

## 9. Defendant

Ascentium is a competitor of Balboa's. As participants in the same industry, executives at the two companies are familiar with each other, and have in some cases worked with each other in the past. 10. In or about August of 2016, Ascentium Senior Vice President Cliff McKenzie contacted Balboa Sales Director Patrick Ontal about a business opportunity. According to Mr. McKenzie, Ascentium had for several years been financing home health care practices through a company known as America's Medical Home Team, Inc. ("MHT"). Mr. McKenzie indicated that Ascentium's experience with MHT had been lucrative and positive, but that Ascentium had reached its portfolio limit of approximately \$40 million and was no longer going to finance the home health care practices. MHT was therefore looking for a new financing partner, and Mr. McKenzie wanted to refer the business to Balboa. 11. Balboa was interested, and proceeded to gather information on MHT and learn more about its business. Over the course of the next several weeks, via email and telephone calls, Mr. McKenzie described MHT's business as follows: 12. MHT recruited physicians from around the country to establish a new home health care practice. If interested, the physician would purchase from one to four Medical Home Team licenses ("MHT License") from MHT for a fixed price of \$76,500.00 per license. Pursuant to the MHT License, MHT would establish a new limited liability company that would be wholly-owned by the physician. MHT would recruit and facilitate the hiring of the nurse practitioners who would conduct the actual home visits, and provide all marketing, billing, collection, and support services. MHT would also provide the physician with three ipads per license, loaded with electronic health record software that would enable the physician to remotely review the nurse practitioners' notes and the patients' health records. Case 3:18-cv-00898-M Document 165 Filed 11/08/19 Page 4 of 19 PageID 1616 Page 5 of 13 13. According to Mr. McKenzie, the physician would apply to the lender – primarily Ascentium, although another lender named Univest Capital had participated at various times throughout the program's history – to finance the purchase of the MHT License(s). If approved for financing, an MHT sales representative would obtain the physician's signature on the requisite

financing documents, including either an Installment Payment Agreement (“MPA”) or a Monthly Payment Agreement (“MPA”) executed by the physician on behalf of a newly-formed limited liability company wholly-owned by the physician. Because the primary obligor was a newlyformed entity with no business or credit history, the lender also required a personal guaranty executed by the physician as well as a corporate guaranty from the physician’s regular practice, if one existed. The MHT sale representative would also take a picture of the physician with ipads to confirm delivery of the only “hard” asset and a picture of the physician’s driver’s license to confirm identity. 14. According to Mr. McKenzie, after executed documents (and the photos) were sent back to the lender, the lender would contact the physician by phone to confirm that the physician had in fact purchased the MHT License(s) and understood the payment schedule set forth on the MPA and/or MPA. Once this verbal verification was complete, the lender would fund the transaction by ACH payment to MHT. 15. Mr. McKenzie was effusive in his praise for MHT. On or about August 19, 2016, he stated that neither Ascentium nor Univest had experienced a “hard default” with any borrower, and that they had already funded \$12 million in transactions so far that year. 16. Because MHT was an unknown company to Balboa, Balboa sought additional assurances that MHT was a viable business at the outset of its relationship with MHT. In particular, Balboa’s President Phil Silva contacted Hernan Traversone, Ascentium’s Chief Credit Officer, to Case 3:18-cv-00898-M Document 165 Filed 11/08/19 Page 5 of 19 PageID 1617 Page 6 of 13 inquire as to Ascentium’s experience with MHT. Mr. Silva was familiar with Mr. Traversone, having worked with him at another finance company, American Express, in the past. 17. Mr. Silva called Mr. Traversone on or about October 19, 2016, and took notes of his conversation. Mr. Traversone stated that MHT was an excellent vendor, and that Ascentium had experienced no default on any of the more than \$40 million in financing it had provided since 2012 to more than 200 physicians participating in the MHT program. To emphasize his glowing recommendation of MHT, Mr. Traversone reminded Mr. Silva of a saying Mr. Silva had used when the worked together at American Express: “The best vendors bring the best obligors.” And MHT, said Mr. Traversone, was in that category. 18. Mr. Traversone’s statements were made with full knowledge that Balboa was evaluating its participation in financing MHT Licenses. He also knew that Balboa would rely heavily on a glowing recommendation not just from any Ascentium employee, but from Acentium’s Chief Credit Officer who had

previously had a good working relationship with Mr. Silva. And in fact, Balboa did rely on Mr. Traversone's representations, and based on Ascentium's credit reference, Balboa decided to proceed with financing MHT Licenses. 19. Mr. Traversone's and Mr. McKenzie's statements were false, and they knew they were false when they made them. In early 2016 – more than six months prior to Mr. Silva's conversation with Mr. Traversone – Ascentium was aware that the vast majority of its borrowers had not established a home health care practice at all, much less a profitable practice. Ascentium also knew that to the extent monthly payments were being made, they were being made by MHT and being funded solely out of sales of new MHT Licenses. In fact, Ascentium had demanded in early 2016 that MHT immediately pay a number of its loans in full. Ascentium was not terminating its participation in the MHT program due to routine portfolio risk management, as Mr. Traversone claimed, but because Ascentium recognized that MHT was ponzi scheme. Case 3:18-cv-00898-M Document 165 Filed 11/08/19 Page 6 of 19 PageID 1618 Page 7 of 13 20. In short, Ascentium and Messrs. McKenzie and Traversone were not referring business to Balboa. To the contrary, Ascentium was actively participating in the ponzi scheme with the intent that Balboa would fund enough MHT Licenses to enable MHT to pay off Ascentium's loans. 21. Balboa was wholly unaware that MHT was a ponzi scheme before it began funding MHT Licenses on behalf of physicians. Messrs. McKenzie's and Traversone's misrepresentations to Balboa ensured that Balboa would remain in the dark, and that Balboa would provide funding that would be used to pay off Ascentium's nonperforming loans. 22. On or about December 29, 2016, Balboa executed and delivered to Ho Home Visits a certain written Installment Payment Agreement No. 250821-000 (the "IPA"), under the terms of which Balboa loaned Ho Home Visits the principal sum of Three Hundred Six Thousand Dollars (\$306,000.00) to finance Ho Home Visits' purchase of four MHT Licenses, as described in an attachment to the IPA ("IPA Exhibit A1"). A true and correct copy of the IPA is attached hereto as "Exhibit 1" and incorporated herein by reference, and a true and correct copy of the IPA Exhibit A1 is attached hereto as "Exhibit 2." 23. Ho Home Visits completed its purchase of the MHT Licenses, and Balboa has performed all of its obligations under the IPA, except as excused or prevented by the conduct of Ho Home Visits. 24. The IPA required Ho Home Visits, among other things, to make six (6) initial monthly payments of \$396.00 and then sixty (60) monthly payments of \$7,596.00, payable on the twenty-ninth day of each month, beginning December 29, 2016. See Ex.

1. 25. The IPA further provided that, if Ho Home Visits failed to pay any amount when due under the IPA, Ho Home Visits would be charged a late fee in an amount equal to ten percent (10%) of each late payment. Ex. 1. Case 3:18-cv-00898-M Document 165 Filed 11/08/19 Page 7 of 19 PageID 1619 Page 8 of 13 26. The IPA further provided that all amounts past due and unpaid under the IPA would bear interest at a rate of eighteen percent (18%) per annum or the maximum rate allowed under applicable law. Ex. 1. 27. Pursuant to the Guaranty provision of the IPA, Ho unconditionally guaranteed "the payment and performance when due of all of the obligations of [Ho Home Visits]." Exh. 1. 28. Pursuant to the Guaranty of Installment Payment Agreement attached to the IPA, Ho, M.D. guaranteed payment and performance of the obligations owed by Ho Home Visits to Balboa under the IPA. A true and correct copy of the Guaranty of Installment Payment Agreement is attached hereto as "Exhibit 3." Ho and Ho, M.D. are hereinafter referred to collectively as the "Guarantors." 29. The IPA provided that an event of default would occur thereunder if, among other things, the Defendants fail to pay any amount when due under the IPA. Ex. 1. 30. If a default occurred, the IPA entitled Balboa to declare the "Accelerated Balance," i.e., all accelerated payments due under the IPA, plus any remaining payments under the IPA discounted to their present value at the discount rate of three percent (3%), "immediately due and payable." Ex. 1. 31. Finally, the IPA provided that Defendants would be liable to Balboa for all costs and fees, including attorneys' fees, incurred by Balboa in enforcing its rights and remedies as a result of the Defendants' default under the IPA. Ex. 1. 32. Ho Home Visits and, in turn, the Guarantors, defaulted under the terms of the IPA for, among other things, failure to pay the monthly payments when due for May 2017 and each monthly payment that has come due thereafter. 33. In accordance with the IPA, and as a proximate result of Ho Home Visits' default thereunder, Balboa declared the Accelerated Balance to be immediately due and payable to Balboa. Case 3:18-cv-00898-M Document 165 Filed 11/08/19 Page 8 of 19 PageID 1620 Page 9 of 13 34. Ho Home Visits has not paid the Accelerated Balance, or any other amount, since the date of Balboa's demand. 35. As of May 29, 2017, the amount owed jointly and severally by the Defendants to Balboa was \$410,580.69 in unpaid payments (less 3%), plus the interest and fees that had accrued and continued to accrue after May 29, 2017, and all fees, expenses, attorneys' fees and costs incurred by Balboa in connection with the IPA as of the date of filing this Complaint, and that continue to accrue thereafter. COUNT 1:

BREACH OF IPA CONTRACT (against Ho Home Visits) 36. Balboa incorporates all preceding allegations by reference as though fully set forth herein. 37. There is a valid and enforceable contract between Balboa and Ho Home Visits, to wit, the IPA. See Ex. 1. 38. Balboa has performed all of its obligations under the IPA, except as excused or prevented by the conduct of Ho Home Visits. 39. On or about May 29, 2017, Ho Home Visits materially breached the IPA by, among other things, failing to pay the monthly payments when due for May 2017 and each monthly payment that has come due thereafter. 40. As a proximate result of Ho Home Visits' default, and in accordance with the IPA, Balboa declared the Accelerated Balance to be immediately due and payable to Balboa. Ho Home Visits has not paid the Accelerated Balance, or any amount, since Balboa's demand. 41. The total amount owed by Ho Home Visits to Balboa, as set out above, is \$410,580.69 in unpaid payments (less 3%), plus the interest and fees that had accrued and continued to accrue after May 29, 2017, and all fees, expenses, attorneys' fees and costs incurred Case 3:18-cv-00898-M Document 165 Filed 11/08/19 Page 9 of 19 PageID 1621 Page 10 of 13 by Balboa in connection with the IPA as of the date of filing this Complaint, and that continue to accrue thereafter. COUNT 2: BREACH OF GUARANTY (against Guarantors) 42. Balboa incorporates all preceding allegations by reference as though fully set forth herein. 43. There are valid and enforceable Guaranties between Balboa and the Guarantors, pursuant to which the Guarantors guaranteed payment and performance of Ho Home Visits' obligations to Balboa. See Ex. 1; Ex. 3. 44. Ho Home Visits has defaulted in its performance of its obligations to Balboa. 45. Accordingly, the Guarantors are liable for the performance of Ho Home Visits' obligations to Balboa. 46. The total amount owed by Ho Home Visits to Balboa, and guaranteed by the Guarantors is \$410,580.69 in unpaid payments (less 3%), plus interest and fees that had accrued and continued to accrue after May 29, 2017, and all fees, expenses, attorneys' fees and costs incurred by Balboa in connection with the IPA as of the date of filing this Complaint, and that continue to accrue thereafter. COUNT 3: FRAUD (against Ascentium) 47. Balboa incorporates all preceding allegations by reference as though fully set forth herein. 48. Ascentium, through its employees Mr. McKenzie and Mr. Traversone, made material representations, or concealed and failed to disclose material facts, to Balboa as to the viability of MHT and as to Ascentium's experience with financing MHT Licenses as set forth more fully herein. Case 3:18-cv-00898-M Document 165 Filed 11/08/19 Page 10 of 19

PageID 1622 Page 11 of 13 49. Such representations were false, and Ascentium and its employees knew such representations were false when made. 50. Such representations were made with the intent to Balboa rely upon the representations in deciding whether to engage MHT as a vendor and to thereafter finance MHT Licenses. 51. Balboa justifiably and reasonably relied upon Ascentium's representations in commencing its involvement with MHT. 52. Balboa was damaged by Ascentium's misrepresentations, by funding payments for MHT Licenses, including the MHT Licenses purchased by the Ho Defendants, that the purchasing physicians would not repay and would ultimately deny any obligation to repay. COUNT 4: NEGLIGENT MISREPRESENTATION (against Ascentium) 53. Balboa incorporates all preceding allegations by reference as though fully set forth herein. 54. Ascentium, through its employees Mr. McKenzie and Mr. Traversone, made material representations to Balboa as to the viability of MHT and as to Ascentium's experience with financing MHT Licenses as set forth more fully herein. 55. Such representations were false, and Ascentium and its employees had no reasonable basis for believing such statements to be true. 56. Such representations were made with the intent to Balboa rely upon the representations in deciding whether to engage MHT as a vendor and to thereafter finance MHT Licenses. 57. Balboa justifiably and reasonably relied upon Ascentium's representations in commencing its involvement with MHT. Case 3:18-cv-00898-M Document 165 Filed 11/08/19 Page 11 of 19 PageID 1623 Page 12 of 13 58. Balboa was damaged by Ascentium's misrepresentations, by funding payments for MHT Licenses that the purchasing physicians would not repay and would ultimately deny any obligation to repay. PRAYER Plaintiff Balboa Capital Corporation respectfully requests that Defendants Doctor Nhue Ho Home Visits LLC, Nhue Ho, M.D., PLLC,