Two basic types of fiduciary relationships exist. The first type is based on formal legal relationships, such as trustee-beneficiary, partnership, attorney-client, and principal-agency relationships. The second type is an informal fiduciary relationship, which is implied in law due to the factual situation surrounding the involved transaction, and the relationship of the parties to each other and to the transaction." *Lee,* 74 P.3d at 160. (citations omitted).

In its *Verified Complaint*, Plaintiff assert Jordan Starkman breached fiduciary duties – duty of loyalty and duty of care. (*Verified Complaint*, ¶¶ 48 – 55). According to Plaintiff, the alleged fiduciary duties Jordan Starkman owed arise out of Wyo. Stat. § 17-16-842. *Id.* at ¶¶ 50-52 & 54-55. This statute is contained in the Wyoming Business Corporation Act, but it pertains to ***an officer*** of a company **when performing in such capacity**. *See* Wyo. Stat. Ann. § 17-16-842(a) (LexisNexis 2017). Plaintiff alleges it properly removed Jordan Starkman as an officer and director of Health Advance. (*Verified Complaint*, ¶ 49). Assuming, *arguendo*, this statement is true, Jordan Starkman was not an officer of Health Advance when he allegedly violated Wyo. Stat. § 17-16-842. Accordingly, this statute is inapplicable. More importantly, as discussed above, Jordan Starkman was never acting improperly. Mr. Starkman was and is the current President of

Health Advance who is simply attempting to protect his company from a hostile and illegal takeover. His actions uphold his fiduciary duties to the Company.

Plaintiff's last two (2) claims are for declaratory relief and a permanent injunction. Both of these claims relate to Jordan Starkman's authority to take actions for and on behalf of Health Advance. As discussed in detail above, Mr. Starkman founded Health Advance. He was never placed on leave, and was never removed as an officer and member of the Board of Directors. He was and is still the President of Health Advance, member of the Board of Directors, and the individual who has property authority to control and to take actions for and on behalf of Health Advance.

This factor weighs in favor of Defendant Jordan Starkman.

B. Plaintiff is not entitled to either a temporary restraining order or a preliminary injunction since damages are available.

The second *Awad* factor is that Plaintiff must demonstrate it is likely to suffer irreparable injury if the injunction is denied. *Awad*, 670 F.3d at 1125. The general rule is that a court should consider whether damages and other legal remedies are adequate to compensate the plaintiff. Charles Allen Wright, Arthur R. Miller, Mary Kay Kane, et al., 11A Fed. Prac. & Proc. Civ. §2951 *Temporary Restraining Orders General* (3d ed. 2014). Only if they are not available will the potential injury be considered irreparable for the purposes of the restraining order. *Id*. In other words, there must be irreparable harm that damages will not cure. *See also Merrill Lynch v. Rex Baxter and Paul Aiman*, F.Supp.2d 2009 WL 960773 (D. Utah 2009 Unpublished) (failed to demonstrate irreparable harm because damages could be proven in this highly regulated industry; consequently, the TRO was denied).

"Irreparable harm" may be shown to exist where money damages are inadequate to compensate the wrong or where there are difficulties in the calculation of losses. *Flying Cross Check, L.L.C. v. Cent. Hockey League, Inc.*, 153 F.Supp.2d 1253, 1259 (D.Kan.2001). "Loss of customers, loss of goodwill, and threats to a business' viability can constitute irreparable harm.' *Id.* (quoting *Zurn Constructors, Inc. v. B.F. Goodrich Co.* ., 685 F. Supp. 1172, 1181 (D.Kan.1988)). However, purely speculative harm does not amount to irreparable harm. *Greater Yellowstone Coal. v. Flowers*, 321 F.3d 1250, 1259 (10th Cir.2003). The "irreparable harm requirement is met if a plaintiff demonstrates a significant risk that he or she will experience harm that cannot be compensated after the fact by monetary damages." *Id.* Because a preliminary injunction is an extraordinary remedy, the right to relief must be clear and unequivocal." *Id.* at 1256. In other words, for an injury to constitute irreparable harm, it must be "certain, great, actual and not theoretical." *Chem-Trol v. Christensen*, F.Supp.2d, 2009 WL 331625 (D. Kan. 2009 Unpublished). There must be a significant risk of harm that cannot be remedied by an award of monetary damages because of difficulty or uncertainty in their proof or calculation. *Id.* Here, Plaintiff has an adequate remedy at law; namely pecuniary damages.

The most significant point here is that Plaintiff is alleging Jordan Starkman's actions caused "pecuniary harm" to Health Advance. (*Verified Complaint*, ECF No. 1, ¶ 36). For example, Plaintiff asserts Mr. Starkman's actions diminished "Health Advance's share prices and market capitalization, which prevents Health Advance from securing funding and competing in its industrial market." *Id.* at ¶ 36(d). Furthermore,

Plaintiff alleges it has incurred "costs and expenses in attempting to mitigate the damage that Starkman has caused to Health Advance and correct the misleading information that Starkman made public." *Id.* at ¶36(b). Any impact on Health Advance's share prices, ability to secure funding, and the alleged costs and expenses incurred in attempting to mitigate the alleged damages is discoverable and determinable. In fact, Plaintiff is affirmatively seeking damages. *Id.* at p. 12. The fact Plaintiff is seeking an award of damages is a concession by Plaintiff that damages are available to it as a remedy. *See e.g. Domino Video Satellite v. Echostar Satellite Corp.*, 356 F.3d 1256 (10th Cir. 2004) (no irreparable harm because damage for breach could be calculated). If damages are available as a remedy to Plaintiff, a temporary restraining order and preliminary injunction are improper.

In the alternative, for an injury to constitute irreparable harm, it must be "certain, great, actual and **not theoretical**." *Chem-Trol v. Christensen*, F.Supp.2d, 2009 WL 331625 (D. Kan. 2009 Unpublished enforced covenant) (emphasis added). Here, Plaintiff conclusory asserts it has been injured by the Jordan Starkman's filings and press releases. Plaintiff offers no demonstrable, certain and actual evidence of injury. Thus, its injury is theoretical, so a temporary restraining order and preliminary injunction are improper.

Thus, this factor weighs in favor of Defendant Jordan Starkman.

B. When balance of harms injunctive relief would have on the Parties, the potential harms both Parties will suffer if injunctive relief will cause justifies the dissolution of the temporary restraining order and denial of a preliminary injunction.

The third *Awad* factor is that the threatened injury to Plaintiff outweighs the

injury the opposing party, Defendant Jordan Starkman, will suffer under the injunction. *Awad*, 670 F.3d at 1125. Here, Jordan Starkman founded Health Advance. He has spent years developing his Company. Suddenly, in less than a month after being issued shares in the Company, Micro Medtech and its agents have taken actions to improperly oust Mr. Starkman from his own Company. The Court's temporary restraining order and any preliminary injunction would prevent Mr. Starkman from protecting his Company. He would essentially be pushed to the side while a minority shareholder took control of his Company, made false and fraudulent filings and representations, and took further unknown actions. This is not the case that – as Plaintiff contends – Mr. Starkman would benefit, or at least not be harmed, by injunctive relief. Without Jordan Starkman having the ability to protect his Company, both Health Advance and Mr. Starkman will be harmed. As such, injunctive relief is not proper or warranted.

This factor also weighs in favor of Defendant Jordan Starkman.

C. The public interest actually weighs in favor of the dissolution of the temporary restraining order and the denial of a preliminary injunction.

The fourth and final *Awad* factor is that the injunction would not be adverse to the public interest. *Awad*, 670 F.3d at 1125. Here, granting the preliminary injunction would in fact have an **adverse** to the public interest.

Health Advance is a publically traded company, whose shares are traded on the OTC Markets. Thus, the public funds are directly at issue in this matter. To protect those public funds, it is critical for the Court to determine who was and currently is in control of Health Advance: Jordan Starkman or the agents of Micro Medtech. As is currently evidenced by their actions following the entry of the current temporary

restraining order, Micro Medtech and its agents are making incorrect representations regarding the Company. For example, within days of this Court's temporary restraining order, a new 10-Q was filed, which contains numerous misrepresentations and falsehoods including, but not limited to, the Hantian Labs deal and the number of shares issued.

Without being able to adequately inform the public of the dispute between the Parties, the public's interest is threatened. Namely, the public is left to believe that there is no genuine dispute as to the control and current status of Health Advance. It is further left to believe that the information contained in the 10-Qs filed by Gregory Shusterman are complete and accurate when they are anything but complete and accurate. They are fraudulent. They contain misrepresentations of fact. They were issued without any proper authority. Thus, being stripped of his ability to counteract the actions by Micro Medtech and its agents, Jordan Starkman is now unable to protect his company and, more importantly, the public. Instead, if a preliminary injunction is entered, the public would continue to mistakenly invest public funds into Health Advance based on incomplete and inaccurate (really fraudulent) information.

In the end, the public interest is served by dissolution of the temporary restraining order and denial of a preliminary injunction because then the underlying dispute can be adequately disclosed to them, and the public can then make an informed decision as to whether to continue to invest in the Company or not. In short, the fully disclosed dispute would result in a "stop" sign being placed on the OTC Market's platform again, which arguably is best for the public to protect its interest and its funds.

D. Plaintiff is not entitled to a temporary restraining order or preliminary injunction as it does not have clean hands.

The clean hands maxim bars relief to those guilty of improper conduct in the matter as to which they seek relief. 30A C.J.S. Equity § 109 (2014). It is invoked to protect the integrity of the court. *Id*. In other words, he who comes into equity must come with clean hands. *Id*. This maxim expresses a principle of inaction rather than action, and may be invoked only to prevent affirmative equitable relief. *Id*. The maxim means that equity refuses to lend its aid in any manner to one seeking its active interposition who has been guilty of unlawful or inequitable conduct in the matter with relation to which he or she seeks relief, and it allows a court to deny equitable relief on the ground that a party's conduct has been inequitable, unfair and dishonest, or fraudulent and deceitful as to the controversy at issue. *Id*. In this instance, unclean hands should bar Plaintiff in seeking a temporary restraining order or a preliminary injunction.

The actions by Health Advance which put it at odds with its founder, Jordan Starkman, were really the actions of one shareholder of the Company, Micro Medtech. In less than a month after entering into a licensing agreement with Health Advance, Micro Medtech began its concerted effort to conduct a hostile takeover of Health Advance. However, the fatal flaw to Micro Medtech's actions is that it was never the controlling stock owner of the Company. Further, Micro Medtech's filings with the SEC were fraudulent for a variety of reasons including, but not limited to, the fact that its handpicked agents did not have the authority to make those filings and the filings are inaccurate and/or completely false. Micro Medtech took further improper actions such as unilaterally attempting to void the Hantian Labs deal without authority to do so. Plaintiff's improper and fraudulent actions are discussed more thoroughly above. All of

its actions evidence Plaintiff's unclean hands in regards to this matter and should deny them equitable relief. The Court should thus dissolve the current temporary restraining order and deny Plaintiff's motion for a preliminary injunction.

V. Conclusion

Micro Medtech and its agents are attempting to use this Court as a vehicle to continue and complete its improper, fraudulent, and illegal hostile takeover of Health Advance. The temporary restraining order and any preliminary injunction would have a disastrous effect on Mr. Starkman's ability to protect his Company. The Court should not allow the judicial system to be used in such a manner. Defendant Jordan Starkman is the proper President and member of the Board of Directors. His actions have been justified. More importantly, his actions have been truthful. The Court should thus dissolve the August 7, 2017 Order Granting Temporary Restraining Order, ECF No. 6, *as amended*, and to deny Plaintiff's request for a preliminary injunction.

Certification of Good Faith Conference

Pursuant to Local Rule 7.1(b)(1)(A), counsel for Defendant has met and conferred with the other Party's counsel regarding this motion, and Plaintiff's counsel opposes this motion. Furthermore, counsel for Defendant has provided two (2) days' notice to Plaintiff's counsel of this motion to dissolve the temporary restraining order pursuant to Rule 65(b)(4) of the Federal Rules of Civil Procedure.

WHEREFORE, Defendant Jordan Starkman, by and through his counsel, hereby

respectfully moves the Court to dissolve the August 7, 2017 Order Granting Temporary Restraining Order, ECF No. 6, *as amended*, and to deny Plaintiff's request for a preliminary injunction.

DATED this 7th day of September 2017.

Jordan Starkman, Defendant

By: /s/ Keith J. Dodson

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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing document was served this 7th day of September, 2017, addressed to:

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Fax

CM/ECF

/s/ Keith J. Dodson

Keith J. Dodson