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**GreenSky, LLC v. Wellness Program Services, LLC dba Trusii, et. al., Order and Judgment**

John J. Goger

*Superior Court of Fulton County, Metro Atlanta Business Case Division*

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IN THE SUPERIOR COURT OF FULTON COUNTY  
BUSINESS CASE DIVISION  
STATE OF GEORGIA

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GREENSKY, LLC,

Plaintiff,

v.

WELLNESS PROGRAM SERVICES,  
LLC d/b/a TRUSII and JEFFREY  
TARADAY,

Defendants.

CIVIL ACTION NO.  
2019CV323886

Bus. Case Div. 4

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**ORDER AND JUDGMENT**

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This matter came before the Court for a specially set bench trial on January 19, 2023. Having heard evidence and argument and considered the post-trial briefing, the Court enters this Final Order and Judgment.

Plaintiff GreenSky, LLC (“GreenSky”) is a third party loan service provider. It acts as an intermediary between merchants, their customers, and GreenSky’s partner banks who offer financing to facilitate a customer’s purchase. This dispute concerns an agreement between GreenSky and a merchant Defendant Wellness Program Services, LLC d/b/a Trusii (“Trusii”) and one of the merchant’s owners, Defendant Jeffrey Taraday.

## 1. BACKGROUND

### 1.1 The GreenSky Program.

#### *1.1.1 GreenSky's Role as Financing Intermediary*

Through its GreenSky Program, GreenSky processes loan applications from customers interested in purchasing a product or service from a participating merchant. If the customer's loan application is approved, GreenSky notifies the customer that it can then use the available funds to purchase the item or service. When such a purchase is made, the bank partner of GreenSky that approved the customer's loan application sends payment, via GreenSky, to the merchant, and GreenSky then acts as a loan servicer for the bank partner, receiving and processing the customer's loan payments.

#### *1.1.2 How Merchants Apply to Participate in the GreenSky Program*

Merchants must apply to participate in the GreenSky Program, and GreenSky enters into contractual relationships with merchants whose participation is approved. During the period in question, GreenSky's merchant contract ("Program Agreement") was placed on GreenSky's website and accessible to merchant applicants for viewing. A copy of that Merchant Agreement was admitted into evidence. (Pl. Ex. 13.) Merchants desiring to participate in the GreenSky Program would electronically prepare and submit an application found on GreenSky's website ("Merchant Application"). In addition to some information

about the merchant, the individual preparing the Merchant Application had to list certain information about the merchant's principals, partners, or owners. (See generally Pl. Ex. 44.) The individual preparing the Merchant Application also had to provide certain personal information about any individual so listed, including their email, mobile phone number, birthdate, social security number, and residential address. (Id.) At the end of the Merchant Application, the party preparing it had to click on online check box ("click box") which was found below this affirmation:

By clicking the box below and submitting this application, you are certifying that you have read and agree to the Disclosures [with a web address] and Program Agreement [with a web address].

Additionally, directly adjacent to the click box was the statement,

I certify that the information submitted is true, accurate, and complete. By submitting this [Merchant] Application, I certify that I have read and agree to the Disclosures and Program Agreement.

It was not possible for a Merchant Application to be electronically submitted unless this click box was checked. Upon receiving a Merchant Application containing the checked, click box, GreenSky considered a merchant was willing be bound by the Program Agreement should its Merchant Application be approved.

*1.1.3 The Program Agreement Defines Merchant in a Manner that may Create Liability for a Merchant's Owner*

One of the key disputes in this matter concerns of the Program Agreement's definition of a "Merchant" which, for most purposes, was the vendor identified in

the Merchant Application. (Pl. Ex. 13 § 42(q).) However, Program Agreement's definition of a merchant is further extended,

. . . for purposes of Section 25(a) with respect to a Merchant that is not publicly traded [the definition of Merchant] shall expressly include all persons who, directly or indirectly, have an ownership interest in Merchant (and by participating in the GreenSky Program, Merchant represents and warrants that all authorizations and approvals of any such persons necessary for them to be included in the definition of Merchant for such purpose have been obtained).

(Id.)

Generally stated, section 25(a) of the Program Agreement requires the merchant to indemnify GreenSky for any losses it might occur as a result of the merchant's breach of the Program Agreement. (Id. Ex. 13 § 24(a).) Throughout this litigation, and at trial, GreenSky has admitted this extended definition of merchant which applies solely for purposes of indemnification essentially makes the merchant's owners, as defined in § 42(q) of the Program Agreement, personal guarantors of the participating merchant's debt.

## 1.2 Trusii Applies to Participate in GreenSky Program

Trusii is a Florida limited liability company that began in the wellness industry. Initially, two key principals of the company were Christopher Kennedy and Mariano Piompino who had been friends and business partners for approximately fifteen years. As Kennedy testified, neither he nor Piompino had good credit. Initially, Taraday was retained to do some writing work for the

company. Eventually, in 2016, Kennedy asked Taraday to become a Trusii owner. Taraday lived in California and infrequently traveled to Trusii's Florida offices. He had little prior business experience. However, Taraday had some cash and good credit to contribute to the business. Upon joining Trusii, Taraday informed Kennedy and Piompino that he was unwilling to personally guaranty any of the company's debts.

During the pertinent time frame, Trusii sold "hydrogen water generator" machines ("products"). On or about April 17, 2018, an individual using the name Michael Pino electronically submitted a Merchant Application for Trusii to participate in the GreenSky Program. (Pl. Ex. 44.) In doing so, Pino checked the online click box affirming that the Program Agreement had been reviewed. (Id.) As outlined above, Pino would not have been able to submit the Merchant Application unless this box had been checked. Because Pino completed the Merchant Application for Trusii and was listed as Trusii's primary contact, GreenSky sent him an email confirming the Merchant Application had been received and was being reviewed. (Pl. Ex. 10.) That email included an electronic link to a copy of the Program Agreement, stating, "[c]lick here to review the GreenSky Program Agreement for your records." At this time, GreenSky did not send a copy of the Program Agreement to the Taraday, the owner listed on the Merchant Application and potentially liable under the Program Agreement.

Throughout the course of their subsequent dealings, this Mike Pino would communicate with GreenSky on behalf of Trusii. During the summary judgment phase of this litigation, Defendants described Pino as an intern who worked in the Florida office with the hopes of eventually joining the business. Evidence now reveals that Michael Pino was an alias used by Piompino. There was disputed evidence as to precisely when Taraday or Kennedy learned of this charade. GreenSky urges Taraday and Kennedy were aware of this ruse at the time GreenSky submitted its Merchant Application while Taraday claims he learned of during the fall of 2021 while this litigation was pending.<sup>1</sup>

Taraday became aware that GreenSky had received Trusii's Merchant Application when he received a telephone call from a GreenSky agent. The telephone call to Taraday was placed to the phone number listed for Taraday on Trusii's Merchant Application. A transcript of the telephone call was placed into evidence. (Pl. Ex. 14.) During the relatively short conversation, Taraday provided the GreenSky agent with the requested verification as follows:

GreenSky: I was umm actually just calling to go over an application we received that was submitted for your business.

Taraday: Okay . . .

GreenSky: . . . we always reach out when we receive applications like in their starting stages just to confirm that you are aware of the

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<sup>1</sup> Taraday claims he discussed this revelation to his former attorney who advised him to defer disclosing it to opposing counsel and the Court.

application and you submitted it so that's our main concern just making sure that no one is trying to defraud you or put in the application without your knowledge.

Taraday: Yea, you know, I, I, I'll need to verify that. I'm checking right now with my partners because I know that they were submitting a few applications.

GreenSky: Okay.

Taraday: Umm so let me just put you on hold for one minute and double check on that, that'd be great.

GreenSky: Okay I'll be here.

Taraday: Okay hold on, okay.

[Pause lasting approximately five minutes]

Taraday: Hi, I'm back.

GreenSky: Hey sir.

Taraday: Hey so yea everything's all good, my partner submitted an application for us.

GreenSky: Alright.

Taraday: We're moving very fast and sometimes I don't know about certain things.

(Id.) During this call, GreenSky made no mention Taraday could be personally called to answer for the debts of Trusii should GreenSky ever seek indemnity under the Program Agreement.

GreenSky subsequently approved Trusii's Merchant Application, and Trusii began to inform its customers they had the option to finance their purchases of



Trusii's water systems through the GreenSky Program.

### 1.3 Trusii's Business Operations

As represented by GreenSky, between April 2018 and March 2019, over 500 Trusii customers financed the purchase of over \$4.5 million worth of Trusii's products through the GreenSky Program. (Pl. Ex. 16.) Contrary to what these sales figures might suggest, Trusii was a struggling business. By Taraday's own account, money for Trusii was very tight. Taraday and Kennedy testified they were trying to grow Trusii and any money it may have earned was put back into the business. Trusii's financial records were not offered into evidence so that money coming into and out of the business could be clearly and comprehensively tracked. The evidence indisputably revealed Trusii had an extremely loose business structure and observed few corporate formalities.

### 1.4 Customer Complaints De-Rail Trusii's Participation in the GreenSky Program

In March of 2019 GreenSky noticed a material increase in the number of customers complaining about Trusii. Upon review, GreenSky determined most of these customer complaints concerned charges assessed for products that had not been delivered or were defective. As a result of Trusii's lack of cooperation in addressing the complaints, GreenSky suspended and then terminated Trusii's participation in the GreenSky Program.

Due largely to GreenSky's lack of cooperation in addressing these

complaints, GreenSky issued refunds to complaining customers for their loan debts and/or satisfied their loan balances with GreenSky's banking partners. (Pl. Ex. 13 § 12(a).) The undisputed evidence indicates GreenSky remitted a total of \$3,053,331.44 towards the loan debts and/or loan balances of complaining customers.

## **2. PROCEDURAL HISTORY**

### **2.1 Early Phases of Litigation**

On July 12, 2019, GreenSky filed the above-styled petition against Trusii and Taraday which it subsequently amended. Among its claims, GreenSky sought to enforce the Program Agreement's indemnification provision against both Trusii and Taraday. It also sought litigation expenses under both the Program Agreement and O.C.G.A. § 13-6-11. Both Defendants filed answers which were subsequently amended to include counterclaims. This matter was transferred to the Metro Atlanta Business Case Division on October 16, 2019. The case proceeded through a lengthy discovery period that included judicially-imposed, pandemic-related stays. Additionally, numerous discovery extensions were granted, most based on the joint motion of the parties.

During the summary judgment phase of the litigation, the Court considered various motions and granted summary judgment on certain issues. Notably, the Court granted GreenSky's breach of contract / indemnification claims against

Trusii but determined an issue of fact existed regarding the amount of damages GreenSky sought to recover. GreenSky's breach of contract / indemnification claims against Taraday was denied as the Court determined an issue of fact existed as to whether the agent who submitted the Merchant Application had the authority to individually bind Taraday. Summary judgment was granted on all of Trusii's and Taraday's counterclaims.

After the summary judgment phase, Trusii's and Taraday's counsel withdrew. Trusii failed to obtain new counsel, and an order striking its pleadings and granting a default judgment was entered against it. (Ord. Striking Pleadings and entering Def. J., entered July 19, 2022.) However, Taraday began proceeding *pro se*. During this pre-trial phase, GreenSky filed an Amended Complaint lodging a new "alter ego" theory of liability against Taraday. (Third Am. Compl. ¶¶ 60(b).)

## 2.2 Issues to be Tried

As reflected in the Consolidated Pre-Trial Order, the issues to be tried include: (1) the amount of damages GreenSky incurred as a result of Trusii's breach of the Program Agreement and (2) whether Taraday is personally liable for those same damages either under the Program Agreement or as Trusii's alter ego. (PTO ¶¶ 6-7.)

### 3. ANALYSIS

#### 3.1 Damages Incurred by GreenSky as a Result of Trusii's Breach

Trusii's liability having already been established by virtue of summary judgment and later by default, and having considered the evidence submitted at trial, the Court finds GreenSky has suffered \$3,053,311.44 in principal damages as a result of Trusii's breach of the Program Agreement.

The Court further finds GreenSky has reasonably and necessarily incurred litigation expenses but will defer consideration on their amount until a later time as addressed below.

#### 3.2 Taraday's Liability Under the Program Agreement

While the Court has found the process in which the Merchant Application was electronically signed by Pino/Piompino and verified by Taraday was sufficient to bind Trusii under the Program Agreement, it will now consider whether that process was sufficient to individually bind Taraday.

Here, GreenSky contends Taraday's liability is based on the apparent authority of Pino to bind Taraday. See O.C.G.A. § 10-6-1 ("The relation of principal and agent arises wherever one person, expressly or by implication authorizes another to act for him . . . .") In considering whether an agent has the apparent authority to bind a principal, a court must examine *both* the principal's conduct and the reasonable/innocent reliance of the third party attempting to

establish the agency.

The doctrine of apparent agency is predicated on principles of estoppel, and its applicability, therefore, is determined by examining both the conduct of the alleged *principal* and the detrimental reliance on that conduct by the third party asserting the doctrine. Apparent authority creates an estoppel allowing third parties to bind a principal to the agent's acts on account of the principal's conduct, reasonably construed by third parties acting in innocent reliance thereon. (Punctuation omitted; emphasis in original).

Lynn v. Lowndes County Health Servs., LLC, 354 Ga. App. 242, 247-248 (2020) cert. denied Sept. 8, 2020.

In Capital Color Printing, Inc. v. Ahern, 291 Ga. App. 101 (2008), the Georgia Court of Appeals considered a question involving the apparent authority of an agent to bind a principal to a guaranty. It provides a useful survey of the type of conduct exhibited by a principal sufficient to establish apparent authority. Such authority may be demonstrated by “written or spoken words or any other conduct of the principal which, reasonably interpreted, causes the third person to believe that the principal *consents to have the act done on his behalf* by the person purporting to act for him (emphasis supplied).” Id. at 109 citing R. W. Holdco, Inc. v. Johnson, 267 Ga. App. 859, 864 (2004). Similarly, evidence establishing an agent’s apparent authority “must show that the principal either intended to cause the third person to believe that the agent was authorized *to act for him*, or he should have realized that his conduct was likely to create such belief (punctuation omitted, emphasis added.)” Id. citing Arrington & Blount Ford, Inc. v. Jinks, 154

Ga. App. 785, 786-787 (1980).

Here, GreenSky and Trusii were just starting their business relationship, so there was no prior conduct between the parties that might lead GreenSky to reasonably believe “Pino” was empowered to personally bind Taraday. Compare Atlanta Truck Parts, Inc. v. Zenon & Zenon Contractors, Inc., 345 Ga. App. 507 (2018) (evidence of the agent’s apparent authority reflected significant past interactions between the third party, the principal, and the agent allowing third party to observe the principal’s conduct).

The primary evidence supporting GreenSky’s assertion of apparent authority is the telephone conversation commenced by a GreenSky agent.<sup>2</sup> GreenSky imbues this brief conversation with great significance, asserting, “[i]f Mr. Taraday had not affirmed that his ‘partner’ had signed the Program Agreement for ‘us,’ GreenSky would not have accepted Trusii’s application to become a party of the GreenSky Program.” (Pl.’s Post-Trial Brf. 13; Pl. Ex. 14.) When considering whether Taraday was holding Pino/Piompino out as his personal agent, the Court finds GreenSky is parsing this brief conversation and unduly emphasizing the

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<sup>2</sup> The evidence also reflects Pino/Piompino was given had access to Taraday’s personal information -- his mobile phone number, residential address, etc. -- which the agent used to prepare the Merchant Application. While this evidence suggests Taraday may have entrusted the agent to handle some personal matters, the Court finds this conduct insufficient to demonstrate that Taraday reasonably led GreenSky to believe the agent had the power to personally bind him for Trusii’s debts.

GreenSky also urges the Court to consider Taraday’s conduct establishing Pino’s/Piompino’s authority subsequent to entering the Program Agreement. The Court finds this argument unavailing as nothing in Taraday’s subsequent conduct would reasonably lead GreenSky to conclude that Pino/Piompino had been empowered to serve as Taraday’s personal agent.

words “partner” and “us” – ignoring that these terms are often used colloquially.

The Court has considered the conversation as a whole. It begins with a GreenSky representative telling Taraday, “I am calling to go over an application . . . that was submitted for your business.” (Pl. Ex. 14.) During this conversation, the potential for Taraday to become personally liable for Trusii’s business dealings was never mentioned by GreenSky’s representative. (Id.) Taraday simply provided the confirmation that was requested – that his business had submitted a Merchant Application to GreenSky. The Court is not persuaded Taraday reasonably led GreenSky to believe the agent who submitted Trusii’s Merchant Application was authorized to represent Taraday’s individual interests.

Additionally, the Court is not persuaded that GreenSky’s reliance on Taraday’s conduct, purportedly establishing Pino’s/Piompino’s authority, was completely innocent. This finding is based upon a combination of factors -- the circuitous manner in which the Program Agreement imposes individual liability upon a merchant’s owner, the electronic signature process where one signatory is expected to bind potentially more than one responsible party, and GreenSky’s roundabout attempt at verifying the extent of the agent’s authority.

The Merchant Agreement, which GreenSky drafted, is a 17-page, single-spaced document with 42 discrete sections. Neither the Merchant Application nor the Program Agreement uses the term guaranty or guarantor. The potential for an

owner's individual liability is not identified by a separate heading or any sort of bold print or enlarged font. Rather, the liability of the owner only becomes apparent upon a close review of the Program Agreement's definition of Merchant and then tracing its reference to the Program Agreement's indemnification provision. (Pl. Ex. 13 §§ 42(q) and 25(a).)

Adding to the potential confusion regarding an owner's individual liability, Taraday was not expressly required to sign or authorize the Program Agreement which might more clearly alert him to the potential he could be held personally liable thereunder. Rather, GreenSky relied on a process, which it created, where the one individual submitting the Merchant Application could potentially bind a merchant's owners without clearly establishing the individual's authority to do so.

In this case, GreenSky could have clarified the authority questions created by its Program Agreement and electronic signature process during its verification call to Taraday; however, GreenSky made no effort to do so. The GreenSky representative expressly stated that the call was about an application submitted by Taraday's "business" and was entirely silent about Taraday's potential liability for Trusii's dealings with GreenSky. If GreenSky were attempting to verify the agent's authority to personally bind Taraday for Trusii's debts, it could have done so in a far more direct fashion.



### 3.3. Taraday's Alter Ego Liability

GreenSky also seeks to hold Taraday individually liable as the “alter ego” of Trusii. “Under the alter ego doctrine in Georgia, the corporate entity may be disregarded for liability purposes when it is shown that the corporate form has been abused.” Ballie Lumber Co. v. Thompson, 279 Ga. 288, 289 (2005). In Ballie Lumber Co., the Supreme Court outlined the high burden a plaintiff must meet in order to pierce the corporate veil.

In order to disregard the corporate entity because a corporation is a mere alter ego or business conduit of a person, it should have been used as a subterfuge so that to observe it would work an injustice. To prevail based upon this theory it is necessary to show that the shareholders disregarded the corporate entity and made it a mere instrumentality for the transaction of their own affairs; that there is such unity of interest and ownership that the separate personalities of the corporation and the owners no longer exist.

#### Id.

The Court finds GreenSky has conclusively demonstrated that one of Trusii's principals, Michael Piompino, engaged in dishonest business practices including his use of an alias.<sup>3</sup> However, looking at the evidence in total, the Court

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<sup>3</sup> During trial, evidence was offered that the Attorney General of Florida had instituted an action against Trusii, Taraday, Kennedy, Piompino and others alleging unfair and deceptive trade practices (the “Florida Action”). GreenSky indicated it intended to use deposition transcripts from the Florida Action during the course of trial, and Taraday filed a motion in limine seeking to bar their use. When trial commenced, the Court provisionally granted the motion in limine and asked counsel to revisit the ruling when seeking to introduce any of the transcripts from the Florida action.

Neither party secured Piompino's attendance at trial. GreenSky used Piompino's deposition testimony in this matter as direct evidence. This deposition testimony included Piompino's false statements about the intern “Michael Pino.” GreenSky was then permitted to use Piompino's deposition testimony in a Florida action solely for the purpose of impeaching Piompino's deposition testimony in the present action. (Trial Tr. 92-93.) However, GreenSky sought to make broad use of Piompino's deposition testimony in the Florida Action for other purposes,

is not persuaded by GreenSky's evidence that Trusii was merely the alter ego of its owners.

Notably, GreenSky failed to introduce Trusii's financial records, so that the Court lacked a complete picture of the money coming into Trusii or how it was being spent.<sup>4</sup> Taraday testified he received no salary or disbursement from Trusii. He further testified that all monies Trusii received were funneled back into the back into the business. Other testimony indicated Trusii's paid the manufacturers of its products who were located in Korea. Additional evidence was offered about a Trusii "case study" program whereby product owners would receive payments for certain activities, including writing reviews. This "case study" program appeared to be a social media campaign designed to help boost product sales, and testimony indicated Trusii paid millions of dollars to customers towards that end.<sup>5</sup> In sum, evidence, which GreenSky did not dispute, reflects Trusii was paying at least some of its business and promotional expenses.

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including the support its apparent authority and alter ego arguments. To be clear, the Court has declined to consider Piompino's deposition testimony in the Florida Action for anything other than impeachment. (*Id.* 120-125.) Alternatively, even if the Court were to consider Piompino's deposition testimony in the Florida Action as direct evidence in support of GreenSky's alter ego theory, the Court finds it unconvincing. It offers only a few snapshots rather than a comprehensive picture of Trusii's financial situation and practices.

<sup>4</sup> GreenSky's counsel suggested Trusii and Taraday failed to provide those records in discovery while Taraday was under the impression his former counsel, who handled the discovery phase of this litigation, produced those records. As detailed above, this case was provided an extensive discovery period with the Court granting the parties' requests for various discovery extensions. GreenSky never filed any discovery motions concerning Trusii's failure to produce its financial records. Moreover, if it lacked Trusii's financial records, GreenSky could have attempted to procure them from third parties such as the financial institution(s) holding Trusii's account(s).

<sup>5</sup> Like all other aspects of the Trusii business, the "case study" program was not well-managed. Kennedy testified that significant sums were paid to customers even though they had failed to complete the activities required for payment.

Based upon the limited evidence provided, Court can only find that Trusii was a struggling business, hampered by inexperienced and poor leadership. Its many business problems were only magnified when it experienced rapid growth -- exposing its lack of a sufficient supply chain, a workable plan for addressing customer complaints, or meaningful controls over its rewards-based customer appreciation program. In the absence of a more complete picture of Trusii's financial picture, the Court is not persuaded Trusii's owners used it as a "mere instrumentality for the transaction of their own affairs." Ballie Lumber Co. at 289. On this alter ego claim, GreenSky has simply failed to carry its burden of proof.

#### **4. CONCLUSION**

In light of the foregoing, the Court enters the following Final Order and Judgment:

- a. The Court finds in favor of Plaintiff GreenSky, LLC and against Defendant Wellness Program Services, LLC d/b/a Trusii and awards a judgment in the principal amount of \$3,053,311.44.<sup>6</sup> Post-judgment interest shall accrue on this judgment as permitted by law.
- b. The Court finds in favor of Defendant Jeffrey Taraday and against Plaintiff GreenSky, LLC.

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<sup>6</sup> The Court shall defer consideration of attorney's fees pending the conclusion of any appellate review of Taraday's liability under the Program Agreement. At that time, if Taraday has no personal liability under the Program Agreement, an award of fees will be entered without further hearing. If he is found to have personal liability under the Program Agreement, Taraday will be provided the opportunity to contest the amount of attorney's fees and legal expenses sought by GreenSky.

c. There being no just reason for delay, the Court directs the entry of a final judgment under O.C.G.A. § 9-11-54(b).

**IT IS SO ORDERED**, this the 2nd day of March, 2023.

/s/ John J. Goger  
John J. Goger, Senior Judge  
Superior Court of Fulton County  
Atlanta Judicial Circuit  
Metro Atlanta Business Case Division

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Attorneys for Petitioner	Attorneys for Respondents
<p>Keith J. Barnett Kimberly D. Eason <b>TROUTMAN PEPPER HAMILTON SANDERS LLP</b> 600 Peachtree Street NE, Suite 3000 Atlanta, Georgia 30308-2216 Tel: (404) 885-3000 Fax: (404) 885-3900 <a href="mailto:keith.barnett@troutmansanders.com">keith.barnett@troutmansanders.com</a> <a href="mailto:kimberly.eason@troutman.com">kimberly.eason@troutman.com</a></p>	<p>Wellness Program Services, LLC d/b/a Trusii- <i>Unrepresented</i>  Jeffrey Taraday - <i>Appearing pro se</i> 10866 Washington Blvd. # 932 Culver City, California 90232 <a href="mailto:jt@trusii.com">jt@trusii.com</a></p>