IN THE SUPREME COURT OF THE STATE OF NEVADA

MANUEL IGLESIAS and EDWARD MOFFLY, Petitioners, v. EIGHTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA IN AND FOR THE COUNTY OF CLARK and the Honorable NANCY ALLF, District Court Judge, Respondents, and N5HYG, LLC, A MICHIGAN LIMITED LIABILITY COMPANY; AND, NEVADA 5, INC., A NEVADA CORPORATION, Real Parties in Interest.	Supreme Court No. Distr. Ct. Case No. A-17-762664-B Dept. XXVII **PETITIONERS' APPENDIX TO *PETITION* UNDER NRAP 21 FOR WRIT OF PROHIBITION, OR IN THE ALTERNATIVE, WRIT OF MANDAMUS** **(VOLUME I)**

Pursuant to NRAP 30, Petitioners MANUEL IGLESIAS and EDWARD MOFFLY, hereby submit their *Petitioners' Appendix to Petition Under NRAP 21 for Writ Of Prohibition, or in the Alternative, Writ Of Mandamus*.

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PROOF OF SERVICE

Pursuant to Nev. R. App. P. 25, I certify that I am an employee of Kaplan Cottner; that, in accordance therewith, I caused a copy of **PETITIONERS' APPENDIX TO *PETITION* UNDER NRAP 21 FOR WRIT OF PROHIBITION, OR IN THE ALTERNATIVE, WRIT OF MANDAMUS** to be mailed on the 9th day of June, 2021, by depositing, in a sealed envelope, a true and correct copy in the United States mail, postage prepaid a Compact Disc containing PDF copies and via email, and addressed to the following:

Attorneys of Record	Parties Represented
Ogonna M. Brown, Esq. 3993 Howard Hughes Parkway Suite 600 Las Vegas, NV 89169	*N5HYG, LLC, a Michigan limited liability company; and, in the event the Court grants the pending Motion for Reconsideration, NEVADA 5, INC., a Nevada corporation*
G. Mark Albright, Esq. D. Chris Albright, Esq. 801 South Rancho Drive Suite D-4 Las Vegas, NV 89106	*N5HYG, LLC, a Michigan limited liability company; and, in the event the Court grants the pending Motion for Reconsideration, NEVADA 5, INC., a Nevada corporation*
E. Powell Miller, Esq. (*pro hac vice*) Christopher Kaye, Esq. (*pro hac vice*) 950 W. University Dr. Suite 300 Rochester, MI 48307	*N5HYG, LLC, a Michigan limited liability company; and, in the event the Court grants the pending Motion for Reconsideration, NEVADA 5, INC., a Nevada corporation*
The Honorable Nancy Allf Eighth Judicial District Court Department 27 200 Lewis Avenue Las Vegas, NV 89155	*Presiding Judge over Case No. A-17-762664-B*

/s/ Sunny Southworth
An employee of Kaplan Cottner

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“Exhibit 1”

“Exhibit 1”

COMP

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DISTRICT COURT

CLARK COUNTY, NEVADA

N5HYG, LLC, a Michigan limited liability company; and NEVADA 5, INC., a Nevada corporation,

Plaintiffs,

vs.

HYGEA HOLDINGS CORP., a Nevada corporation; MANUEL IGLESIAS; EDWARD MOFFLY; DANIEL T. MCGOWAN; FRANK KELLY; MARTHA MAIRENA CASTILLO; LACY LOAR; RICHARD WILLIAMS, ESQ.; GLENN MARICHI, M.D.; KEITH COLLINS, M.D.; JACK MANN, M.D.; THE ESTATE OF HOWARD SUSSMAN, M.D.; JOSEPH CAMPANELLA; CARL ROSENCRANTZ; and RAY GONZALEZ; DOES I-XXX; and ROES I-XXX, inclusive,

Defendants.

CASE NO.: A-17-762664-B

DEPT. NO.: Department 25

COMPLAINT AND JURY DEMAND

Arbitration Exemption Claimed: Matter Seeks Extraordinary Equitable Relief, Including Rescission of Contract

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COMPLAINT AND JURY DEMAND

COME NOW, Plaintiffs, N5HYG, LLC, a Michigan limited liability company, and NEVADA 5, INC., a Nevada corporation (hereinafter "Plaintiffs"), by and through their undersigned counsel of record, and as and for its Complaint against Defendants, HYGEA HOLDINGS CORP.; MANUEL IGLESIAS; EDWARD MOFFLY; DANIEL T. MCGOWAN; FRANK KELLY; MARTHA MAIRENA CASTILLO; LACY LOAR; RICHARD WILLIAMS, ESQ.; GLENN MARICHI, M.D.; KEITH COLLINS, M.D.; JACK MANN, M.D.; THE ESTATE OF HOWARD SUSSMAN, M.D.; JOSEPH CAMPANELLA; CARL ROSENCRANTZ; and RAY GONZALEZ (collectively hereinafter "Defendants"), hereby allege and aver as follows:

THE PARTIES

1. Defendants wrongfully secured $30 million from Plaintiffs, based on their conduct as alleged herein, and have breached their obligations, promises and representations to the Plaintiffs which were made to secure these funds. In doing so, they have continued to rake in funds from new victims.

2. Defendant Hygea Holdings Corp. ("Hygea") is a Nevada corporation with its principal place of business in Miami, Florida. It purports to be engaged in the business of acquiring and managing physician practices and similar medical providers. Its affairs are managed by a Board of Directors, which upon information and belief has fourteen members.

3. Defendant Manuel Iglesias ("Iglesias") is a citizen and resident of the State of Florida. He is the Chief Executive Officer of Hygea and a member of its Board of Directors, although he has recently become nonresponsive to investor communications.

4. Defendant Edward Moffly ("Moffly") is a citizen and resident of the State of Florida. He is the Chief Financial Officer of Hygea and a member of its Board of Directors, although he has recently become nonresponsive to investor communications.

5. Defendant Daniel T. McGowan ("McGowan") is a citizen and resident of the State of New York. He is Chairman of the Board of Directors of Hygea Holdings Corporation.

6. Defendant Frank Kelly ("Kelly") is a citizen and resident of the State of Georgia. He is Vice Chairman of the Board of Directors of Hygea Holdings Corporation.

7. Defendant Martha Mairena Castillo ("Castillo") is a citizen and resident of the State of Florida. She is the CAO and member of the Board of Directors of Hygea Holdings Corporation.

8. Defendant Lacy Loar ("Loar") is a citizen and resident of the State of Florida. She is a member of the Board of Directors of Hygea Holdings Corporation.

9. Defendant Richard L. Williams, Esq. ("Williams") is a citizen and resident of the State of Florida. He is the CLO and member of the Board of Directors of Hygea Holdings Corporation.

10. Defendant Glenn Marrichi, M.D. ("Marrichi") is a citizen and resident of the State of Georgia. He is a member of the Board of Directors of Hygea Holdings Corporation.

11. Defendant Keith Collins, M.D. ("Collins") is a citizen and resident of the State of Florida. He is a member of the Board of Directors of Hygea Holdings Corporation.

12. Defendant Jack Mann, M.D. ("Mann") is a citizen and resident of the State of New York. He is a member of the Board of Directors of Hygea Holdings Corporation.

13. Defendant Howard Sussman, M.D. ("Sussman"), who is presently believed to be deceased, was a citizen and resident of the State of Florida. He was, at all relevant times, a member of the Board of Directors of Hygea Holdings Corporation. Upon information and belief, an estate has been established to administer his assets and liabilities.

14. Defendant Joseph Campanella ("Campanella") is a citizen and resident of the State of California. He is a member of the Board of Directors of Hygea Holdings Corporation.

15. Defendant Carl Rosencrantz ("Rosencrantz") is a citizen and resident of the State of Florida. He is a member of the Board of Directors of Hygea Holdings Corporation.

16. Defendant Ray Gonzalez ("Gonzalez") is a citizen and resident of the State of Florida. He is a member of the Board of Directors of Hygea Holdings Corporation. Together, the Defendants other than Hygea, Iglesias, and Moffly are referred to as the "Other Board Member Defendants."

17. Upon information and belief, at all times material to this Complaint, Iglesias and Moffly acted with the knowledge, direction, consent, and authorization of the Other Board Member Defendants.

18. Defendants designated herein as Does and Roes are individuals and legal entities that are liable to Plaintiffs for the claims set forth herein in that they, directly and/or indirectly, participated in the conspiracy alleged herein and/or control the named Defendants set forth herein or are possible alter egos of the above-named Defendants. If discovery should reveal Defendants

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are participating in fraudulent transfers for the purpose of avoiding creditors such as Plaintiffs, then the Does and Roes may include members of these entities, the entities themselves, and/or third-party transferees, including but not limited to new entities formed for holding property and assets, and they shall be added as defendants herein. Any such transactions and the true capacities of Does and Roes are presently unknown to Plaintiffs and, therefore, Plaintiffs sue said Defendants by such fictitious names. Plaintiffs will amend their Complaint to assert the true names and capacities of such Does and Roes if and when more information has been ascertained.

19. Plaintiff N5HYG, LLC ("N5HYG") is a limited liability company organized under the laws of the State of Michigan for the purpose of acquiring the shares at issue in this lawsuit. All of its membership shares are owned by Plaintiff Nevada 5, Inc., a corporation organized under the laws of the State of Nevada.

20. Plaintiff Nevada 5, Inc. ("Nevada 5") is a corporation organized under the laws of the State of Nevada.

21. The amount in controversy exceeds $15,000, and venue and jurisdiction are proper in this Court.

GENERAL ALLEGATIONS

22. In 2016, Defendants Iglesias and Moffly, acting in their capacity as officers and board members of Hygea, approached Nevada 5's agents about the possibility of an investment in Hygea. At all times pertinent to the allegations in this Complaint, Defendants Iglesias and Moffly acted and held themselves out as agents and representatives of Defendant Hygea.

23. At all relevant times pertinent to the allegations in this Complaint, Defendants were aware that representations, documents and other information that Defendants made or gave to Plaintiffs and/or Plaintiffs' authorized agents would be relied upon by Plaintiffs in deciding whether to make a substantial capital investment in Defendant Hygea, and Defendants intended that Plaintiffs would rely on those representations, documents, and other information.

24. Defendants made two interlocking sets of misrepresentations: they misrepresented Hygea's financial performance, and that after Nevada 5's investment Hygea would "go public." In fact, the financial performance turned out to be far worse than Defendants had claimed, and the impaired financial performance rendered a public offering impossible.

25. These representations were made to personnel of RIN Capital. RIN Capital served

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at all relevant times as Plaintiffs' authorized agent; and whose agency on behalf of Plaintiffs was disclosed and known to Defendants. Defendants were aware that the representations they made to RIN Capital would be relied upon by Plaintiffs in deciding whether to make a substantial capital investment in Defendant Hygea. In short, everyone involved understood that anything communicated to RIN Capital equaled a communication to Plaintiffs. These RIN personnel included Dan Miller, Sean Darin, and Chris Fowler.

26. Over the course of the representations, it became clear that the proposed vehicle for a public offering was a "reverse takeover," or RTO, with a company on the Toronto Stock Exchange. Effectively, the public company would "takeover" Hygea in exchange for the public company's stock, resulting in Hygea's effective presence on the exchange as a new public company. Defendants consistently represented that an RTO was imminent. On June 1, 2016, RIN's Dan Miller met with Iglesias and Moffly in Miami. They represented to him that Hygea was planning on going public in the fourth quarter of 2016.

27. On July 5, 2016, Dan Miller and Sean Darin had dinner in Miami with Iglesias, Moffly, and a representative of an investment bank, CEA, that was purportedly involved in the transaction. They met the next day at Hygea's office. At the July 6, 2016 meeting, Iglesias and Moffly represented to Dan Miller and Sean Darin that Hygea was a successful business that was poised for continued growth and a public offering of its stock.

28. Iglesias and Moffly represented to Plaintiffs that Hygea's business consisted of acquiring medical practices – primarily physician's practices – in Florida and surrounding states. By acquiring and consolidating the practices' non-medical operations, Hygea could supposedly realize value through economies of scale, improvements to billing and insurance coding practices, and more efficient business practices. Ideally, such a system would allow the doctors to concentrate on their medical practices while Hygea ran – and improved – the business side of things.

29. At this meeting and in ensuing communications, Iglesias and Moffly stressed that Hygea was profitable; that Hygea was growing; that the financial statements showed a high-performing company; that audited financial statements showing the supposed growth and success were being prepared and would be available soon; and that Hygea was poised for its RTO. As before, the explicit representation and implicit suggestion was that the planned RTO would be exceedingly remunerative to the shareholders at the time of the RTO.

30. Plaintiffs attempted to engage in a due diligence process to decide whether to make that substantial capital investment. On July 26, 2016, Plaintiffs' agent, Sean Darin, sent a due diligence list to Iglesias and Moffly, requesting that Defendants provide certain due diligence documentation and information. On July 27, 2016, Moffly acknowledged receipt of that list and referenced a "data room" and dropbox folder that contained the information Plaintiffs sought.

31. Defendants also provided Plaintiffs with documents and financial information on which they intended Plaintiffs would rely in making their decision as to whether to make a capital, equity investment in Defendant Hygea. The financial information provided up until the time of the investment itself encompassed sometimes-developing numbers that overall reflected a healthy company poised for an imminent RTO. [1] For example:

a. On or around June 27, 2016, Defendants sent RIN a Confidential Information Memorandum, or "CIM," apparently prepared by CEA, representing certain information about Hygea's financial performance. It represented favorable financial performance numbers for 2014 and 2015.

b. On August 2, 2016, Moffly provided Plaintiffs' agent, Dan Miller, with a final quarterly work file being used by third party financial analysts to perform a Quality of Earnings Report ("QoE") and a purported audit of Defendant Hygea's finances.

c. Plaintiffs were provided access to a purported transaction "data room" on approximately August 9, 2016.

d. On August 10, 2016, Defendant Moffly sent to Dan Miller a timeline for Defendant Hygea's public offering, which stated that the public offering would occur by the end of October 2016 at the latest.

e. On September 14, 2016, in response to a request from Plaintiffs' agent Dan Miller, Defendant Moffly formally transmitted the CIM, containing information pertinent to a potential investment deal, including updated unaudited financials. It showed favorable financial performance figures for 2013 through 2015.

[1] Defendants classified this information, and in particular the specific financial figures, as confidential. Defendants have these documents and are in possession of these exact figures. Plaintiffs will supply precise figures after the Court has entered an appropriate protective order or otherwise provided direction on this issue.

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f. On or about September 16, 2016, Defendant Moffly sent to Dan Miller a proposed deal structure, representing a purported Cormark valuation of Defendant Hygea at a very high level, and claimed that the company was actually ahead of the very favorable projections underlying the figure.

g. In multiple emails on September 20-21, 2016, Defendant Moffly stated that the final trial balances for June 30, 2016 would be finished in a matter of hours with the "consolidation done by [outside accountants] CLA (Clifton Larson Allen, LLP) [. . .] but assembled by our accounting team."

h. On September 20, 2016, Defendant Moffly sent to Plaintiffs' agent Dan Miller a copy of financials, containing balance sheets, income statements, and a statement of cash flows, purportedly done by CPA firm Rodriguez, Trueba & Co. They once again showed a favorable financial performance over the 2013 through 2015 period.

i. In response to Plaintiffs' questions about Hygea's physician compensation structure and agreement issues, employee benefits, possible claims for unpaid bonuses, and Defendant Hygea's potential compliance issues, Defendant Hygea's representatives addressed Plaintiffs' questions via phone and email on September 22, 2016. On or about September 22, 2016, Tom Herrmann, Chief Compliance Officer of Defendant Hygea, provided information via a telephone call with Plaintiffs' agents to address Plaintiffs' compliance questions. On September 22, 2016, Plaintiffs received an email from Defendants' agents, providing context regarding existing physician contracts and bonus provisions.

j. On or around September 27, 2016, Defendants provided RIN with an Offering Memorandum with additional, and once again favorable representations as to Hygea's financial situation.

k. On September 29, 2016, Defendant Moffly sent to Dan Miller an email attaching a capital table structure analysis, purportedly approved by Cormark and Defendant Hygea's board, that projected a favorable 2016 EBITDA.

l. On October 4, 2016, Defendant Moffly on behalf of Defendant Hygea sent to Dan Miller a copy of Hygea's Quality of Earnings Report ("QoE") dated October 3, 2016, which was purportedly prepared by third party CLA, showing once again very favorable performance figures.

m. The October 3, 2016 QoE also showed for Defendant Hygea in the "trailing twelve months" from June 30, 2015 through June 30, 2016 continued healthy performance.

n. On October 5, 2016, Defendants Iglesias and Moffly on behalf of Defendant Hygea provided to Dan Miller and others a verification of Defendant Hygea's QoE.

32. As the deal neared, on September 20, 2016, Moffly told Dan Miller that the pre-RTO "road show" and following "quiet period" was currently scheduled to begin on October 3, 2016 but could be moved back a week if necessary. Once again, the representation was clear: an RTO was only weeks away and the process would begin as soon as Nevada 5 had made its investment.

33. At no time during these communications did any Defendant inform any representative of Nevada 5 that the purported forthcoming "growth" of Hygea would actually come from new investors, as opposed to earnings, or from non-standard, non-GAAP accounting methods applied to new medical practice acquisitions; or that the RTO would be impossible in light of Hygea's manifold deficiencies.

34. Eventually, Nevada 5, in reliance upon these representations and omissions, formed N5HYG to execute a Stock Purchase Agreement dated October 5, 2016, which N5HYG did. A copy is in Defendants' possession.

35. Under the terms of the Stock Purchase Agreement, N5HYG paid $30 million for 23,437,500 shares of Hygea's Common Stock, constituting 8.57% of the outstanding shares. *See* Stock Purchase Agreement § 3.3 (purchase price) and recitals (number of shares and percentage).

36. In the Stock Purchase Agreement, the parties agreed that the price of $1.82 per share "reflected the fair market value" of the company and that Plaintiffs were buying shares reflecting 8.57 percent of the company. Given that the shares cost $30 million in aggregate, and that $30 million is 8.57 percent of about $350 million, Defendants therefore agreed that the company was worth at least $350 million.

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37. This valuation reflected and was consistent with the range of financial performance that Defendants had represented Hygea to have been achieving.

38. Under the Stock Purchase Agreement, Defendants were subject to numerous obligations to Plaintiffs, some of which were personally guaranteed by Defendants Iglesias and Moffly.

39. The Stock Purchase Agreement also reflected many of the representations that Defendants had made throughout the negotiations. For example, the Stock Purchase Agreement vouched for the accuracy of the financial statements provided during the negotiations:

> **Attached to Schedule 4.6.1 are true, correct and complete copies of** each of the following: (a) the consolidated audited balance sheets of Seller and the Subsidiaries as of December 31, 2013 and the related statements of profit and loss and changes in equity for the fiscal year then ended (the "2013 Yearly Financials"); and (b) that certain "Hygea Holdings Corp. Quality of Earnings Report Update – TTM June 30, 2016" prepared by independent accounting firm CliftonLarsonAllen LLP, dated as of October 3, 2016, including an unaudited consolidated balance sheet of Seller and the Subsidiaries as of June 30, 2016 (respectively, **the "Most Recent Balance Sheet,"** and the "Most Recent Balance Sheet Date") **and** the related unaudited consolidated statement of profit and loss and changes in equity of Seller and the Subsidiaries for the 6-month period then ended (collectively, **the "Most Recent Financials"**). Seller, together with CPA firm RT&C (Rodriguez, Trueba & Co) is in the process of completing the preparation of the consolidated audited balance sheets of Seller and the Subsidiaries as of December 31, 2014 and December 31, 2015 and the related statements of profit and loss and changes in equity for the fiscal years then ended (the "2014 & 2015 Yearly Financials" and, collectively with the Audited Financials, the "Yearly Financials"), true and correct copies of which shall be provided to Buyer promptly upon completion, but in any event no later than November 30, 2016, which 2014 & 2015 Yearly Financials (together with the Most Recent Financials), when completed and provided to Buyer, shall reflect shareholders' equity as of June 30, 2016 ….. The Most Recent Financials and the Yearly Financials are referred to herein collectively as the "Financials." Section 4.6.1. *See also* Section 4.25 (representation that "All of the books and records of Seller and each Subsidiary have been maintained in the Ordinary Course of Business and fairly reflect, in all material respects, all transactions of the Business.")(emphasis added).

40. These financial attachments continued the rosy representations; were consistent with ranges of performance previously represented; and constituted Defendants' concluding, warranted representations.

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41. Defendant Hygea provided a certificate of satisfaction, dated October 5, 2016 and signed by Defendant Iglesias in his capacity as President and CEO, which stated that "[t]he representations and warranties of Seller made in the Purchase Agreement are true and correct in all respects at and as of the date hereof with the same force and effect as if made as of the date hereof."

42. After Plaintiffs' purchase, Plaintiffs learned that these representations had been incorrect and that Defendants had hidden the truth from them. The information showing that the representations were false and that material facts were omitted is uniquely and exclusively in Defendants' possession, despite their contractual, statutory, and common law obligations to provide the information to Plaintiffs. Nonetheless, despite this improper restriction on information, Plaintiffs have been able to learn certain things about Hygea's true status.

43. First of all, the RTO process did not begin immediately upon Plaintiffs' investment, and the RTO was not completed around the end of 2016 or beginning of 2017 as promised. Despite continued assurances that it will occur, it has never happened.

44. Moreover, it has recently become apparent that, far from enjoying robust growth, Hygea is running out of cash. It has failed to make certain contractual payments to Plaintiffs and, upon information and belief, it paid its payroll through its American Express account for some time until it was apparently poised to fail to "make payroll" over the last few weeks, until it ultimately was apparently able to do so. Upon information and belief, Hygea owes approximately $10 million to American Express.

45. Given Hygea's apparent troubles, Hygea hired an outside consultant, FTI, to review its financial performance. Led by an industry expert, FTI has met with constant "roadblocks," as Moffly and Iglesias have refused to share information.

46. Nonetheless, FTI has been able to reach certain conclusions about Hygea's status. On June 29, 2017, Plaintiffs learned that Defendants were making a partial disclosure of their previous misrepresentations, now representing that Hygea's 2016 EBITDA was far less than represented before the investment.

47. But even this "disclosure" was inaccurate. At this June 29, 2017 meeting, a senior FTI representative reported that he had evaluated the claimed "corrected" EBITDA for 2016. He called it "fabricated," and reported that EBITDA was actually about one seventh of the "corrected" figure, with the potential for a similarly meager increase if Hygea could remedy its severe

operational deficiencies.

48. On July 12, 2017, the senior FTI representative called Chris Fowler at RIN. He reported that Hygea was refusing to provide 13 week cash flow projections; that he could not get a hold of the checking accounts; that Hygea's headquarters lacked access to the bank accounts, which were under Iglesias and Moffly's personal control; that Iglesias had admitted to "cooking the books" to avoid "issues" with a previous lender; and that Hygea had recently bought new medical practices despite its apparent distress.

49. Despite the roadblocks he had faced, the senior FTI representative was able to conclude and report to Fowler that "their numbers," that is, Hygea's financial performance figures for 2014 through 2016, "are not the same as the ones they gave" to Plaintiffs during the lead-up to Plaintiffs' investment. He added that he would not "come up with bullshit for [the] auditors," who supposedly would review the financial information.

50. The senior FTI representative also explained on August 29, 2017 that the QoE could have been inaccurate because Defendants could have imposed constraints on the earnings review or otherwise manipulated the process. For example, Defendants appeared to manipulate the EBITDA figures through enormous medical record account, or "MRA," adjustments and by improperly accounting for medical practice acquisitions.

51. Upon information and belief, an accountant with one outside accounting firm told Iglesias and Moffly, "You can badger me, but I won't sign off on these" financials that Hygea presented.

52. In other words, Defendants made representations of a healthy company poised for an imminent RTO, representing robust financial performance within the parameters of a successful and valuable business and concluding with warranted financial information within such parameters. Since Plaintiffs' investment, made in detrimental reliance on those representations, it has become apparent that the business's actual performance fell far short of such parameters.

53. Moreover, in addition to Section 4.6.1, under Section 6.6 of the Stock Purchase Agreement, Defendants promised to provide accurate and complete 2014 and 2015 financials by November 30, 2016:

> 2014 & 2015 Financials. As promptly as practicable upon their completion, but in no event later than November 30, 2016, Seller shall

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> deliver true, correct and complete copies of the 2014 & 2015 Financials to Buyer, which 2014 & 2015 Financials shall comport in all respects with the provisions set forth in Section 4.6.

54. This deadline has come and gone, but Defendants have failed, to the date of this complaint, to provide the promised financials. Defendants have also failed to provide the promised projections and assumptions.

55. In recent weeks, the situation has, if anything, deteriorated. FTI has hit a brick wall, with Defendants unwilling or unable to provide rudimentary financial documents and information and unable or unwilling to pay them.

56. Nonetheless, Defendants have continued to pressure outside accountants for an endorsement of Hygea's books.

57. Moreover, subsequent to Plaintiffs' acquisition of Hygea stock, it has become clear that Defendants were baldly misrepresenting to Plaintiffs the value to Hygea of certain acquired medical practices. Even if Hygea acquired the practice late in a calendar year, it was allocating all of the practice's revenue from that year to itself – for example, upon information and belief, Defendants would buy a practice in October and count the practice's January through September income as Hygea's. Defendants' feeble explanation was that this was permitted by preexisting "management agreements." This is both illogical and untrue. The senior FTI representative spoke with Chris Fowler on or about September 6, 2017 and relayed that he had called three separate selling physicians to inquire about the purported management agreements. When he asked the selling physicians about this issue, they all stated that they knew nothing about these supposed "management agreements."

58. In addition, it has become apparent that Defendants continued to emphasize securing new investors to fill their coffers, to the detriment of the business model Defendants represented to Plaintiffs at the time of the Stock Purchase Agreement. In other words, despite the fact that Defendants were supposed to be realizing revenue from their skillful management of the acquired medical practices, such activity was not the primary source of the project's funds, thus adversely impacting the growth and revenue Defendants represented to Plaintiffs would occur.

59. Indeed, the entire theory behind Hygea's business model was that Hygea would realize efficiencies from effective business and accounting practices. Such a theory is entirely at odds with the way Defendants have actually run the operation (and, unbeknownst to Plaintiffs, at

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odds with the way Defendants were running the operation at the time of the Stock Purchase Agreement). Among other, worse things, this reflects Defendants' disorganized accounting and ineffective management.

60. As Defendants' fraud has become apparent, Iglesias and Moffly have begun to outright avoid their responsibilities as officers. Moffly sought to resign when asked to sign the financials prepared during his tenure, but ultimately agreed to stay on board to complete the same. But both he and Iglesias have failed to appear for key meetings and refused to engage in communications with important investors and stakeholders. They appear to be in the course of abandoning their scheme and leaving it to their victims to clean up the mess.

61. Defendants have also failed to fulfil numerous other obligations under the Stock Purchase Agreement, some of which were personally guaranteed by Iglesias and Moffly.

62. Though Plaintiffs have pled facts that at least support a strong inference of fraud, the specifics of the full depth and breadth of Defendants' fraud is still currently unknown to Plaintiffs, as many of the documents and specifics regarding the true financial condition of the company—particularly in the 2014 through 2016 time frame—have been concealed and are peculiarly and exclusively within the possession of Defendants. As a result, the Plaintiffs should be allowed to avail themselves of the relaxed pleading standard under NRCP 9(b) and conduct the necessary discovery to learn the specifics of Defendants' fraud hereafter.

63. Plaintiffs' injuries stem from Defendants' misconduct. Hygea's current distress reflects the continuation of the same poor performance that Defendants concealed before Plaintiffs' investment.

64. Plaintiffs are not required to tender back their shares in order to pursue their causes of action set forth in this Complaint. However, on September 18, 2017 they tendered back the shares they acquired under the Stock Purchase Agreement conditioned upon a full return of their purchase price plus interest, with such tender remaining open for 30 days and with such tender communicated to Hygea. This was and remains without prejudice to Plaintiffs' arguments, rights, remedies, claims, and legal theories, including their claims for damages beyond the amount reflected in such tender; it also was and remains without prejudice to Plaintiffs' ability to otherwise tender their shares for purposes of relief, including under their statutory securities fraud claim set forth below for return of their purchase price, plus interest, costs, and reasonable attorneys' fees plus whatever additional

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relief the Court determines is warranted. To date, Defendants have refused the tender. Unless and until the tender offer is accepted and Plaintiffs are otherwise fully compensated, Plaintiffs are entitled to pursue all remedies, exercise their rights as shareholders, and mitigate their damages.

FIRST CAUSE OF ACTION

Statutory Securities Fraud - (alleged by all Plaintiffs against all Defendants and Roes and Does)

65. Plaintiffs restate each allegation as set forth above.

66. For purposes of the Uniform Securities Act (the "Act"), at N.R.S. 90.295, the stock that Defendants sold to Plaintiffs was a "security."

67. Under the Act, at N.R.S. 90.570

> In connection with the offer to sell, sale, offer to purchase or purchase of a security, a person shall not, directly or indirectly:
>
> 1. Employ any device, scheme or artifice to defraud;
>
> 2. Make an untrue statement of a material fact or omit to state a material fact necessary in order to make the statements made not misleading in the light of the circumstances under which they are made; or
>
> 3. Engage in an act, practice or course of business which operates or would operate as a fraud or deceit upon a person.

68. As set forth above, Defendants violated the Act by, among other things: employing a device, scheme or artifice to defraud; making at least one untrue statement of a material fact or omitting to state at least one material fact necessary in order to make the statements made not misleading in light of the circumstances under which they are made; and engaging in an act, practice or course of business which operates or would operate as a fraud or deceit upon a person.

69. The Act provides for rescission and civil liability for these violations.

70. Accordingly, Defendants are liable to Plaintiffs for their violation of the Act in selling the securities to Plaintiffs.

WHEREFORE, Plaintiffs pray that this Honorable Court award them a Judgment against Defendants in an amount to be determined and such equitable relief that it deems to be appropriate, including statutory rescission.

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SECOND CAUSE OF ACTION

Federal Statutory Securities Fraud - (by all Plaintiffs against all Defendants and Roes and Does)

71. Plaintiffs restate each allegation as set forth above.

72. For purposes of the Securities Act of 1933 (the "Federal Act"), the stock that Defendants sold to Plaintiffs was a "security."

73. Defendants sold the stock to Plaintiffs through interstate commerce and through the means and instrumentalities thereof.

74. The Federal Act further states:

> It shall be unlawful for any person in the offer or sale of any securities (including security-based swaps) or any security-based swap agreement (as defined in section 78c(a)(78) of this title) by the use of any means or instruments of transportation or communication in interstate commerce or by use of the mails, directly or indirectly
>
> > (1) to employ any device, scheme, or artifice to defraud, or
> >
> > (2) to obtain money or property by means of any untrue statement of a material fact or any omission to state a material fact necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading; or
> >
> > (3) to engage in any transaction, practice, or course of business which operates or would operate as a fraud or deceit upon the purchaser. 15 U.S.C. § 77q.

75. As set forth above, Defendants violated 15 U.S.C. § 77q through interstate commerce by, among other things, employing a device, scheme or artifice to defraud; making at least one untrue statement of a material fact or omitting to state at least one material fact necessary in order to make the statements made not misleading in the light of the circumstances under which they are made; and engaging in an act, practice or course of business which operates or would operate as a fraud or deceit upon a person.

76. The Federal Act provides for rescission and civil liability for these violations:

> Any person who— . . .
>
> > (2) offers or sells a security . . . by the use of any means or instruments of transportation or communication in interstate commerce or of the mails, by means of a prospectus or oral communication, which includes an untrue statement of a material fact or omits to state a material fact necessary in order

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> to make the statements, in the light of the circumstances under which they were made, not misleading (the purchaser not knowing of such untruth or omission), and who shall not sustain the burden of proof that he did not know, and in the exercise of reasonable care could not have known, of such untruth or omission, shall be liable, subject to subsection (b), to the person purchasing such security from him, who may sue either at law or in equity in any court of competent jurisdiction, to recover the consideration paid for such security with interest thereon, less the amount of any income received thereon, upon the tender of such security, or for damages if he no longer owns the security. 15 U.S.C. § 77l.

77. Accordingly, Defendants are liable to Plaintiffs for their violation of the Federal Act in selling the securities to Plaintiffs.

WHEREFORE, Plaintiffs pray that this Honorable Court award them a Judgment against Defendants in an amount to be determined after trial and such equitable relief it deems to be appropriate, including statutory rescission.

THIRD CAUSE OF ACTION

Failure to Comply with State Registration Requirements (alleged by all Plaintiffs against all Defendants and Roes and Does)

78. Plaintiffs restate each allegation as set forth above.

79. For purposes of the Uniform Securities Act (the "Act"), the stock that Defendants sold to Plaintiffs was a "security."

80. On or around September 28, 2016, Defendants provided RIN with an Offering Memorandum claiming that its offer was being made pursuant to Regulation D under the Securities Act of 1933, purportedly obviating the need for defendant to properly register the security in accordance with federal and state law.

81. It was unlawful for the Defendants to offer to sell or to sell any security unless the security was either registered in accordance with state law pursuant to NRS 90.460 or subject to the exemption provided for a Regulation D offering pursuant to NRS 90.515.

82. Defendants did not register a security in accordance with NRS 90.460.

83. Defendants did not qualify for an exemption in accordance with NRS 90.515. Among other things, Defendants did not file a copy of notice of sale of securities pursuant to Regulation D ("notice of sale") with the Administrator of the Division; Defendants' provision of false information, withholding of information, and failure to provide information as set forth above, rendered the

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"Regulation D exception" unavailable under 17 CFR 230.500 and 17 CFR 230.502; Defendants failed to file the federal documents required under 17 CFR 230.503; and the purported use of Regulation D was invalid as "part of a plan or scheme to evade the registration provisions of the Act" under 17 CFE 230.500(f).

84. Defendants failed to register the securities as required by the Federal Act.

85. All Defendants participated in and oversaw this violative conduct.

86. The Act provides for rescission and civil liability for these violations.

87. Accordingly, Defendants are liable to Plaintiffs for their violation of the Act in selling the securities to Plaintiffs.

WHEREFORE, Plaintiffs pray that this Honorable Court award them a Judgment against Defendants in an amount to be determined and such equitable relief that it deems to be appropriate, including statutory rescission.

FOURTH CAUSE OF ACTION

Failure to Comply with Federal Registration Requirements (alleged by all Plaintiffs against all Defendants and Roes and Does)

88. Plaintiffs restate each allegation as set forth above.

89. For purposes of the Securities Act of 1933 (the "Federal Act"), the stock that Defendants sold to Plaintiffs was a "security."

90. Defendants sold the stock to Plaintiffs through interstate commerce and through the means and instrumentalities thereof.

91. On or around September 28, 2016, Defendants provided RIN with an Offering Memorandum claiming that its offer was being made pursuant to "Regulation D" under the Federal Act, purportedly obviating the need for defendant to properly register the security in accordance with federal law.

92. Defendants were in fact ineligible for the "Regulation D exception." For example, Defendants' provision of false information, withholding of information, and failure to provide information as set forth above, rendered the "Regulation D exception" unavailable under 17 CFR 230.500 and 17 CFR 230.502; Defendants failed to file the documents required under 17 CFR 230.503; and the purported use of Regulation D was invalid as "part of a plan or scheme to evade the registration provisions of the [Federal] Act" under 17 CFE 230.500(f).

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93. Defendants failed to register the securities as required by the Federal Act.

94. The Federal Act provides for rescission and civil liability for these violations.

95. All Defendants participated in and oversaw this violative conduct.

96. Accordingly, Defendants are liable to Plaintiffs for their violation of the Federal Act in selling the securities to Plaintiffs.

WHEREFORE, Plaintiffs pray that this Honorable Court award them a Judgment against Defendants in an amount to be determined and such equitable relief that it deems to be appropriate, including statutory rescission.

FIFTH CAUSE OF ACTION

Control Person Liability under the Nevada Uniform Securities Act (alleged by Plaintiffs against Iglesias, Moffly, and the Other Board Member Defendants)

97. Plaintiffs restate each allegation as set forth above.

98. Each of Iglesias, Moffly, and the Other Board Members materially engaged in and/or aided Defendant Hygea in the acts, omissions, purchase and sale, and failure to register the securities and other security fraud violations and/or transactions constituting Defendant Hygea's securities fraud in violation of the Nevada Uniform Securities Act in that each of them were the natural persons who acted on behalf of Defendant Hygea in directing or making the misrepresentations and other conduct set forth herein.

99. Plaintiffs sustained and suffered damage proximately caused by the joint concert of action Defendants in an amount exceeding $15,000, including costs, interest, and attorneys' fees.

100. Pursuant to the Uniform Securities Act, Iglesias, Moffly, and the Other Board Members are jointly and severally liable to Plaintiffs with and to the same extent as Defendant Hygea.

101. Pursuant to NRS 90.660, these Defendants are jointly and severally liable to Plaintiffs.

102. Iglesias, Moffly, and the Other Board Members have acted toward Plaintiffs with oppression, fraud, or malice, express or implied, such that Plaintiffs may recover exemplary and punitive damages for the sake of example and by way of punishing Iglesias, Moffly, and the Other Board Members pursuant to NRS 42.005 in an amount in excess of fifteen thousand dollars.

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WHEREFORE Plaintiffs request that this Court enter a judgment in their favor for the amount of damages to which they are found to be entitled, plus costs and attorneys' fees, and any exemplary and punitive damages, statutory damages, and equitable relief to which they are found to be entitled.

SIXTH CAUSE OF ACTION

Control Person Liability under the Federal Securities Act (alleged by Plaintiffs against Iglesias, Moffly, and the Other Board Member Defendants)

103. Plaintiffs restate each allegation as set forth above.

104. Iglesias, Moffly, and the Other Board Member Defendants either violated the Federal Act as set forth above, or by or through stock ownership, agency, or otherwise, or pursuant to or in connection with an agreement or understanding with one or more other persons by or through stock ownership, agency, or otherwise, controlled the person(s) who did so.

105. Pursuant to 15 USC 77o, these Defendants are jointly and severally liable to Plaintiffs.

WHEREFORE, Plaintiffs pray that this Honorable Court award them a Judgment against these Defendants in an amount to be determined and such equitable relief that it deems to be appropriate, including statutory rescission.

SEVENTH CAUSE OF ACTION

Common Law Fraud (alleged by all Plaintiffs against all Defendants and Roes and Does)

106. Plaintiffs restate each allegation as set forth above.

107. As set forth above, Defendants made false representations.

108. Defendants knew or believed the representations were false, or had an insufficient basis for making the representations, and the Defendants' conduct was fraudulent, malicious or oppressive.

109. The Defendants intended to induce the Plaintiffs to act in reliance upon the misrepresentations, in particular, by purchasing the Hygea stock.

110. Plaintiffs justifiably relied upon the misrepresentations.

111. Plaintiffs were injured and damaged as a result of this reliance in an amount exceeding $15,000, including costs, interest, and attorneys' fees.

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WHEREFORE, Plaintiffs pray that this Honorable Court award them a Judgment against Defendants in an amount to be determined, including all compensatory, exemplary, and punitive damages, costs, interest, and attorneys' fees, and such equitable relief as it deems to be appropriate, including rescission of the Stock Purchase Agreement and the return to Plaintiffs of not less than their $30 million purchase price plus interest.

EIGHTH CAUSE OF ACTION

Negligent Misrepresentation (alleged by all Plaintiffs against all Defendants and Roes and Does)

112. Plaintiffs restate each allegation as set forth above.

113. Defendants had a pecuniary interest in selling Hygea stock to Plaintiffs.

114. Defendants supplied false information for the guidance of Plaintiffs in their business transaction, and failed to exercise reasonable care or competence in obtaining or communicating the information.

115. Plaintiffs justifiably and foreseeably relied upon this false information.

116. Plaintiffs were pecuniarily injured and damaged as a result of this reliance in an amount exceeding $15,000, including costs, interest, and attorneys' fees.

WHEREFORE, Plaintiffs pray that this Honorable Court award them a Judgment against Defendants in an amount to be determined, including all compensatory, exemplary, and punitive damages, costs, interest, and attorneys' fees, and such equitable relief as it deems to be appropriate, including rescission of the Stock Purchase Agreement and the return to Plaintiffs of not less than their $30 million purchase price plus interest.

NINTH CAUSE OF ACTION

Silent Fraud/Material Omissions (alleged by all Plaintiffs against all Defendants and Roes and Does)

117. Plaintiffs restate each allegation as set forth above.

118. As set forth above, Defendants had: (a) superior knowledge regarding Hygea and their proposed and eventual sale of Hygea stock to Plaintiffs, (b) knowledge which was not within the fair and reasonable reach of the Plaintiffs and which Plaintiffs could not discover by the exercise of reasonable diligence, and/or (c) means of knowledge which were not open to both Defendants and Plaintiffs alike.

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119. Defendants omitted material facts in their communications with Plaintiffs, and the Defendants' conduct was fraudulent, malicious or oppressive.

120. Plaintiffs relied upon Defendants to communicate to them the true state of facts to enable them to properly, fully, and fairly evaluate the bargain.

121. Plaintiffs were injured and damaged as a result of this reliance in an amount exceeding $15,000, including costs, interest, and attorneys' fees.

WHEREFORE, Plaintiffs pray that this Honorable Court award them a Judgment against Defendants in an amount to be determined, including all compensatory, exemplary, and punitive damages, costs, interest, and attorneys' fees, and such equitable relief as it deems to be appropriate, including rescission of the Stock Purchase Agreement and the return to Plaintiffs of not less than their $30 million purchase price plus interest.

TENTH CAUSE OF ACTION

Breach of Contract (alleged by N5HYG against Hygea, Iglesias, and Moffly)

122. Plaintiffs restate each allegation as set forth above.

123. The Stock Purchase Agreement was a valid contract to which Hygea, Iglesias, and Moffly are bound.

124. These Defendants breached the Stock Purchase Agreement as set forth above. For example, they have failed to provide the financials and meet other obligations as required, some of which were personally guaranteed by Iglesias and Moffly. On information and belief, these Defendants have breached the Stock Purchase Agreement by way of other acts and/or omissions which further analysis and discovery will reveal.

125. Plaintiffs have been injured and damaged by these breaches in an amount exceeding $15,000, including costs, interest, and attorneys' fees.

WHEREFORE, Plaintiffs pray that this Honorable Court award them a Judgment against Hygea, Iglesias, and Moffly in an amount to be determined and such equitable relief as it deems to be appropriate, including rescission of the Stock Purchase Agreement as discussed further in Count X below.

ELEVENTH CAUSE OF ACTION

Rescission of Contract (alleged by N5HYG against Hygea, Iglesias, and Moffly)

126. Plaintiffs restate each allegation as set forth above.

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127. The Stock Purchase Agreement was a contract to which Hygea, Iglesias, and Moffly are bound.

128. These Defendants have failed to perform under the Stock Purchase Agreement as set forth above. For example, they have failed to provide the financials and meet other obligations as required, some of which were personally guaranteed by Iglesias and Moffly, and have denied Plaintiffs the benefits of their stock ownership through their mismanagement, misconduct, and violations of Plaintiffs' rights under the Stock Purchase Agreement and as a shareholder. On information and belief, these Defendants have breached the Stock Purchase Agreement by way of other acts and/or omissions which further analysis and discovery will reveal.

129. This failure of performance defeats the very object of the contract or renders that object impossible of attainment, and/or concerns a matter of such prime importance that the contract would not have been made by Plaintiffs if default in that particular had been expected or contemplated.

130. Plaintiffs have been injured and damaged by these breaches in an amount exceeding $15,000, including costs, interest, and attorneys' fees.

WHEREFORE, Plaintiffs pray that this Honorable Court award them a Judgment against Hygea, Iglesias, and Moffly in an amount to be determined and such equitable relief as it deems to be appropriate, encompassing rescission of the Stock Purchase Agreement and the return to Plaintiffs of not less than their $30 million purchase price plus interest.

TWELFTH CAUSE OF ACTION

Breach of Fiduciary Duty and Waste of Corporate Assets (alleged by all Plaintiffs against Iglesias, Moffly, and the Other Board Member Defendants)

131. Plaintiffs restate each allegation as set forth above.

132. Iglesias, Moffly, and the Other Board Member Defendants owed a fiduciary duty to Plaintiffs for reasons including, but not limited to, their positions as officers and directors of Hygea. Based on their fiduciary relationships, Iglesias, Moffly, and the Other Board Member Defendants specifically owe Plaintiffs the highest fiduciary obligations in the management and administration of the affairs of Hygea, including oversight of compliance with federal laws and securities regulations.

133. These Defendants breached these duties.

134. These breaches have proximately caused injuries and damages to Plaintiffs and wasted valuable corporate assets of Hygea in an amount exceeding $15,000, including costs, interest, and attorneys' fees.

WHEREFORE, Plaintiffs pray that this Honorable Court award them a Judgment against Iglesias, Moffly, and the Other Board Member Defendants in an amount to be determined and such equitable relief as it deems to be appropriate.

THIRTEENTH CAUSE OF ACTION

Breach of the Duty of Candor (alleged by all Plaintiffs against Iglesias, Moffly, and the Other Board Member Defendants)

135. Plaintiffs restate each allegation as set forth above.

136. Iglesias, Moffly, and the Other Board Member Defendants owed a duty of candor to Plaintiffs for reasons including, but not limited to, their positions as officers and directors of Hygea.

137. Iglesias, Moffly, and the Other Board Member Defendants issued, caused to be issued, and/or disseminated false and misleading information regarding, among other things, the finances of Hygea, Hygea's business model, and the conduct of Hygea's officers and directors, as described herein.

138. By these actions, Iglesias, Moffly, and the Other Board Member Defendants breached their respective duties of candor owed to Plaintiffs and Hygea's other shareholders.

139. These breaches have proximately caused injuries and damages to Plaintiffs in an amount exceeding $15,000, including costs, interest, and attorneys' fees.

WHEREFORE, Plaintiffs pray that this Honorable Court award them a Judgment against Iglesias, Moffly, and the Other Board Member Defendants in an amount to be determined and such equitable relief as it deems to be appropriate.

FOURTEENTH CAUSE OF ACTION

Breach of the Duty of Loyalty (alleged by all Plaintiffs against Iglesias, Moffly, and the Other Board Member Defendants)

140. Plaintiffs restate each allegation as set forth above.

141. Iglesias, Moffly, and the Other Board Member Defendants owed a duty of loyalty to Plaintiffs for reasons including, but not limited to, their positions as officers and directors of Hygea.

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142. The wrongful conduct of Iglesias, Moffly, and the Other Board Member Defendants, as more fully described herein, breached their respective duties of loyalty to Plaintiffs.

143. These breaches have proximately caused injuries and damages to Plaintiffs in an amount exceeding $15,000, including costs, interest, and attorneys' fees.

WHEREFORE, Plaintiffs pray that this Honorable Court award them a Judgment against Iglesias, Moffly, and the Other Board Member Defendants in an amount to be determined and such equitable relief as it deems to be appropriate.

FIFTEENTH CAUSE OF ACTION

Minority Shareholder Oppression (alleged by N5HYG against Iglesias, Moffly, and the Other Board Member Defendants, with Hygea as a nominal Defendant to the extent necessary to afford complete relief)

144. Plaintiffs restate each allegation as set forth above.

145. Hygea has a limited number of shareholders and is not a publically traded corporation.

146. Iglesias, Moffly, and the Other Board Member Defendants have control and have exercised control over Hygea.

147. N5HYG is a minority shareholder of Hygea.

148. Iglesias, Moffly, and the Other Board Member Defendants have abused their position of control over Hygea to violate N5HYG's rights as a shareholder.

149. N5HYG has been injured and damaged thereby in an amount exceeding $15,000, including costs, interest, and attorneys' fees.

WHEREFORE, Plaintiffs pray that this Honorable Court award them a Judgment against Defendants in an amount to be determined and such equitable relief as it deems to be appropriate.

SIXTEENTH CAUSE OF ACTION

Tortious Interference with Contract (alleged as to Defendants Iglesias, Moffly, and the Other Board Member Defendants)

150. Plaintiffs reallege the previous paragraphs as if set forth here.

151. Plaintiffs invested in Hygea and N5HYG entered into the Stock Purchase Agreement.

152. Iglesias, Moffly, and the Other Board Member Defendants knew about this contract and undertook intentional acts intended or designed to disrupt the contractual relationship. These acts have disrupted the contract and effectively negated any benefit to Plaintiffs from their

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investment through the conduct set forth above, and have caused Hygea to breach its obligations to N5HYG under the Stock Purchase Agreement.

153. These breaches have injured and damaged Plaintiffs in an amount exceeding $15,000, including costs, interest, and attorneys' fees.

154. These Defendants caused these breaches intentionally in order to wrongfully secure Plaintiffs' money for their own purposes.

WHEREFORE Plaintiffs requests that this Court enter a judgment in their favor for the amount of compensatory and exemplary and punitive damages to which they are found to be entitled, plus costs and attorneys' fees, and any equitable relief to which they are found to be entitled.

SEVENTEENTH CAUSE OF ACTION

Civil Conspiracy (alleged as to all Defendants and Roes and Does)

155. Plaintiffs reallege the previous paragraphs as if set forth here.

156. Defendants had an agreement or preconceived plan to commit the wrongful conduct set forth above, including to mislead Plaintiffs into acquiring Hygea stock, to refuse to honor the promises made to Plaintiffs after such acquisition, and to otherwise violate N5HYG's rights as a shareholder.

157. Defendants intended to achieve an unlawful result.

158. Defendants acted in furtherance of their agreement.

159. There was concerted action between and among Defendants.

160. Defendants wrongfully conspired with each other with the intent to and for the illegal purposes set forth above, including to mislead Plaintiffs into acquiring Hygea stock, to refuse to honor the promises made to Plaintiffs after such acquisition, and to otherwise violate N5HYG's rights as a shareholder.

161. These actions have injured and damaged Plaintiffs in an amount exceeding $15,000, including costs, interest, and attorneys' fees.

WHEREFORE, Plaintiffs pray that this Honorable Court award them a Judgment against Defendants in an amount to be determined and such equitable relief as it deems to be appropriate, including rescission of the Stock Purchase Agreement and the return to Plaintiffs of an amount not less than their $30 million purchase price plus interest.

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EIGHTEENTH CAUSE OF ACTION

Concert of Action (alleged as to all Defendants and Roes and Does)

162. Plaintiffs reallege the previous paragraphs as if set forth here.

163. Defendants engaged in a concert of action under which individually and collectively they acted tortiously pursuant to a common design by the conduct set forth above, including to mislead Plaintiffs into acquiring Hygea stock, to interfere with the promises made to Plaintiffs after such acquisition, and to otherwise violate N5HYG's rights as a shareholder.

164. Defendants jointly engaged in tortious activity.

165. Each of the Defendants is liable for the harm caused by the others because all acted jointly.

166. Plaintiffs sustained and suffered damage proximately caused by the joint concert of action Defendants in an amount exceeding $15,000, including costs, interest, and attorneys' fees.

WHEREFORE Plaintiffs request that this Court enter a judgment in their favor for the amount of damages to which they are found to be entitled, plus costs and attorneys' fees, and any equitable relief to which they are found to be entitled, including rescission of the Stock Purchase Agreement and the return to Plaintiffs of an amount not less than their $30 million purchase price plus interest.

NINETEENTH CAUSE OF ACTION

Unjust Enrichment (alleged as to Defendants Iglesias, Moffly, and the Other Board Member Defendants)

167. Plaintiffs reallege the previous paragraphs as if set forth here.

168. Each of Iglesias, Moffly, and the Other Board Members was or is being unjustly compensated by Hygea and its shareholders, despite the failure of their stewardship of Hygea and their personal implication in the wrongdoing set forth herein.

169. Each of the Defendants who have been unjustly enriched by the wrongdoing set forth in this Complaint should be required to account for and repay the amounts by which they have been unjustly enriched together with their earnings thereupon.

WHEREFORE Plaintiffs request that this Court enter a judgment in their favor for the amount of damages to which they are found to be entitled, plus costs and attorneys' fees, and any equitable relief to which they are found to be entitled, including rescission of the Stock Purchase

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Agreement and the return to Plaintiffs of an amount not less than their $30 million purchase price plus interest.

TWENTIETH CAUSE OF ACTION

Constructive Fraud (alleged as to all Defendants)

170. Plaintiffs reallege the previous paragraphs as if set forth here.

171. By virtue of the lengthy negotiations of the parties, the claimed expertise of Defendants Hygea, Iglesias, Moffly, and the Other Board Members in owning and operating businesses like Defendant Hygea, Defendants' represented and purported business model of Defendant Hygea, the central role Defendants Iglesias and Moffly would have in managing the day to day operations of Defendant Hygea, and Defendants' purported investment partners and the purported role of additional investors, the parties had a special and confidential relationship whereby Plaintiffs reposed special confidence in Defendants and relied upon Defendants to provide truthful and accurate information regarding the business and affairs of Defendant Hygea so that Plaintiffs could properly evaluate the risks and benefits associated with making an equity investment in Defendant Hygea before entering into the Stock Purchase Agreement.

172. Defendants breached this special and confidential relationship by providing them with false and/or fraudulent financial documents, misrepresenting and/or omitting material information related to the financial status of Defendants and the potential profitability of Defendant Hygea, as set forth herein, in order to induce Plaintiffs into executing the Stock Purchase Agreement.

173. Plaintiffs sustained and suffered damage proximately caused by the joint concert of action Defendants in an amount exceeding $15,000, including costs, interest, and attorneys' fees.

174. Defendants Hygea, Iglesias, Moffly, and the Other Board Members have acted toward Plaintiffs with oppression, fraud, or malice, express or implied, such that Plaintiffs may recover exemplary and punitive damages for the sake of example and by way of punishing Defendants Hygea, Iglesias, Moffly, and the Other Board Members pursuant to NRS 42.005 in an amount in excess of ten thousand dollars.

WHEREFORE Plaintiffs request that this Court enter a judgment in their favor for the amount of damages to which they are found to be entitled, plus costs and attorneys' fees, and any exemplary and punitive damages, statutory damages, and equitable relief to which they are found to

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be entitled, including rescission of the Stock Purchase Agreement and the return to Plaintiffs of an amount not less than their $30 million purchase price plus interest.

TWENTY-FIRST CAUSE OF ACTION

Claim for Accounting (by Plaintiff N5HYG against Iglesias, Moffly, and the Other Board Member Defendants)

175. Plaintiffs restate each allegation as set forth above.

176. Iglesias, Moffly, and the Other Board Member Defendants owed fiduciary duties to Plaintiff N5HYG for reasons including, but not limited to, their positions as officers and directors of Hygea.

177. The relationship between Plaintiff N5HYG and Iglesias, Moffly, and the Other Board Member Defendants is founded in trust and confidence, as more fully established herein.

178. Iglesias, Moffly, and the Other Board Member Defendants have mismanaged and misallocated the funds of Defendant Hygea, and specifically the invested funds of Plaintiff N5HYG.

179. Iglesias, Moffly, and the Other Board Member Defendants have a duty to render an accounting of Defendant Hygea's finances as a result of the fiduciary relationship that exists between them and Plaintiff N5HYG.

WHEREFORE, Plaintiffs pray that this Honorable Court award them a Judgment against Iglesias, Moffly, and the Other Board Member Defendants in an amount to be determined and such equitable relief as it deems to be appropriate, including without limitation an Order requiring Defendants Iglesias, Moffly, and the Other Board Member Defendants to render an accounting to Plaintiff N5HYG, that the Defendants' conduct was fraudulent, malicious, or oppressive thereby entitling Defendants to punitive damages.

JURY DEMAND

Plaintiffs hereby demand a trial by jury as to all issues so triable.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs pray for judgment as follows:

A. Plaintiffs pray that this Honorable Court award them a Judgment against Defendants in an amount to be determined and such equitable relief that it deems to be appropriate, including statutory rescission;

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B. Plaintiffs pray that this Honorable Court award them a Judgment against Defendants in an amount to be determined, in excess of $15,000.00, and such equitable relief that it deems to be appropriate, including statutory rescission;

C. Plaintiffs pray that this Honorable Court award them a Judgment against Defendants in an amount to be determined, including all compensatory, exemplary, and punitive damages, costs, interest, and attorneys' fees, and such equitable relief as it deems to be appropriate, including rescission of the Stock Purchase Agreement and the return to Plaintiffs of not less than their $30 million purchase price plus interest;

D. Plaintiffs pray that this Honorable Court award them a Judgment against Hygea, Iglesias, and Moffly in an amount to be determined and such equitable relief as it deems to be appropriate, including rescission of the Stock Purchase Agreement;

E. Plaintiffs pray that this Honorable Court award them a Judgment against Iglesias, Moffly, and the Other Board Member Defendants in an amount to be determined and such equitable relief as it deems to be appropriate;

F. Plaintiffs request that this Court enter a judgment in their favor for the amount of compensatory and punitive damages to which they are found to be entitled, plus costs and attorneys' fees, and any equitable relief to which they are found to be entitled;

G. Plaintiffs request that this Court enter a judgment in their favor for the amount of damages to which they are found to be entitled, plus costs and attorneys' fees, and any punitive damages, statutory damages, and equitable relief to which they are found to be entitled;

H. Plaintiffs pray that this Honorable Court award them a Judgment against Iglesias, Moffly, and the Other Board Member Defendants in an amount to be determined and such equitable relief as it deems to be appropriate, including without limitation an Order requiring Defendants Iglesias, Moffly, and the Other Board Member Defendants to render an accounting to Plaintiff N5HYG; and

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I. Such relief against Does I-X and Roes I-X as the Court deems appropriate, including such relief as set forth above.

DATED this 5th day of October, 2017.

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“Exhibit 2”

“Exhibit 2”

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DISTRICT COURT

CLARK COUNTY, NEVADA

N5HYG, LLC, a Michigan limited liability company, et al., Plaintiffs, v. HYGEA HOLDINGS CORP., a Nevada corporation, et al., Defendants.	CASE NO.: A-17-762664-B DEPT NO.: 27

MOTION FOR PARTIAL DISMISSAL OF CLAIMS AND PARTIES

Defendant Hygea Holdings Corp. ("Hygea") and Defendants Manuel Iglesias, Edward Moffly, Daniel T. McGowan, Frank Kelly, Martha Mairena Castillo, Lacy Loar, Glenn Marrichi, Dr. Keith Collins, M.D., Dr. Jack Mann, M.D., Joseph Campanella, and Carl Rosenkrantz (together, the "Individual Defendants" and with Hygea, the "Defendants")[1], by and through their

[1] In addition to the foregoing, there are three other defendants: Ray Gonzalez, Richard Williams, and The Estate of Howard Sussman, M.D. Mr. Gonzalez is represented by separate counsel and (continued...)

counsel of record, Ballard Spahr LLP, submit this Motion for Partial Dismiss of Claims and Parties (the "Motion"). This Motion is based on N.R.C.P 12(b)(2) & (5); the pleadings and papers on file; and any oral argument presented at the hearing for this Motion.

Dated: June 28, 2018.

BALLARD SPAHR LLP

By:/s/ Maria A. Gall
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(...continued)
has filed a separate motion to dismiss, in which Defendants join with respect to all non-jurisdictional arguments. It is the understanding of undersigned counsel that Mr. Williams is not currently represented by counsel and may be appearing pro per. It is counsel's understanding that Mr. Williams intends to respond to the Complaint vis-à-vis a motion to dismiss; however, his time to respond has not yet come due, as he was not served with the Notice of Entry of Order remanding this lawsuit until June 19, 2018. Finally, Plaintiffs have not yet served the The Estate of Howard Sussman, M.D., an issue that is before this Court per Plaintiff's motion to enlarge time for service, which Defendants oppose for the reasons set forth in their opposition.

NOTICE OF MOTION

PLEASE TAKE NOTICE that the undersigned will bring the above and foregoing Motion for hearing before the Court on the ____ day of August 8, 2018 at the hour of 9:30 am.m., in Department XXVII of the above-entitled Court.

Dated: June 28, 2018

BALLARD SPAHR LLP

By:/s/ Maria A. Gall
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MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

The vast majority of claims against Defendants require dismissal for the following reasons:

- The Court lacks personal jurisdiction over Defendants Daniel T. McGowan, Frank Kelly, Martha Mairena Castillo, Lacy Loar, Glenn Marrichi, Dr. Keith Collins, M.D., Dr. Jack Mann, M.D., Joseph Campanella, and Carl Rosenkrantz, all of whom are domiciled outside of Nevada and none of whom are alleged to have a connection to any relevant activity or an occurrence that took place in Nevada.
- The integration clause contained with the stock purchase agreement between Plaintiff N5HYG, on the one hand, and Defendants Hygea, Manuel Iglesias, and Edward Moffly, on the other, precludes Plaintiffs' claims for and grounded in fraud.
- Plaintiffs have failed to plead their claims for and based in fraud with the requisite particularity demanded by N.R.C.P. 9(b). With respect to Hygea and Messrs. Iglesias and Moffly, Plaintiffs do not identify what was purportedly untrue about the representations made by these defendants. With respect to the remaining defendants, Plaintiffs fail to attribute a single misrepresentation purportedly made by such individuals.
- Plaintiffs have failed to plead viable claims for violation of the federal or state securities laws, including because such claims are wholly inapplicable to the private securities transaction at issue in this lawsuit.
- Plaintiffs have failed to plead viable claims for breach of fiduciary duty against all individual defendants because such claims are derivative in nature, and Plaintiffs did not make the requisite pre-suit demand or sufficiently plead that demand would have been futile; in any event, the business judgment rule protects these defendants' decisions, and Plaintiffs have not pled any facts to overcome the presumption of the rule.
- Plaintiffs have failed to adequately plead their remaining common law claims, many of which are simply unavailable.
- Moreover, Nevada 5—which is neither a party to contract at issue nor a Hygea stockholder—has no connection to this lawsuit other than as N5HYG's parent company, which in and of itself does provide Nevada 5 any claims against Defendants.

Accordingly, for these and the reasons set forth herein, Defendants respectfully request that this Court dismiss Nevada 5 as a plaintiff from this lawsuit and dismiss all claims against all Defendants, with the exception of N5HYG's claim for breach of contract against Hygea, Iglesias, and Moffly.

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II. BACKGROUND

This case arises from the purchase of securities in Defendant Hygea, a private Nevada corporation with a principal place of business in Doral, Florida, by Plaintiff N5HYG, LLC, a Michigan entity that is the wholly-owned subsidiary of Plaintiff Nevada 5, Inc., a Nevada corporation. Compl. ¶¶ 1, 19-20. Plaintiffs allege a purported fraudulent course of conduct arising from that purchase by "Defendants"—Hygea, its (now former) CEO, Manuel Iglesias; (now former) CFO, Edward Moffly; and various of its current and former directors, including Daniel T. McGowan, Frank Kelly, Martha Mairena Castillo, Lacy Loar, Glenn Marrichi, Dr. Keith Collins, M.D., Dr. Jack Mann, M.D., Joseph Campanella, and Carl Rosenkrantz. Compl. ¶¶ 2-16.

The Complaint further alleges that Nevada 5 formed N5HYG to purchase securities from Hygea pursuant to a Confidential Information Memorandum and a Stock Purchase Agreement (the "SPA") between N5HYG, on the one hand, and Hygea, and Igelsias and Moffly (the "Guarantor Defendants"), on the other. Compl. ¶ 31, 34; **Ex. A**, SPA. Importantly, neither Plaintiff Nevada 5 nor Defendants McGowan, Kelly, Castillo, Loar, Marrichi, Collins, Mann, Campanella, or Rosenkrantz (the "Non-Guarantor Defendants") are alleged to have been parties to the SPA. *See generally* Compl.

The Complaint asserts that, during the course of discussions leading up to N5HYG's execution of the SPA, Defendants made "two interlocking sets of misrepresentations"—one as to Hygea's financial performance, and the other as to the intention to take Hygea public via a reverse takeover ("RTO") that never occurred. Compl. ¶¶ 24,26, 29, 43. The Complaint sets forth a series of paragraphs attempting to describe these oral and written misrepresentations. In describing the oral and written misrepresentations the Complaint never refers to any Defendant by name other than Iglesias and Moffly. *See* Compl. ¶¶ 26-64. Indeed, the Complaint groups all Defendants, other than Hygea, Iglesias, and Moffly, as the "Other Board Member Defendants," and never refers to any of them by name or with any specificity. Compl. ¶ 16. Moreover, even with respect to Hygea, Iglesias and Moffly, the Complaint never identifies precisely *what* about the information provided turned out to be inaccurate. *See generally* Compl. Indeed, Plaintiffs expressly recognize

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that the information provided to them was "developing" and only "could have been inaccurate." Compl. ¶¶ 31, 51.

Based on these allegations, Plaintiffs set forth a veritable "kitchen-sink" of claims, not only for breach of contract, but also for twenty more causes of action, including federal and state securities fraud, common law fraud, breach of fiduciary duty, and conspiracy. These causes of action, including by and against whom they are made, are set forth in a demonstrative chart attached hereto as **Exhibit B**.

III. MOTION TO DISMISS NEVADA 5 BECAUSE IT LACKS STANDING AND IS NOT THE REAL PARTY IN INTEREST

A. Nevada 5 Has No Connection to this Lawsuit and Is Not A Proper Plaintiff

Plaintiff Nevada 5 asserts claims under the state and federal securities laws, claims for and grounded in fraud, claims for breach of fiduciary duty, and other common laws claims for conspiracy and unjust enrichment. *See* Ex. B, Chart of Claims. However, Nevada 5 lacks standing to bring its claims and, even if it had standing, is not the real party in interest with respect to the claims because it has no connection to this case other than as the parent of Plaintiff N5HYG. However, courts in other jurisdictions have specifically found that alleged "wrongdoing to a subsidiary does not confer standing upon the parent company, even where the parent is the sole shareholder of the subsidiary." *See In re Neurontin Mktg. & Sales Practices Litig.*, 810 F. Supp. 2d 366, 370 (D. Mass. 2011) (citation omitted)); *Clarex Ltd. v. Natixis Securities America*, LLC, 2012 WL 4849146 (denying parent corporation's standing when case concerned bonds and warrants in subsidiaries' name: "a subsidiary is a "separate corporation," and thus the parent company "has no standing to assert [the subsidiary's] legal rights") (citation omitted); *BNP Paribas Mortg. Corp. v. Bank of Am.*, N.A., 778 F.Supp.2d 375, 420 (S.D.N.Y.2011) (plaintiff which sued based on the injuries of its subsidiary lacked standing to do so); *Diesel Sys. Ltd. v. Yip Shing Diesel Eng'g Co.*, 861 F. Supp. 179, 181 (E.D.N.Y.1944) ("A corporation does not have standing to assert claims belonging to a related corporation, simply because their business is intertwined").

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Indeed, Nevada 5 has not—and cannot—state basis for its claims. For instance, the Complaint contains no allegation that Nevada 5 has any contractual relationship with any Defendant. Accordingly, Nevada 5 has no standing to bring any claim that sounds in contract against any Defendant and its Sixteenth Cause of Action for tortious interference with a contract must be dismissed. *Id.*, ¶¶ 150–54. Similarly, Plaintiff Nevada 5 is not (and has never been) a stockholder of Hygea. The Complaint does not allege that Nevada 5 has ever purchased (or otherwise held) Hygea stock. That being the case, Nevada 5 lacks a fraud-based justiciable controversy with any Defendant, and has no standing to bring its First through Ninth and Twentieth Causes of Action.

Further, Nevada 5's remaining claims—its Twelfth through Fourteenth Causes of Action for breach of fiduciary duty and Seventeenth through Twentieth Causes of action for civil conspiracy, concert of action, unjust enrichment, and constructive fraud—fail similarly as derivative of those claims made by its subsidiary, Plaintiff N5HYG.[2] Nevada 5's parent-subsidiary relationship N5HYG does not, in and of itself, confer standing to make claims on N5HYG's behalf. In short, Nevada 5 has no dog in this fight, and it is thus unclear why Nevada 5 is a party to this action.

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[2] Courts in other jurisdictions have specifically found that "wrongdoing to a subsidiary does not confer standing upon the parent company, even where the parent is the sole shareholder of the subsidiary." *See In re Neurontin Mktg. & Sales Practices Litig.*, 810 F. Supp. 2d 366, 370 (D. Mass. 2011) (citation omitted)); *see also Domino's Pizza, Inc. v. McDonald*, 546 U.S. 470 (2006) ("[I]t can be said to be the whole purpose of corporations and agency law – that the shareholder [] of a corporation has no rights and is exposed to no liability under the corporations contracts."); *Russo v. Lopez*, 2012 WL 846462 D. Nev 2012 (Pro, J.) (holding that as a general rule, a corporation is a separate legal entity from its shareholders, and thus "injury to the corporation is not cognizable as injury to the shareholders, for purposes of the standing requirements"); *Clarex Ltd. v. Natixis Securities America, LLC*, 2012 WL 4849146 (denying parent corporation's standing when case concerned bonds and warrants in subsidiaries' name: "a subsidiary is a "separate corporation," and thus the parent company "has no standing to assert [the subsidiary's] legal rights") (citation omitted); *BNP Paribas Mortg. Corp. v. Bank of Am., N.A.*, 778 F.Supp.2d 375, 420 (S.D.N.Y.2011) (plaintiff which sued based on the injuries of its subsidiary lacked standing to do so); *Diesel Sys. Ltd. v. Yip Shing Diesel Eng'g Co.*, 861 F. Supp. 179, 181 (E.D.N.Y.1944) ("A corporation does not have standing to assert claims belonging to a related corporation, simply because their business is intertwined.").

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IV. MOTION TO DISMISS FOR LACK OF PERSONAL JURISDICTION

"Nevada's long-arm statute permits personal jurisdiction over a nonresident defendant unless the exercise of jurisdiction would violate due process." *Consipio Holding, BV v. Carlberg*, 128 Nev. 454, 458, 282 P.3d 751, 754 (2012); *see also* NRS 14.065(1). "Due process requires 'minimum contacts' between the defendant and the forum state 'such that the maintenance of the suit does not offend traditional notions of fair play and substantial justice.'" *Trump v. District Court*, 109 Nev. 687, 692, 857 P.2d 740, 743 (1993). (quoting *Mizner v. Mizner*, 84 Nev. 268, 270, 439 P.2d 679, 680 (1968)). "Due process requirements are satisfied if the nonresident defendants' contacts [with Nevada] are sufficient to obtain either (1) general jurisdiction, or (2) specific personal jurisdiction and it is reasonable to subject the nonresident defendants to suit here." *Viega GmbH v. Eighth Judicial Dist. Court*, 130 Nev. Adv. Rep. 40, 328 P.3d 1152, 1156 (2014). The burden of pleading and establishing personal jurisdiction rests with Plaintiffs. *See, e.g., Abbott-Interfast v. District Court*, 107 Nev. 871, 873, 821 P.2d 1043, 1044 (1991).

A. This Court Does Not Have General Personal Jurisdiction Over the Non-Guarantor Defendants

This Court does not have general jurisdiction over the Non-Guarantor Defendants.[3] "For an individual, the paradigm forum for the exercise of general jurisdiction is the individual's domicile . . . ." *Goodyear Dunlop Tires Operations, S.A. v. Brown*, 564 U.S. 915, 924, 131 S. Ct. 2846, 2853 (2011). Here, Plaintiffs expressly aver that each of the Non-Guarantor Defendants resides in a state *other than Nevada*—i.e., New York for Defendants McGowan and Mann, Florida for Defendants Castillo, Loar, Collins, and Rosenkrantz, Georgia for Defendants Kelly and Marrichi, and California for Defendant Campanella. *See* Compl. ¶¶ 5-8, 10-12, 14-15.

B. This Court Does Not Have Specific Personal Jurisdiction Over the Non-Guarantor Defendants

This Court also lacks specific personal jurisdiction over the Non-Guarantor Defendants. As held by the U.S. Supreme Court:

[3] The Court has jurisdiction over Hygea, Iglesias, and Moffly by virtue of the SPA, which contains a forum selection provision.

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> In order for a state court to exercise specific jurisdiction, the suit must arise out of or relate to the defendant's contacts with the forum. In other words, there must be an affiliation between the forum and the underlying controversy, principally, *an activity or an occurrence that takes place in the forum State and is therefore subject to the State's regulation*. For this reason, specific jurisdiction is confined to adjudication of issues deriving from, or connected with, the very controversy that establishes jurisdiction.

Bristol-Myers Squibb Co. v. Superior Court, 137 S. Ct. 1773, 1780 (2017) (internal citations and quotations omitted).

Here, Plaintiffs have not pled any facts establishing what activity at issue took place in Nevada, must less how the Non-Guarantor Defendants were involved in such activity. The only connection between Nevada and the Non-Guarantor Defendants alleged by Plaintiffs is each Non-Guarantor's position as a director of a Hygea, a Nevada corporation. However, in *Consipio Holding, BV v. Carlberg*, the Nevada Supreme Court held that "a [nonresident] individual's position as a Nevada corporation's director does not automatically subject that individual to [specific] jurisdiction in Nevada." 128 Nev. at 461, 282 P.3d at 757. More is needed, but Plaintiffs simply have not alleged any more. Accordingly, this Court must dismiss the Non-Guarantor Defendants from this lawsuit for lack of personal jurisdiction.

V. MOTION TO DISMISS FOR FAILURE TO STATE A CLAIM

Dismissal of a complaint is proper for "failure to state a claim upon which relief can be granted." N.R.C.P. 12(b)(5). "All factual allegations of the complaint must be accepted as true." *Vacation Village v. Hitachi Am.*, 110 Nev. 481, 484, 874 P.2d 744, 746 (1994) (citation omitted). However, "the allegations must be legally sufficient to constitute the elements of the claim asserted." *Sanchez v. Wal-Mart Stores, Inc.*, 125 Nev. 818, 823, 221 P.3d 1276, 1280 (2009) (citation omitted). A complaint should be dismissed where a party can prove no set of facts which, if true, would entitle it to relief. *See Buzz Stew, LLC v. City of N. Las Vegas*, 124 Nev. 224, 228, 181 P.3d 670, 672 (2008).

A. The SPA's Integration Clause and Parol Evidence Rule Bar Plaintiffs' Causes of Action For and Grounded in Fraud

Here, Plaintiffs make the following claims for or grounded in fraud:

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- Violation of NRS 90.570 and 15 U.S.C. § 77q (First and Second Causes of Action),
- Common Law Fraud (Seventh Cause of Action);
- Negligent Misrepresentation (Eighth Cause of Action) [4];
- Silent Fraud/Material Omission (Ninth Cause of Action);
- Breach of Fiduciary Duty (Twelfth Cause of Action);
- Breach of Duty of Candor (Thirteenth Cause of Action);
- Breach of Duty of Loyalty (Fourteenth Cause of Action);
- Minority Shareholder Oppression (Fifteenth Cause of Action);
- Civil Conspiracy (Seventeenth Cause of Action);
- Concert of Action (Eighteenth Cause of Action); and
- Constructive Fraud (Twentieth Cause of Action)

(collectively, the "Claims in Fraud").

The Claims in Fraud are based on Plaintiffs' assertions that Plaintiffs relied upon certain representations that Hygea had a strong financial performance and that the Company intended to "go public" after the investment. Compl. ¶¶ 23-24. However, the SPA at issue in this lawsuit contains a full integration clause at Paragraph 8.4 (the "Integration Clause"). The Integration Clause unambiguously states as follows:

> 8.4. **Entire Agreement.** This Agreement, together with the Ancillary Agreement and any documents, Schedules, instruments, or certificates referred to herein or delivered in connection herewith, constitutes the entire agreement among the Parties hereto with respect to the subject matter hereof and supersedes any and all prior discussions, negotiations, proposals, undertakings, understandings, and agreements (including draft agreements) with respect thereto, whether written or oral, none of which shall be used as evidence of the Parties' intent. In addition, each Party hereto acknowledges and agrees that all prior drafts of this Agreement contain attorney work product and shall in all respects be subject to the foregoing sentence.

///

[4] "Although the word 'fraud' is not found anywhere in the Restatement definition [of negligent misrepresentation]—nor is the intent requirement that normally must accompany an allegation of common law fraud—fraud is still an 'essential element' of a negligent misrepresentation claim." *Scaffidi v. United Nissan*, 425 F.Supp.2d 1159, 1169-70 (D. Nev. 2005).

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Ex. A, SPA at ¶ 8.4. Importantly, the Integration Clause forbids introduction of "all prior discussions, negotiations, proposals, understandings, and agreements," including for the express purpose of evidencing any party's intent. *See Alexander v. Simmons*, 90 Nev. 23, 24, 518 P.2d 160, 161 (1974) (explaining that only if the written contract is silent on a matter, may it be proven by parol). Accordingly, Plaintiffs' Claims in Fraud, which rely upon allegations of pre-SPA misrepresentations, are barred by the Integration Clause.

For similar reasons, Plaintiffs are precluded by the parol evidence rule from asserting claims for and grounded in fraud when the alleged misrepresentations contradict the very terms of a written agreement, such as that found in the Integration Clause. *See Crow-Spieker #23 v. Robinson*, 97 Nev. 302, 305, 629 P.2d 1198, 1199 (1981) (internal quotations omitted) ("The parol evidence rule forbids the reception of evidence which would vary or contradict the contract, since all prior negotiations and agreements are deemed to have been merged therein. If the terms of an agreement are clear, definite and unambiguous, parol evidence may not be introduced to vary those terms.") *See also Tallman v. First Nat. Bank*, 66 Nev. 248, 259, 208 P.2d 302, 307 (1949) (stating that "fraud is not established by showing parol agreements at variance with a written instrument and there is no inference of a fraudulent intent not to perform from the mere fact that a promise made is subsequently not performed"). *See also Rd. & Highway Builders, Ltd. Liab. Co. v. N. Nev. Rebar, Inc.*, 128 Nev. 384, 386, 284 P.3d 377, 378 (2012) ("We conclude that when a fraudulent inducement claim contradicts the express terms of the parties' integrated contract, it fails as a matter of law"). Accordingly, the Claims in Fraud must be dismissed, as Plaintiffs are barred by the Integration Clause and the parol evidence rule from introducing any evidence, including that of representations or intent, outside the SPA.

B. Plaintiffs Failed to State Their Claims For and Grounded in Fraud With the Particularity Demanded by N.R.C.P. 9(b)

Even if Plaintiffs' Claims in Fraud survive the parol evidence rule, they do not survive the heightened pleading requirements of N.R.C.P. 9(b). "The circumstances that must be detailed include averments to the time, the place, the identity of the parties involved, and the nature of the fraud or mistake." *Brown v. Kellar*, 97 Nev. 582, 583-84, 636 P.2d 874, 874 (1981). The

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heightened pleading requirement for fraud is designed "to give defendants notice of the particular misconduct so that they can defend against the charge and not just deny that they have done anything wrong." *Risinger v. SOC LLC*, 936 F. Supp. 2d 1235, 1242 (D. Nev. 2013). *Accord Ivory Ranch v. Quinn River Ranch*, 101 Nev. 471, 472-73, 705 P.2d 673, 675 (1985) ("NRCP 9(b) requires that special matters (fraud, mistake, or condition of the mind), be pleaded with particularity in order to afford adequate notice to the opposing party.") Moreover, when suing more than one defendant—as Plaintiffs do here—N.R.C.P. 9(b) requires a plaintiff to "differentiate [her] allegations . . . and inform each defendant separately of the allegations surrounding his alleged participation in the fraud." *Swartz v. KPMG LLP*, 476 F.3d 756, 764-65 (9th Cir. 2007) (discussing the federal counterpart to N.R.C.P. 9(b) and dismissing plaintiff's fraud claims because plaintiff "lumped" the defendant at issue with the other defendants.)

As to Hygea and the Guarantor Defendants, Plaintiffs' Complaint is based on assertions that the Guarantor Defendants misrepresented Hygea's financial performance and plans to "go public." Compl. ¶ 24. Although Plaintiffs attempt to create the veneer of particularity by alleging that the Guarantor Defendants provided certain documents on certain dates reflecting a "favorable financial performance," *see* Compl. at ¶ 31(a)-(n), Plaintiffs do not identify the purportedly inaccurate financial figures contained in such documents with any specificity whatsoever. Plaintiffs' lack of specificity is exacerbated by other "wishy washy" allegations that "[t]he financial information provided up until the time of the investment itself encompassed sometimes-developing numbers," Compl. ¶ 31, and that the last financial report Plaintiffs received "*could have*" been inaccurate. Compl. ¶ 50. Such allegations do not provide Hygea and/or the Guarantor Defendants with the notice needed to defend themselves, and thus fail under Rule 9(b).

As to the Non-Guarantor Defendants, Plaintiffs plead no facts that any of the Non-Guarantor Defendants ever made *any* representations to *any* Plaintiff. *See generally* Compl. Nor do Plaintiffs allege to have had any interactions with any of the Non-Guarantor Defendants. As Plaintiffs have failed to allege any facts, let alone specific facts, demonstrating that any of the Non-Guarantor Defendants made any misrepresentations to them, or that any of the Non-Guarantor Defendants were involved in any interactions where those individuals could possibly

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omit information, the Claims in Fraud fail as to each of the Non-Guarantor Defendants.[5] Accordingly, the entirety of Plaintiffs' claims for and grounded in fraud should be dismissed for failure to plead with the requisite particularity demanded by N.R.C.P. 9(b).

C. Plaintiffs Do Not Have Any Viable Claim for Violation of the Federal Securities Laws

Plaintiffs assert three claims under the Federal Securities Act of 1933 (the "1933 Act"). All claims fail as a matter of law (even if Plaintiffs have pled such claims with the particularity demanded by N.R.C.P. 9(b)).

1. Plaintiffs Do Not Have Any Viable Claim for Federal Statutory Securities Fraud (Second Cause of Action)

In their Second Cause of Action for statutory securities fraud, Plaintiffs quote from and assert that Defendants violated Section 17(a) of the 1933 Act. Compl. ¶¶ 74-75. However, every federal circuit to address this issue (including the Ninth Circuit Court of Appeals) has held that Section 17(a) has no private right of action. *See, e.g., Puchall v. Houghton, Cluck, Coughlin & Riley (In re Washington Pub. Power Supply Sys. Sec. Litig.)*, 823 F.2d 1349, 1355-58 (9th Cir. 1987) (en banc). Confusingly, Plaintiffs incorrectly quote Section 12(a)(2) for purposes of identifying the remedy to their non-existent Section 17(a) claim. Even if the Court recognized such pleading as sufficient to trigger a cause of action under Section 12(a)(2), "for Section 12(a)(2) to apply there must be a public offering." *Artist Hous. Holdings, Inc. v. Davi Skin, Inc.*, No. 2:06-cv-893-RLH-LRL, 2007 U.S. Dist. LEXIS 25364, at *5 (D. Nev. Mar. 27, 2007).[6] Here,

[5] Indeed, Plaintiffs failure to plead any facts relating to fraud against the Non-Guarantor Defendants moots whether Plaintiffs also differentiated their allegations against the Non-Guarantor Defendants. Yet, if this question has not been mooted, then it can only be answered in the negative.

[6] Section 12(a)(2) of the 1933 Act establishes a private cause of action against a party who sells a security "by means of a prospectus or oral communication, which includes an untrue statement of material fact or omits to state a material fact necessary in order to make the statements, in light of the circumstances under which they were made. . . . ." The requirement that there be a public offering flows from the term "prospectus," the definition of which the U.S. Supreme Court confined to a "document[] related to [a] public offering[] by an issuer or its controlling

(continued...)

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the Complaint does not allege a public offering; rather it alleges a privately-negotiated stock purchase by Plaintiff N5HYG. *See* Compl. ¶ 34. Indeed, Plaintiffs' claims for breach of contract and fraud are based on the allegation that there was *not* a public offering. *See* Compl. ¶¶ 26, 29, 43, 52. Accordingly, Plaintiffs' Second Cause of Action for violation of the 1933 Act in selling securities to Plaintiffs must be dismissed.

2. Plaintiffs Do Not Have Any Viable Claim for Failure to Comply with Federal Registration Requirements (Fourth Cause of Action)

In their Fourth Cause of Action, Plaintiffs attempt to plead a claim against Defendants for failure to comply with the federal registration requirements for securities, including by misusing the registration safe harbor of Regulation D. Plaintiffs, however, do not make clear what provision of the 1933 Act Defendants violated by their purported failure to register. As a threshold matter, neither the federal securities registration statue (Section 5, 15 U.S.C. § 773) nor Regulation D, which Plaintiffs cite in this Cause of Action, provide a private right of action.[7] *See Levitt v. J.P. Morgan Sec., Inc.*, 9 F. Supp. 3d 259, 273 (E.D.N.Y. 2014). Indeed, "the exclusive federal cause of action for failure to register public or private securities lies under Section 12(a)(1) of the 1933 Securities Act . . . ." *Brown v. Earthboard Sports USA, Inc.*, 481 F.3d 901, 916 (6th Cir. 2007). Yet, even if Plaintiffs meant to plead a claim under Section 12(a)(1) of the 1933 Act, they still have no viable cause of action against Defendants because Section 4(a)(2) of the 1933 Act provides a safe harbor exemption for "transactions by an issuer not involving any public

(...continued)
shareholders." *Gustafson v. Alloyd Co.*, 513 U.S. 561, 569 (1995). Similarly, claims based on an "oral communication" must relate to a prospectus. *Id.* at 567-68.

[7] Further, the Complaint does not support Plaintiffs' claim that Regulation D would not apply to this transaction. The conduct for which Plaintiffs' fault Hygea—providing inaccurate information, not filing certain forms, or that the offering was part of a "scheme to evade the registration provisions"—are not bases on which a private plaintiff can argue that a Regulation D offering is invalid; instead the proper remedy for such concerns would be a Rule 10b-5 fraudulent misstatement suit. *See Hamby v. Clearwater Consulting Concepts, LLC*, 428 F. Supp. 2d 915, 920 (E.D. Ark. 2006) ("[T]he SEC has explicitly stated that filing a Form D is not a condition to obtaining an exemption under [Regulation D].") Plaintiffs, however, have made clear in their filings in federal court (while this matter was removed thereto) that they are not pleading a Rule 10b-5 claim. In any event, they have failed to state such a claim and are otherwise estopped from doing so given their representations to the federal court.

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offering." 15 U.S.C. § 77d(a)(2). Here, Plaintiffs' allege that the securities at issue were sold to Plaintiff N5HYG, pursuant to a private stock purchase agreement, i.e., the Agreement. *See* Compl. ¶ 34; **Ex. XX**, SPA. Accordingly, Plaintiffs' Fourth Cause of Action for violation of the 1933 Act in failing to register securities must be dismissed.

3. Plaintiffs Do Not Have Any Viable Claim for Federal Control Person Liability (Sixth Cause of Action)

In their Sixth Cause of Action, Plaintiffs attempt to plead control person liability against all Individual Defendants. The 1933 Act provides for "control person" liability in limited circumstances, but Plaintiffs fail to adequately allege either required element: (1) a primary violation of Sections 11 and 12 of the 1933 Act; and (2) defendant's "control" over the primary violator. 15 U.S.C. § 77o. Here, as noted above, Plaintiffs have failed to plead any primary violation of Section 11 or 12 of the 1933 Act, whether by Hygea or any of the Individual Defendants. Even if Plaintiffs have pled a primary violation, Plaintiffs do not adequately allege that any of the Individual Defendants controlled Hygea or one another. Allegations that merely establish a person as a director of company alleged to be the primary violator are insufficient. Rather, a plaintiff must set forth "specific factual allegations indicating how [the alleged] control was manifested" by, for instance, including facts "supporting that the defendant was either involved in the day-to-day business of the primary violator or connected to the fraudulent act in some way." *Richardson v. Oppenheimer & Co. Inc.*, No. 2:11-cv-02078-GMN-PAL, 2014 U.S. Dist. LEXIS 43419, at *34 (D. Nev. Mar. 31, 2014). Plaintiffs, here, have done neither. Accordingly, Plaintiffs' claim for control person liability must be dismissed.

D. Plaintiffs Do Not Have Any Viable Claim for Violation of the Nevada Securities Laws

Plaintiffs bring purported "claims" based on several sections of the NUSA: NRS 90.570 (First Cause of Action – Statutory Securities Fraud), NRS 90.460 (Third Cause of Action – Failure to Comply with Registration Requirements), and NRS 90.660 (Fifth Cause of Action – Control Person Liability). However, the statute's plain language dictates that NRS 90.570, 90.460, and 90.660 apply only "if (a) an offer to sell is made in this State; or (b) an offer to purchase is made

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and accepted in this State." NRS 90.830(1); *see also Prime Mover Capital Partners, L.P. v. Elixir Gaming Techs.*, Inc., 793 F. Supp. 2d 651, 669 (S.D.N.Y. 2011) (dismissing NUSA claims based on the purported sale of a Nevada corporation's securities because, as is the case here, "plaintiffs have not alleged that defendants offered to sell, or that plaintiffs received and accepted an offer to buy, [the company's] stock in Nevada"). The statute further specifies that an offer to sell occurs in Nevada only if the offer "(a) originates in this State; or (b) is directed by the offeror to a destination in this State and received where it is directed . . . ." NRS 90.830(3).

Here, Plaintiffs make no allegation that any offer to sell Hygea securities occurred in Nevada. *See generally* Compl. Indeed, the Complaint supports the opposite conclusion. Hygea's principal place of business is in Miami, Florida, and its business relates to acquiring physician's practices in Florida and surrounding states. *See* Compl. ¶¶ 2, 28. There is no allegation that Hygea has operations in Nevada, that either Plaintiff or their agent, RIN Capital LLC, received any offer to buy Hygea securities that originated in Nevada, that any Defendant directed an offer to a destination in Nevada, that Plaintiffs or RIN correspondingly received such an offer in Nevada, or that any act whatsoever occurred in, originated from, or was in any way associated with Nevada. In short, none of the several communications alleged in the Complaint and related to the offer process are identified as being directed to or received in Nevada. *See, e.g.*, Compl., ¶¶ 26, 27 (instead describing meetings in Miami). Indeed, the Complaint asserts that the misrepresentations were made to Plaintiffs' agent, RIN, *see* Compl. ¶ 25, which is a Michigan-organized limited liability company with operations in Michigan. *See* Exs. B & C to Motion To Dismiss On Behalf Of Defendant Ray Gonzalez.

Accordingly, Plaintiffs are barred from stating claims under NRS 90.570, 90.460, and 90.660 by the allegations (or lack thereof) in their own Complaint. That being the case, Plaintiffs' First, Third, and Fifth Causes of Action must be dismissed with respect to all Defendants (with prejudice). *Cf. Prime Mover*, 793 F. Supp. 2d at 669 (dismissing similarly flawed claims). However, even if the Court construed Plaintiffs' allegations to state the requisite contacts with Nevada, Plaintiffs' causes of action for violation of the NUSA still fail as a matter of law for the reasons set forth below.

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1. NRS 90.570 Does Not Apply to Nevada 5 or the Non-Guarantor Defendants (First Cause of Action)

Plaintiffs First Cause of Action purports to bring a claim under NRS 90.570 for statutory securities fraud. Plaintiffs, however, fail to state a claim under NRS 90.570 against the Non-Guarantor Defendants. NUSA provides that private civil liability for a violation of NRS 90.570 can only be pursued via NRS 90.660(1)(d). *See* NRS 90.660(1)(d). In turn, NRS 90.660 places important (and here, partially dispositive) limits on recovery.

First, direct actions for recovery under NRS 90.660(1)(d) are limited to claims against a person who "offers or sells" a security. *See* NRS 90.660(1).[8] As noted above, Hygea was the "seller" and there are no allegations that the Non-Guarantor Defendants personally made any representations[9] in connection with Hygea's purported offer to sell Plaintiff N5HYG securities. Thus, this is an additional reason for dismissal in so far it is asserted the Non-Guarantor Defendants. *See G.K. Las Vegas*, 460 F. Supp. 2d at 1258 ("Though the complaint is rife with allegations against 'Defendants' generally, [the claim] does not contain a single mention of either [director defendant].")

Second, liability attaches under NRS 90.660(1) only upon actual tender of the security or securities in question or the provision of "notice of willingness to exchange the security for the amount specified." NRS 90.660(1). Here, Plaintiffs' allege that "on September 18, 2017 they tendered back the shares they acquired under the [SPA] *conditioned upon* a full return of their purchase price plus interest, *with such tender remaining open for 30 days* . . . ." Compl. ¶ 64 (emphasis added). Taking the allegations in ¶ 64 as true, Plaintiffs notice of willingness to tender

[8] *But see* NRS 90.660(4) (setting forth control person liability). The reasons that control person liability does not attach to the Non-Guarantor Defendants in this case is set forth below.

[9] NRS 90.660(1)(d) only provides a private right of action for a violation of subsection (2) of NRS 90.570, which states that a person shall not "make an untrue statement of a material fact or omit to state a material fact . . . ." NRS 90.570(2). In interpreting identical language in the federal securities fraud rule (Rule 10b-5), the U.S. Supreme Court held that primary liability can lie only against the actual "maker" of the statement, which the Court held is limited to "the person or entity with ultimate authority over the statement, including its content and whether and how to communicate it." *Janus Capital Grp. v. First Deriv. Traders*, 564 U.S. 135, 144 (2011). Here, there is no allegation that any of the Non-Guarantor Individual Defendants made any misstatement at all. *Cf.* Complaint (failing to set forth allegations that any Non-Guarantor Defendant made any misstatement to Plaintiffs).

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therefore expired on October 18, 2017. That being the case, Plaintiffs did not (actually) tender and have not alleged the existence of a (currently) effective notice of willingness to tender. NRS 90.660 does not provide for "exploding" conditional tenders, which would be inconsistent with the plain meaning of the term. Black's Law Dictionary 1467 (6th ed. 1991) ("Tender" is an "unconditional offer to perform.") Accordingly, any claims Plaintiffs might otherwise enjoy under NUSA are not ripe until and unless Plaintiffs provide Hygea with a notice of willingness to tender that is not conditional as to time.

Finally, just as with Section 12 under the 1933 Act, only "the person purchasing the security" can pursue a claim. NRS 90.660(1); *see also G.K. Las Vegas Ltd. P'ship v. Simon Prop. Grp., Inc.*, 460 F. Supp. 2d 1246, 1260 n.8 (D. Nev. 2006) (Ezra, J.) Thus, Plaintiff Nevada 5 has no claim under NRS 90.570 (which is also true for all of Nevada 5's NUSA claims, as NRS 90.660 is the only basis for private civil liability in NUSA).

2. Plaintiffs Have No Claim Against Any Defendant Under NRS 90.460 (Third Cause Of Action)

Plaintiffs' Third Cause of Action purports to set forth a claim for failure to properly register the alleged Hygea-N5HYG security offering under NRS 90.460. Once again, liability under 90.460 is limited by NRS 90.660. *See* NRS 90.660(1)(b). Accordingly, and for the same reasons set forth directly above, Plaintiff Nevada 5 (which did not purchase any securities) has no right to recovery, and the Non-Guarantor Defendants (who are not alleged to have made any misrepresentations) cannot be directly liable. Further, because the Complaint contains no allegation of a currently valid notice of willingness to tender, the claim must be dismissed with respect to all parties until such tender or notice of willingness to tender can be and/or is alleged.

Additionally, Plaintiffs' Third Cause of Action fails as a matter of law because the securities offering at issue was not required to be registered under NUSA. NRS 90.530(11) exempts from registration certain offerings that involve less than 35 in-state purchasers, no general solicitations, no commissions except to licensed broker-dealers, and belief by the issuer that the purchaser plans to use the securities for investment. NRS 90.530(11); *see also Jakemer v. Romano*, No. CV-06-2563-PHX-SMM, 2007 WL 704178, at *9 (D. Ariz. Mar. 5, 2007). Taking

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the allegations in the Complaint as true, the offering alleged here satisfies all of these criteria. As explained above, the Complaint alleges a privately-negotiated transaction between Hygea and a single seller, executed after a series of private and confidential communications, which did not involve the Non-Guarantor Defendants, and which involved zero in-state purchasers. The securities would therefore be exempt from registration under NRS 90.530(11)(a)–(d) even if NUSA otherwise applied to the transaction at issue (which it does not, as explained above). As also noted in above, the allegations also do not contradict that the purported securities sale satisfied federal Regulation D requirements and/or falls under the federal Section 4(a)(2) exemption.

3. Plaintiffs Cannot Establish Control Person Liability Under NUSA (Fifth Cause of Action)

Plaintiffs final NUSA claim, their Fifth Cause of Action, is for control person liability under NRS 90.660(4). This claim, of course, first requires a claimant to establish primary liability under NRS 90.660(1) or (3). For the reasons set forth above, Plaintiffs fail to state a claim against any Defendant for liability under NUSA, including NRS 90.660(1) and (3). That being the case, there can be no control person liability under NRS 90.660(4) with respect to any Defendant. *See* NRS 90.660(4) (providing that an "officer or director of the *person liable* . . . [is] also liable jointly and severally with and to the same extent as the [liable] person") (emphasis added).

E. Plaintiffs Do Not Have Any Viable Claim for Breach of Fiduciary Duty (Twelfth through Fifteenth Causes of Action)

As an initial matter, Plaintiffs cannot sustain any claim for breach of fiduciary duty—including specifically for waste, breach of the duty of candor, breach of the duty of loyal, and minority shareholder oppression—on conduct that purportedly occurred prior to October 5, 2016, the date Plaintiff N5HYG entered into the Agreement and became a Hygea stockholder. *See Omnicare, Inc. v. NCS Healthcare,* 809 A.2d 1163, 1169 (Del. Ch. 2002) (noting that "a breach of fiduciary duty claim must be based on an actual, existing fiduciary relationship"). Accordingly, paragraphs 22 through 41 of the Complaint—which concern actions prior to October 5, 2016—are entirely inapplicable to any claim for breach of fiduciary duty because Plaintiffs N5HYG was not

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a Hygea stockholder before this date, and thus, lack the requisite standing to claim a breach.[10] *See Omnicare, Inc. v. NCS Healthcare, Inc.*, 809 A.2d 1163, 1169 (Del. Ch. 2002) (shareholder plaintiffs may only challenge alleged breaches of fiduciary duty if they held shares of the corporation at the time of the alleged breach.)

In the meantime, although paragraphs 42 through 63 of the Complaint contain allegations for conduct that purportedly occurred after October 5, 2016, such allegations are largely subsumed by Plaintiffs' claim for breach of contract. *See* Compl., ¶ 43 (alleging failure to go public as purportedly promised by the SPA); ¶¶ 53-55 (alleging failure to provide financials or make payments as purportedly promised by the SPA); ¶ 61 (alleging failure to fulfill other obligations purportedly promised by the SPA). As Delaware has explained, claims for breach of fiduciary duty cannot "proceed in parallel with breach of contract claims unless there is an independent basis for the fiduciary duty claims apart from the contractual claims." *CIM Urban Lending GP, LLC v. Cantor Commer. Real Estate Sponsor, L.P.*, No. 11060-VCN, 2016 Del. Ch. LEXIS 47, at *7 (Ch. Feb. 26, 2016). *See also Action Nissan v. Hyundai Motor Am.*, 617 F. Supp. 2d 1177, 1192-93 (M.D. Fla. 2008) ("While the economic loss rule does not automatically bar a breach of fiduciary duty claim, the rule does apply when the claim for breach of fiduciary duty is based upon and inextricably intertwined with the claim for breach of contract.") Thus, any allegations that depend upon the Agreement must give way to the contract claim. *See CIM Urban Lending,* 2016 Del. Ch. LEXIS 47, at *8.

To the extent any allegations set forth in paragraphs 42 through 63 exist independent of the SPA, such allegations could only describe a claim that is derivative in nature, but as set forth below, any derivative claim fails because Plaintiffs did not make the requisite pre-suit demand required by N.R.C.P. 23.1 and did allege that demand is excused. As further set forth below, Plaintiffs make no allegations that would support a claim for breach of the duty of loyalty or waste, and Nevada does not recognize claims for minority shareholder oppression or breach of the

[10] Paragraphs 1 through 22 contain allegations related to the identity of the parties.

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duty of candor. Accordingly, the entirety of Plaintiffs' claims for breach of fiduciary duty must be dismissed.

1. Plaintiffs Allegations for Breach of Fiduciary Duty are Derivative in Nature

Derivative actions are those "brought by a shareholder on behalf of a corporation to recover for harm done to the corporation." *Cohen v. Mirage Resorts, Inc.*, 119 Nev. 1, 62 P.3d 720, 732 (2003) (citing *Kramer v. W. Pac. Indus.*, 546 A.2d 348, 351 (Del. 1988)).[11] "Whether a cause of action is individual or derivative must be determined from the nature of the wrong alleged and the relief, if any, which could result if plaintiff were to prevail." *Id.* at 352. Courts undertaking such a determination "look to the body of the complaint, not to the plaintiff's designation or stated intention." *Id.*

When conducting such an analysis under Nevada law, the court applies the "Direct Harm Test" to determine whether the claims are direct or derivative. *Parametric Sound Corp. v. Eighth Jud. Dist. Ct.*, 401 P.3d 1100 (Nev. 2017). In doing so, the court considers "(1) who suffered the alleged harm (the corporation or the suing stockholders, individually); and (2) who would receive the benefit of any recovery or other remedy (the corporation or the stockholders, individually)?'" *Id.* at 1107. The focus is on the direct harm, *id.* at 1108, and in order to maintain a direct claim, both questions must be answered in favor of the suing stockholder. *See id.* at 1106 (explaining that a direct claim exists when a shareholder has "injuries that are independent of any injury suffered by the corporation.")

Here, Plaintiffs fundamental theory of the case describes what can only be called a derivative claim for mismanagement. As set forth in ¶ 59 of the Complaint, "[t]he entire theory behind Hygea's business model was that Hygea would realize efficiencies from effective business and accounting practices. Such a theory is entirely at odds with the way Defendants have actually

[11] Nevada's corporate law is modeled largely after Delaware's corporate law. *See Cohen v. Mirage Resorts, Inc.*, 119 Nev. 1, 62 P.3d 720, 726–27 & n. 10 (2003). As such, Nevada courts look to decisions of Delaware courts, or decisions applying Delaware law, for guidance. *Hilton Hotels Corp. v. ITT Corp.*, 978 F.Supp. 1342, 1346 (D.Nev.1997).

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run the operation . . . . Among other things, this reflects Defendants' disorganized accounting and ineffective management." The foregoing allegation is reinforced at ¶ 132 where Plaintiffs claim that Defendants had "the highest fiduciary obligations in the management and administration of the affairs of Hygea, including oversight of compliance with federal laws and securities regulations." Plaintiffs allege that such mismanagement led to Hygea's "current distress," *see* Compl. ¶ 63, but any harm Plaintiffs might have suffered as a result of such distress would be one that affected all stockholders equally. Accordingly, any claim for breach of fiduciary duty set forth by the Complaint would be derivative in nature.

2. Plaintiffs Failed to Make a Pre-Suit Demand or Sufficiently Plead Demand Futility

"A shareholder must make a demand on the board of directors to address the shareholder's claims prior to bringing a derivative action, or demonstrate that such a demand is futile." *Parametric Sound Corp. v. Eighth Judicial Dist. Court of Nev.*, 401 P.3d 1100, 1105 (Nev. 2017) (citing *Shoen v. SAC Holding Corp.*, 122 Nev. 621, 633, 137 P.3d 1171, 1179 (2006); NRS 41.520(2); NRCP 23.1.) Moreover, "[i]n light of the demand requirement, NRCP 23.1 imposes heightened pleading imperatives . . . . Under this rule, a derivative complaint must state, with particularity, the demand for corrective action that the shareholder made on board of directors . . . and why he failed to obtain such action, or his reasons for not making a demand." *Shoen v. SAC Holding Corp.*, 122 Nev. 621, 633-34, 137 P.3d 1171, 1179 (2006).

Importantly, "[the] demand requirement recognizes the corporate form in two ways[:]"

> First, a demand informs the directors of the complaining shareholder's concerns and gives them an opportunity to control any acts needed to correct improper conduct or actions, including any necessary litigation
>
> . . .
>
> Second, the demand requirement protects clearly discretionary directorial conduct and corporate assets by discouraging unnecessary, unfounded, or improper shareholder actions.
>
> Thus, in "promoting . . . alternate dispute resolution, rather than immediate recourse to litigation, the demand requirement is a recognition of the fundamental precept that directors manage the business and affairs of corporations."

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Shoen v. SAC Holding Corp., 122 Nev. 621, 633, 137 P.3d 1171, 1179 (2006) (quoting *Aronson v. Lewis*, 473 A.2d 805, 812 (Del. 1984))

Plaintiffs did not make any demand on Hygea's board of directors, and by failing to do so, Plaintiffs deprived the directors of the ability to evaluate the merits of Plaintiffs' claims for breach of fiduciary duty. Nor did Plaintiffs plead why such a demand would have been futile, much less set forth their reasons with particularity. *See Shoen v. SAC Holding Corp.*, 122 Nev. 621, 637, 137 P.3d 1171, 1182 (2006) (explaining that in determining demand futility, a court must decide whether, "under the particularized facts alleged, a reasonable doubt is created that: (1) the directors are disinterested and independent or (2) the challenged transaction was otherwise the product of a valid exercise of business judgment") (quoting *Aronson v. Lewis*, 473 A.2d 805, 812 (Del. 1984)). Indeed, Plaintiffs fail to plead any specific wrongdoing or involvement on the behalf of the vast majority of the board of directors. Rather, Plaintiffs focus on the purported acts of the Guarantor Defendants and simply allege that the Non-Guarantor Defendants consented to their actions. *See* Compl. ¶ 17 ("Iglesias and Moffly acted with the knowledge, direction, consent, and authorization of the Other Board Member Defendants.") Such allegations would be insufficient to support a finding of demand futility *even if* Plaintiffs had made the assertions that demand would have been futile, which they failed to even allege. Accordingly, Plaintiffs' claims for breach of fiduciary duty must be dismissed.

3. Plaintiffs Fail to Overcome the Business Judgment Rule

Even if Plaintiffs have pled a direct claim or sufficiently overcome demand futility for purposes of pleading a derivative claim, then pursuant to NRS 78.138, directors and officers benefit from the presumption that "in deciding upon matters of business . . . [they] act[ed] in good faith, on an informed basis and with a view to the interests of the corporation." The business judgment rule "expresses a sensible policy of judicial noninterference with business decisions and is designed to limit judicial involvement in business decision-making so long as a minimum level of care is exercised in arriving at the decision." 18B Am. Jur. 2d Corporations § 1451 (2016). It prevents a court from "replac[ing] a well-meaning decision by a corporate board" with its own decision. *Id.* To overcome the protections of the business judgment rule, a plaintiff must plead

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facts sufficient to allege that the directors were interested in the transaction at issue or engaged in "intentional misconduct, fraud, or a knowing violation of the law." NRS 78.138(7); *Shoen v. SAC Holding Corp.*, 122 Nev. 621, 635-36, 137 P.3d 1171, 1181 (2006) (explaining that the business judgment rule "applies only in the context of valid interested director action, or the valid exercise of business judgment by disinterested directors in light of their fiduciary duties").

For the reasons set forth above, Plaintiffs have not sufficiently pled fraud as to any point in time, but in particular as to that timeframe after Plaintiff N5HYG became Hygea stockholder. Nor have Plaintiffs made any allegations of intentional misconduct or knowing violation of the law. Moreover, Plaintiffs have not made any allegations as to how the Individual Defendants were interested. Accordingly, Plaintiffs' claims for breach of fiduciary duty—whether brought derivatively or directly—fail to overcome the protection of the business judgment rule and must be dismissed in their entirety.

4. Plaintiffs Fail to Plead Any Allegations to Support a Claim for Breach of the Duty of Loyalty or Waste (Twelfth and Fourteenth Causes of Action)

Even if Plaintiffs have somehow overcome the business judgment rule, they have not set forth any allegations to support their claims for the breach of the duty of loyalty or waste (beyond a mere recital of the elements). "[T]he duty of loyalty requires the board and its directors to maintain, in good faith, the corporation's and its shareholders' best interests over anyone else's interests." *Shoen*, 122 Nev. at 632, 137 P.3d at 1178. For instance, directors can breach their fiduciary duty of loyalty if they "exploit an opportunity that belongs to the corporation." *Leavitt v. Leisure Sports Inc.*, 103 Nev. 81, 87, 734 P.2d 1221, 1225 (1987). In the meantime, "[t]he essence of waste is the diversion of corporate assets for improper or unnecessary purposes. Corporate waste occurs when assets are used in a manner so far opposed to the true interests of the corporation so as to lead to the clear inference that no one thus acting could have been influenced by any honest desire to secure such interests." *Patrick v. Allen*, 355 F. Supp. 2d 704, 714-15 (S.D.N.Y. 2005). Here, the Complaint is devoid of any allegation as to how the any Individual Defendant exploited a corporate opportunity or diverted corporate assets for improper or unnecessary purposes, much less what corporate opportunity was exploited, what assets were

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diverted, or for what purpose(s) such assets were diverted. Accordingly, Plaintiffs' claims for breach of the duty of loyalty and waste must be dismissed.

F. Nevada Does Not Recognize Claims for Minority Shareholder Oppression or Breach of the Duty of Candor (Thirteenth and Fifteenth Causes of Action)

In their Thirteenth and Fourteenth Causes of Action, Plaintiffs attempt to set forth claims for minority shareholder oppression and breach of the duty of candor. However, Nevada does not recognize a "duty of candor;" rather, it is subsumed either within the duty of care or duty of loyalty and applies only in limited instances where the corporation is providing information in connection with a stockholder action, such as a merger vote. *See, e.g., Cohen v. Mirage Resorts, Inc.*, 119 Nev. 1, 17-18, 62 P.3d 720, 731 (2003). This is consistent with Delaware law on the matter. *See, e.g., Kahn ex rel DeKalb Genetics Corp. v. Roberts*, C.A. No. 12324, 1995 Del. Ch. LEXIS 151, at *21 (Ch. Dec. 6, 1995) (explaining that the "duty of candor arises when the board elects to or has a duty to seek shareholder action" and that "if the board does not seek shareholder action at a meeting, through consent, in a tender or exchange offer, or otherwise, it has . . . no distinctive state law duty to disclose material developments with respect to the company's business").

Likewise, Nevada does not recognize "minority shareholder oppression" as an independent cause of action. Indeed, a claim for shareholder oppression is the same as that for abuse of control,[12] and in *In re Amerco Deriv. Litig.*, the Nevada Supreme Court noted that "Nevada does not recognize a cause of action for abuse of control" because "claims for abuse of control are essentially claims for breach of the fiduciary duty of loyalty." 252 P.3d 681, 700 n.11 (Nev. 2011). As set forth above, Plaintiffs have not set forth any facts as to how the Individual Defendants breached their duty of loyalty.

Accordingly, Plaintiffs claims for breach of the duty of candor and minority shareholder oppression must be dismissed. Moreover, even if the Court expanded upon Nevada law to

[12] Indeed, Plaintiffs allege in their Fifteenth Cause of Action for minority shareholder oppression that the Individual Defendants "have abused their position of control over Hygea to violate N5HYG's rights as a stockholder."

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recognize a claim for breach of the duty of candor and minority shareholder oppression, Plaintiffs have not set forth any allegations to support such claims (beyond a mere recital of the elements.)

G. Plaintiffs Do Not Have Any Viable Claim For Negligent Misrepresentation (Eighth Cause of Action)

In their Eighth Cause of Action, Plaintiffs attempt to set forth a claim for negligent misrepresentation against Defendants. However, even if this claim survives Rule 9(b) pleading, Nevada's economic loss doctrine precludes a plaintiff from asserting a claim for negligent misrepresentation when it seeks to recover purely economic losses. *Halcrow Inc. v. Eighth Jud. Dist. Ct.*, 302 P.3d 1148, 1152 (Nev. 2013). Nevada's economic loss doctrine is "intended to mark 'the fundamental boundary between contract law, which is designed to enforce the expectancy interests of the parties, and tort law, which imposes a duty of reasonable care and thereby [generally] encourages citizens to avoid causing physical harm to others.'" *Id.* (quoting *Terracon Consultants Western, Inc. v. Mandalay Resort Group*, 125 Nev. 66, 72-73, 206 P.3d 81, 86 (2009)). The intent of this doctrine is to protect "parties from unlimited economic liability, which could result from negligent actions taken in commercial settings." *Id.* (citing *Terracon*, 125 Nev. at 74, 206 P.3d at 86-87). Here, Plaintiffs seek to pile their negligent misrepresentation claim upon their breach of contract action. Even if the Court does not dismiss the negligent misrepresentation claim for reasons related to the Integration Clause and N.R.C.P. 9(b), the claim should be dismissed as being barred by the economic loss doctrine. Plaintiffs solely seek to recover economic damages, and do not assert damages for physical harm or injury; thus the economic loss doctrine applies and bars Plaintiffs' negligent misrepresentation claim.

H. Plaintiffs' Claim for Tortious Interference Against the Individual Defendants Fails as a Matter of Law (Sixteenth Cause of Action)

In the Sixteenth Cause of Action, Plaintiff N5HYG attempts to set forth a claim for tortious interference against the Individual Defendants. To set forth a claim for tortious interference with a contract, a plaintiff must plead "(1) a valid and existing contract; (2) the defendant's knowledge of the contract; (3) intentional acts intended or designed to disrupt the contractual relationship; (4) actual disruption of the contract; and (5) resulting damage." *J.J.*

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Industries, LLC v. Bennett, 119 Nev. 269, 274, 71 P.3d 1264, 1267 (2003). However, even presuming Plaintiffs have sufficiently pled the foregoing elements,[13] Plaintiffs claim for tortious interference fails because officer, directors, employees, and agents of a company cannot tortiously interfere with their own company's contracts. See *Bartsas Realty, Inc. v. Nash*, 81 Nev. 325, 402 P.2d 650, 651 (1965) (dismissing the tortious interference claim because "defendants' breach of their own contract with the plaintiff is not a tort). Here, Plaintiffs expressly plead that the Individual Defendants were acting in their capacity as Hygea officers and directors in their dealings with Plaintiffs. *See, e.g.*, Compl. ¶¶ 17 & 22. Accordingly, Plaintiffs' claim for tortious interference fails as a matter of law and must be dismissed.

I. Plaintiffs' Claims for Conspiracy and Concert of Action Fail as a Matter of Law (Seventeenth and Eighteenth Causes of Action)

In their Seventeenth and Eighteenth Causes of Action, Plaintiffs attempt to set forth claims for conspiracy and concert of action against all Defendants. However, the intracorporate conspiracy doctrine provides that "[a]gents and employees of a corporation cannot conspire with their corporate principal or employer where they act in their official capacities on behalf of the corporation and not as individuals for their individual advantage." *Collins v. Union Federal Sav. & Loan Ass'n*, 99 Nev. 284, 303, 662 P.2d 610, 622 (1983). In such situations "no unlawful combination of persons would exist" and dismissal of civil conspiracy claims is proper. *Id.* Moreover, a civil conspiracy claim cannot stand based upon any conspiracy between the employees themselves. *Id.*

Courts applying Nevada law have uniformly applied the intracorporate conspiracy doctrine to bar claims for concert of action for the same reasons as a civil conspiracy claim. *See U-Haul*

[13] Plaintiffs have not pled what actions each Individual Defendant undertook to disrupt the contractual relationship from which motive can be inferred. However, this is a necessary element of a claim for tortious interference. Indeed, the U.S. District Court for the District of Nevada, interpreting Nevada law, explained that a plaintiff must establish a defendant had a motive to induce the breach of contract and that general intent to interfere is not enough. *Nat. Right to Life P. A. Com. v. Friends of Bryan*, 741 F. Supp. 807, 813 (D. Nev. 1990). Here, the Complaint is devoid of any allegation as to what any Individual Defendant's purported motive for interfering with the SPA might have been.

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Co. of Nevada, Inc. v. U.S., Case No. 2:08-cv-0729-KJD-RJJ, 2012 WL 3042908, at *3 (D. Nev. July 25, 2012); *Rebel Communications, LLC v. Virgin Valley Water Dist.*, Case No. 2:10-cv-0513-LRH-PAL, 2010 WL 363176, at *2 (D. Nev. 2010). Again, Plaintiffs expressly plead that the Individual Defendants were acting in their capacity as Hygea officers and directors in their dealings with Plaintiffs. *See, e.g.*, Compl. ¶¶ 17 & 22. As a result, the Individual Defendants could not, as a matter of law, have conspired or engaged in a concert of action by and among themselves and Hygea. Accordingly, the claims for conspiracy and concert of action must be dismissed.

J. Plaintiffs' Claim for Unjust Enrichment Fails as a Matter of Law (Nineteenth Cause of Action)

Plaintiffs' Nineteenth Cause of Action asserts unjust enrichment against the Individual Defendants. Unjust enrichment is '"the unjust retention . . . of money or property of another against the fundamental principles of justice or equity and good conscience.'" *Topaz Mutual Co. v. Marsh*, 108 Nev. 845, 856, 839 P.2d 606, 613 (1992) (quoting *Nevada Industrial Dev. v. Benedetti*, 103 Nev. 360, 363 n.2, 741 P.2d 802, 804 n.2 (1987)). Plaintiffs allege that the Individual Defendants were or are "being unjustly compensated by Hygea and its shareholders" as a result of all wrongdoing alleged in the Complaint. Compl. ¶¶ 168-169. However, Plaintiffs do not allege that such compensation rightfully belongs to either Plaintiff. Indeed, any monies being improperly retained by the Individual Defendants would belong to Hygea, and thus, the Individual Defendants' action would harm the Company (not Plaintiffs). As set forth above, such is a derivative claim for breach of fiduciary duty, and for the same reasons Plaintiffs' claims for breach of fiduciary duty fail, Plaintiffs' claim for unjust enrichment fails. *See also Topaz Mutual Co., 108 Nev. at 856, 839 P.2d at 613; McFarland v. Long*, No. 2:16-cv-00930-RFB-PAL, 2017 U.S. Dist. LEXIS 168998, at *20 (D. Nev. Oct. 6, 2017) (a claim for unjust enrichment cannot lie where no money or property of another is being retained by defendants or where the claim is merely duplicative of a claim for breach of fiduciary duty).

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K. Plaintiffs Have Failed to Plead a Viable Claim for Constructive Fraud Against Defendants (Twentieth Cause of Action)

Plaintiffs' Twentieth Cause of Action asserts constructive fraud against all Defendants. "Constructive fraud is characterized by a breach of duty arising out of a fiduciary or confidential relationship." *Long v. Towne*, 98 Nev. 11, 13, 639 P.2d 528, 530 (1982). "A 'confidential or fiduciary relationship' exists when one reposes a special confidence in another so that the latter, in equity and good conscience, is bound to act in good faith and with due regard to the interests of the one reposing the confidence." *Id.* at 529-30. Plaintiffs here are sophisticated business entities, as are Defendants. By virtue of their arms-length negotiations, there could not have been any special confidence reposed by Plaintiffs in Defendants. Accordingly, Plaintiffs' claim for constructive fraud must be dismissed.

L. Plaintiffs Have Failed to Plead a Viable Claim for Accounting Against the Individual Defendants (Twenty-First Cause of Action)

In the Twenty-First Cause of Action, Plaintiff N5HYG demands an accounting from all Individual Defendants. It is not clear whether Plaintiffs' Cause of Action for accounting is that for an equitable remedy ancillary to its other causes of action, or, whether by this claim, Plaintiffs attempt to set forth an independent cause of action. If the latter, the claim is precluded because the equitable remedy of accounting is "not an independent cause of action." *Western Nevada Supply Co. Profit-Sharing Plan and Trust v. Aneesard Mgmt., LLC*, 2011 WL 1118683, at *6 (D. Nev. 2011).[14] If the former, Plaintiffs must plead "that a relationship exists between the plaintiff and defendant that requires an accounting, and that some balance is due the plaintiff that can only be ascertained by an accounting." *Teselle v. McLoughlin*, 173 Cal. App. 4th 156, 179, 92 Cal. Rptr. 3d 696, 715 (2009). There does not appear to be any Nevada cases specifically on point, but other courts have found that the requisite relationship exists where there exists a contract pursuant to which payment is collected by one party and the other party is entitled to payment by the

[14] Likewise, Plaintiffs' Eleventh Cause of Action for rescission is a remedy, and although Plaintiffs are entitled to demand alternative remedies, Plaintiffs cannot obtain both forms of relief because obtaining both rescission and damages for breach of contract would constitute a double recovery. *See Bergstrom v. Estate of DeVoe*, 109 Nev. 575, 578, 854 P.2d 860, 862 (1993). Accordingly, Plaintiffs' Cause of Action for rescission must be dismissed.

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collecting party. *See Wolf v. Superior Court*, 107 Cal. App. 4th 25, 130 Cal.Rptr.2d 860 (Cal.Ct.App. 2003). Here, Plaintiffs have pled the existence of a contractual relationship between them and the Guarantor Defendants, but not the Non-Guarantor Defendants. Moreover, even with respect to the Guarantor Defendants, Plaintiffs have not pled that the Guarantor Defendants collected any monies to which Plaintiffs are entitled. Accordingly, any independent cause of action Plaintiffs may have set forth for accounting must be dismissed.

VI. CONCLUSION

For the reasons set forth herein, Defendants respectfully request that this Court dismiss Nevada 5 as a plaintiff from this lawsuit and dismiss all claims against all Defendants, with the exception of N5HYG's claim for breach of contract against Hygea, Iglesias, and Moffly.

Dated: June 28, 2018.

BALLARD SPAHR LLP

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CERTIFICATE OF SERVICE

I certify that on June 28, 2018, and pursuant to N.R.C.P. 5(b), a true and correct copy of the foregoing **MOTION FOR PARTIAL DISMISSAL OF CLAIMS AND PARTIES** was served on the following parties via the Court's electronic service system:

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Attorneys for Defendant Ray Gonzalez

I further certify that on June 28, 2018, and pursuant to N.R.C.P. (b), a true and correct copy of the foregoing **MOTION FOR PARTIAL DISMISSAL OF CLAIMS AND PARTIES** was served on the following parties by U.S. Mail, postage-prepaid, and a courtesy copy sent by e-mail:

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Defendant Pro Per

/s/ C. Bowman
An Employee of BALLARD SPAHR LLP

EXHIBIT A

STRICTLY CONFIDENTIAL
EXECUTION VERSION

STOCK PURCHASE AGREEMENT

by and among

N5HYG LLC,

HYGEA HOLDINGS CORP.,

and

THE SELLER PRINCIPALS NAMED HEREIN,

Dated as of October 5, 2016

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STRICTLY CONFIDENTIAL
EXECUTION VERSION

STOCK PURCHASE AGREEMENT

by and among

N5HYG LLC,

HYGEA HOLDINGS CORP.,

and

THE SELLER PRINCIPALS NAMED HEREIN,

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EXHIBITS

Exhibit A: List of Subsidiaries

STOCK PURCHASE AGREEMENT

This Stock Purchase Agreement (as amended or otherwise modified in accordance with the terms hereof, this "Agreement"), dated as of October 5, 2016 (the "Effective Date"), is entered into by and among **N5HYG LLC**, a Michigan limited liability company ("Buyer"), **HYGEA HOLDINGS CORP.**, a Nevada corporation ("Seller"), and the Seller Principals (defined below). Buyer, Seller and the Seller Principals are sometimes referred to in this Agreement collectively as the "Parties" or individually as a "Party." Any reference to "Seller" herein shall include any predecessor of Seller. Unless the context otherwise requires, terms used in this Agreement that are capitalized and not otherwise defined in context will have the meanings set forth or cross-referenced in Article 1.

RECITALS

WHEREAS, the Seller Principals each own (directly and indirectly, as applicable) common stock of Seller ("Common Stock") which in the aggregate constitutes 30.36% of the issued and outstanding Common Stock (not taking into account the exercise of any warrants, options or similar rights to acquire Common Stock, and prior to taking into account the Contemplated Transactions);

WHEREAS, Seller owns (directly and indirectly, as applicable) 100% of the issued and outstanding capital stock or other equity interests of each of the entities listed on Exhibit A hereto (collectively, the "Subsidiaries," and each, a "Subsidiary");

WHEREAS, through the Subsidiaries, Seller owns and operates a health care business focused primarily on the delivery of primary-care-based health care to patients (currently numbering approximately 175,000 patients) through its integrated group practices and through the Palm Network, Seller's independent practice association and managed services organization (collectively, the "Business") throughout Florida and Georgia;

WHEREAS, Seller and the Seller Principals have determined it is in their collective best interest that Seller issue to Buyer an amount of Common Stock such that immediately following such issuance Buyer shall own Twenty-Three Million Four Hundred Thirty-Seven Thousand Five Hundred (23,437,500) shares of Common Stock, constituting 8.57% of all of the issued and outstanding Common Stock, not taking into account the exercise of any warrants, options or similar rights to acquire Common Stock, but taking into account the Contemplated Transactions (the "Acquired Stock");

WHEREAS, as payment for the Acquired Stock, Buyer shall contribute the Consideration to Seller;

WHEREAS, Buyer, Seller and Seller Principals have determined that the Consideration, which reflects a price per share of Acquired Stock equal to $1.28 (the "Per-Share Price"), is consistent with the fair market value of the Acquired Stock and includes a payment for the goodwill inherent in the Acquired Stock;

WHEREAS, Seller Principals will receive an indirect financial benefit from the Contemplated Transactions; and

WHEREAS, the Buyer, Seller and Seller Principals desire to make certain representations, warranties, covenants and agreements in connection with this Agreement.

AGREEMENT

NOW THEREFORE, in consideration of the premises and mutual promises herein made, and in consideration of the representations, warranties, covenants and agreements herein contained, the Parties, intending to be legally bound, hereby agree as follows:

1. **DEFINITIONS**.

As used herein, the following terms shall have the following meanings:

"1934 Act" is defined in Section 4.26.

"2013 Yearly Financials" is defined in Section 4.6.1.

"2014 & 2015 Yearly Financials" is defined in Section 4.6.1.

"409A Plan" is defined in Section 4.17.8.

"Acquired Stock" is defined in the Recitals.

"Action" means any claim, action, cause of action, law suit (whether in contract or tort or otherwise) or audit, litigation (whether at law or in equity and whether civil or criminal), assessment, grievance, arbitration, investigation, hearing, mediation, charge, complaint, inquiry, demand, notice or proceeding to, from, by or before any Governmental Authority or any mediator.

"Affiliate" means, with respect to any specified Person at any time, (a) each Person directly or indirectly controlling, controlled by or under direct or indirect common control with such specified Person at such time, (b) each Person who is at such time an officer, manager (with respect to a limited liability company), or a member of a board of directors of, or direct or indirect beneficial holder of at least 5% of any class of the capital stock of, such specified Person, (c) if such specified Person is an individual, the Family Members of such Person and (d) the Family Members of each officer, manager, director, or holder described in clause (b) above.

"Agreement" is defined in the Preamble.

"AJCA" is defined in Section 4.17.8.

"Ancillary Agreements" means each agreement, document, instrument or certificate contemplated by this Agreement or to be executed by Buyer, Seller, or any Seller Principal in connection with the consummation of the Contemplated Transactions, in each case only as applicable to the relevant party or parties to such Ancillary Agreement, as indicated by the context in which such term is used.

"Business" is defined in the Recitals.

"Business Day" means any day, other than a Saturday, Sunday or any other day on which banks located in New York are authorized or required by applicable Legal Requirement to be closed.

"Business Employee" is defined in Section 4.21.3.

"Buyer" is defined in the Preamble.

"Buyer Indemnified Persons" is defined in Section 7.1.

"Buyer Investor Protections" is defined in Section 6.4.

"Center" is defined in Section 4.15.1.

"Closing" is defined in Section 3.2.

"Closing Date" is defined in Section 3.2.

"Code" means the U.S. Internal Revenue Code of 1986, as amended.

"Common Stock" is defined in the Recitals.

"Compensation" means, with respect to any Person, all wages, earnings, salaries, commissions, compensation, remuneration, incentives, bonuses, or benefits of any kind or character whatsoever (including issuances or grants of equity interests or the right to acquire equity interests or compensation based on the value or increase in value of equity interests), required to be made or that have been made directly or indirectly by any Seller to such Person or Affiliates of such Person.

"Consideration" is defined in Section 3.3.

"Contemplated Transactions" means, collectively, the transactions contemplated by this Agreement, including (a) the transfer by Seller of the Acquired Stock to Buyer in exchange for the Consideration and (b) the execution, delivery, and performance of this Agreement and the Ancillary Agreements.

"Contractual Obligation" means, with respect to any Person, any contract, agreement, deed, mortgage, lease, sublease, license, sublicense or other legally enforceable commitment, promise, undertaking, obligation, arrangement, instrument or understanding, whether written or oral, to which or by which such Person is a party or otherwise subject or bound or to which or by which any property, business, operation or right of such Person is subject or bound.

"Data Room" means that certain virtual data room hosted by Seller in connection with the Contemplated Transactions using Sharepoint Online/Microsoft Office 365 under the folder name "Investors."

"Debt" means, with respect to any Person, all Liabilities of such Person, without duplication (a) for borrowed money (including overdraft facilities) or in respect of loans or advances (including, in any case, any prepayment premiums due or arising as a result of the consummation of the Contemplated Transactions), (b) evidenced by notes, bonds, debentures, or similar Contractual Obligations, (c) for deferred rent or the deferred purchase price of property, goods, or services (other than trade payables or accruals incurred in the Ordinary Course of Business, but in any case including any deferred purchase price Liabilities, earnouts, contingency payments, installment payments, deferred revenue, customer deposits, seller notes, promissory notes, or similar Liabilities, in each case related to past acquisitions and whether or not contingent), (d) under capital leases or synthetic obligations which would be required to be capitalized in accordance with GAAP, (e) in respect of letters of credit and bankers' acceptances (in each case whether or not drawn, contingent, or otherwise), (f) for obligations arising under any interest rate, commodity, or other similar swap, cap, collar, futures contract, or other hedging arrangement, (g) for any credit card payables with respect to charges having a transaction date of 30 days or more prior to the Closing Date or related to non-business related activities, (h) all accrued interest expense, (i) accounts payable over 60 days, (j) accounts payable to any of such Person's Affiliates, directors, shareholders, officers, employees, or Representatives, (k) overdrawn or negative balance cash accounts, (l) all

obligations of the type referred to in clauses (a) through (k) above of other Persons secured by any Encumbrance on any property or asset of such Person, whether or not such obligation is assumed by such Person all obligations of the type referred to in clauses (a) through (k) above of any other Person the payment of which such Person has Guaranteed, and (n) accrued but unpaid interest, fees, penalties, premiums (including in respect of prepayment) arising with respect to any of the items described in clauses (a) through (l) above).

"Direct Owners" is defined in Section 4.5.1.

"Disclosed Contract" is defined in Section 4.19.2.

"Disclosure Schedules" is defined in Section 2.2.

"Effective Date" is defined in the Recitals.

"Encumbrance" means any charge, claim, community or other marital property interest, condition, equitable interest, lien, lease, license, option, pledge, security interest, mortgage, deed of trust, right of way, easement, encroachment, servitude, preemptive right, anti-dilution right, right of first offer or first refusal, or buy/sell agreement and any other restriction, encumbrance, or covenant with respect to, or condition governing the use, construction, voting (in the case of any security or equity interest), transfer or exercise of or receipt of income from, any other attribute of ownership.

"Environment" means soil, surface waters, groundwater, land, stream sediments, surface or subsurface strata, ambient air, or indoor air, including any material or substance used in the physical structure of any building or improvement.

"Environmental Laws" means any Legal Requirement relating to (a) releases or threatened releases of Hazardous Substances, (b) pollution or protection of health or the environment or natural resources, or (c) the manufacture, handling, transport, use, treatment, storage, recycling or disposal of or exposure to Hazardous Substances.

"Equity Value" means the enterprise value of Seller (including all of its subsidiaries) less Debt, all calculated in accordance with GAAP.

ERISA" is defined in Section 4.17.1.

"ERISA Affiliate" is defined in Section 4.17.1.

"ERISA Employer" is defined in Section 4.17.1.

"Family Member" means, with respect to any individual, (a) such Person's spouse, (b) each parent, brother, sister or natural or adopted child of such Person or such Person's spouse, (c) each trust created for the benefit of one or more of the Persons described in clauses (a) and (b) above and (d) each custodian or guardian of any property of one or more of the Persons described in clauses (a) through (c) above in his or her capacity as such custodian or guardian.

"Federal Health Care Program" means any plan or program that provides health benefits, whether directly, through insurance, or otherwise, which is funded directly, in whole or in part, by the United States Government or a state health care program, including, but not limited to, the Medicare and Medicaid programs.

"Financials" is defined in Section 4.6.1.

"Fundamental Representations" means the representations and warranties of Seller set forth in Section 4.1 (Organization), Section 4.2 (Power and Authorization), Section 4.5 (Capitalization; Subsidiaries), Section 4.10 (Ownership of Assets), Section 4.14 (Legal Compliance; Illegal Payments; Permits), Section 4.15 (Compliance with Healthcare Laws), Section 4.16 (Tax Matters), Section 4.17 (Employee Benefit Plans), Section 4.21 (Employees) and Section 4.24 (No Brokers).

"GAAP" means generally accepted accounting principles in the United States, as in effect on the Closing Date or as of the period(s) indicated.

"Government Order" means any order, writ, judgment, injunction, decree, stipulation, ruling, determination, or award entered by or with any Governmental Authority.

"Governmental Authority" means any United States federal, state, or local or any foreign government, or political subdivision thereof, or foreign state, or any multinational organization or authority or any authority, agency, or commission entitled to exercise any administrative, executive, judicial, legislative, police, or regulatory power, any court or tribunal (or any department, bureau or division thereof), or any arbitrator or arbitral body.

"Guarantee" by any Person means any obligation, contingent or otherwise, of such Person directly or indirectly guaranteeing or otherwise supporting in whole or in part the payment of any Debt or other obligation of any other Person and, without limiting the generality of the foregoing, any obligation, direct or indirect, contingent or otherwise, of such Person (a) to purchase or pay (or advance or supply funds for the purchase or payment of) such Debt or other obligation of such other Person (whether arising by virtue of partnership arrangements, by agreement to keep well, to purchase assets, goods, securities or services, to take or pay, or to maintain financial statement conditions or otherwise) or (b) entered into for the purpose of assuring in any other manner the obligee of such Debt or other obligations of the payment of such Debt or to protect such obligee against loss in respect of such Debt (in whole or in part). The term "Guarantee" used as a verb has a correlative meaning.

"Hazardous Substance" means and includes each substance designated as a hazardous waste, hazardous substance, hazardous material, pollutant, contaminant or toxic substance or as designated with words of similar meaning and regulatory effect under any Environmental Law, petroleum and petroleum products or derivatives, asbestos and urea formaldehyde, polychlorinated biphenyls, Medical Waste, and any other substance for which liability or standards of conduct may be imposed under Environmental Law.

"Healthcare Laws" means all federal and state laws, rules or regulations, and published program instructions relating to the regulation, provision or administration of, or payment for, healthcare products or services, including, but not limited to (a) the federal Anti-Kickback Statute (42 U.S.C. §1320a-7b(b)), the Physician Self-Referral Law, commonly known as the "Stark Law" (42 U.S.C. §1395nn), the criminal health care fraud statute (18 U.S. Code § 1347, the civil False Claims Act (31 U.S.C. §3729 et seq.), the Federal Food, Drug, and Cosmetics Act (21 U.S. Code §301 et. seq.), the Federal Controlled Substances Act (21 U.S. Code §801 et. seq.), the Clinical Laboratory Improvement Amendments of 1988 (42 U.S. Code §263a et. seq.), TRICARE (10 U.S.C. Section 1071 et seq.), Sections 1320a-7, 1320a-7a and 1320a-7b of Title 42 of the United States Code and the regulations promulgated pursuant to such statutes; (b) the Health Insurance Portability and Accountability Act of 1996 (Pub. L. No. 104-191) and the regulations promulgated thereunder; (c) Medicare (Title XVIII of the Social Security Act) and the regulations and program instructions and other legally enforceable requirements promulgated thereunder; (d) Medicaid (Title XIX of the Social Security Act) and the regulations and other legally enforceable

requirements promulgated thereunder; (e) quality, safety and medical necessity laws, rules or regulations relating to the regulation, provision or administration of, or payment for, healthcare products or services; (f) rules governing the provision of services to employees with workers compensation coverage or licensure or certification as a healthcare organization to provide such services; and (g) licensure laws, rules or regulations relating to the regulation, provision or administration of, or payment for, healthcare products or services, including laws relating to the so-called "corporate practice of medicine" and fee splitting, each of (a) through (g) as amended from time to time.

"Indemnified Person" means, with respect to any Indemnity Claim, each Buyer Indemnified Person or Seller Indemnified Party asserting the Indemnity Claim (or on whose behalf the Indemnity Claim is asserted) under Article 7.

"Indemnifying Party" means, with respect to any Indemnity Claim, the party or parties against whom such Indemnity Claim may be or has been asserted.

"Indemnity Claim" means a claim for indemnity Article 7.

"Indirect Owners" is defined in Section 4.5.1.

"Intellectual Property Rights" means the entire right, title, and interest in and to all proprietary rights of every kind and nature however denominated, throughout the world, including (a) patents, patent applications, industrial designs, industrial design applications, and patent disclosures, together with all reissues, continuations, continuations-in-part, revisions, divisionals, extensions, reviews and reexaminations in connection therewith, (b) confidential information, trade secrets, database rights, and all other proprietary rights in Technology, (c) trademarks, trade names, service marks, service names, brands, trade dress and logos, and all other indicia of origin, all applications, registrations, and renewals in connection therewith, and the goodwill and activities associated therewith, (d) domain names, rights of privacy and publicity, and moral rights, including all rights of authorship, use, publication, reproduction, distribution, performance transformation, moral rights and rights of ownership of copyrightable works, copyrights and registrations and applications associated therewith, mask work rights (e) any and all registrations, applications, recordings, licenses, common-law rights, and contractual rights relating to any of the foregoing, and (e) all rights of privacy and publicity, including rights to the use of names, likenesses, images, voices, signatures and biographical information of real persons, as well as all Actions and rights to sue at law or in equity for any past or future infringement or other impairment of any of the foregoing, including the right to receive all proceeds and damages therefrom, and all rights to obtain renewals, continuations, divisions, or other extensions of legal protections pertaining thereto, and (f) all copies and tangible embodiments or descriptions of any of the foregoing (in whatever form or medium).

"IRS" means the Internal Revenue Service.

"Legal Requirement" or "Law" means any constitution, law (including common law), statute, standard, ordinance, code, rule, regulation, resolution, or promulgation, or any Government Order, or any license, franchise, permit, or similar right granted under any of the foregoing, or any similar provision or duty or obligation having the force or effect of law, including, and for the avoidance of doubt, any Healthcare Law.

"Liability" means, with respect to any Person, any liability or obligation of such Person, whether known or unknown, whether asserted or unasserted, whether determined, determinable or otherwise, whether absolute or contingent, whether accrued or unaccrued, whether liquidated or unliquidated, whether incurred or consequential, whether due or to become due.

"Litigation Conditions" is defined in Section 7.6.2.

"Losses" is defined in Section 7.1.

"Material Adverse Effect" means any event, circumstance, development, condition, occurrence, state of facts, change or effect that, when considered individually or in the aggregate has been, or would be reasonably likely to be, materially adverse to (a) the business condition (financial or otherwise), or the business, assets, liabilities of Seller, or (b) the ability of Seller or either Seller Principal to perform their respective obligations under this Agreement or to consummate the Contemplated Transactions, in either case, other than any event, circumstance, development, condition, occurrence, state of facts, change or effect arising out of: (i) general business, financial, credit or economic conditions in the United States; (ii) acts of war (whether or not declared), sabotage or terrorism, military actions or the escalation thereof; (iii) any change in or adoption of any applicable Legal Requirement or GAAP, and (iv) natural disasters, acts of nature or acts of god such as landslides, floods, fires, explosions, lightning and induction caused by lightning causing damage to equipment, earthquakes subsidence, storms, cyclones, typhoons, hurricanes, tornados, tsunamis, perils of sea, volcanic activity, and other extreme weather conditions and any other extraordinary operation of the forces of nature; except, in the case of subparts (i), (ii), (iii) or (iv) of this definition, only to the extent that such events, circumstances, developments, conditions, occurrences, states of facts, changes or effects do not have a disproportionate effect on Seller relative to other participants in the industries in which Seller operates.

"Most Recent Balance Sheets" is defined in Section 4.6.1.

"Most Recent Balance Sheet Date" is defined in Section 4.6.1.

"Most Recent Financials" is defined in Section 4.6.1.

"Ordinary Course of Business" means an action taken by any Person in the ordinary course of such Person's business which is consistent with the past customs and practices of such Person.

"Party" is defined in the Preamble.

"Payment Date" is defined in Section 6.3.

"Payor" means any insurer, health maintenance organization, third party administrator, employer, union, trust, governmental program (including but not limited to any Third Party Payor Program), or other consumer or customer of health care services that has authorized Seller as a provider of health care services to the members, beneficiaries, participants or the like, thereof or to whom Seller has submitted a claim for services.

"Per-Share Price" is defined in the Recitals.

"Permits" means, with respect to any Person, any license, accreditation, bond, franchise, permit, consent, approval, right, privilege, certificate, registration, accreditation or other similar authorization issued by, or otherwise granted by, any Governmental Authority or any other Person to which or by which such Person is subject or bound or to which or by which any property, business, operation, or right of such Person is subject or bound.

"Person" means any individual or corporation, association, partnership, limited liability company, joint venture, joint stock, or other company, business trust, trust, organization, labor union, Governmental Authority, or other entity of any kind.

"Physician Owner" is defined in Section 4.5.1.

"Plan" is defined in Section 4.17.1.

"Post-Closing Monthly Payment" is defined in Section 6.3.

"Procedure" shall mean any procedure or procedures on the list of Medicare-covered procedures for ambulatory surgical centers in accordance with regulations issued by the U.S. Department of Health and Human Services.

"Pro Rata Share" is defined in Section 7.4.2.

"Put Notice" is defined in Section 6.3.

"Put Option" is defined in Section 6.3.

"Put Price" is defined in Section 6.3.

"Real Property" is defined in Section 4.12.

"Real Property Leases" is defined in Section 4.12.

"Reimbursed Transaction Expenses" is defined in Section 6.2.

"Release" means any releasing, spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, migrating, disposing or dumping of a Hazardous Substance into the Environment (including the abandonment or discarding of barrels, containers and other closed receptacles containing any Hazardous Substance) and any condition that results in the exposure of a person to a Hazardous Substance.

"Representative" means, with respect to any Person, any director, manager, officer, employee, agent, consultant, advisor, or other representative of such Person, including legal counsel, accountants, and financial advisors.

"SEC" is defined in Section 4.26.

"SEC Documents" is defined in Section 4.26.

"Seller" is defined in the Preamble.

"Seller Indemnification Obligations" is defined in Section 7.4.

"Seller Indemnified Parties" is defined in Section 7.2.

"Seller Intellectual Property Rights" means all Intellectual Property Rights owned by Seller or used by Seller in connection with each of the Business as currently conducted, including all Intellectual Property Rights in and to Seller Technology.

"Seller Owners" is defined in Section 4.5.1.

"Seller Principals" means the following Seller Owners: (a) Manuel Iglesias (Co-Founder, Director and Chief Executive Officer of Seller) and (b) Edward Moffly (Co-Founder, Director and Chief Financial Officer of Seller).

"Seller Technology" means any and all Technology used in connection with the Business as currently conducted.

"Seller's Knowledge" shall mean the knowledge of each of the Seller Principals, Richard Williams (the Chief Legal Officer and General Counsel of Seller), and each officer, manager or member of the board of directors (or equivalent governing body) of Seller and each Subsidiary. For purposes of this Agreement, any such individual shall be deemed to have knowledge of a particular fact or other matter if (a) such individual is actually aware of such fact or other matter or (b) a prudent individual could be expected to discover or otherwise become aware of such fact or other matter after reasonable investigation.

"Subsidiary" is defined in the Recitals.

"Subsidiary Equity Interests" is defined in Section 4.5.2.

"Tax" or "Taxes" means (a) any and all federal, state, local, or foreign income, gross receipts, license, payroll, employment, excise, severance, stamp, occupation, premium, windfall profits, environmental, customs, duties, capital stock, franchise, profits, built-in gain, withholding, social security (or similar taxes, including FICA), unemployment, disability, real property, intangible property, personal property, escheat, abandoned or unclaimed property obligation, sales, use, transfer, registration, value added, alternative or add-on minimum, estimated, or other tax of any kind or any charge or fee of any kind in the nature of (or similar to) taxes imposed by any Governmental Authority or any Legal Requirement, including any interest, penalty, or addition thereto, in each case whether disputed or not and (b) any Liability for the payment of any amounts of the type described in clause (a) of this definition as a result of (i) being a member of an affiliated, consolidated, combined or unitary group or being a party to any agreement or arrangement whereby liability for payment of such amounts was determined or taken into account with reference to the Liability of another Person, in each case, for any period, (ii) as a result of any tax sharing, tax indemnification or tax allocation agreement, arrangement or understanding (other than commercial contracts (A) a principal subject matter of which is not Taxes, (B) containing customary Tax indemnification provisions, and (C) entered into in the ordinary course of business), (iii) or as a result of being liable for the payment of another Person's taxes as a transferee or successor, by contract or otherwise.

"Tax Return" means any return, statement, election, form, declaration, report, claim for refund or information return or statement relating to Taxes, including any schedule, supplement or attachment thereto, and including any amendment thereof.

"Technology" means all inventions, works, discoveries, innovations, know-how, information (including ideas, research and development, formulas, algorithms, compositions, processes and techniques, data, designs, drawings, specifications, graphics, illustrations, artwork, documentation, and manuals), databases, computer software, firmware, computer hardware, integrated circuits and integrated circuit masks, electronic, electrical, and mechanical equipment, and all other forms of technology, including improvements, modifications, works in process, derivatives, or changes, whether tangible or intangible, embodied in any form, whether or not protectable or protected by patent, copyright, mask work right, trade secret law, or otherwise, and all documents and other materials recording any of the foregoing.

"Third Party Claim" is defined in Section 7.6.1.

"Third Party Payor Programs" means all Third Party Payor Programs (including but not limited to, Federal Health Care Programs, workers compensation, or any other state health care programs, as well as Blue Cross and/or Blue Shield, managed care plans, or any other private insurance program).

"Treasury Regulations" means the regulations promulgated under the Code.

"Trigger Event" is defined in Section 6.3.

"Yearly Financials" is defined in Section 4.6.1.

2. GENERAL RULES OF INTERPRETATION; SCHEDULES.

2.1. General Rules. Except as otherwise explicitly specified to the contrary, (a) references to a Section, Article, Exhibit or Schedule means a Section or Article of, or Exhibit or Schedule to, this Agreement, unless another agreement is specified, (b) the word "including" shall be construed as "including without limitation", (c) references to a particular statute or regulation include all rules and regulations thereunder and any predecessor or successor statute, rules or regulation, in each case as amended or otherwise modified from time to time, (d) words in the singular or plural form include the plural and singular form, respectively, (e) words expressed in the masculine shall include the feminine and neuter genders and vice versa, (f) the word "will" shall have the same meaning as the word "shall", (g) the word "extent" in the phrase "to the extent" means the degree to which a subject or other thing extends and shall not simply mean "if", (h) references to "day" or "days" in the lower case means calendar days, (i) references to the "date hereof" are to the date of this Agreement, (j) the words "hereof", "herein", "hereto", and "hereunder", and words of similar import, shall refer to this Agreement as a whole and not any particular provisions of this Agreement, (k) references to dollars or "$" are to United States dollars, and (l) references to a particular Person include such Person's successors and assigns to the extent not prohibited by this Agreement.

2.2. Disclosure Schedules. Disclosure in any section of the Schedules to this Agreement (the "Disclosure Schedules") shall apply only to the indicated section of this Agreement except to the extent that it is readily apparent from the face of such disclosure that such disclosure is relevant to another section of this Agreement. The inclusion of any information in the Schedules shall not be deemed to be an admission or acknowledgment, in and of itself that such information is required by the terms hereof to be disclosed, is material or has resulted in or is reasonably likely to result in a Material Adverse Effect. Complete and correct copies of all documents referred to in the Disclosure Schedules were made available to Buyer in the Data Room or sent via electronic mail to Dan Miller (Managing Director of Buyer's parent company) at DMiller@RINCapital.com prior to the Closing Date.

3. STOCK PURCHASE.

3.1. The Stock Purchase. Upon the Closing, in exchange for the Consideration contributed by Buyer to Seller, Buyer shall purchase from Seller and Seller shall sell, issue, transfer, assign, convey and deliver to Buyer the Acquired Stock free and clear of any and all liens, mortgages, liens, pledges, security interests, conditional sales agreements, right of first refusals, options, restrictions, liabilities, encumbrances, or charges.

3.2. Closing. The closing of the Contemplated Transactions hereby (the "Closing") will take place remotely via the electronic exchange of documents and signature pages on the Effective Date (the "Closing Date"), or in such other manner as the Parties agree in writing. For accounting and

computational purposes (other than for Tax purposes), the Closing will be deemed to have occurred at 12:01 a.m. (Eastern Time) on the Closing Date.

3.3. Consideration. The consideration to be paid for the Acquired Stock shall be Thirty Million and no/100 Dollars ($30,000,000.00) (the "Consideration"). The Consideration shall be paid as of the Closing effected by wire transfer of immediately available funds to an account provided to Buyer by Seller in writing prior to the Closing.

3.4. Deliverables by Seller. At the Closing, Seller shall deliver (or cause to be delivered) to Buyer the following items:

3.4.1. all documents that are necessary to transfer to Buyer good and valid title to the Acquired Stock free and clear of any lien, with any necessary transfer tax stamps affixed or accompanied by evidence that all equity transfer taxes have been paid;

3.4.2. a certificate of incumbency verifying the authority of the respective officers of Seller executing this Agreement, and any other agreements contemplated hereby, or making certifications for Closing;

3.4.3. a certificate from the Secretary of Seller certifying that all board of directors and shareholder approvals necessary to consummate the transactions contemplated by this Agreement and the Ancillary Agreements to which Seller is a party have been obtained and attaching thereto: (i) a copy of the articles of organization of Seller, and (ii) a copy of the resolutions of the board of directors of Seller, evidencing the approval of this Agreement and the Ancillary Agreements to which each is a party and the transactions contemplated hereby and thereby;

3.4.4. a certificate signed by Seller certifying the satisfaction of the conditions set forth in Sections 3.7(b) and 3.7(c);

3.4.5. duly executed counterparts of each Ancillary Agreement to which a Seller or a Seller Principal is a party;

3.4.6. all of the consents, waivers and similar instruments that are set forth on Schedule 4.3, each in form and substance reasonably satisfactory to Buyer; and

3.4.7. such other documents and certificates as Buyer may reasonably request or as may be required pursuant to this Agreement.

3.5. Deliverables by Buyer. At the Closing, Buyer shall deliver (or cause to be delivered) to or on behalf of Seller the following items:

3.5.1. payment of the Consideration in accordance with Section 3.3;

3.5.2. a certificate of incumbency verifying the authority of the respective officer(s), manager(s) and/or director(s) of Buyer executing this Agreement, or any other agreements contemplated hereby, or making certifications for Closing;

3.5.3. a certificate from the Secretary of Buyer certifying that all governance approvals necessary to consummate the transactions contemplated by this Agreement, and the Ancillary Agreements to which it is a party have been obtained;

3.5.4. a certificate signed by Buyer certifying the satisfaction of the conditions set forth in Sections 3.6(b) and 3.6(c);

3.5.5. duly executed counterparts of each Ancillary Agreement to which a Buyer is a party; and

3.5.6. such other documents and certificates as Seller may reasonably request or as may be required pursuant to this Agreement.

3.6. Seller Closing Conditions. Seller's obligations to consummate the transactions contemplated hereunder are expressly conditioned upon the satisfaction of the following conditions (unless the same are expressly waived by Seller):

(a) receipt by Seller of the various documents and items set forth at Section 3.5 hereof;

(b) the representations and warranties of Buyer will be true and correct in all respects at and as of the Closing with the same force and effect as if made as of the Closing; and

(c) Buyer will have performed and complied in all material respects with all agreements, obligations and covenants contained in this Agreement that are required to be performed or complied with by them at or prior to the Closing.

3.7. Buyer Closing Conditions. Buyer's obligations to consummate the transactions contemplated hereunder are expressly conditioned upon the satisfaction of the following conditions (unless the same are expressly waived by Buyer):

(a) receipt by Buyer of the various documents and items set forth in Section 3.4 hereof;

(b) the representations and warranties of Seller will be true and correct in all respects at and as of the Closing with the same force and effect as if made as of the Closing;

(c) Seller and each Seller Principal (as applicable) will have performed and complied in all material respects with all agreements, obligations and covenants contained in this Agreement that are required to be performed or complied with by them at or prior to the Closing; and

(d) since the date hereof, there will have occurred no event, change, fact, or condition, nor will there exist any circumstance which, singly or in the aggregate with all other events, changes, facts, conditions and circumstances, has resulted or would reasonably be expected to result in a Material Adverse Effect.

4. REPRESENTATIONS AND WARRANTIES OF SELLER.

In order to induce Buyer to enter into and perform this Agreement and to consummate the Contemplated Transactions, Seller hereby represents and warrants to Buyer, as of the date hereof as follows:

4.1. Organization;. Each of Seller and each Subsidiary is (a) duly organized, validly existing and in good standing under the laws of the state of its incorporation or formation and (b) duly qualified to do business and in good standing in each other jurisdiction where such qualification is required. Seller has delivered to Buyer true, accurate and complete copies of the organizational documents of Seller and each Subsidiary. Schedule 4.1 sets forth a true and correct list of the current directors, managers, officers and

stockholders or other equity holders of Seller and each Seller Subsidiary, as applicable. No earn-out payments, and no payments for referrals to Seller or any Subsidiary of Medicare or Medicaid patients, have been made or promised by Seller, any Subsidiary, or any Affiliate, officer, director, manager or agent thereof in connection with the acquisition of any Subsidiary or the acquisition of the business or assets of any other entity.

4.2. Power and Authorization. Seller has the requisite capacity to execute and deliver this Agreement and to perform its obligations hereunder. The execution, delivery and performance by Seller of this Agreement and each Ancillary Agreement to which Seller is a party and the consummation of the Contemplated Transactions are within the power and authority of Seller and have been duly authorized by all necessary action on the part of Seller. This Agreement and each Ancillary Agreement to which Seller is a party (a) have been duly executed and delivered by Seller and (b) are the legal, valid and binding obligations of Seller, enforceable against Seller in accordance with their respective terms subject to applicable bankruptcy, insolvency, reorganization, moratorium or other similar Laws affecting the enforceability of creditors' rights generally, and, other than with respect to any restrictive covenant contained in this Agreement or any Ancillary Agreement, general equitable principles and the discretion of courts in granting equitable relief. Seller and each Subsidiary has the full corporate or limited liability company power and authority necessary to own and use its properties and assets and carry on its business as currently conducted.

4.3. Authorization of Governmental Authorities. Except as disclosed on Schedule 4.3, no action by (including any authorization, consent or approval), or in respect of, or filing with, or notice to, any Governmental Authority is required for, or in connection with, the valid and lawful (a) authorization, execution, delivery and performance by Seller and each Ancillary Agreement to which Seller is a party or (b) consummation of the Contemplated Transactions by Seller.

4.4. Non-contravention. Except as disclosed on Schedule 4.4, neither the execution, delivery and performance by Seller of this Agreement nor the execution, delivery and performance by Seller of any Ancillary Agreement nor the consummation of the Contemplated Transactions will: (a) assuming the taking of any action by (including any authorization, consent or approval), or in respect of, or any filing with, any Governmental Authority, in each case, as disclosed on Schedule 4.3, violate any Legal Requirement applicable to Seller, any Subsidiary or the Business; (b) result in the modification, acceleration, termination, breach or violation of, or default under, any Contractual Obligation to which Seller or any Subsidiary is a party; (c) require any action by (including any authorization, consent or approval) or in respect of (including notice to), any Person under any Contractual Obligation of Seller or any Subsidiary; (d) result in the creation or imposition of an Encumbrance upon, or the forfeiture of, the Common Stock or any asset owned or held by Seller or any Subsidiary; or (e) result in a breach or violation of, or default under, the organizational documents of Seller or any Subsidiary.

4.5. Capitalization; Subsidiaries.

4.5.1. Capitalization of Seller. Except for those warrants to purchase Common Stock listed on Schedule 4.5.1, complete and correct copies of which have been made available by Seller to Buyer, other than the Common Stock, Seller has not issued, nor has agreed to issue, any equity interest of any kind (including any preferred stock, warrants, options, "phantom equity," or other equity interests of any kind whatsoever, including any security or other instrument convertible into an equity security of Seller, or any derivative right of any of the foregoing). None of the Common Stock (including, for the avoidance of doubt, the Acquired Stock) is subject to, and none of Seller, either Seller Principal or, to Seller's Knowledge, any of the Seller Owners is a party to, any shareholders' agreement or similar agreement, any voting agreement, any pre-emptive rights, any rights of first offer or rights of first refusal, or any

similar Encumbrance of any kind with respect to the Common Stock. All of the issued and outstanding shares of Common Stock have been duly authorized, validly issued, and are fully paid and non-assessable, as applicable. Seller has complied in all material respects with all federal and state securities Laws and exemptions (including all applicable rules and regulations promulgated by the SEC, any applicable state securities regulators, and/or any exchange upon which any Common Stock is traded) in connection with the issuance and sale of all of the Common Stock (including the Acquired Stock). All of the issued and outstanding Common Stock is held of record and beneficially owned by the Persons set forth on Schedule 4.5.1 (the "Direct Owners") in the respective amounts set forth on Schedule 4.5.1. When used in this Agreement: (a) the term "Indirect Owner" means each Person that has a direct or indirect beneficial ownership interest in a Direct Owner; (b) the term "Seller Owners" means, collectively, all of the Direct Owners and the Indirect Owners; and (c) the term "Physician Owner" means each Seller Owner who is a physician (including any medical doctors, doctors of osteopathy, physiatrists, chiropractors or dentists). Schedule 4.5.1 sets forth a list of all Physician Owners, as well as the respective approximate percentages of direct or indirect beneficial ownership interest held by each such Physician Owner in one or more Direct Owners. The Acquired Stock has been duly authorized, validly issued and, upon payment of the Consideration, will be fully paid and non-assessable and, upon the Closing, Buyer shall have sole and exclusive, good and valid title to the Acquired Stock, not subject to any Encumbrance.

4.5.2. Capitalization of Subsidiaries; Affiliates. Seller has no subsidiaries or Affiliates other than the Subsidiaries. Exhibit A sets forth a complete list of all of the Subsidiaries. Seller owns, either directly or indirectly, 100% of the issued and outstanding capital stock, membership interests or other equity interests of each Subsidiary (including any preferred stock, warrants, options, "phantom equity," or other equity interests of any kind whatsoever, including any derivative rights thereto) (the "Subsidiary Equity Interests"). None of the Subsidiary Equity Interests is subject to, and none of Seller, either Seller Principal, any Subsidiary or, to Seller's Knowledge, any of the Seller Owners is a party to, any shareholders' agreement or similar agreement, any voting agreement, any pre-emptive rights, any rights of first offer or rights of first refusal, or any similar Encumbrance of any kind with respect to any Subsidiary Equity Interests. All of the issued and outstanding Subsidiary Equity Interests have been duly authorized, validly issued, and are fully paid and non-assessable, as applicable. Seller and each Subsidiary, as applicable, have complied in all material respects with all federal and state securities Laws and exemptions (including all applicable rules and regulations promulgated by the SEC, any applicable state securities regulators, and/or any exchange upon which any Common Stock is traded) in connection with the issuance and sale of all of the Subsidiary Equity Interests. All of the issued and outstanding Subsidiary Equity Interests are held of record and beneficially owned by the Persons designated on Exhibit A in the respective amounts set forth on Exhibit A.

4.6. Financial Matters.

4.6.1. Financial Statements. Attached to Schedule 4.6.1 are true, correct and complete copies of each of the following: (a) the consolidated audited balance sheets of Seller and the Subsidiaries as of December 31, 2013 and the related statements of profit and loss and changes in equity for the fiscal year then ended (the "2013 Yearly Financials"); and (b) that certain "Hydrea Holdings Corp. Quality of Earnings Report Update – TTM June 30, 2016" prepared by independent accounting firm CliftonLarsonAllen LLP, dated as of October 3, 2016, including an unaudited consolidated balance sheet of Seller and the Subsidiaries as of June 30, 2016 (respectively, the "Most Recent Balance Sheet," and the "Most Recent Balance Sheet

Date") and the related unaudited consolidated statement of profit and loss and changes in equity of Seller and the Subsidiaries for the 6-month period then ended (collectively, the "Most Recent Financials"). Seller, together with CPA firm RT&C (Rodriguez, Trueba & Co) is in the process of completing the preparation of the consolidated audited balance sheets of Seller and the Subsidiaries as of December 31, 2014 and December 31, 2015 and the related statements of profit and loss and changes in equity for the fiscal years then ended (the "2014 & 2015 Yearly Financials" and, collectively with the Audited Financials, the "Yearly Financials"), true and correct copies of which shall be provided to Buyer promptly upon completion, but in any event no later than November 30, 2016, which 2014 & 2015 Yearly Financials (together with the Most Recent Financials), when completed and provided to Buyer, shall reflect shareholders' equity as of June 30, 2016 that is no less than $95,000,000. The Most Recent Financials and the Yearly Financials are referred to herein collectively as the "Financials."

4.6.2. Except for the absence of footnote disclosure and any customary year-end adjustments that would not, individually or in the aggregate, be reasonably expected to be material, solely with respect to the Most Recent Financials, each of the Financials has been (or, with respect to the 2014 & 2015 Yearly Financials, will be) prepared in accordance with GAAP (except as set forth on Schedule 4.6.2) and presents (or, with respect to the 2014 & 2015 Yearly Financials, will present) fairly in all material respects the financial position and results of operations of Seller as at the dates and for the periods indicated therein. The Financials were (or, with respect to the 2014 & 2015 Yearly Financials, will be) derived from the books and records of Seller and the Subsidiaries.

4.7. Absence of Undisclosed Liabilities. Neither Seller nor any Subsidiary has any Liability of the type that would otherwise be required to be set forth on a balance sheet prepared in accordance with GAAP, except for (a) Liabilities set forth on the face of the Most Recent Balance Sheets, (b) Liabilities incurred in the Ordinary Course of Business since the Most Recent Balance Sheet Date, none of which can reasonably be expected to be material to Seller and applicable (none of which relate to (i) a breach of a Contractual Obligation, (ii) breach of warranty, (iii) a tort, (iv) an infringement of Intellectual Property rights, (v) violation of any Legal Requirement or (vi) an environmental liability), and (c) Liabilities listed on Schedule 4.7.

4.8. Absence of Certain Developments. Since the Most Recent Balance Sheet Date, the Business has been conducted only in the Ordinary Course of Business, except in connection with the transactions contemplated by, or entered into in connection with, this Agreement (and otherwise disclosed to Buyer). Without limiting the foregoing, except as set forth on Schedule 4.8:

4.8.1. Neither Seller nor any Subsidiary has (a) amended its organizational documents, (b) amended any term of its Common Stock or Subsidiary Equity Interests, (c) issued, sold, granted, or otherwise disposed of, any Common Stock or Subsidiary Equity Interests or (d) issued, granted or awarded any rights to acquire Common Stock, Subsidiary Equity Interests or other equity interests of any kind (including any preferred stock, warrants, options, "phantom equity," or other equity interests of any kind whatsoever, including any derivative rights thereto);

4.8.2. Neither Seller nor any Subsidiary has become liable in respect of any Guarantee and has not incurred, assumed or otherwise become liable in respect of any Debt, except for borrowings in the Ordinary Course of Business under credit facilities in existence on the Most Recent Balance Sheet Date;

4.8.3. Neither Seller nor any Subsidiary has permitted any of its assets to become subject to an Encumbrance or sold, leased, licensed, transferred, abandoned, forfeited, or otherwise disposed of or lost the use of any of its assets (except for (i) inventory and supplies consumed in the Ordinary Course of Business, and (ii) assets sold, transferred or disposed of in the Ordinary Course of Business and replaced with items of like kind and value);

4.8.4. Neither Seller nor any Subsidiary has (a) made any declaration, setting aside or payment of any dividend or other distribution with respect to, or any repurchase, redemption or other acquisition of, any of its Common Stock or Subsidiary Equity Interests other than Tax distributions in the Ordinary Course of Business, or (b) purchased, redeemed, or otherwise acquired any of its Common Stock or Subsidiary Equity Interests;

4.8.5. there has been no loss, destruction, damage, or eminent domain taking (in each case, whether or not insured) affecting the Business or assets of Seller or any Subsidiary;

4.8.6. other than as required by applicable Legal Requirements, neither Seller nor any Subsidiary has directly or indirectly increased, made any change in, or accelerated the vesting of, any Compensation payable or paid, whether conditionally or otherwise, to (a) any current or former non-executive employee, consultant, independent contractor, partner, or agent other than in the Ordinary Course of Business or (b) any current or former executive officer or director;

4.8.7. Neither Seller nor any Subsidiary has made any loan or advance to, Guarantee for the benefit of, or made any investment in, any Person;

4.8.8. Neither Seller nor any Subsidiary has made any change in any of its methods of accounting or accounting practices or policies;

4.8.9. Neither Seller nor any Subsidiary has executed, adopted, amended, or terminated any collective bargaining agreement or other agreement with a labor union or other labor organization;

4.8.10. Neither Seller nor any Subsidiary has paid, discharged, settled, or satisfied any Action or any Liability, other than the payment of trade payables in the Ordinary Course of Business;

4.8.11. Neither Seller nor any Subsidiary has entered into any agreement or commitment relating to capital expenditures exceeding One Hundred Thousand Dollars ($100,000) individually or Two Hundred Fifty Thousand Dollars ($250,000) in the aggregate (and Schedule 4.8 includes a complete and detailed listing of all such agreements or commitments, regardless of value (excluding acquisitions outside the Ordinary Course of Business), for the past 2 years);

4.8.12. Neither Seller nor any Subsidiary has made, changed or revoked any Tax election, elected or changed any method of accounting for Tax purposes, filed any amended Tax Return, settled any claim or Action in respect of Taxes, or entered into any Contractual Obligation in respect of Taxes with any Governmental Authority;

4.8.13. Neither Seller nor any Subsidiary has waived any right of value or suffered any loss;

4.8.14. Neither Seller nor any Subsidiary has made any write off or write down of or made any determination to write off or write down any asset or property;

4.8.15. Neither Seller nor any Subsidiary has settled any Action, pending or threatened, or had any judgment or lien entered against it, in each case in excess of $5,000;

4.8.16. Neither Seller nor any Subsidiary has canceled or terminated any insurance policy;

4.8.17. Neither Seller nor any Subsidiary has acquired (by merger, consolidation or acquisition of stock or assets) any corporation, partnership or other business organization or division thereof or collection of assets;

4.8.18. Neither Seller nor any Subsidiary has commenced or terminated any line of business;

4.8.19. Neither Seller nor any Subsidiary has entered into any commitment, whether orally or in writing, to do any of the things referred to elsewhere in this Section 4.8; and

4.8.20. no other event or circumstance has occurred which has had, or would reasonably be expected to have, a Material Adverse Effect.

4.9. Debt. Seller and the Subsidiaries have no Liabilities in respect of Debt totaling more than Five Hundred Thousand Dollars ($500,000) in the aggregate except as set forth on Schedule 4.9. Schedule 4.9 sets forth a true, correct and complete list of the individual components (indicating the amount and the Person to whom such Debt is owned) of all Debt outstanding with respect to the Business.

4.10. Ownership of Assets. Except as disclosed on Schedule 4.10, either Seller or a Subsidiary has sole and exclusive, good and valid title to, or, in the case of property held under a lease or other Contractual Obligation, a sole and exclusive, enforceable leasehold interest in, or right to use and otherwise commercially exploit, all of the properties, rights, and assets, whether real or personal property and whether tangible or intangible, that are owned or purported to be owned by Seller or such Subsidiary or that are used or exploited in the business of Seller and the Subsidiaries as currently conducted. Except as disclosed on Schedule 4.10, none of the real or personal property of Seller or any Subsidiary is subject to any Encumbrance.

4.11. Accounts Receivable. All accounts and notes receivable reflected on the Most Recent Balance Sheets or that arise following such date and prior to the Closing have arisen, or will arise, in the Ordinary Course of Business, represent, or will represent, claims for bona fide services rendered by Seller, a Subsidiary, or the employees or contractors of Seller or a Subsidiary. Except as reflected on the Most Recent Balance Sheets, neither Seller nor any Subsidiary has received written notice or, to the Seller's Knowledge, oral notice from or on behalf of any obligor of any such accounts receivable that such obligor is unwilling or unable to pay any material portion of such accounts receivable.

4.12. Real Property. Schedule 4.12 sets forth a true, correct and complete list, including addresses, of each leasehold interest in real property leased, subleased, or licensed to or by, or for which a right to use or occupy has been granted to, Seller and/or any Subsidiary (the "Real Property"), and the Real Property listed on such schedule is all of the real property used by Seller and the Subsidiaries in connection with the Business. Schedule 4.12 identifies each document or instrument pursuant to which any Real Property is leased, subleased, or licensed (each a "Real Property Lease") and except for the

foregoing, there are no written or oral subleases, licenses, concessions, occupancy agreements, or other Contractual Obligations granting to any Person (other than Seller or a Subsidiary) the right of use or occupancy of the Real Property. Neither Seller nor any Subsidiary currently owns, nor has Seller or any Subsidiary previously owned, any real property whatsoever. Except as set forth in Schedule 4.12, either Seller or a Subsidiary has a valid leasehold interest in and to each of the Real Properties. There are no defaults by Seller or any Subsidiary under any Real Property Lease, and to Seller's Knowledge, no other party thereto is in default. Except as set forth in Schedule 4.12, no Affiliate of Seller is the owner, lessor, sublessor, or licensor under any Real Property Lease. Seller has delivered to Buyer accurate and complete copies of the Real Property Leases, in each case as amended or otherwise modified and in effect. To Seller's Knowledge, there is no pending or threatened appropriation, condemnation or similar Action affecting the Real Property. Since the Most Recent Balance Sheet Date, there has been no material destruction, damage or casualty with respect to any of the Real Property. The Real Property is (i) in good condition and repair (subject to normal wear and tear) and (ii) sufficient for the operation of the Business conducted therein as it is currently conducted and as it is presently proposed to be conducted. The condition and use of the Real Property conforms to each applicable certificate of occupancy and all other permits required to be issued in connection with the Real Property.

4.13. Intellectual Property. Except as disclosed on Schedule 4.13, Seller owns all rights, title and interest in and to, or will be licensed or otherwise possess, a valid and enforceable right to use all Seller Technology and all Seller Intellectual Property Rights free and clear of any Encumbrance, and without any known conflict with, or infringement of, the rights of any third parties. Except as disclosed on Schedule 4.13, Seller Intellectual Property Rights and Seller Technology includes all of the Intellectual Property Rights and Technology used in or necessary for the conduct of the Business of Seller as currently conducted.

4.14. Legal Compliance; Illegal Payments; Permits.

4.14.1. Neither Seller nor any Subsidiary is in breach or violation, in any respect of, or in default under, nor has Seller or any Subsidiary at any time during the previous ten (10) years been in breach or violation in any respect of, or default under, any Legal Requirement nor is there any circumstance or set of circumstances which could, with notice, the passage of time or otherwise, constitute such a breach, violation or default. All compensation paid, and to be paid, to Seller's and any Subsidiary's employees (inclusive of physicians, clinicians and other providers) is and at all times has been, (i) set in advance, (ii) commercially reasonable, (iii) determined in a manner that has not taken into account, directly or indirectly, the volume or value of referrals (as defined in 42 CFR 411.351) for designated health services (as defined at 42 CFR 411.351), (iv) reflective of fair market value, and (v) compliant with all of the requirements of each of the federal Anti-Kickback Statute (42 U.S.C. §1320a-7b(b)), and the Physician Self-Referral Law, commonly known as the "Stark Law" (42 U.S.C. §1395nn). Neither Seller nor any Subsidiary pays, or at any time has paid, or is bound by any contractual obligation to pay in the future, to any employee (inclusive of physicians, clinicians and other providers) any bonuses or other incentive payments. During the previous ten (10) years, no written notice has been received by, and no oral notices have been made or other claims been filed against, Seller or any Subsidiary alleging a violation of any Legal Requirement, and neither Seller nor any Subsidiary has been subject to any adverse inspection, finding, investigation, penalty assessment, audit or other compliance or enforcement action. Neither Seller, nor any Subsidiary, nor any Physician Owner, nor any of their respective directors, managers, officers, other employees or agents, has during the previous ten (10) years (i) directly or indirectly given or made, or agreed to give or make, any illegal gift, contribution, payment, incentive, or similar benefit to any supplier, customer (other than promotional gifts of nominal value), governmental official, provider or employee or other Person who was, is or

may be in a position to help or hinder Seller or any Subsidiary (or assist in connection with any actual or proposed transaction) or made, or agreed to make, any illegal contribution, or reimbursed any illegal political gift or contribution made by any other Person, to any candidate for federal, state, local, or foreign public office or (ii) caused Seller or any Subsidiary to establish or maintain any unrecorded fund or asset or made any false entries on any books or records for any purpose.

4.14.2. Seller and each Subsidiary have been duly granted all Permits under all Legal Requirements necessary for the conduct, in all respects, of the Business as currently conducted and the lawful occupancy, use, and operation of the Real Property by Seller and/or one or more Subsidiaries, as applicable. Schedule 4.14.2 describes each such Permit, including each such Permit related to Healthcare Laws. Except as set forth on Schedule 4.14.2, such Permits are valid and in full force and effect, neither Seller nor any Subsidiary is in breach or violation of, or default under, in any material respect, any such Permit, and no basis exists which, with notice or lapse of time or both, would constitute any such breach, violation or default.

4.15. Compliance with Healthcare Laws.

4.15.1. Schedule 4.15.1 sets forth a complete and comprehensive list of all ambulatory surgical centers, clinics, practices and other facilities where medical services are provided that, in each case, are operated by Seller or any Subsidiary (collectively, the "Centers"), including, with respect to each Center: (a) the physical address of such Center; (b) the types of services provided at such Center; and (c) the name of the Subsidiary that operates such Center.

4.15.2. Except as set forth on Schedule 4.15.2, neither Seller nor any Subsidiary, nor any manager, director, officer, employee or agent of Seller or any Subsidiary, has (a) violated, conducted the Business or operated any Center in violation of or noncompliance with, or used or occupied Seller's properties or assets in violation of or noncompliance with, any Healthcare Laws in any respect, or (b) received any written notice of any alleged breach, violation of or non-compliance with, default under or any citation for violation of or noncompliance with, any Healthcare Laws nor, is there a fact, arrangement, operation, circumstance or set of circumstances which could, with the passage of time or otherwise, constitute such a breach, violation, default or noncompliance. Each Center is structured (including with respect to the ownership structure) and operated, and the business at each Center is conducted, in full and complete compliance with all applicable Healthcare Laws. Each Subsidiary that is an integrated group practice (if any) meets the definition of "group practice" as defined at 42 CFR 411.352.

4.15.3. Except as set forth on Schedule 4.15.3: (a) Seller, each Subsidiary, each Physician Owner, and each other clinical employee of Seller, a Subsidiary or a Physician Owner who provides professional medical services at any Center, has the requisite Permits and provider or supplier number(s) to bill all Third Party Payor Programs that it currently bills, (b) neither Seller, any Subsidiary, any Physician Owner, nor any clinical employee of Seller, a Subsidiary or a Physician Owner who provides professional medical services at any Center, has received any written notice that there is any investigation, audit, claim review, or other action pending or threatened that could result in a revocation, suspension, termination, probation, restriction, limitation, or non-renewal of such Person's Permit, supplier or provider number, or such Person's disqualification or exclusion from any Third Party Payor Program; (c) all claims for all items, services and goods provided at or by a Center and submitted by or on behalf of

Seller, any Subsidiary, any Physician Owner, or any clinical employee of Seller, a Subsidiary or a Physician Owner who provides professional medical services at any Center to Third Party Payor Programs represent claims for medically necessary items, services or goods actually provided by such Person; (d) all claims for all items, services and goods provided at or by any Center that have been submitted by or on behalf of Seller, any Subsidiary, any Physician Owner, or any clinical employee of Seller, a Subsidiary or a Physician Owner who provides professional medical services at a Center, have been submitted in compliance with applicable Laws, including any Healthcare Laws, and all rules, regulations, agreements, policies, and procedures of the Third Party Payor Programs; (e) neither Seller, any Subsidiary, any Physician Owner, nor any clinical employee of Seller, a Subsidiary or a Physician Owner who provides professional medical services at any Center, has received any written notice that there are any pending or threatened audits, investigations or claims for or relating to its claims for any items, services and goods provided at or by any Center; (f) all billing practices relating to items, services and goods provided at or by a Center, and all billing practices of, Seller, the Subsidiaries, all Physician Owners, and all clinical employees of Seller, any Subsidiary or any Physician Owner who provides professional medical services at any Center are and have been in compliance with all applicable Healthcare Laws, regulations, agreements and policies of all applicable Third Party Payor Programs, and neither Seller, any Subsidiary, nor any Physician Owner, nor any clinical employee of Seller, any Subsidiary or any Physician Owner who provides professional medical services at any Center, has billed or received any payment or reimbursement for any items, services and goods provided at or by any Center in excess of amounts allowed by any Healthcare Law, except to the extent any such amounts are immaterial and have been repaid in full as required by, and in compliance with, all applicable Healthcare Laws and Third Party Payor Program agreements; (g) neither Seller, any Subsidiary, any Seller Owner, nor any employee of Seller, any Subsidiary or any Seller Owner who provides professional medical services at any Center, or any officer, director, manager or employee or clinical contractor of Seller or any Subsidiary, has been excluded, debarred or suspended from participation in any Federal Health Care Program or had its/his/her billing privileges revoked, nor is any such exclusion, debarment, suspension, or billing privileges revocation threatened; (h) based upon and in reliance upon Seller's monthly review of (1) the "list of Excluded Individuals/Entities" on the website of the United States Health and Human Services Office of Inspector General (http://oig.hhs.gov/fraud/exclusions.html), and the similar lists of Medicaid program exclusion by the States of Florida, Georgia or any other states that reimburse for services associated with Seller, any Subsidiary and/or any Physician Owner and (2) the "List of Parties Excluded From Federal Procurement and Non-procurement Programs" on the website of the United States General Services Administration (http://www.arnet.gov/epls/ and https://www.sam.gov), none of the shareholders, members, Seller Owners (including Physician Owners), managers, officers, directors, employees or clinical contractors of Seller or any Subsidiary has been excluded from participation in any Federal Health Care Program. None of Seller, any Subsidiary, any Physician Owner, or any officer, director or employee or clinical contractor of Seller, any Subsidiary or any Physician Owner has received any written notice from any Third Party Payor Programs of any pending or threatened investigations, audits, inquiries or surveys; and (i) Seller, the Subsidiaries, all Physician Owners, and all clinical employees of Seller, any Subsidiary or any Physician Owner who provides professional medical services at any Center are in compliance with all Medicare enrollment requirements as contained in 42 C.F.R. part 424 and program instructions issued pursuant thereto, and all information on the CMS enrollment forms (the various iterations of the CMS 855, such as the 855A , 855B, 855I and 855S) that have been filed by or on behalf of such entities or individuals is complete, current, and accurate.

4.15.4. Schedule 4.15.4 lists each current physician, physician assistant and other clinical employees and clinical contractors required to be licensed, certified and/or registered to perform services at the Centers along with their respective state(s) of licensure, certification or registration (including the licensure, certification or registration number). All such licensures, certifications and registrations are valid and contain no restrictions, and all such physicians, physician assistants and clinical employees or contractors required to be licensed, certified or registered to perform services at the Centers are so licensed, certified or registered without restriction. Seller, each Subsidiary and each physician providing services at the Center have current and valid provider contracts with the Third Party Payor Programs as set forth (or required to be set forth) on Schedule 4.15.4, and are in compliance in all respects with the conditions of participation of any Federal Healthcare Program and the various agreements and conditions necessary for reimbursement under all other applicable Third Party Payor Programs. All services furnished at the Centers have been and are being performed by personnel acting within the scope of their practice as determined by State law and who otherwise met all State requirements for performing the services at the time the services were performed. Neither the execution of this Agreement nor the consummation of the Contemplated Transactions will result in the breach or default under, or grant the ability of the counterparty to terminate, any Third Party Payor Agreement listed (or required to be listed) on Schedule 4.15.4.

4.15.5. Seller and each Subsidiary have been duly granted all Permits under all Healthcare Laws necessary for the conduct, in all respects, of the Business as currently conducted. Schedule 4.15.5 describes each such Permit. Except as set forth on Schedule 4.15.5, (a) each such Permit is valid and in full force and effect, and (b) neither Seller nor any Subsidiary is in breach or violation of, or default under, in any respect, any such Permit, and, to Seller's Knowledge, no circumstance or set of circumstances exists which, with notice or lapse of time or both, would constitute any such breach, violation nor default.

4.15.6. Except as set forth on Schedule 4.15.6, each Physician Owner (a) has paid fair market value for Common Stock of Seller, and no portion of any such payments were to reward or induce referrals of any items or services reimbursable by any Third Party Payor Program; (b) has at all times received distributions proportionate with his/her ownership of Common Stock and has not received any remuneration, in cash or in kind, in exchange for referrals of items or services that are reimbursable, in whole or in part, by any Third Party Payor Programs, including any Federal Healthcare Programs; (c) with respect to any physician-owned ambulatory surgical centers, has at all times while a Physician Owner generated at least one-third (1/3) of his/her medical practice income from all sources for the previous fiscal year or 12-month period from the performance of any Procedure; (d) has at all times while a Physician Owner used one or more of the Centers as an extension of his/her medical practice and has at all times while a Physician Owner regularly performed Procedures at one or more of the Centers; and (e) has not knowingly referred a Procedure to another Physician Owner, or to any physician, owner, or employee of Seller, a Subsidiary or another Physician Owner, for performance of such Procedure at any Center nor used any Center as a passive source of income in exchange for referrals of Procedures.

4.15.7. None of Seller, any Subsidiary or any Center has experienced a data breach or disclosure of information that would constitute a data or security incident as defined by HIPAA or any other applicable Healthcare Law.

4.15.8. No Seller Owner (i) has been convicted of a criminal offense or violation under any provision of a Healthcare Law; or related to the delivery of an item or service under a Federal health care program; or related to fraud, theft, embezzlement, breach of fiduciary

responsibility, or other financial misconduct; or related to patient abuse; or a felony of any kind, (ii) has had any civil monetary penalty, assessment or sanction imposed against him or her under any provision of a Healthcare Law or in relation to a violation of a Healthcare Law, and/or (iii) has been debarred, excluded or suspended at any time from participation in any Federal Health Care Programs.

4.16. Tax Matters. Except as set forth on Schedule 4.16:

4.16.1. Seller is, and at all times since its formation has been, a C Corporation for federal and state income tax purposes. Each of Seller's Subsidiaries is, and since its formation has been, disregarded as an entity separate from Seller. No Governmental Authority has ever challenged, disputed, or contested the classification of any Subsidiary as a disregarded entity.

4.16.2. Seller, except as noted in Schedule 4.16.2, has duly and timely filed, or has caused to be duly timely filed on its behalf or on behalf of the applicable Subsidiary, with the appropriate Governmental Authority, all Tax Returns required to be filed by it and/or each Subsidiary in accordance with all applicable Legal Requirements. All such Tax Returns are true, correct and complete in all material respects. All Taxes owed by Seller (whether or not shown on any Tax Return) have been timely paid in full to the appropriate Governmental Authority. No claim has ever been made by a Governmental Authority in a jurisdiction where Seller does not file Tax Returns that Seller is or may be subject to taxation by or required to file Tax Returns in that jurisdiction. There are no liens with respect to Taxes upon any asset of Seller.

4.16.3. Seller and each Subsidiary has deducted, withheld, and timely paid to the appropriate Governmental Authority all Taxes required by applicable Law to be deducted, withheld and paid in connection with amounts paid or owing to any employee, independent contractor, creditor, stockholder or other third party. Seller and each Subsidiary has timely filed or provided all information, returns or reports, including Forms 1099 and W-2 (and foreign state and local equivalents) that are required to have been filed or provided and has accurately reported all information required to be included on such returns or reports.

4.16.4. There is no foreign, federal, state or local dispute, audit, investigation, proceeding or claim concerning any Tax Return or Tax Liability of Seller pending, being conducted, claimed or raised by a Governmental Authority. Seller has provided to Buyer true and complete copies of all Tax Returns, examination reports, and statements of deficiencies filed, assessed against, or agreed to by Seller or any Subsidiary since January 1, 2010. All Tax deficiencies assessed against Seller has been fully paid or finally settled. No Tax Return of Seller has ever been audited by any Governmental Authority. Neither Seller nor any Subsidiary has received from any Governmental Authority (including from jurisdictions where Seller does not file Tax Returns) notification of intention to open an audit or review, a request for information related to any Tax matters or written notice of proposed assessment, adjustment or deficiency for any amount of Taxes proposed, asserted or assessed against Seller or any Subsidiary. To Seller's Knowledge, no such notification, request for information, or written notice of proposed assessment, adjustment or deficiency is forthcoming.

4.16.5. There are no Liens for Taxes upon any assets of Seller or any Subsidiary, except for Taxes not yet due and payable or being contested in good faith and for which adequate reserves in accordance with GAAP have been provided in the Financials.

4.16.6. Neither Seller nor any Subsidiary has waived any statute of limitations for the assessment or collection of Taxes or is the beneficiary of any extension of time within which to file any Tax Return which has not since been filed. Neither Seller nor any Subsidiary has t executed any power of attorney with respect to any Tax, other than powers of attorney that are no longer in force. Neither Seller nor any Subsidiary (a) is a party to any closing agreement with any Governmental Authority in respect of Taxes or (b) has received or requested from any Governmental Authority any private letter rulings, technical advice memoranda or similar agreements or rulings relating to Taxes.

4.16.7. Neither Seller nor any Subsidiary has any Liability for the Taxes of any other Person under Treasury Regulation § 1.1502-6 (or any similar provision of state, local or foreign law), as a transferee or successor, by contract (other than Liabilities for Taxes arising under customary Tax indemnification provisions contained in commercial contracts entered into in the ordinary course of business, a principal subject matter of which is not Taxes), or otherwise by law.

4.16.8. Neither Seller nor any Subsidiary is a party to any Tax allocation, sharing, indemnification, or similar agreement, arrangement or similar contract (other than commercial contracts (i) a principal subject matter of which is not Taxes, (ii) containing customary Tax indemnification provisions, and (iii) entered into in the ordinary course of business).

4.16.9. Neither Seller nor any Subsidiary will be required to include any item of income in or exclude any item of deduction from, taxable income for any period or portion thereof ending after the Closing Date as a result of (i) any change in method of accounting for a Pre-Closing Tax Period, (ii) any "closing agreement" as described in Section 7121 of the Code (or any corresponding or similar provision of state, local or foreign law) executed on or prior to the Closing Date, (iii) any intercompany transactions or any excess loss account described in Treasury Regulation § 1.1502 19 (or any corresponding or similar provision of state, local or foreign law), (iv) the installment method of accounting, the completed contract method of accounting or the cash method of accounting with respect to a transaction that occurred prior to the Closing Date, (v) any prepaid amount received on or prior to the Closing Date, (vi) the discharge of any Debt on or prior to the Closing date under Section 108(i) of the Code (or any corresponding or similar provision of state, local or foreign law), (vii) as a result of amounts earned on or before the Closing Date pursuant to Section 951 of the Code (or any corresponding or similar provision of state, local or foreign law), or (viii) as a result of any debt instrument held prior to the Closing that was acquired with "original issue discount" as defined in Section 1273(a) of the Code or subject to the rules set forth in Section 1276 of the Code.

4.16.10. Neither Seller nor any Subsidiary has not participated in a "reportable transaction" as defined in Section 6707A of the Code or Treasury Regulation § 1.6011-4 (or any predecessor provision thereto) or any corresponding or similar provision of state or local law.

4.16.11. Seller and each Subsidiary has disclosed on its federal state and local income Tax Returns all positions taken in such Tax Returns that could give rise to a substantial understatement of federal income Tax within the meaning of Section 6662 of the Code (or any corresponding or similar provision of state or local law).

4.16.12. Neither Seller nor any Subsidiary is the beneficiary of any Tax incentive, Tax rebate, Tax holiday or similar arrangement or agreement with any Governmental Authority.

4.16.13. Seller does not have a permanent establishment in any foreign country and does not and has not engaged in a trade or business in any foreign country.

4.16.14. The provisions of Section 197(f)(9) of the Code will not apply to any intangible asset owned by Seller or any Subsidiary after the Closing Date.

4.17. Employee Benefit Plans.

4.17.1. For purposes of this Agreement, the term "Plan" shall mean any employee benefit plan (as defined in Section 3(3) of the Employee Retirement Income Security Act of 1974, as amended ("ERISA"), whether or not subject to ERISA, any other bonus, profit sharing, compensation, pension, retirement, "401(k)," "SERP," severance, savings, deferred compensation, fringe benefit, insurance, welfare, post-retirement health or welfare benefit, health, life, stock option, stock appreciation right, stock purchase, restricted stock, phantom stock, restricted stock unit, performance shares, tuition refund, service award, company car or car allowance, scholarship, housing or living allowances, relocation, disability, accident, sick pay, sick leave, accrued leave, vacation, holiday, termination, unemployment, individual employment, consulting, executive compensation, incentive, commission, retention, change in control, other material plan, agreement, policy, trust fund or arrangement (whether written or unwritten, insured or self-insured), and any plan subject to Sections 125, 127, 129, 137 or 423 of the Code, maintained, sponsored or contributed to (or required to be maintained, sponsored or contributed to) by Seller or any trade or business, whether or not incorporated, that together with Seller would be deemed to be a "single employer" within the meaning of Section 4001(b) of ERISA or Sections 414(b), 414(c), or 414(m) of the Code (an "ERISA Affiliate" and, together with Seller, the "ERISA Employers") or to which any ERISA Employer is a party or with respect to which any ERISA Employer has or may have any Liability, in each case for the benefit of any current or former director, consultant or employee of any ERISA Employer or any dependent or beneficiary thereof.

4.17.2. Schedule 4.17 sets forth an accurate and complete list of all Plans, and no ERISA Employer has any current or contingent obligation to contribute to, or Liability under, any Plan sponsored by any Person other than an ERISA Employer.

4.17.3. No Plan is, and no ERISA Employer has ever participated in or made contributions to: (a) a "multiemployer plan," as defined in Section 4001(a)(3) of ERISA or (b) a plan that has two or more contributing sponsors at least two of whom are not under common control within the meaning of Section 4063 of ERISA.

4.17.4. No Plan is a "single employer plan," as defined in Section 4001(a)(15) of ERISA, that is subject to Title IV of ERISA. No ERISA Employer has incurred any outstanding Liability under Section 4062, 4063 or 4064 of ERISA to the Pension Benefit Guaranty Corporation or to a trustee appointed under Section 4042 of ERISA.

4.17.5. The IRS has issued a currently effective favorable determination letter with respect to each Plan that is intended to be a "qualified plan" within the meaning of Section 401 of the Code, or an opinion or advisory opinion or letter as to each such Plan which is a prototype or volume submitter plan, and each trust maintained pursuant thereto has been determined to be exempt from federal income taxation under Section 501 of the Code by the IRS. Each such Plan has been timely amended since the date of the latest favorable determination letter in accordance with all applicable Laws. Nothing has occurred with respect to the operation of any such Plan that is reasonably likely to cause the loss of such qualification

or exemption or the corresponding imposition of any Liability, penalty or tax under ERISA or the Code or the assertion of claims by "participants" (as that term is defined in Section 3(7) of ERISA) other than routine benefit claims. No ERISA Employer has utilized the Employee Plans Compliance Resolution System to remedy any qualification failure of any Plan.

4.17.6. None of the ERISA Employers, the managers, officers or directors of the ERISA Employers, nor any Plan has engaged in a "prohibited transaction" (as such term is defined in Section 406 of ERISA or Section 4975 of the Code) or any other breach of fiduciary responsibility that could subject any ERISA Employer, or any manager, officer or director of any ERISA Employer to any tax or penalty on prohibited transactions imposed by such Section 4975 or to any Liability under Sections 409 or 502 of ERISA. There has not been any "reportable event" (as such term is defined in Section 4043 of ERISA) for which the 30-day reporting requirement has not been waived with to any Plan in the last five (5) years, and no notice of reportable event will be required to be filed in connection with the transactions contemplated under this Agreement. No ERISA Employer has utilized the U.S. Department of Labor's Voluntary Fiduciary Correction Program to correct any fiduciary violations under any Plan.

4.17.7. All Plans have been established, maintained and administered in accordance with their terms and with all provisions of applicable Laws, including ERISA and the Code, except for instances of noncompliance where neither the costs to comply nor the failure to comply, individually or in the aggregate, could have a material and adverse effect on any ERISA Employer. All reports and information required to be filed with any Authority or provided to participants or their beneficiaries have been timely filed or disclosed and, when filed or disclosed were accurate and complete. No ERISA Employer has any Liability for excise taxes under Section 4980D or 4980H of the Code.

4.17.8. Each Plan that is a "non-qualified deferred compensation plan" (within the meaning of Section 409A(d)(1) of the Code) that is subject to Section 409A of the Code ("409A Plan") has been operated in full compliance with Section 409A of the Code since January 1, 2005 and, if necessary, was, prior to January 1, 2009, amended to fully comply with the requirements of the final regulations promulgated under Section 409A of the Code. No Plan that would be a 409A Plan but for the effective date provisions applicable to Section 409A of the Code as set forth in Section 885(d) of the American Jobs Creation Act of 2004, as amended ("AJCA") has been "materially modified" within the meaning of Section 885(d)(2)(B) of AJCA after October 3, 2004 or has been operated in violation of Section 409A. No ERISA Employer has utilized any formally sanctioned correction program with respect to any 409A Plan.

4.17.9. None of the Plans promise or provide retiree or post-service medical or other retiree or post-service welfare benefits to any Person except as required by applicable Law and no ERISA Employer has represented, promised, or contracted to provide such retiree benefits to any employee, former employee, director, consultant or other Person, except as required by applicable Law.

4.17.10. Neither the execution and delivery of this Agreement nor the consummation of the transactions contemplated hereby (either alone or in conjunction with any other event) will: (i) increase any benefits otherwise payable under any Plan; (ii) result in any acceleration of the time of payment or vesting of any such benefits; (iii) limit or prohibit the ability to amend or terminate any Plan; (iv) require the funding of any trust or other funding vehicle; or (v) renew or extend the term of any agreement in respect of compensation for an employee of

any ERISA Employer that would create any Liability to any ERISA Employer after the Closing.

4.17.11. No employee of any ERISA Employer is entitled to any gross-up, make-whole, or other additional payment from any ERISA Employer with respect to taxes, interests or penalties imposed under Section 409A of the Code.

4.17.12. No ERISA Employer has communicated to any current or former employee, manager or director any intention or commitment to establish or implement any additional Plan or to amend or modify, in any material respect, any existing Plan.

4.17.13. No Plan is subject to the Law of any jurisdiction other than the United States.

4.18. Environmental Matters. Except as set forth in Schedule 4.18, (a) Seller and each Subsidiary is and has been for the past seven (7) years in compliance in all material respects with all Environmental Laws, (b) there has been no Release or threatened Release of any Hazardous Substances on, upon, into or from any site currently or heretofore owned, leased or otherwise operated or used by Seller or any Subsidiary, including the Centers, (c) there have been no Hazardous Substances generated by Seller or any Subsidiary that have been disposed of or come to rest at any site that has been included in any published U.S. federal, state or local "superfund" site list or any other similar list of hazardous or toxic waste sites published by any Governmental Authority in the United States, and (d) there have been no underground storage tanks located on, no PCBs (polychlorinated biphenyls) or PCB-containing Equipment or asbestos-containing materials used, stored or present on, and no hazardous waste as defined by the Resource Conservation and Recovery Act stored or present on, any site owned or operated by Seller or any Subsidiary, except for the storage of hazardous waste by Seller or a Subsidiary in the Ordinary Course of Business and in compliance, in all material respects, with Environmental Laws. Seller has delivered, or caused to be delivered, to Buyer copies of all documents, records and information in its possession or control reasonably related to any actual or potential material liability of Seller or a Subsidiary under Environmental Laws, including previously conducted environmental site assessments, compliance audits, asbestos surveys and documents regarding any Releases at, upon, under or from any property currently or formerly owned, leased or operated by Seller or any Subsidiary.

4.19. Contracts.

4.19.1. Contracts. Except as disclosed on Schedule 4.19, neither Seller nor any Subsidiary is bound by or a party to any of the following Contractual Obligations:

(a) any Contractual Obligation relating to the acquisition or disposition of (i) any business of Seller or a Subsidiary or any portion thereof (whether by merger, consolidation, or other business combination, sale of securities, sale of assets, or otherwise) or (ii) any asset other than in the Ordinary Course of Business;

(b) any Contractual Obligation concerning or consisting of a partnership, limited liability company or joint venture agreement;

(c) any Contractual Obligation (or group of related Contractual Obligations) (i) under which Seller or any Subsidiary has created, incurred, assumed, or guaranteed any Debt (including any Debt owed to Seller or any Subsidiary from any other Person for any advance of loan of funds), or (ii) under which an Encumbrance has been placed on any of its assets;

(d) any Contractual Obligation relating to confidentiality, non-solicit or non-competition restrictions or that restricts, in any respect, the conduct of the Business by Seller or any Subsidiary;

(e) any Contractual Obligation relating to employment, personal services, consulting, an independent contractor arrangement, or similar matters;

(f) any Contractual Obligation under which Seller or any Subsidiary is, or would reasonably be expected to become, obligated to pay any investment bank, broker, financial advisor, finder, or other similar Person (including an obligation to pay any legal, accounting, brokerage, finder's, or similar fees or expenses) in connection with this Agreement or the Contemplated Transactions;

(g) any Contractual Obligation arising pursuant to a Third Party Payor Program;

(h) any other Contractual Obligation (or group of related Contractual Obligations) the performance of which involves remaining consideration to be paid or received by Seller and/or any Subsidiary in excess of Two Hundred Fifty Thousand Dollars ($250,000);

(i) any Contractual Obligation under which Seller or any Subsidiary has engaged in any promotional sale, discount, rebate or other activity with any customer (other than in the Ordinary Course of Business);

(j) any Contractual Obligation with any health care provider or facility;

(k) any Contractual Obligation under which Seller or any Subsidiary is obligated to minimum purchase requirements or commitments or exclusive dealing or "most favored nation" provisions; and

(l) any Contractual Obligation under which Seller or any Subsidiary is obligated to indemnify any Person.

4.19.2. Enforceability; Breach. Each Contractual Obligation required to be disclosed on Schedule 4.9 (Debt), Schedule 4.12 (Real Property), Schedule 4.13 (IP Contracts), Schedule 4.15 (Compliance with Healthcare Laws), Schedule 4.19 (Contracts), or Schedule 4.23 (Insurance) (each, a "Disclosed Contract") is enforceable against Seller and/or the applicable Subsidiary or Subsidiaries and, to Seller's Knowledge, each other party to such Contractual Obligation, and is in full force and effect, and will continue to be so enforceable and in full force and effect on identical terms following the consummation of the Contemplated Transactions, subject to applicable bankruptcy, insolvency, reorganization, moratorium or other similar Laws affecting the enforceability of creditors' rights generally, general equitable principles, and the discretion of courts in granting equitable relief. Neither Seller nor any Subsidiary has been, nor, to Seller's Knowledge, has any other party to any Disclosed Contract been, during the thirty-six (36) month period ending on the date hereof, nor is any such Person currently, in breach or violation in any material respect of, or default in any material respect under, any Disclosed Contract, nor to Seller's Knowledge has any circumstance or set of circumstances occurred that, with the lapse of time, or the giving of notice, or both, would constitute such a breach or violation. Seller has delivered to Buyer true, accurate and complete copies of each written Disclosed Contract, in each case, as amended or otherwise modified and in effect. Seller has delivered to Buyer a written summary setting forth the terms and conditions of each oral Disclosed Contract, if any.

4.20. Affiliate Transactions. Except as disclosed on Schedule 4.20, and except with respect to holdings of less than five percent (5%) of entities that are traded on a public exchange, such as the NASDAQ or the New York Stock Exchange, neither Seller nor any Subsidiary nor any shareholder, member, current or former director, manager, officer or employee, or Affiliate of Seller or any Subsidiary, is or was in the last three years a consultant, competitor, creditor, debtor, customer, client, lessor, lessee, distributor, service provider, supplier, or vendor of, or is or was in the last three years a party to any Contractual Obligation with, Seller or any Subsidiary or has or had in the last three years any interest in any of the assets used in, or necessary to, the Business as currently conducted.

4.21. Employees.

4.21.1. Except as disclosed on Schedule 4.21.1, within the last five (5) years, neither Seller nor any Subsidiary has, in connection with the operation of the Business:

(a) been subject to any material labor dispute including, but not limited to, a work slowdown, lockout, work stoppage, picketing, strike, handbilling, bannering, or other concerted activity due to any organizational activities (and, to Seller's Knowledge, there are no organizational efforts with respect to the formation of a collective bargaining unit or a workers' council presently being made or threatened with respect to Seller or any Subsidiary);

(b) recognized any labor organization or group of employees as the representative of any employees, received any written demand for recognition from any labor organization or workers' council, or been party to any petition for recognition or representation right with any Governmental Authority with respect to any employees of Seller or any Subsidiary; been involved in negotiations with any labor organization or workers' council regarding terms for a collective bargaining agreement covering any employees, or any effects bargaining agreement, neutrality or card-check recognition agreement, or other labor agreement; or been a party to any collective bargaining agreement, contract or other agreement or understanding with a labor union or other employee bargaining representative, and no such agreement is being negotiated by Seller or any Subsidiary;

(c) committed any violation of Section 8 of the National Labor Relations Act as amended, 29 U.S.C. § 158, or any other labor Law of any jurisdiction where Seller or any Subsidiary employs employees;

(d) materially violated any applicable Legal Requirements pertaining to labor and employment, employment practices, terms and conditions of employment, compensation and wages and hours in connection with the employment of any employees, including any such Laws relating to labor relations, fair employment practices, immigration, wages, hours, the classification and payment of employees and independent contractors, child labor, hiring, working conditions, meal and break periods, plant shutdown and mass layoff, privacy, health and safety, workers' compensation, leaves of absence, family and medical leave, access to facilities and employment opportunities for disabled persons, employment discrimination (including discrimination based upon sex, pregnancy, marital status, age, race, color, national origin, ethnicity, sexual orientation, disability, veteran status, religion or other classification protected by law or retaliation for exercise of rights under applicable Law), equal employment opportunities and affirmative action, employee privacy, the collection and payment of all taxes and other withholdings, and unemployment insurance and is in material compliance with each of these laws and is not subject to any consent decree or continuing reporting obligations to the United States Equal Employment Opportunity Commission, any branch of the U.S. Department of Labor or any similar state or local Governmental Authority;

(e) misclassified any individuals as consultants or independent contractors rather than as employees or as exempt rather than non-exempt for purposes of the Fair Labor Standards Act or similar state Legal Requirements or violated any term and condition of any employment contract or independent contractor agreement and is not liable for any payment to any trust or other fund or to any Governmental Authority, with respect to unemployment compensation benefits, social security, employment insurance premiums, or other benefits or obligations for employees (other than routine payments made in the Ordinary Course of Business);

(f) participated in or made contributions to: (a) a "multiemployer plan," as defined in Section 4001(a)(3) of ERISA or (b) a plan that has two or more contributing sponsors at least two of whom are not under common control within the meaning of Section 4063 of ERISA;

(g) employed any employee who is not legally eligible for employment under applicable immigration Laws, violated any applicable Laws pertaining to immigration and work authorization, or received notice from any Governmental Authority of any investigation by any Governmental Authority regarding noncompliance with applicable immigration laws, including but not limited to U.S. Social Security Administration "No-Match" letters, or failed to maintain in its files a current and valid Form I-9 for each of its active employees;

(h) been delinquent in payments to any employees for any wages (including overtime compensation), salaries, commissions, bonuses or other direct compensation for any services performed by them or any amounts required to be reimbursed to such employees; or

(i) implemented any plant closing, mass layoff or redundancy of employees that could require notice and/or consultation (without regard to any actions that could be taken by Buyer following the Closing) under applicable Laws (including the Worker Adjustment and Retraining Notification Act of 1988, as amended, 29 U.S.C. §§ 2101, et seq., or any similar state Laws).

4.21.2. Except as disclosed on Schedule 4.21.2, there are no Actions against Seller or any Subsidiary pending, or to the Seller's Knowledge, threatened to be brought or filed, by or before any Governmental Authority by or concerning any current or former applicant, employee or independent contractor of Seller or any Subsidiary, and there have been no such Actions pending, or to the Seller's Knowledge, threatened, in the thirty-six (36) month period ending on the date hereof.

4.21.3. Schedule 4.21.3 sets forth a true and complete list, as of the date hereof, of (i) all current directors, executive officers, managers, employees, providers (including, but not limited to, physicians, physician assistants, and surgeons) relating to the respective businesses of Seller and the Subsidiaries (the "Business Employees"), including any Business Employees who are on leaves of absence for any purpose, and (ii) their work location, title, date of hire, active or inactive status, current annual base salary or hourly wage compensation and incentive or bonus compensation, vacation eligibility, and exempt or non-exempt status. As of the date hereof, no Business Employee has given written or, to Seller's Knowledge, oral notice to Seller or any Subsidiary of termination of employment with Seller or any Subsidiary. No Business Employee of Seller or any Subsidiary is employed pursuant to a visa, work permit or other work authorization.

4.21.4. To the Seller's Knowledge, no petition has been filed or proceedings instituted by any labor union, workers' council or other labor organization with any Governmental Authority seeking recognition or certification as a bargaining representative of

any employee or group of employees of Seller or any Subsidiary; there is no organizational effort currently being made or threatened by, or on behalf of, any labor union workers' council or other labor organization to organize any employees of Seller or any Subsidiary, and, to the Seller's Knowledge, there have been no such efforts for the past five (5) years; and no demand for recognition as the bargaining representative of any employee or group of employees of Seller or any Subsidiary has been made to Seller or any Subsidiary at any time during the past five (5) years.

4.21.5. There are no pending or, to the Seller's Knowledge, threatened unfair labor practice charges against Seller or any Subsidiary before the National Labor Relations Board or any analogous state or foreign Governmental Authority. Neither Seller nor any Subsidiary has, or is currently, engaged in any unfair labor practice as defined in the National Labor Relations Act.

4.21.6. Neither Seller nor any Subsidiary is subject to or has been subject to at any time in the past three (3) years, United States Executive Order 11246, the Vietnam Era Veterans' Readjustment Assistance Act of 1974, or Section 503 of The Rehabilitation Act of 1973, in each case as amended and including all rules and regulations promulgated thereunder.

4.22. Litigation; Government Orders. Except as set forth on Schedule 4.22, there is no, and, during the thirty-six (36) month period ending on the date hereof, there have been no, Actions (a) pending, or, to Seller's Knowledge, threatened against of affecting Seller or any Subsidiary, or (b) pending, or, to Seller's Knowledge, threatened against or affecting, any officers, managers, or employees (including physician employees, physician's assistants and other clinical employees) of Seller or any Subsidiary with respect to the business of Seller or any Subsidiary. Except as set forth on Schedule 4.22, Seller is not the subject of any Government Order.

4.23. Insurance. Schedule 4.23(a) sets forth a true and complete list of all insurance policies currently in force with respect to Seller. All such policies are in full force and effect, all premiums with respect thereto covering all periods up to and including the Closing have or will have been paid, Seller is in default in any material respect thereunder, and no notice of cancellation or termination has been received by Seller with respect to any such insurance policy. Schedule 4.23(a) also describes any self-insurance or co-insurance arrangements by Seller, including any reserves established thereunder. In addition, Schedule 4.23(a) contains a list of all pending claims and all claims submitted during the thirty-six (36) month period ending on the date hereof under any insurance policy maintained by Seller. Except as disclosed on Schedule 4.23(b), no insurer has (i) denied or disputed (or otherwise reserved its rights with respect to) the coverage of any such claim pending under any insurance policy or (ii) to Seller' Knowledge, threatened to cancel any such insurance policy. There is no claim which, individually or in the aggregate with other claims, could reasonably be expected to impair any current or historical limits of insurance available to Seller.

4.24. No Brokers. Neither Seller nor any Subsidiary has any Liability of any kind to, nor is Seller or any Subsidiary subject to any claim of, any broker, finder or agent in connection with the Contemplated Transactions other than those which are described on Schedule 4.24, all of which will be paid by Seller prior to the Closing.

4.25. Books and Records. All of the books and records of Seller and each Subsidiary have been maintained in the Ordinary Course of Business and fairly reflect, in all material respects, all transactions of the Business.

4.26. SEC Documents. Seller has NOT timely filed all reports, schedules, forms, statements and other documents required to be filed by it with the Securities and Exchange Commission ("SEC") pursuant to the reporting requirements of the Securities Exchange Act of 1934, as amended (the "1934 Act") (all of the foregoing filed prior to the date hereof and all exhibits included therein and financial statements and schedules thereto and documents (other than exhibits to such documents) incorporated by reference therein, being hereinafter referred to herein as the "SEC Documents"). Upon written request, Seller will deliver to Buyer true and complete copies of the SEC Documents, except for such exhibits and incorporated documents. As of their respective dates, the SEC Documents complied in all material respects with the requirements of the 1934 Act and the rules and regulations of the SEC promulgated thereunder applicable to the SEC Documents, and none of the SEC Documents, at the time they were filed with the SEC, contained any untrue statement of a material fact or omitted to state a material fact required to be stated therein or necessary in order to make the statements therein, in light of the circumstances under which they were made, not misleading. None of the statements made in any such SEC Documents is, or has been, required to be amended or updated under applicable law (except for such statements as have been amended or updated in subsequent filings prior the date hereof).

5. REPRESENTATIONS AND WARRANTIES OF BUYER.

In order to induce Seller to enter into and perform this Agreement and to consummate the Contemplated Transactions, Buyer represents and warrants to Seller, as of the date hereof, as follows:

5.1. Organization. Buyer is duly organized, validly existing and in good standing under the laws of the State of Michigan.

5.2. Power and Authorization. The execution, delivery and performance by Buyer of this Agreement and each Ancillary Agreement to which it is a party and the consummation of the Contemplated Transactions are within the power and authority of Buyer and have been duly authorized by all necessary action on the part of Buyer. This Agreement and each Ancillary Agreement to which Buyer is a party (a) have been duly executed and delivered by such party and (b) is and will be a legal, valid and binding obligation of such party, enforceable against such party in accordance with its terms, subject to applicable bankruptcy, insolvency, reorganization, moratorium or other similar Laws affecting the enforceability of creditors' rights generally, and, other than with respect to any restrictive covenant contained in this Agreement or any Ancillary Agreement, general equitable principles and the discretion of courts in granting equitable relief.

5.3. Authorization of Governmental Authorities. No action by (including any authorization, consent or approval), or in respect of, or filing with, any Governmental Authority is required for, or in connection with, the valid and lawful (a) authorization, execution, delivery and performance by Buyer of this Agreement and each Ancillary Agreement to which it is a party or (b) consummation of the Contemplated Transactions by Buyer.

5.4. Non-contravention. Neither the execution, delivery and performance by Buyer of this Agreement or any Ancillary Agreement to which it is a party, nor the consummation of the Contemplated Transactions, will: (a) assuming the taking of any action required by (including any authorization, consent or approval) or in respect of, or any filing with, any Governmental Authority, violate any provision of any Legal Requirement applicable to Buyer, (b) result in a breach or violation of, or default under, Buyer's organizational documents, or (c) result in the creation or imposition of an Encumbrance upon, or the forfeiture of, any asset of Buyer, including the Acquired Stock.

5.5. No Brokers. Buyer has no Liability of any kind to any broker, finder or agent with respect to the Contemplated Transactions for which Seller or any of its Affiliates could be liable.

6. **COVENANTS**.

6.1. Publicity. After the Closing, Buyer will be entitled to issue any press release or make any other public announcement without obtaining Seller's prior approval so long as such press release or other public announcement does not disclose any of the specific pricing terms hereof; provided, however, that the foregoing limitation will not apply to any communications with Buyer's limited partners, members, investors, Representatives or prospective investors, if applicable. Neither Seller nor Seller Principal shall be entitled to issue any press release or make any other public announcement of any kind whatsoever with respect to this Agreement or the Contemplated Transactions without obtaining Buyer's prior approval, which shall not be unreasonably withheld or delayed.

6.2. Fees and Expenses. Seller shall be responsible for the following transaction expenses of Buyer and/or Buyer's Affiliates incurred or to be incurred by any of them or any of their respective Representatives in connection with the negotiation, execution, or performance of this Agreement or the Contemplated Transactions: (1) $150,000 for legal fees and expenses; and (2) $6,000 for the cost of certain background investigations (collectively, the "Reimbursed Transaction Expenses"). Seller shall pay the full amount of the Reimbursed Transaction Expenses to Buyer as promptly as practicable after the Closing, but in no event later than 2 Business Days after the Closing, by means of a wire transfer of immediately available funds pursuant to wire instructions provided by Buyer to Seller. Except as otherwise provided in the preceding sentence or elsewhere in this Agreement, all costs, expenses, and fees incurred in connection with the negotiation, execution, or performance of this Agreement or the Contemplated Transactions by Buyer shall be paid by Buyer, and all costs, expenses, and fees incurred in connection with the negotiation, execution, or performance of this Agreement or the Contemplated Transactions by Seller or a Seller Principal shall be paid by Seller.

6.3. Post-Closing Monthly Payments to Buyer. From and after the Closing Date, on each Payment Date prior to the occurrence of a Trigger Event, Seller shall make a payment to Buyer (each, a "Post-Closing Monthly Payment") in an amount equal to $175,000.00. For purposes of this Agreement: (a) the term "Payment Date" shall mean (i) January 1, 2017 and (ii) the first day of each subsequent calendar month thereafter and (b) the term "Trigger Event" shall mean the earlier to occur of (a) the consummation of an initial public offering of Seller's common stock on an established and internationally recognized stock exchange (such as the New York Stock Exchange, NASDAQ, or the Toronto Stock Exchange); and (b) such time as Buyer shall no longer hold any of the Acquired Stock or other equity interest in Seller (or a successor to Seller). In the event that Seller fails to make any payment when due pursuant to this Section 6.3, then after a grace period of 10 days, such missed payment will be subject to a default interest rate of 7.0% annually, accrued on a daily basis starting on the first day of the month immediately prior to the Payment Date with respect to the delinquent payment. (For example, if Seller fails to make its required Post-Closing Monthly Payment on January 1, 2017, then it has a grace period of up to January 10, 2017 to make such payment. If the payment remains unpaid as of January 10 and is not made until January 12, 2017, then the amount due will be $175,000.00 plus default interest at an annual rate of 7.0%, accrued for 43 days (31 days in December, plus 12 days in January).

6.4. Buyer Investor Protections. Notwithstanding any contrary provision in the organizational documents of Seller or any successor to Seller, from and after the Closing Date and for so long as Buyer holds any amount of Common Stock (or any analogous equity security in the event of any stock split, reverse stock split, reverse or forward merger, consolidation, recapitalization, redomestication, conversion, or other restructuring transaction of any kind), Seller and each Seller Principal shall ensure that Buyer always has the rights set forth in this Section 6.4 below (the "Buyer Investor Protections"), including, as applicable: (i) by voting such Seller Principal's shares of Common Stock in favor of the Buyer Investor Protections, (ii) by voting in such Seller Principal's capacity as a director in favor of the Buyer Investor Protections, (iii) by encouraging other Seller Owners and directors of Seller to similarly

vote in favor of the Buyer Investor Protections, (iv) by requiring each transferee of any portion of a Seller Principal's Common Stock (and each transferee of such transferee, *ad infinitum*) to be bound by all of the obligations of the Seller Principals set forth in this Section 6.4 as a condition to the transfer of such Common Stock; and (v) upon the request of Buyer, by doing, executing, acknowledging, and/or delivering all such further agreements, resolutions, amendments to organizational documents, acts, assurances, deeds, assignments, transfers, conveyances, and other instruments and papers as may be reasonably required or appropriate to carry out, evidence, and/or more fully implement the Buyer Investor Protections):

(a) Preemptive Rights/Anti-Dilution Rights. From and after the Closing and at all times until a Trigger Event has occurred: (i) neither Seller nor, for the avoidance of doubt, any successor to Seller in the event of any merger, consolidation, recapitalization, redomestication, conversion, or other restructuring transaction of any kind, shall issue or sell any new equity securities of any kind (including any security or other instrument convertible into an equity security) unless it first provides Buyer a preemptive right (with sufficient notice of at least 60 days and sufficient time to close a transaction) that allows Buyer to purchase Buyer's pro rata portion of such equity securities, at a price (taking into account the total post-issuance Equity Value reflected in such transaction) equal to that paid by new subscribers in such proposed new issuance, so as to maintain Buyer's pro rata ownership of Seller's equity securities and, in the event that other Seller shareholders are offered a similar preemptive right but do not exercise it, to increase Buyer's pro rata ownership; and (ii) without limiting the foregoing, neither Seller nor, for the avoidance of doubt, any successor to Seller in the event of any merger, consolidation, recapitalization, redomestication, conversion, or other restructuring transaction of any kind, shall issue any equity securities of any kind (including any security or other instrument convertible into an equity security) or otherwise enter into any transaction, if such issuance or transaction would result in a total post-transaction Equity Value that is lower than $493,256,955 unless: (A) it provides Buyer notice of such proposed issuance or transaction no later than 30 days prior to the consummation of such transaction; and (B) contemporaneously with the consummation of such issuance or transaction, Seller issues to Buyer, at no cost, equity securities sufficient to ensure that Buyer's post-issuance equity ownership of Seller (or such successor) is equal to or greater than the Consideration, which equity securities shall be, upon issuance, fully paid, non-assessable and free and clear of all Encumbrances.

(b) Board Representation and Observation Rights. At all times while Buyer holds any portion of the Acquired Stock, Buyer shall have the right to appoint a designee to serve as a member of Seller's Board of Directors and another designee to serve as a non-voting observer of Seller's Board of Directors.

(c) Required Reports. In addition to any reports, communication and information Buyer is entitled to receive or review in its capacity as a stockholder, and in addition to any reports, communication and information Buyer's board representatives and observers are entitled to receive or review in their capacity as such (all of which shall be provided at the same time that they are provided to other stockholders and board members and observers, as applicable), no later than 45 days after the end of each fiscal quarter of Seller and no later than 120 days after the end of each fiscal year of Seller, as applicable, Seller shall deliver to Buyer the following financial, operating and management reports with respect to the business of Seller (including the Subsidiaries), in each case including such information and in such manner as reasonably requested by Buyer from time to time: (i) consolidated Financials, including management commentary (quarterly); (ii) annual budget, including management commentary (annually); (iii) management reports on recent acquisitions, pending acquisitions, and acquisition pipeline (quarterly, or more frequently as needed); and (iv) management reports on any other business

activity likely to cause material variations in budget (quarterly, or more frequently as needed).

6.5. Revised Physician Compensation Arrangements; Billing & Coding Audit. As promptly as practicable after the Closing Date, but in no event later than December 31, 2016, Seller shall (or shall cause the applicable Subsidiary to) enter into new or amended employment agreements with all of its contracted physicians and medical service providers (and shall promptly make available to Buyer true and correct copies of all such agreements), which new or amended employment agreements (x) shall reflect a revised "best practices" bonus compensation structure in full compliance with all Healthcare Laws, but (y) shall otherwise remain substantially unchanged from the current agreements with such contracted physicians and medical service providers. Without limiting any of Buyer's rights pursuant to Section 6.4, upon Buyer's request at any time and from time to time, Seller shall (and/or shall cause the Subsidiaries to, as appropriate) promptly direct an independent third-party auditor to conduct a billing and coding audit of Seller and/or any of its Subsidiaries (at Buyer's expense) and shall fully cooperate with the auditor in conducting such an audit. In the event of any such audit (whether directed by Buyer or otherwise), Seller shall keep Buyer reasonably informed of the progress of any such audit, shall promptly provide Buyer with the results and reports of any such audit, and shall consult with Buyer on the findings of any such audit and take any actions as reasonably requested by Buyer to ensure continued "best practices" compliance with all Healthcare Laws.

6.6. 2014 & 2015 Financials. As promptly as practicable upon their completion, but in no event later than November 30, 2016, Seller shall deliver true, correct and complete copies of the 2014 & 2015 Financials to Buyer, which 2014 & 2015 Financials shall comport in all respects with the provisions set forth in Section 4.6.

6.7. SEC Compliance. As promptly as practicable after the Closing Date, but in no event later than December 31, 2016, Seller shall take all necessary actions and file all necessary documents to ensure that it is compliant in all material respects with the 1934 Act.

6.8. Stock Certificate. As promptly as practicable after the Closing, but in no event later than five (5) Business Days after the Closing, Seller shall deliver to Buyer (or cause Seller's transfer agent to deliver to Buyer) a stock certificate evidencing Buyer's ownership of the Acquired Stock, duly issued and executed by the appropriate officers of Seller and otherwise in accordance with Seller's Articles of Incorporation and Bylaws.

6.9. Compliance with Laws. At all times from and after the Closing Date, Seller and each Seller Principal shall, and shall cause the business of Seller (including the Business) and each of the subsidiaries of Seller (including the Subsidiaries) to, comply with all Laws.

6.10. Further Assurances. From and after the Closing Date, upon the request of either Seller or Buyer, each of the Parties shall do, execute, acknowledge, and deliver all such further acts, assurances, deeds, assignments, transfers, conveyances, and other instruments and papers as may be reasonably required or appropriate to carry out and/or evidence the Contemplated Transactions.

7. INDEMNIFICATION.

7.1. Indemnification by Seller. Subject to the provisions of this Article 7, Seller shall indemnify and hold harmless Buyer and its Affiliates, and each of the directors, officers, stockholders, partners, members, managers, employees, agents, consultants, advisors, and Representatives of each of the foregoing Persons (the "Buyer Indemnified Persons,") from, against, and in respect of any and all Actions, Liabilities, Government Orders, Encumbrances, losses, damages, bonds, assessments, fines, penalties, Taxes, fees, costs (including reasonable costs of investigation, defense, and enforcement of this

Agreement), expenses (including actual and reasonable attorneys' and experts fees and expenses), or amounts paid in settlement (collectively referred to as "Losses") that any Buyer Indemnified Person may suffer, incur, sustain, or become subject to as a result of, arising out of, or directly or indirectly relating to:

7.1.1. any breach of, or inaccuracy in, any representation or warranty made by Seller in this Agreement, in any Ancillary Agreement, or in any certificate delivered pursuant to this Agreement;

7.1.2. any breach or violation of, or any failure to perform, any covenant or agreement of Seller or any Seller Principal in this Agreement, the Ancillary Agreements, or in any certificate delivered pursuant to this Agreement, but excluding any such covenant or other agreement that by its nature is required to be performed at, by or prior to the Closing;

7.1.3. any Losses attributable to (i) Taxes of Seller for any period ending on or before the Closing Date; (ii) Taxes of any other Person imposed on Seller (A) pursuant to Treasury Regulation § 1.1502-6 or any analogous or similar state, local, or foreign Law or regulation, with respect to any group of which Seller is or was a member on or prior to the Closing Date, or (B) as a result of any Tax sharing, Tax indemnification or Tax allocation agreement, arrangement, or understanding (other than customary Tax indemnification provisions contained in commercial contracts entered into in the ordinary course of business, a principal subject matter of which is not Taxes), or (iii) Taxes of any Person, which Taxes relate to an event or transaction occurring before the Closing, imposed on Seller as a transferee or successor or otherwise pursuant to any Law; or

7.1.4. any Losses related to any Liabilities that arise out of or relate to (in whole or in part) Seller, any subsidiary of Seller (including any Subsidiary), any business of Seller or its subsidiaries (including the Business) and/or the operation of any Center, in each case on or prior to the Closing, including but not limited to any Losses arising out of any failure to get any consent and approval of, or any failure to file any required notice with, any Person as may be necessary for Seller or any Seller Owner to consummate any of the Contemplated Transactions (and in all cases including, for the avoidance of doubt, all such Losses or Liabilities that arise out of or relate to, in whole or in part, matters, circumstances, information or documentation set forth, described or referenced on any of the Disclosure Schedules or otherwise disclosed or made available to Buyer prior to the Closing).

7.2. Indemnification by Buyer. Subject to the provisions of this Article 7, Buyer shall indemnify and hold harmless Seller and its Affiliates, and the directors, officers, stockholders, partners, members, managers, employees, agents, consultants, advisors, and Representatives of each of the foregoing Persons (the "Seller Indemnified Parties") from, against, and in respect of any and all Losses which any of them may suffer, incur, sustain, or become subject to as a result of, arising out of, or directly or indirectly relating to:

7.2.1. any breach of, or inaccuracy in, any representation or warranty made by Buyer in this Agreement, the Ancillary Agreements, or in any certificate delivered pursuant to this Agreement; or

7.2.2. any breach or violation of, or any failure to perform, any covenant or agreement of Buyer in this Agreement, or in any certificate delivered pursuant to this Agreement, but excluding any such covenant or other agreement that by its nature is required to be performed at, by or prior to the Closing.

7.3. Certain Limitations. The indemnification provided for in Section 7.1 and Section 7.2 shall be subject to the following limitations:

7.3.1. For purposes of this Article 7, any inaccuracy in or breach of any representation or warranty (and the amount of any Losses) shall be determined without regard to any materiality, Material Adverse Effect or other similar qualification contained in or otherwise applicable to such representation or warranty; and

7.3.2. With respect to Buyer Indemnified Persons, Losses shall specifically include diminution in value of the Acquired Units, including any diminution in value of the Acquired Units as a result of Seller being required to satisfy any indemnification obligation hereunder.

7.4. Personal Guarantees of Seller Principals.

7.4.1. Guarantee of Post-Closing Monthly Payments. Notwithstanding anything herein to the contrary, each Seller Principal hereby absolutely and unconditionally guarantees, jointly and severally with all other Seller Principals, the prompt and punctual payment by Seller of 100% of Seller's payment obligations under Section 6.3. Each Seller Principal's liability under this Section 7.4.1 is primary, direct and unconditional and shall not require Buyer to resort to any other Person, including Seller, or any other right, remedy or collateral, whether held as collateral for satisfaction of obligations set forth herein.

7.4.2. Guarantee of Seller Indemnification Obligations. Each Seller Principal hereby absolutely and unconditionally guarantees, jointly and severally with all other Seller Principals, the prompt and punctual payment by Seller of each indemnification obligation of Seller pursuant to Section 7.1 (a "Seller Indemnification Obligation"); provided, however, that in no event shall any Seller Principal's liability with respect to any Seller Indemnification Obligation exceed such Seller Principal's pro-rata portion thereof, determined in accordance with the percentage set forth for such Seller Principal on Exhibit B, which reflects such Seller Principal's approximate pro rata percentage share of the Common Stock immediately prior to the Contemplated Transactions ("Pro Rata Share"). Each Seller Principal's liability under this Section 7.4.2 is primary, direct and unconditional and shall not require Buyer to resort to any other Person, including Seller, or any other right, remedy or collateral, whether held as collateral for satisfaction of obligations set forth herein.

7.5. Survival. No claim may be made or suit instituted seeking indemnification pursuant to Section 7.1.1 or Section 7.2.1 for any breach of, or inaccuracy in, any representation or warranty (and no indemnity obligation shall arise with respect to any such claim) unless a written notice describing such breach or inaccuracy in reasonable detail in light of the circumstances then known to the Indemnified Party is provided to the Indemnifying Party: (a) at any time, in the case of any breach of, or inaccuracy in, the Fundamental Representations, the representations and warranties set forth in Section 5.1 (Organization), Section 5.2 (Power and Authorization), Section 5.5 (No Brokers), and/or in the case of any claim or suit based upon fraud, intentional misrepresentation or willful misconduct; and (b) at any time prior to the sixty (60) month anniversary of the Closing Date, in the case of any breach of, or inaccuracy in, any other representation and warranty in this Agreement. For clarity, all of the other covenants and agreements of the Parties set forth in this Agreement shall survive the Closing in accordance with their respective terms or, if no such term is specified, indefinitely; provided that no claim may be made or suit instituted seeking indemnification pursuant to Section 7.1 or Section 7.2 unless a written notice describing such claim in reasonable detail in light of the circumstances then known to the Indemnified Party, is provided to the Indemnifying Party at any time prior to the sixtieth (60^{th}) day after

such claim is barred by the statute of limitations under applicable Law (taking into account the survival periods set forth in this Section 7.5, any tolling periods and other extensions).

7.6. Third Party Claims.

7.6.1. Notice of Third Party Claims. Promptly after receipt by an Indemnified Person of written notice of the assertion of a claim by any Person who is not a party to this Agreement (a "Third Party Claim") that may give rise to an Indemnity Claim against an Indemnifying Party under this Article 7, the Indemnified Person shall give written notice thereof to the Indemnifying Party; provided that, no delay on the part of the Indemnified Person in notifying the Indemnifying Party will relieve the Indemnifying Party from any obligation under this Article 7, except to the extent such delay actually and materially prejudices the Indemnifying Party.

7.6.2. Assumption of Defense, etc. The Indemnifying Party will be entitled to participate in the defense at its sole cost and expense of any Third Party Claim that is the subject of a notice given by or on behalf of any Indemnified Person pursuant to Section 7.6.1. In addition, the Indemnifying Party will have the right to defend the Indemnified Person against the Third Party Claim with counsel of its choice reasonably satisfactory to the Indemnified Person so long as (i) the Indemnifying Party gives written notice that they or it will defend the Third Party Claim to the Indemnified Person within thirty (30) days after the Indemnified Person has given notice of the Third Party Claim under Section 7.6.1 stating that the Indemnifying Party will, and thereby covenants to, indemnify, defend and hold harmless the Indemnified Person from and against the entirety of any and all Losses the Indemnified Person may suffer resulting from, arising out of, relating to, in the nature of, or caused by the Third Party Claim, (ii) the Third Party Claim involves only money damages and does not seek an injunction or other equitable relief against the Indemnified Person, (iii) counsel to the Indemnified Person does not determine in good faith that an actual or potential conflict exists between the Indemnified Person and the Indemnifying Party in connection with the defense of the Third Party Claim that would make separate counsel advisable, (iv) the Third Party Claim does not relate to or otherwise arise in connection with Taxes or any criminal or regulatory enforcement Action, (v) defense of the Third Party Claim by the Indemnifying Party will not, in the reasonable judgment of the Indemnified Person, have a material adverse effect on the Indemnified Person, and (vi) Indemnifying Party has sufficient financial resources, in the reasonable judgment of the Indemnified Person, to satisfy the amount of any adverse monetary judgment that is reasonably likely to result ((i) through (vi) are collectively referred to as the "Litigation Conditions"). If (i) any of the Litigation Conditions ceases to be met or (ii) the Indemnifying Party fails to take reasonable steps necessary to defend diligently the Third Party Claim, the Indemnified Person may assume its own defense, and the Indemnifying Party will be liable for all reasonable costs or expenses paid or incurred in connection with such defense. The Indemnified Person may retain separate co-counsel at its sole cost and expense and participate in the defense of the Third Party Claim; provided that, the Indemnifying Party will pay the fees and expenses of separate counsel retained by the Indemnified Person that are incurred prior to the Indemnifying Party's assumption of control of the defense of the Third Party Claim. The Indemnified Person shall make available to the Indemnifying Party or its agents, upon the reasonable request of the Indemnifying Party, all records and other materials in the Indemnified Person's possession at the time of such request, as may be reasonably required by the Indemnifying Party for its use in contesting any Third Party Claim and shall otherwise reasonably cooperate.

7.6.3. Limitations on Indemnifying Party Control. The Indemnifying Party will not consent to the entry of any judgment or enter into any compromise or settlement with respect to the Third Party Claim without the prior written consent of the Indemnified Person unless such judgment, compromise or settlement (i) provides for the payment by the Indemnifying Party of money as sole relief for the claimant, (ii) results in the full and general release of all Indemnified Persons from all Liabilities arising out of or relating to, or in connection with, the Third Party Claim and (iii) involves no finding or admission of any violation of Legal Requirements or the rights of any Person and no effect on any other claims that may be made against the Indemnified Person. If (w) a firm written offer is made to settle any Third Party Claim for which the sole relief provided is monetary damages, (x) the amount of such monetary damages (plus all indemnifiable expenses of the Indemnified Party related to such Third Party Claim) would not exceed any of the limitations on the Indemnifying Party's indemnification obligations set forth in Article 7, (y) the Indemnifying Party agrees in writing to accept such settlement and pay all such monetary damages (plus all indemnifiable expenses of the Indemnified Party related to such Third Party Claim), and (z) the Indemnified Party refuses to consent to such settlement, then: (I) the Indemnifying Party shall be excused from, and the Indemnified Party shall be solely responsible for, all further defense of such Third Party Claim (but no party shall be excused from its indemnification obligations hereunder until the maximum liability set forth in the immediately succeeding subsection (II) has been satisfied); and (II) the maximum liability of the Indemnifying Party relating to such Third Party Claim shall be the amount of the proposed settlement (plus indemnifiable expenses of the Indemnified Party related to such Third Party Claim to the date of such refusal to consent to settlement), if the amount thereafter recovered from the Indemnified Party on such Third Party Claim is greater than the amount of the proposed settlement.

7.6.4. Indemnified Person's Control. If the Indemnifying Party does not deliver the notice contemplated by clause (i) of Section 7.6.2 within thirty (30) days after the Indemnified Person has given notice of the Third Party Claim pursuant to Section 7.6.1 (or is not permitted to assume control), the Indemnified Person may defend, and may consent to the entry of any judgment or enter into any compromise or settlement with respect to, the Third Party Claim in any manner it may deem appropriate (and the Indemnified Person need not consult with, or obtain any consent from, the Indemnifying Party in connection therewith) provided, however, that in such circumstance the Indemnifying Person may retain separate co-counsel at its sole cost and expense and participate in the defense of the Third Party Claims and have access to all information from the Indemnified Party related thereto. If such notice and evidence is given on a timely basis and the Indemnifying Party conducts the defense of the Third Party Claim but any of the other conditions in Section 7.6.2 is or becomes unsatisfied, the Indemnified Person may defend, and may consent to the entry of any judgment or enter into any compromise or settlement with respect to, the Third Party Claim; provided that, the Indemnifying Party will not be bound by the entry of any such judgment consented to, or any such compromise or settlement effected, without its prior written consent (which consent will not be unreasonably withheld, conditioned or delayed). In the event that the Indemnified Person conducts the defense of the Third Party Claim pursuant to this Section 7.6.4, the Indemnifying Party will (i) advance the Indemnified Person promptly and periodically for the costs of defending against the Third Party Claim (including reasonable attorneys' fees and expenses) and (ii) remain responsible for any and all other Losses that the Indemnified Person may incur or suffer resulting from, arising out of, relating to, in the nature of or caused by the Third Party Claim to the fullest extent provided in this Article 7.

7.6.5. Consent to Jurisdiction Regarding Third Party Claim. Each of the Parties hereby consents to the non-exclusive jurisdiction of any court in which any Third Party Claim

may be brought against any Indemnified Person for purposes of any claim which such Indemnified Person may have against any such Indemnifying Party pursuant to this Agreement in connection with such Third Party Claim, and in furtherance thereof, the provisions of Section 8.11 are incorporated herein by reference, mutatis mutandis.

7.7. Direct Claims. In the event that any Indemnified Person wishes to make a claim for indemnification under this Article 7, the Indemnified Person shall give written notice of such claim to each Indemnifying Party. For the avoidance of doubt, where the Indemnifying Party is a Seller under this Article 7, such notice shall be to Seller. Any such notice shall describe the breach or inaccuracy and other material facts and circumstances upon which such claim is based and the estimated amount of Losses involved, in each case, in reasonable detail in light of the facts then known to the Indemnified Person; provided that, no defect in the information contained in such notice from the Indemnified Person to any Indemnifying Party will relieve such Indemnifying Party from any obligation under this Article 7, except to the extent such failure to include information actually and materially prejudices such Indemnifying Party.

7.8. Manner of Payment. Any payment to be made by Seller or Buyer, as the case may be, pursuant to this Article 7 will be effected by wire transfer of immediately available funds from Seller or Buyer, as the case may be, to an account designated by Seller or Buyer, as the case may be, within five (5) Business Days after the determination thereof.

7.9. No Contribution. Neither Seller nor any of the Seller Owners will have any right of contribution from any of Buyer Indemnified Persons with respect to any Loss claimed by a Buyer Indemnified Person.

7.10. Effect of Investigation. The representations, warranties and covenants of the Indemnifying Party, and each Indemnified Person's right to indemnification with respect thereto, shall not be affected or deemed waived by reason of any investigation made by or on behalf of the Indemnified Person (including by any of its agents, advisors, counsel or representatives) or by reason of the fact that the Indemnified Person (or any of its agents, advisors, counsel or representatives) knew or should have known that any such representation or warranty is, was or might be inaccurate or by reason of the Indemnified Person's waiver of any condition to the Closing of the Contemplated Transactions.

7.11. Remedies Cumulative. The rights of each Buyer Indemnified Person and Seller Indemnified Party under this Article 7 are cumulative, and each Buyer Indemnified Person and Seller Indemnified Party will have the right in any particular circumstance, in its sole discretion, to enforce any provision of this Article 7 without regard to the availability of a remedy under any other provision of this Article 7. Except as set forth in the Schedules, the Buyer Indemnified Persons' right to indemnification under this Article 7 is not adversely affected by whether or not the possibility of any Loss was disclosed to the Buyer Indemnified Persons on the date of this Agreement. The representations and warranties of Seller shall not be affected or deemed waived by reason of any investigation made by or on behalf of any Buyer Indemnified Person (including any Representatives of any Buyer Indemnified Person) or by reason of the fact that any Buyer Indemnified Person or any Representatives of any Buyer Indemnified Person knew or should have known that any representation or warranty is or might be inaccurate.

7.12. Tax Treatment. All indemnification and other payments under this Article 7 shall, to the extent permitted by applicable Legal Requirements, be treated for all income Tax purposes as adjustments to the aggregate consideration paid hereunder. None of the Parties shall take any position on any Tax Return, or before any Governmental Authority, that is inconsistent with such treatment unless otherwise required by any applicable Legal Requirement.

8. **MISCELLANEOUS.**

8.1. Notices. All notices, requests, demands, claims, and other communications required or permitted to be delivered, given, or otherwise provided under this Agreement must be in writing and must be delivered, given, or otherwise provided: (a) by hand (in which case, it shall be effective upon delivery); (b) by facsimile (in which case, it shall be effective upon receipt of confirmation of good transmission); or (c) by overnight delivery by a nationally recognized courier service (in which case, it shall be effective on the Business Day after being deposited with such courier service), in each case, to the address (or facsimile number) listed below:

If to Seller or either Seller Principal:

Hygea Holdings Corp.
8750 NW 36 Street, Suite 300
Miami, FL 33178
Attention: Manuel E. Iglesias, President & Chief Executive Officer
Facsimile: 866-852-0454

with a copy (which shall not constitute notice) to:

Hygea Holdings Corp.
8750 NW 36 Street, Suite 300
Miami, FL 33178
Attention: Richard L. Williams, Esq., Chief Legal Officer
Facsimile: 866-852-0454

If to Buyer:

N5HYG LLC
38955 Hills Tech Drive
Farmington Hills, MI 48331
Attention: Chris Fowler
Facsimile: (248) 536-0869

with a copy (which shall not constitute notice) to:

Oakland Law Group PLLC
38955 Hills Tech Dr.
Farmington Hills, MI 48331
Attention: Alan Gocha
Facsimile: (248) 536-1859

Each of the Parties to this Agreement may specify a different address, email address or facsimile number by giving notice in accordance with this Section 8.1 to each of the other Parties hereto.

8.2. Succession and Assignment; No Third-Party Beneficiary. Subject to the immediately following sentence, this Agreement shall be binding upon and inure to the benefit of the Parties hereto and their respective successors and permitted assigns and all such successors and permitted assigns shall be deemed to be a Party hereto for all purposes hereof. No Party may assign, delegate, or otherwise transfer either this Agreement or any of his, her or its rights, interests, or obligations hereunder without the prior written consent of Buyer and Seller; except that Buyer may assign this Agreement (a) to one or more of its Affiliates, or (b) after the Closing, in connection with any disposition or transfer of all or

substantially all of the equity interests of Buyer in any form of transaction. Except for the provisions of Section 7.1 and this Section 8.2, this Agreement is for the sole benefit of the Parties hereto and their successors and permitted assigns and nothing herein expressed or implied shall give or be construed to give any Person, other than the Parties hereto and such successors and permitted assigns, any legal or equitable rights hereunder.

8.3. Amendments and Waivers. No amendment or waiver of any provision of this Agreement shall be valid and binding unless it is in writing and signed, in the case of an amendment, by Buyer and Seller, or in the case of a waiver, by the Party against whom the waiver is to be effective. No waiver by any Party of any breach or violation of, default under, or inaccuracy in any representation, warranty, covenant, or agreement hereunder, whether intentional or not, shall be deemed to extend to any prior or subsequent breach, violation, default of, or inaccuracy in, any such representation, warranty, covenant, or agreement hereunder or affect in any way any rights arising by virtue of any prior or subsequent such occurrence. No delay or omission on the part of any Party in exercising any right, power, or remedy under this Agreement shall operate as a waiver thereof.

8.4. Entire Agreement. This Agreement, together with the Ancillary Agreements and any documents, Schedules, instruments, or certificates referred to herein or delivered in connection herewith, constitutes the entire agreement among the Parties hereto with respect to the subject matter hereof and supersedes any and all prior discussions, negotiations, proposals, undertakings, understandings, and agreements (including any draft agreements) with respect thereto, whether written or oral, none of which shall be used as evidence of the Parties' intent. In addition, each Party hereto acknowledges and agrees that all prior drafts of this Agreement contain attorney work product and shall in all respects be subject to the foregoing sentence.

8.5. Schedules. Nothing in any Schedule attached hereto shall be adequate to modify, qualify, or disclose an exception to a representation or warranty made in this Agreement unless such Schedule identifies the modification, qualification, or exception. Any modifications, qualifications, or exceptions to any representations or warranties disclosed on one Schedule shall constitute a modification, qualification, or exception to any other representations or warranties made in this Agreement if it is reasonably apparent that the disclosures on such Schedule should apply to such other representations and warranties.

8.6. Counterparts; Electronic Signature. This Agreement may be executed in multiple counterparts, all of which shall be considered one and the same agreement, and shall become effective when one or more counterparts have been signed by each of the Parties and delivered to the other Parties, it being understood that all Parties need not sign the same counterpart. This Agreement may be executed by facsimile or pdf signature by any Party and such signature shall be deemed binding for all purposes hereof without delivery of an original signature being thereafter required.

8.7. Severability. Any term or provision of this Agreement that is invalid or unenforceable in any situation in any jurisdiction shall not affect the validity or enforceability of the remaining terms and provisions hereof or the validity or enforceability of the offending term or provision in any other situation or in any other jurisdiction. In the event that any provision hereof would, under applicable Legal Requirements, be invalid or unenforceable in any respect, each Party hereto intends that such provision shall be construed by modifying or limiting it so as to be valid and enforceable to the maximum extent compatible with, and possible under, applicable Legal Requirements and to otherwise give effect to the intent of the Parties.

8.8. Headings. The headings contained in this Agreement are for convenience purposes only and shall not in any way affect the meaning or interpretation hereof.

8.9. Construction. The Parties hereto have participated jointly in the negotiation and drafting of this Agreement. In the event an ambiguity or question of intent or interpretation arises, this Agreement shall be construed as if drafted jointly by the Parties hereto and no presumption or burden of proof shall arise favoring or disfavoring any Party by virtue of the authorship of any of the provisions of this Agreement. The Parties hereto intend that each representation, warranty, covenant, and agreement contained herein shall have independent significance. If any Party hereto has breached or violated, or if there is an inaccuracy in, any representation, warranty, covenant, or agreement contained herein in any respect, the fact that there exists another representation, warranty, covenant, or agreement relating to the same subject matter (regardless of the relative levels of specificity) which the Party has not breached or violated, or in respect of which there is not an inaccuracy, shall not detract from or mitigate the fact that the Party has breached or violated, or there is an inaccuracy in, the first representation, warranty, covenant, or agreement.

8.10. Governing Law. This Agreement, the negotiation, terms, and performance of this Agreement, the rights of the Parties under this Agreement, and all Actions arising in whole or in part under or in connection with this Agreement, shall be governed by and construed in accordance with the domestic substantive laws of the State of Nevada, without giving effect to any choice or conflict of law provision or rule that would cause the application of the laws of any other jurisdiction.

8.11. Jurisdiction; Venue; Service of Process.

8.11.1. Jurisdiction. Each Party to this Agreement, by his, her, or its execution hereof, (a) hereby irrevocably submits to the exclusive jurisdiction and venue of the Nevada state and/or United States federal courts located in Clark County, Nevada for the purpose of any Action between any of the Parties hereto arising in whole or in part under or in connection with this Agreement, any Ancillary Agreement, the Contemplated Transactions, or the negotiation, terms or performance hereof or thereof, (b) hereby waives to the extent not prohibited by applicable Legal Requirements, and agrees not to assert, by way of motion, as a defense or otherwise, in any such Action, any claim that he or she is not subject personally to the jurisdiction of the above-named court, that venue in such court is improper, that his, her or its property is exempt or immune from attachment or execution, that any such Action brought in the above-named court should be dismissed on grounds of *forum non conveniens* or improper venue, that such Action should be transferred or removed to any court other than the above-named court, that such Action should be stayed by reason of the pendency of some other Action in any other court other than the above-named court or that this Agreement or the subject matter hereof may not be enforced in or by such court, and (c) hereby agrees not to commence or prosecute any such Action other than before the above-named court. Notwithstanding the foregoing, (i) a Party hereto may commence any Action in a court other than the above-named court solely for the purpose of enforcing an order or judgment issued by the above-named court, and (ii) the dispute resolution procedures set forth in this Section 8.11.1 shall be the sole and exclusive means by which the Parties may resolve any disputes arising thereunder and any resolution of any such dispute in accordance with such dispute resolution procedures shall be valid and binding on all of the Parties hereto.

8.11.2. Service of Process. Each Party hereto hereby (a) consents to service of process in any Action between any of the Parties hereto arising in whole or in part under or in connection with this Agreement, any Ancillary Agreement, the Contemplated Transactions, or the negotiation, terms or performance hereof or thereof, in any manner permitted by Nevada law, (b) agrees that service of process made in accordance with clause (a) or made by overnight delivery by a nationally recognized courier service at his or her address specified pursuant to Section 8.1 shall constitute good and valid service of process in any such Action, and (c)

waives and agrees not to assert (by way of motion, as a defense or otherwise) in any such Action any claim that service of process made in accordance with clause (a) or (b) does not constitute good and valid service of process.

8.12. Waiver of Jury Trial. TO THE EXTENT NOT PROHIBITED BY APPLICABLE LAW THAT CANNOT BE WAIVED, EACH OF THE PARTIES HERETO HEREBY WAIVES, AND COVENANTS THAT HE OR IT SHALL NOT ASSERT (WHETHER AS PLAINTIFF, DEFENDANT, OR OTHERWISE), ANY RIGHT TO TRIAL BY JURY IN ANY ACTION ARISING IN WHOLE OR IN PART UNDER OR IN CONNECTION WITH THIS AGREEMENT, ANY ANCILLARY AGREEMENT, THE CONTEMPLATED TRANSACTIONS, OR THE NEGOTIATION, TERMS OR PERFORMANCE HEREOF OR THEREOF, WHETHER NOW EXISTING OR HEREAFTER ARISING, AND WHETHER SOUNDING IN CONTRACT, TORT, OR OTHERWISE. THE PARTIES HERETO AGREE THAT ANY OF THEM MAY FILE A COPY OF THIS PARAGRAPH WITH ANY COURT AS WRITTEN EVIDENCE OF THE KNOWING, VOLUNTARY, AND BARGAINED-FOR AGREEMENT AMONG THE PARTIES HERETO. THE PARTIES HERETO FURTHER AGREE TO IRREVOCABLY WAIVE THEIR RIGHT TO A TRIAL BY JURY IN ANY PROCEEDING AND ANY SUCH PROCEEDING SHALL INSTEAD BE TRIED IN A COURT OF COMPETENT JURISDICTION BY A JUDGE SITTING WITHOUT A JURY.

[*Remainder of the page intentionally left blank – signature pages follow*]

IN WITNESS WHEREOF, each of the undersigned Parties has executed this Agreement as of the date first above written.

BUYER:

N5HYG LLC,
a Michigan limited liability company

By: _____
Name: Manoj Bhargava
Title: Manager

SELLER:

HYGEA HOLDINGS CORP.,
a Nevada corporation

By: _____
Name: Manuel Iglesias
Title: Chief Executive Officer

SELLER PRINCIPALS:

By signing below, each of the undersigned individuals agrees to be bound by all of the obligations of the Seller Principals under this Agreement, including without limitation the personal guaranty obligations set forth in Section 7.4.

_____
Manuel Iglesias, individually

_____
Edward Moffly, individually

IN WITNESS WHEREOF, each of the undersigned Parties has executed this Agreement as of the date first above written.

BUYER:

N5HYG LLC,
a Michigan limited liability company

By: _____
Name: Manoj Bhargava
Title: Manager

SELLER:

HYGEA HOLDINGS CORP.,
a Nevada corporation

By: _____
Name: Manuel Iglesias
Title: Chief Executive Officer

SELLER PRINCIPALS:

By signing below, each of the undersigned individuals agrees to be bound by all of the obligations of the Seller Principals under this Agreement, including without limitation the personal guaranty obligations set forth in Section 7.4.

_____
Manuel Iglesias, individually

_____
Edward Moffly, individually

EXHIBIT A

List of Subsidiaries

Name of Subsidiary:	Jurisdiction of Incorporation/ Formation:	Direct Owner of 100% of Subsidiary Equity Interests:
Hygea of Delaware, LLC	Delaware	Seller
Hygea Health Holdings, Inc.	Florida	Hygea of Delaware, LLC
All Care Management Services, LLC	Florida	Hygea of Delaware, LLC
Physicians Group Alliance, LLC	Florida	Hygea of Delaware, LLC
Physicians Group Alliance of Atlanta, LLC	Florida	Hygea of Delaware, LLC
Physicians Group Alliance of Georgia, LLC	Florida	Hygea of Delaware, LLC
Physicians Group Alliance of South Florida, LLC	Florida	Hygea of Delaware, LLC
Physicians Group Management of Orlando, LLC	Florida	Hygea of Delaware, LLC
Florida Group Healthcare, LLC	Florida	Hygea of Delaware, LLC
Palm Medical Network, LLC	Florida	Hygea of Delaware, LLC
Hygea of Georgia, LLC	Georgia	Hygea of Delaware, LLC
AARDS II, INC	Florida	Hygea of Delaware, LLC
Gemini Healthcare Fund, LLC	Florida	Hygea Health Holdings, Inc.
Palm PGA MSO, Inc.	Florida	Hygea Health Holdings, Inc.
Palm Allcare MSO, Inc.	Florida	Hygea Health Holdings, Inc.
Palm Allcare Medicaid MSO, Inc.	Florida	Hygea Health Holdings, Inc.
Mobile Clinic Services, LLC	Florida	Hygea Health Holdings, Inc.
Hygea IGP of Central Florida, Inc.	Florida	Hygea Health Holdings, Inc.
Hydrea Acquisition Orlando, LLC	Florida	Hygea Health Holdings, Inc.

Name of Subsidiary:	Jurisdiction of Incorporation/ Formation:	Direct Owner of 100% of Subsidiary Equity Interests:
Hygea Acquisition Atlanta, LLC	Georgia	Hygea Health Holdings, Inc.
Hygea Acquisition Longwood, LLC	Florida	Hygea Health Holdings, Inc.
Physician Management Associates SE, LLC	Florida	Hygea Health Holdings, Inc.
Physician Management Associates East Coast, LLC	Florida	Hygea Health Holdings, Inc.
Hygea South Florida, Inc.	Florida	Hygea Health Holdings, Inc.
Palm MSO System, Inc.	Florida	Hygea Health Holdings, Inc.
Med Plan Clinics, Inc.	Florida	Hygea Health Holdings, Inc.
Med Plan Clinic, LLC	Florida	Gemini Healthcare Fund, LLC
Medcare Quality Medical Centers, LLC	Florida	Gemini Healthcare Fund, LLC
Med Plan Health Exchange, LLC	Florida	Gemini Healthcare Fund, LLC
Medcare Westchester Medical Center, LLC	Florida	Gemini Healthcare Fund, LLC
Med Scripts, LLC	Florida	Gemini Healthcare Fund, LLC
Med Plan, LLC	Florida	Gemini Healthcare Fund, LLC
Mid Florida Adult Medicine, LLC	Florida	Hygea Acquisition Longwood, LLC

Exhibit B

Pro Rata Share of Seller Principals

Name of Seller Principal:	Pro Rata Share:
Manuel Iglesias	20.75%
Edward Moffly	9.61%
TOTAL:	**30.36%**

EXHIBIT B

"Cause of Action"	Description	Plaintiff(s)	Defendants
1	"Statutory Securities Fraud" Violation of NRS 90.570 (Nevada Uniform Securities Act)	Both	All
2	"Federal Statutory Securities Fraud" Violation of 15 U.S.C. § 77q (Securities Act of 1933)	Both	All
3	"Failure to Comply with State Registration Requirements" Violation of NRS 90.460 (Nevada Uniform Securities Act)	Both	All
4	"Failure to Comply with Federal Registration Requirements" Violation of 17 C.F.R. 250.503 (Securities Act of 1933)	Both	All
5	"Control Person Liability under the Nevada Uniform Securities Act" Violation of NRS 90.660 (Nevada Uniform Securities Act)	Both	All Individual Defs.
6	"Control Person Liability under the Federal Securities Act" Liability under 15 U.S.C. § 77o (Securities Act of 1933)	Both	All Individual Defs.
7	"Common Law Fraud" (Nevada Common Law)	Both	All
8	"Negligent Misrepresentation" (Nevada Common Law)	Both	All
9	"Silent Fraud/Material Omissions" (Nevada Common Law)	Both	All
10	"Breach of Contract" (Nevada Common Law)	N5HYG	Hygea, Iglesias, Moffly
11	"Rescission of Contract" (Nevada Common Law Remedy)	N5HYG	Hygea, Iglesias, Moffly
12	"Breach of Fiduciary Duty and Waste of Corporate Assets" (Nevada Common Law)	Both	All Individual Defs.
13	"Breach of the Duty of Candor" (Nevada Common Law)	Both	All Individual Defs.
14	"Breach of the Duty of Loyalty" (Nevada Common Law)	Both	All Individual Defs.
15	"Minority Shareholder Oppression" (Nevada Common Law)	N5HYG	All Individual Defs.
16	"Tortious Interference with Contract" (Nevada Common Law)	Both	All Individual Defs.
17	"Civil Conspiracy" (Nevada Common Law)	Both	All
18	"Concert of Action" (Nevada Common Law)	Both	All
19	"Unjust Enrichment" (Nevada Common Law)	Both	All Individual Defs.
20	"Constructive Fraud" (Nevada Common Law)	Both	All
21	"Claim for Accounting" (Nevada Common Law)	N5HYG	All Individual Defs.

“Exhibit 3”

“Exhibit 3”

ACOM
G. MARK ALBRIGHT, ESQ., NBN 0013940
D. CHRIS ALBRIGHT, ESQ., NBN 004904
ALBRIGHT, STODDARD, WARNICK & ALBRIGHT
801 South Rancho Drive, Suite D-4
Las Vegas, Nevada 89106
Tel: (702) 384-7111 / Fax: (702) 384-0605
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E. POWELL MILLER, ESQ. (pro hac vice pending)
CHRISTOPHER D. KAYE, ESQ. (admitted pro hac vice)
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400 South Fourth Street, Third Floor
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obrown@nevadafirm.com
Attorneys for Plaintiff

DISTRICT COURT
CLARK COUNTY, NEVADA

N5HYG, LLC, a Michigan limited liability company; and NEVADA 5, INC., a Nevada corporation,

Plaintiffs,

vs.

HYGEA HOLDINGS CORP., a Nevada corporation; MANUEL IGLESIAS; EDWARD MOFFLY; DANIEL T. MCGOWAN; FRANK KELLY; MARTHA MAIRENA CASTILLO; LACY LOAR; RICHARD WILLIAMS, ESQ.; GLENN MARICHI, M.D.; KEITH COLLINS, M.D.; JACK MANN, M.D.; THE ESTATE OF HOWARD SUSSMAN, M.D.; JOSEPH CAMPANELLA; CARL ROSENCRANTZ; and RAY GONZALEZ; DOES I-XXX; and ROES I-XXX, inclusive,

Defendants.

CASE NO.: A-17-762664-B

DEPT. NO.: 27

FIRST AMENDED COMPLAINT AND JURY DEMAND

Arbitration Exemption Claimed: Matter Seeks Extraordinary Equitable Relief, Including Rescission of Contract

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FIRST AMENDED COMPLAINT AND JURY DEMAND

COME NOW, Plaintiffs, N5HYG, LLC, a Michigan limited liability company, and NEVADA 5, INC., a Nevada corporation (hereinafter "Plaintiffs"), by and through their undersigned counsel of record, and as and for its First Amended Complaint against Defendants, HYGEA HOLDINGS CORP.; MANUEL IGLESIAS; EDWARD MOFFLY; DANIEL T. MCGOWAN; FRANK KELLY; MARTHA MAIRENA CASTILLO; LACY LOAR; RICHARD WILLIAMS, ESQ.; GLENN MARICHI, M.D.; KEITH COLLINS, M.D.; JACK MANN, M.D.; THE ESTATE OF HOWARD SUSSMAN, M.D.; JOSEPH CAMPANELLA; CARL ROSENCRANTZ; and RAY GONZALEZ (collectively hereinafter "Defendants"), hereby allege and aver as follows:[1]

THE PARTIES

1. Defendants wrongfully secured $30 million from Plaintiffs, based on their conduct as alleged herein, and have breached their obligations, promises and representations to the Plaintiffs which were made to secure these funds. In doing so, they have continued to rake in funds from new victims.

2. Defendant Hygea Holdings Corp. ("Hygea") is a Nevada corporation with its principal place of business in Miami, Florida. It purports to be engaged in the business of acquiring and managing physician practices and similar medical providers. Its affairs are managed by a Board of Directors, which upon information and belief has fourteen members.

3. Defendant Manuel Iglesias ("Iglesias") is a citizen and resident of the State of Florida. Upon information and belief, he was the Chief Executive Officer of Hygea until approximately May 2018. Prior to that time and to the present, he was and is a member of Hygea's Board of Directors, currently serving as Co-Chairman of the Board.

4. Defendant Edward Moffly ("Moffly") is a citizen and resident of the State of Florida. Upon information and belief, he was the Chief Financial Officer of Hygea until departing at some point after Plaintiffs' investment. Prior to that time and to the present, he was and is a member of Hygea's Board of Directors.

[1] Plaintiffs hereby expressly reserve all rights to pursue a Default Judgment against Hygea Holdings Corp. as asserted in Plaintiffs' Motion for Entry of Default Judgment for Sum Certain Against Defendant Hygea Holdings Corp. filed June 12, 2018.

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5. Defendant Daniel T. McGowan ("McGowan") is a citizen and resident of the State of New York. He is Co-Chairman of the Board of Directors of Hygea Holdings Corporation.

6. Defendant Frank Kelly ("Kelly") is a citizen and resident of the State of Georgia. He is Vice Chairman of the Board of Directors of Hygea Holdings Corporation.

7. Defendant Martha Mairena Castillo ("Castillo") is a citizen and resident of the State of Florida. She is the CAO and member of the Board of Directors of Hygea Holdings Corporation.

8. Defendant Lacy Loar ("Loar") is a citizen and resident of the State of Florida. She is a member of the Board of Directors of Hygea Holdings Corporation.

9. Defendant Richard L. Williams, Esq. ("Williams") is a citizen and resident of the State of Florida. Upon information and belief, until approximately February 2018, he was the CLO and member of the Board of Directors of Hygea Holdings Corporation.

10. Defendant Glenn Marrichi, M.D. ("Marrichi") is a citizen and resident of the State of Georgia. He is a member of the Board of Directors of Hygea Holdings Corporation.

11. Defendant Keith Collins, M.D. ("Collins") is a citizen and resident of the State of Florida. Upon information and belief, as of approximately May 2018, Collins was named CEO of Hygea. Prior to that time, he served as a member of the Board of Directors of Hygea Holdings Corporation.

12. Defendant Jack Mann, M.D. ("Mann") is a citizen and resident of the State of New York. He is a member of the Board of Directors of Hygea Holdings Corporation.

13. Defendant Howard Sussman, M.D. ("Sussman"), who is presently believed to be deceased, was a citizen and resident of the State of Florida. He was, at all relevant times, a member of the Board of Directors of Hygea Holdings Corporation. A petition to open an estate for Mr. Sussman has been filed to administer his assets and liabilities.

14. Defendant Joseph Campanella ("Campanella") is a citizen and resident of the State of California. He is a member of the Board of Directors of Hygea Holdings Corporation.

15. Defendant Carl Rosencrantz ("Rosencrantz") is a citizen and resident of the State of Florida. He is a member of the Board of Directors of Hygea Holdings Corporation.

16. Defendant Ray Gonzalez ("Gonzalez") is a citizen and resident of the State of Florida. He was formerly a member of the Board of Directors of Hygea Holdings Corporation.

(Except for Hygea, Iglesias, and Moffly, the above named Defendants are collectively referred to as "the Other Board Member Defendants.").

17. Upon information and belief, at all times material to this Complaint, Iglesias and Moffly acted with the knowledge, direction, consent, and authorization of the Other Board Member Defendants, and all of the Defendants were involved in the transaction.

18. The issue of whether or not Plaintiffs invested, and the fact that Plaintiffs' investment was substantial, among other things, posed an existential consideration for the corporation of which Hygea's Board was either aware, or of which any functioning Board should have been aware.

19. The significance of Plaintiffs' investment—and, therefore, the Board's actual or imputed knowledge with respect to said investment—is manifest. For example, within a year of Plaintiffs' investment, Hygea became so "cash strapped" that it ceased paying its main lender. After about a year, Hygea and its Board admitted that Hygea faced a severe "cash crunch." Thus, Plaintiffs' $30 million infusion would have been clearly significant under these circumstances. At the very least, Plaintiffs' investment would have been a significant transaction as opposed to the corporation's day-to-day business transactions.

20. In fact, at least one former Hygea executive, Mr. Iglesias, has claimed that the Board was aware of and apprised of another infusion of cash to the corporation that was much smaller than Plaintiffs' investment.

21. In addition, Mr. Iglesias has claimed that expected cash infusions from investors were material to Hygea's financial performance indicators.

22. Thus, there was at least a tacit agreement between all of the Board Members to induce Plaintiffs to invest in Hygea, as set forth herein.

23. Defendants designated herein as Does and Roes are individuals and legal entities that are liable to Plaintiffs for the claims set forth herein in that they, directly and/or indirectly, participated in the conspiracy alleged herein and/or control the named Defendants set forth herein or are possible alter egos of the above-named Defendants. If discovery should reveal Defendants are participating in fraudulent transfers for the purpose of avoiding creditors such as Plaintiffs, then the Does and Roes may include members of these entities, the entities themselves, and/or third-party transferees, including but not limited to new entities formed for holding property and assets, and they shall be added as defendants herein. Any such transactions and the true capacities of Does and

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Roes are presently unknown to Plaintiffs and, therefore, Plaintiffs sue said Defendants by such fictitious names. Plaintiffs will amend their Complaint to assert the true names and capacities of such Does and Roes if and when more information has been ascertained.

24. Plaintiff N5HYG, LLC ("N5HYG") is a limited liability company organized under the laws of the State of Michigan for the purpose of acquiring the shares at issue in this lawsuit. All of its membership shares are owned by Plaintiff Nevada 5, Inc., a corporation organized under the laws of the State of Nevada.

25. Plaintiff Nevada 5, Inc. ("Nevada 5") is a corporation organized under the laws of the State of Nevada.

26. The amount in controversy exceeds $15,000, and venue and jurisdiction are proper in this Court.

GENERAL ALLEGATIONS

27. In 2016, Defendants undertook a public offering of stock in Hygea. While not made to the public at large through a public exchange, which would have been impossible given Hygea's financial distress, it was made to investors at large without any pre-existing relationship to Hygea.

28. An investment bank called CEA was involved in the issuance; played a role in Plaintiffs' investment; and has sued Hygea for commissions.

29. The public offering, which eventually ensnared Plaintiffs, had multiple purposes: Iglesias has testified that cash infusions would inflate the corporation's performance metrics; the severe cash crunch that emerged after Plaintiffs' investment shows that cash infusions were necessary to keep Hygea in business; and such survival (and performance-metric-inflation) served the financial interests of both Hygea and its Board.

30. Such infusions of cash from investors served the Board members' personal financial interests for several reasons: Iglesias is, along with his family, one of the largest shareholders in Hygea if not the largest; other Board members also own shares in Hygea, either directly or indirectly; all of the Board members had a professional interest in avoiding Hygea's collapse, in part because at least one of them has expressed concern that a bankruptcy would have harmed his ability to continue professionally in the health care field; and all of the Board members would have seen the value of their actual or potential shares in Hygea destroyed if the corporation collapsed.

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31. In 2016, as part of this offering, Nevada 5's agents were approached about the possibility of an investment in Hygea.

32. From the beginning of discussions, and at all times pertinent to the allegations in this Complaint, all of Hygea's representatives, including Defendants Iglesias and Moffly, acted and held themselves out as agents and representatives of Defendant Hygea.

33. At all relevant times pertinent to the allegations in this Complaint, Defendants were aware that representations, documents and other information that Defendants made or gave to Plaintiffs and/or Plaintiffs' authorized agents would be relied upon by Plaintiffs in deciding whether to make a substantial capital investment in Defendant Hygea, and Defendants intended that Plaintiffs would rely on those representations, documents, and other information.

34. Defendants made two sets of misrepresentations: they misrepresented Hygea's financial performance, and that after Nevada 5's investment, Hygea would "go public" through the issuance of shares on a public stock exchange. In reality, Defendants' financial performance turned out to be far worse than Defendants had claimed, and the impaired financial performance rendered a public-exchange offering impossible. These representations interlocked with one another, because Hygea's financial situation made a public-exchange offering impossible. Each of the two misrepresentations was an inducement upon which Plaintiffs independently relied. For these and other reasons likely to be uncovered during discovery, all Defendants knew or should have known that Hygea's then-existing financial situation made a public-exchange offering impossible at the time Plaintiffs acquired the shares.

35. These representations were made to personnel of RIN Capital. RIN Capital served at all relevant times as Plaintiffs' authorized agent; and whose agency on behalf of Plaintiffs was disclosed and known to Defendants. Defendants were aware that the representations they made to RIN Capital would be relied upon by Plaintiffs in deciding whether to make a substantial capital investment in Defendant Hygea. In short, everyone involved understood that anything communicated to RIN Capital equaled a communication to Plaintiffs. These RIN personnel included Dan Miller, Sean Darin, and Chris Fowler.

36. Over the course of the representations, it became clear that the proposed vehicle for a public-exchange offering was a "reverse takeover," or RTO, with a company on the Toronto Stock Exchange. Effectively, the public company would "takeover" Hygea in exchange for the public

company's stock, resulting in Hygea's effective presence on the exchange as a new public company. Defendants consistently represented that an RTO was imminent. On June 1, 2016, RIN's Dan Miller met with Iglesias and Moffly in Miami. They represented to him that Hygea was planning on going public in the fourth quarter of 2016.

37. On July 5, 2016, Dan Miller and Sean Darin had dinner in Miami with Iglesias, Moffly, and a representative of an investment bank, CEA, that was purportedly involved in the transaction. They met the next day at Hygea's office. At the July 6, 2016 meeting, Iglesias and Moffly represented to Dan Miller and Sean Darin that Hygea was a successful business that was poised for continued growth and a public-exchange offering of its stock.

38. Iglesias and Moffly represented to Plaintiffs that Hygea's business consisted of acquiring medical practices – primarily physician's practices – in Florida and surrounding states. By acquiring and consolidating the practices' non-medical operations, Hygea could supposedly realize value through economies of scale, improvements to billing and insurance coding practices, and more efficient business practices. Ideally, such a system would allow the doctors to concentrate on their medical practices while Hygea ran and improved the medical providers' business operations.

39. At this meeting and in ensuing communications, Iglesias and Moffly stressed that Hygea was profitable; that Hygea was growing; that the financial statements showed a high-performing company; that audited financial statements showing the supposed growth and success were being prepared and would be available soon; and that Hygea was poised for its RTO. As before, the explicit representation and implicit suggestion was that the planned RTO would be exceedingly remunerative to the shareholders at the time of the RTO.

40. Plaintiffs attempted to engage in a due diligence process to decide whether to make that substantial capital investment. On July 26, 2016, Plaintiffs' agent, Sean Darin, sent a due diligence list to Iglesias and Moffly, requesting that Defendants provide certain due diligence documentation and information. On July 27, 2016, Moffly acknowledged receipt of that list and referenced a "data room" and dropbox folder that contained the information Plaintiffs sought.

41. Defendants also provided Plaintiffs with documents and financial information on which they intended Plaintiffs would rely in making their decision as to whether to make a capital, equity investment in Defendant Hygea. The financial information provided up until the time of the

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investment itself encompassed numbers that (even if subject to apparently-reasonable ongoing adjustment) always fell within a relatively-narrow range, and which overall reflected a purportedly healthy company poised for an imminent RTO.[2] For example:

a. On or around June 27, 2016, Defendants sent RIN a Confidential Information Memorandum, or "CIM," apparently prepared by CEA, representing certain information about Hygea's financial performance. It represented favorable financial performance numbers for 2014 and 2015.

b. On August 2, 2016, Moffly provided Plaintiffs' agent, Dan Miller, with a final quarterly work file being used by third party financial analysts to perform a Quality of Earnings Report ("QoE") and a purported audit of Defendant Hygea's finances.

c. Plaintiffs were provided access to a purported transaction "data room" on approximately August 9, 2016.

d. On August 10, 2016, Defendant Moffly sent to Dan Miller a timeline for Defendant Hygea's public-exchange offering, which stated that the public-exchange offering would occur by the end of October 2016 at the latest.

e. On September 14, 2016, in response to a request from Plaintiffs' agent Dan Miller, Defendant Moffly formally transmitted the CIM, containing information pertinent to a potential investment deal, including updated unaudited financials. It showed favorable financial performance figures for 2013 through 2015.

f. On or about September 16, 2016, Defendant Moffly sent to Dan Miller a proposed deal structure, representing a purported Cormark valuation of Defendant Hygea at a very high level, and claimed that the company was actually ahead of the very favorable projections underlying the figure.

g. In multiple emails on September 20-21, 2016, Defendant Moffly stated that the final trial balances for June 30, 2016 would be finished in a matter of

[2] Defendants classified this information, and in particular the specific financial figures, as confidential. Defendants have these documents and are in possession of these exact figures. Plaintiffs will supply precise figures after the Court has entered an appropriate protective order or otherwise provided direction on this issue, or if Defendants stipulate to their inclusion in a public filing.

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hours with the "consolidation done by [outside accountants] CLA (Clifton Larson Allen, LLP) [. . .] but assembled by our accounting team."

h. On September 20, 2016, Defendant Moffly sent to Plaintiffs' agent Dan Miller a copy of financials, containing balance sheets, income statements, and a statement of cash flows, purportedly done by CPA firm Rodriguez, Trueba & Co. They once again showed a favorable financial performance over the 2013 through 2015 period.

i. In response to Plaintiffs' questions about Hygea's physician compensation structure and agreement issues, employee benefits, possible claims for unpaid bonuses, and Defendant Hygea's potential compliance issues, Defendant Hygea's representatives addressed Plaintiffs' questions via phone and email on September 22, 2016. On or about September 22, 2016, Tom Herrmann, Chief Compliance Officer of Defendant Hygea, provided information via a telephone call with Plaintiffs' agents to address Plaintiffs' compliance questions. On September 22, 2016, Plaintiffs received an email from Defendants' agents, providing context regarding existing physician contracts and bonus provisions.

j. On or around September 27, 2016, Defendants provided RIN with an Offering Memorandum with additional, and once again favorable representations as to Hygea's financial situation.

k. On September 29, 2016, Defendant Moffly sent to Dan Miller an email attaching a capital table structure analysis. The email stated that this attachment was approved by Cormark and Defendant Hygea's board. It indicated a favorable 2016 EBITDA that turned out to be false; claimed that "EBITDA Is (*sic*) ahead of schedule used 4 months ago with Cormark" when in fact the actual EBIDTA fell far short of all of the indicated figures; and reflected additional misleading valuation information as well.

l. On October 4, 2016, Defendant Moffly on behalf of Defendant Hygea sent to Dan Miller a copy of Hygea's Quality of Earnings Report ("QoE") dated

October 3, 2016, which was purportedly prepared by third party CLA, showing once again very favorable performance figures.

m. The October 3, 2016 QoE also showed for Defendant Hygea in the "trailing twelve months" from June 30, 2015 through June 30, 2016 continued healthy performance.

n. On October 5, 2016, Defendants Iglesias and Moffly on behalf of Defendant Hygea provided to Dan Miller and others a verification of Defendant Hygea's QoE.

42. As the deal neared, on September 20, 2016, Moffly told Dan Miller that the pre-RTO "road show" and following "quiet period" was currently scheduled to begin on October 3, 2016 but could be moved back a week if necessary. Once again, the representation was clear: an RTO was only weeks away and the process would begin as soon as Nevada 5 had made its investment.

43. At no time during these communications did any Defendant inform any representative of Nevada 5 that the purported forthcoming "growth" of Hygea would actually come from new investors, as opposed to earnings, or from non-standard, non-GAAP accounting methods applied to new medical practice acquisitions; or that the RTO would be impossible in light of Hygea's manifold deficiencies.

44. Eventually, Nevada 5, in reliance upon these representations and omissions, formed N5HYG to execute a Stock Purchase Agreement dated October 5, 2016, which N5HYG did. A copy of the Stock Purchase Agreement is in Defendants' possession.

45. All of the Board member Defendants exercised control over the transaction. They approved Hygea's entry into the Stock Purchase Agreement unanimously and without abstentions. The Board's approval explicitly referenced some of the financial figures that reflected the false representations. It also referenced the "IPO," which was clearly a reference to the RTO, in connection with Plaintiffs' investment. At the time, the Board either knew or should have known that Plaintiffs were investing based on false information; that the financial metrics set forth in the Board's approval documentation reflected false financial information; and that the company's true performance made an IPO or RTO impossible.

46. Under the terms of the Stock Purchase Agreement, N5HYG paid $30 million for 23,437,500 shares of Hygea's Common Stock, constituting 8.57% of the outstanding shares. *See*

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Stock Purchase Agreement § 3.3 (purchase price) and recitals (number of shares and percentage).

47. In the Stock Purchase Agreement, the parties agreed that the price of $1.28 per share "reflected the fair market value" of the company and that Plaintiffs were buying shares reflecting 8.57 percent of the company. Given that the shares cost $30 million in aggregate, and that $30 million is 8.57 percent of about $350 million, Defendants therefore agreed that the company was worth at least $350 million.

48. This valuation reflected and was consistent with the range of financial performance that Defendants had represented Hygea to have been achieving.

49. Under the Stock Purchase Agreement, Defendants were subject to numerous obligations to Plaintiffs, some of which were personally guaranteed by Defendants Iglesias and Moffly.

50. The Stock Purchase Agreement also reflected many of the representations that Defendants had made throughout the negotiations. For example, the Stock Purchase Agreement vouched for the accuracy of the financial statements provided during the negotiations:

> **Attached to Schedule 4.6.1 are true, correct and complete copies of** each of the following: (a) the consolidated audited balance sheets of Seller and the Subsidiaries as of December 31, 2013 and the related statements of profit and loss and changes in equity for the fiscal year then ended (the "2013 Yearly Financials"); and (b) that certain "Hygea Holdings Corp. Quality of Earnings Report Update – TTM June 30, 2016" prepared by independent accounting firm CliftonLarsonAllen LLP, dated as of October 3, 2016, including an unaudited consolidated balance sheet of Seller and the Subsidiaries as of June 30, 2016 (respectively, **the "Most Recent Balance Sheet,"** and the "Most Recent Balance Sheet Date") **and** the related unaudited consolidated statement of profit and loss and changes in equity of Seller and the Subsidiaries for the 6-month period then ended (collectively, **the "Most Recent Financials"**). Seller, together with CPA firm RT&C (Rodriguez, Trueba & Co) is in the process of completing the preparation of the consolidated audited balance sheets of Seller and the Subsidiaries as of December 31, 2014 and December 31, 2015 and the related statements of profit and loss and changes in equity for the fiscal years then ended (the "2014 & 2015 Yearly Financials" and, collectively with the Audited Financials, the "Yearly Financials"), true and correct copies of which shall be provided to Buyer promptly upon completion, but in any event no later than November 30, 2016, which 2014 & 2015 Yearly Financials (together with the Most Recent Financials), when completed and provided to Buyer, shall reflect shareholders' equity as of June 30, 2016 ….. The Most Recent Financials and the Yearly Financials are referred to

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herein collectively as the "Financials." Section 4.6.1. *See also* Section 4.25 (representation that "All of the books and records of Seller and each Subsidiary have been maintained in the Ordinary Course of Business and fairly reflect, in all material respects, all transactions of the Business.")(emphasis added).

51. These financial attachments continued the rosy representations; were consistent with ranges of performance previously represented; and constituted Defendants' concluding, warranted representations.

52. Defendant Hygea provided a certificate of satisfaction, dated October 5, 2016 and signed by Defendant Iglesias in his capacity as President and CEO, which stated that "[t]he representations and warranties of Seller made in the Purchase Agreement are true and correct in all respects at and as of the date hereof with the same force and effect as if made as of the date hereof."

53. After Plaintiffs' purchase, Plaintiffs learned that these representations had been incorrect and that Defendants had hidden the truth from them. The information showing that the representations were false and that material facts were omitted is uniquely and exclusively in Defendants' possession, despite their contractual, statutory, and common law obligations to provide the information to Plaintiffs. Nonetheless, despite this improper restriction on information, Plaintiffs have been able to learn certain things about Hygea's true status.

54. First, Plaintiffs learned that the RTO process did not begin immediately upon Plaintiffs' investment, and the RTO was not completed by the end of 2016 or beginning of 2017 as Defendants promised. Despite subsequent assurances that it would occur, it has never happened.

55. Indeed, because of Hygea's mismanagement of its financial records, its failure to provide support for its financial statements, and/or its intentional misrepresentations in various iterations of its financial statements, Hygea met with difficulties completing audits of its 2014 and 2015 financial statements. Consequently, Defendants elected not to complete the audited 2014 and 2015 financial statements and also elected not to try to "go public" with the RTO.

56. Indeed, at the time Plaintiffs invested, all of the Defendants either knew or should have known that an RTO on the timetable represented to Plaintiffs was, given Hygea's financial distress, impossible.

57. Moreover, it has recently become apparent that, far from enjoying robust growth, Hygea is running out of cash. It has failed to make certain contractual payments to Plaintiffs and, upon information and belief, it paid its payroll through its American Express account for some time

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until it was apparently poised to fail to "make payroll" during late 2017, until it ultimately was apparently able to do so. Upon information and belief, Hygea owes over $8 million to American Express plus interest.

58. Given Hygea's apparent troubles, Hygea hired an outside consultant, FTI, to review its financial performance. Led by an industry expert, FTI met with considerable impediments. For example, Hygea's management, including Moffly and Iglesias, was unable to produce complete, accurate, or adequate documentation supporting their financial statements and projections.

59. Nonetheless, FTI was able to reach certain conclusions about Hygea's status. On June 29, 2017, Plaintiffs learned that Defendants were making a partial disclosure of their previous misrepresentations, now representing that Hygea's 2016 EBITDA was far less than represented before the investment.

60. But even this "disclosure" was inaccurate. At this June 29, 2017 meeting, a senior FTI representative reported that he had evaluated the claimed "corrected" EBITDA for 2016. He called it "fabricated," and reported that EBITDA was actually about one seventh of the "corrected" figure, with the potential for a similarly meager increase if Hygea could remedy its severe operational deficiencies.

61. On July 12, 2017, the senior FTI representative called Chris Fowler at RIN. He reported that Hygea was refusing to provide 13 week cash flow projections; that he could not get a hold of the checking accounts; that Hygea's headquarters lacked access to the bank accounts, which were under Iglesias and Moffly's personal control; that Iglesias had admitted to "cooking the books" to avoid "issues" with a previous lender; and that Hygea had recently bought new medical practices despite its apparent distress.

62. Despite the roadblocks he had faced, the senior FTI representative was able to conclude and report to Fowler that "their numbers," that is, Hygea's financial performance figures for 2014 through 2016, "are not the same as the ones they gave" to Plaintiffs during the lead-up to Plaintiffs' investment. He added that he would not "come up with bullshit for [the] auditors," who supposedly would review the financial information.

63. The Senior FTI representative concluded that the EBITDA figures that were supportable were a fraction of those represented by Defendants.

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64. The senior FTI representative also explained in August 2017 that the reason for the QoE's blatant inaccuracy could have been because Defendants imposed constraints on the earnings review or otherwise manipulated the process. For example, Defendants appeared to manipulate the EBITDA figures through enormous medical record account, or "MRA," adjustments and by improperly accounting for medical practice acquisitions.

65. Upon information and belief, an accountant with one outside accounting firm told Iglesias and Moffly, "You can badger me, but I won't sign off on these" financials that Hygea presented.

66. Defendant Iglesias later claimed that at least one of his EBITDA figures had been based on the assumption that an additional $130 million influx into Hygea would materialize. It did not materialize. None of the Defendants ever told Plaintiffs that the EBITDA figures upon which Plaintiffs relied were premised upon such an assumption until Mr. Iglesias made the shocking admission many months after Plaintiffs' investment.

67. In other words, Defendants made representations of a healthy company poised for an imminent RTO, representing robust financial performance within the parameters of a successful and valuable business and concluding with warranted financial information within such parameters. Since Plaintiffs' investment, made in detrimental reliance on those representations, it has become apparent that the business's actual performance fell far short of such parameters and Defendants elected – that is, made the affirmative decision – not to pursue the RTO at all.

68. Moreover, in addition to Section 4.6.1, under Section 6.6 of the Stock Purchase Agreement, Defendants promised to provide accurate and complete 2014 and 2015 financials by November 30, 2016:

> 2014 & 2015 Financials. As promptly as practicable upon their completion, but in no event later than November 30, 2016, Seller shall deliver true, correct and complete copies of the 2014 & 2015 Financials to Buyer, which 2014 & 2015 Financials shall comport in all respects with the provisions set forth in Section 4.6.

69. This deadline has come and gone, but Defendants have failed, to the date of this complaint, to provide the promised financials. Indeed, Defendants have affirmatively elected not to complete the promised financials at all. Defendants have also failed to provide the promised projections and assumptions.

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70. Over the course of late 2017, the situation deteriorated markedly. Eventually, Hygea was forced to secure a "lifeline" from its lender in the form of a highly unusual loan from the lender, to Mr. Iglesias, and then to Hygea.

71. Nonetheless, Defendants long continued to pressure outside accountants for an endorsement of Hygea's books.

72. Moreover, subsequent to Plaintiffs' acquisition of Hygea stock, it has become clear that Defendants were baldly misrepresenting to Plaintiffs the value to Hygea of certain acquired medical practices. Even if Hygea acquired the practice late in a calendar year, it was allocating all of the practice's revenue from that year to itself – for example, upon information and belief, Defendants would buy a practice in October and count the practice's January through September income as Hygea's. Defendants' feeble explanation was that this was permitted by preexisting "management agreements." This is both illogical and untrue. The senior FTI representative spoke with Chris Fowler on or about September 6, 2017 and relayed that he had called three separate selling physicians to inquire about the purported management agreements. When he asked the selling physicians about this issue, they all stated that they knew nothing about these supposed "management agreements."

73. In addition, it has become apparent that Defendants continued to emphasize securing new investors to fill their coffers, to the detriment of the business model Defendants represented to Plaintiffs at the time of the Stock Purchase Agreement. In other words, despite the fact that Defendants were supposed to be realizing revenue from their skillful management of the acquired medical practices, such activity was not the primary source of the project's funds, thus adversely impacting the growth and revenue Defendants represented to Plaintiffs would occur.

74. Indeed, the entire theory behind Hygea's business model was that Hygea would realize efficiencies from effective business and accounting practices. Such a theory is entirely at odds with the way Defendants have actually run the operation (and, unbeknownst to Plaintiffs, at odds with the way Defendants were running the operation at the time of the Stock Purchase Agreement). Among other, worse things, this reflects Defendants' disorganized accounting and ineffective management.

75. As Defendants' fraud became apparent, Iglesias and Moffly began to outright avoid their responsibilities as officers. Moffly sought to resign when asked to sign the financials prepared

during his tenure, but ultimately agreed to stay on board to complete the same. But both he and Iglesias failed to appear for key meetings and refused to engage in communications with important investors and stakeholders, beginning in mid-late 2017.

76. Defendants have also failed to fulfil numerous other obligations under the Stock Purchase Agreement, some of which were personally guaranteed by Iglesias and Moffly. For example:

a. Beginning in or around August, 2017, Defendants ceased making the $175,000 Post-Closing Monthly Payments to Plaintiff N5HYG, and interest thereon, required under Section 6.3 of the Stock Purchase Agreement;

b. Beginning in or around February 2018, Defendants asserted that they issued additional shares in Hygea after Plaintiffs' investment in October 2016. If true, Defendants issued such shares without providing to Plaintiff N5HYG 60 days' notice and an opportunity to purchase additional shares to maintain its 8.57% ownership interest, as required under Section 6.4(a) of the Stock Purchase Agreement, and Defendants further failed to vote and otherwise take action to preserve the Stock Purchase Agreement's Buyer Investor Protections;

c. Beginning in or around Fall 2017, Defendants refused to allow Plaintiff N5HYG to attend Hygea Board meetings and purportedly revoked Plaintiff N5HYG's rights both to serve as a member of Hygea's Board and to have a designee serve as a non-voting observer of the Board, as required under Section 6.4(b) of the Stock Purchase Agreement.

77. Though Plaintiffs have pled facts that at least support a strong inference of fraud, the specifics of the full depth and breadth of Defendants' fraud is still currently unknown to Plaintiffs, as many of the documents and specifics regarding the true financial condition of the company—particularly in the 2014 through 2016 time frame—have been concealed and are peculiarly and exclusively within the possession of Defendants. As a result, the Plaintiffs should be allowed to avail themselves of the relaxed pleading standard under NRCP 9(b) and conduct the necessary discovery to learn the specifics of Defendants' fraud hereafter.

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78. Plaintiffs' injuries stem from Defendants' misconduct as set forth herein and as discovery will further reveal. Hygea's current distress reflects the continuation of the same poor performance that Defendants concealed before Plaintiffs' investment.

79. Plaintiffs are not required to tender back their shares in order to pursue their causes of action set forth in this Complaint. However, on September 18, 2017 they tendered back the shares they acquired under the Stock Purchase Agreement conditioned upon a full return of their purchase price plus interest, with such tender remaining open for 30 days and with such tender communicated to Hygea. This was and remains without prejudice to Plaintiffs' arguments, rights, remedies, claims, and legal theories, including their claims for damages beyond the amount reflected in such tender; it also was and remains without prejudice to Plaintiffs' ability to otherwise tender their shares for purposes of relief, including under their statutory securities fraud claim set forth below for return of their purchase price, plus interest, costs, and reasonable attorneys' fees plus whatever additional relief the Court determines is warranted. To date, Defendants have refused the tender. Unless and until the tender offer is accepted and Plaintiffs are otherwise fully compensated, Plaintiffs are entitled to pursue all remedies, exercise their rights as shareholders, and mitigate their damages.

FIRST CAUSE OF ACTION

Statutory Securities Fraud - (alleged by all Plaintiffs against all Defendants and Roes and Does)

80. Plaintiffs restate each allegation as set forth above.

81. For purposes of the Uniform Securities Act (the "Act"), at N.R.S. 90.295, the stock that Defendants sold to Plaintiffs was a "security."

82. Under the Act, at N.R.S. 90.570

> In connection with the offer to sell, sale, offer to purchase or purchase of a security, a person shall not, directly or indirectly:
>
> 1. Employ any device, scheme or artifice to defraud;
>
> 2. Make an untrue statement of a material fact or omit to state a material fact necessary in order to make the statements made not misleading in the light of the circumstances under which they are made; or
>
> 3. Engage in an act, practice or course of business which operates or would operate as a fraud or deceit upon a person.

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83. As set forth above, Defendants violated the Act by, among other things: employing a device, scheme or artifice to defraud; making at least one untrue statement of a material fact or omitting to state at least one material fact necessary in order to make the statements made not misleading in light of the circumstances under which they are made; and engaging in an act, practice or course of business which operates or would operate as a fraud or deceit upon a person.

84. These communications came from one Nevada corporation to another. Thus, they were made and received in Nevada for purposes of the Act.

85. The Act provides for rescission and civil liability for these violations.

86. As set forth above, Plaintiffs offered to tender back their shares. For purposes of all of Plaintiffs' claims under the Act, Plaintiffs remain willing to tender back N5HYG, LLC's shares in Hygea for their purchase price, plus the interest and contractual payments that continue to accrue and otherwise subject to the provisions of paragraph 79 above.

87. Accordingly, Defendants are liable to Plaintiffs for their violation of the Act in selling the securities to Plaintiffs.

WHEREFORE, Plaintiffs pray that this Honorable Court award them a Judgment against Defendants in an amount to be determined and such equitable relief that it deems to be appropriate, including statutory rescission.

SECOND CAUSE OF ACTION

Federal Statutory Securities Fraud - (by all Plaintiffs against all Defendants and Roes and Does)

88. Plaintiffs restate each allegation as set forth above.

89. For purposes of the Securities Act of 1933 (the "Federal Act"), the stock that Defendants sold to Plaintiffs was a "security."

90. Defendants sold the stock to Plaintiffs through interstate commerce and through the means and instrumentalities thereof.

91. The Federal Act further states:

> It shall be unlawful for any person in the offer or sale of any securities (including security-based swaps) or any security-based swap agreement (as defined in section 78c(a)(78) of this title) by the use of any means or instruments of transportation or communication in interstate commerce or by use of the mails, directly or indirectly

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> (1) to employ any device, scheme, or artifice to defraud, or
>
> (2) to obtain money or property by means of any untrue statement of a material fact or any omission to state a material fact necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading; or
>
> (3) to engage in any transaction, practice, or course of business which operates or would operate as a fraud or deceit upon the purchaser. 15 U.S.C. § 77q.

92. As set forth above, Defendants violated 15 U.S.C. § 77q through interstate commerce by, among other things, employing a device, scheme or artifice to defraud; making at least one untrue statement of a material fact or omitting to state at least one material fact necessary in order to make the statements made not misleading in the light of the circumstances under which they are made; and engaging in an act, practice or course of business which operates or would operate as a fraud or deceit upon a person.

93. The Federal Act provides for rescission and civil liability for these violations:

> Any person who— . . .
>
> > (2) offers or sells a security . . . by the use of any means or instruments of transportation or communication in interstate commerce or of the mails, by means of a prospectus or oral communication, which includes an untrue statement of a material fact or omits to state a material fact necessary in order to make the statements, in the light of the circumstances under which they were made, not misleading (the purchaser not knowing of such untruth or omission), and who shall not sustain the burden of proof that he did not know, and in the exercise of reasonable care could not have known, of such untruth or omission, shall be liable, subject to subsection (b), to the person purchasing such security from him, who may sue either at law or in equity in any court of competent jurisdiction, to recover the consideration paid for such security with interest thereon, less the amount of any income received thereon, upon the tender of such security, or for damages if he no longer owns the security. 15 U.S.C. § 77l.

94. Materials provided by Defendants to Plaintiffs, including the CIM, constituted one or more prospectus or oral communication, because they constituted one or more documents that describe a public offering of securities by an issuer or controlling shareholder containing generally the sort of information that would be included in an SEC-filed registration statement, had Defendants prepared and filed one. Additional documents and oral representations as set forth above

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constituted representations relating to such document(s). As set forth above, these documents contained untrue statement of a material fact or omits to state a material fact necessary in order to make the statements, in the light of the circumstances under which they were made, not misleading.

95. All of the Defendants engaged in making these misrepresentations as set forth above.

96. Accordingly, Defendants are liable to Plaintiffs for their violation of the Federal Act in selling the securities to Plaintiffs.

WHEREFORE, Plaintiffs pray that this Honorable Court award them a Judgment against Defendants in an amount to be determined after trial and such equitable relief it deems to be appropriate, including statutory rescission.

THIRD CAUSE OF ACTION

Failure to Comply with State Registration Requirements (alleged by all Plaintiffs against all Defendants and Roes and Does)

97. Plaintiffs restate each allegation as set forth above.

98. For purposes of the Uniform Securities Act (the "Act"), the stock that Defendants sold to Plaintiffs was a "security."

99. On or around September 28, 2016, Defendants provided RIN with an Offering Memorandum claiming that its offer was being made pursuant to Regulation D under the Securities Act of 1933, purportedly obviating the need for defendant to properly register the security in accordance with federal and state law.

100. It was unlawful for Defendants to offer to sell or to sell any security unless the security was either registered in accordance with state law pursuant to NRS 90.460 or subject to the exemption provided for a Regulation D offering pursuant to NRS 90.515.

101. Defendants did not register a security in accordance with NRS 90.460.

102. Defendants did not qualify for an exemption in accordance with NRS 90.515 or NRS 90.530. Among other things, Defendants did not file a copy of notice of sale of securities pursuant to Regulation D ("notice of sale") with the Administrator of the Division; Defendants' provision of false information, withholding of information, and failure to provide information as set forth above, rendered the "Regulation D exception" unavailable under 17 CFR 230.500 and 17 CFR 230.502; Defendants failed to file the federal documents required under 17 CFR 230.503; and the purported

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use of Regulation D was invalid as "part of a plan or scheme to evade the registration provisions of the Act" under 17 CFE 230.500(f).

103. Defendants failed to register the securities as required by the Federal Act.

104. All Defendants participated in and oversaw this violative conduct.

105. The Act provides for rescission and civil liability for these violations.

106. Accordingly, Defendants are liable to Plaintiffs for their violation of the Act in selling the securities to Plaintiffs.

WHEREFORE, Plaintiffs pray that this Honorable Court award them a Judgment against Defendants in an amount to be determined and such equitable relief that it deems to be appropriate, including statutory rescission.

FOURTH CAUSE OF ACTION

Failure to Comply with Federal Registration Requirements (alleged by all Plaintiffs against all Defendants and Roes and Does)

107. Plaintiffs restate each allegation as set forth above.

108. For purposes of the Securities Act of 1933 (the "Federal Act"), the stock that Defendants sold to Plaintiffs was a "security."

109. Defendants sold the stock to Plaintiffs through interstate commerce and through the means and instrumentalities thereof.

110. On or around September 28, 2016, Defendants provided RIN with an Offering Memorandum claiming that its offer was being made pursuant to "Regulation D" under the Federal Act, purportedly obviating the need for defendant to properly register the security in accordance with federal law.

111. Defendants were in fact ineligible for the "Regulation D exception." For example, Defendants' provision of false information, withholding of information, and failure to provide information as set forth above, rendered the "Regulation D exception" unavailable under 17 CFR 230.500 and 17 CFR 230.502; Defendants failed to file the documents required under 17 CFR 230.503; and the purported use of Regulation D was invalid as "part of a plan or scheme to evade the registration provisions of the [Federal] Act" under 17 CFE 230.500(f).

112. Defendants failed to register the securities as required by the Federal Act.

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113. The Federal Act provides for rescission and civil liability for these violations. *See, e.g.,* 15 USC 77l(a)(1).

114. All Defendants participated in and oversaw this violative conduct.

115. Accordingly, Defendants are liable to Plaintiffs for their violation of the Federal Act in selling the securities to Plaintiffs.

WHEREFORE, Plaintiffs pray that this Honorable Court award them a Judgment against Defendants in an amount to be determined and such equitable relief that it deems to be appropriate, including statutory rescission.

FIFTH CAUSE OF ACTION

Control Person Liability under the Nevada Uniform Securities Act (alleged by Plaintiffs against Iglesias, Moffly, and the Other Board Member Defendants)

116. Plaintiffs restate each allegation as set forth above.

117. Each of Iglesias, Moffly, and the Other Board Members materially engaged in and/or aided Defendant Hygea in the acts, omissions, purchase and sale, and failure to register the securities and other security fraud violations and/or transactions constituting Defendant Hygea's securities fraud in violation of the Nevada Uniform Securities Act in that each of them were the natural persons who acted on behalf of Defendant Hygea in directing or making the misrepresentations set forth herein.

118. Plaintiffs sustained and suffered damage proximately caused by the joint concert of action Defendants in an amount exceeding $15,000, including costs, interest, and attorneys' fees.

119. Pursuant to the Uniform Securities Act, Iglesias, Moffly, and the Other Board Members are jointly and severally liable to Plaintiffs with and to the same extent as Defendant Hygea.

120. Iglesias, Moffly, and the Other Board Members have acted toward Plaintiffs with oppression, fraud, or malice, express or implied, such that Plaintiffs may recover exemplary and punitive damages for the sake of example and by way of punishing Iglesias, Moffly, and the Other Board Members pursuant to NRS 42.005 in an amount in excess of fifteen thousand dollars.

WHEREFORE Plaintiffs request that this Court enter a judgment in their favor for the amount of damages to which they are found to be entitled, plus costs and attorneys' fees, and any

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exemplary and punitive damages, statutory damages, and equitable relief to which they are found to be entitled.

SIXTH CAUSE OF ACTION

Control Person Liability under the Federal Securities Act (alleged by Plaintiffs against Iglesias, Moffly, and the Other Board Member Defendants)

121. Plaintiffs restate each allegation as set forth above.

122. Iglesias, Moffly, and the Other Board Member Defendants either violated the Federal Act as set forth above, or by or through stock ownership, agency, or otherwise, or pursuant to or in connection with an agreement or understanding with one or more other persons by or through stock ownership, agency, or otherwise, controlled the person(s) who did so.

123. Pursuant to 15 USC 77o, these Defendants are jointly and severally liable to Plaintiffs.

WHEREFORE, Plaintiffs pray that this Honorable Court award them a Judgment against these Defendants in an amount to be determined and such equitable relief that it deems to be appropriate, including statutory rescission.

SEVENTH CAUSE OF ACTION

Common Law Fraud (alleged by all Plaintiffs against all Defendants and Roes and Does)

124. Plaintiffs restate each allegation as set forth above.

125. As set forth above, Defendants made false representations.

126. Defendants knew or believed the representations were false, or had an insufficient basis for making the representations, and Defendants' conduct was fraudulent, malicious or oppressive.

127. Defendants intended to induce Plaintiffs to act in reliance upon the misrepresentations, in particular, by purchasing the Hygea stock.

128. Plaintiffs justifiably relied upon the misrepresentations.

129. Plaintiffs were injured and damaged as a result of this reliance in an amount exceeding $15,000, including costs, interest, and attorneys' fees.

WHEREFORE, Plaintiffs pray that this Honorable Court award them a Judgment against Defendants in an amount to be determined, including all compensatory, exemplary, and punitive damages, costs, interest, and attorneys' fees, and such equitable relief as it deems to be appropriate,

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including rescission of the Stock Purchase Agreement and the return to Plaintiffs of not less than their $30 million purchase price plus interest.

EIGHTH CAUSE OF ACTION

Negligent Misrepresentation (alleged by all Plaintiffs against all Defendants and Roes and Does)

130. Plaintiffs restate each allegation as set forth above.

131. Defendants had a pecuniary interest in selling Hygea stock to Plaintiffs.

132. Defendants supplied false information for the guidance of Plaintiffs in their business transaction, and failed to exercise reasonable care or competence in obtaining or communicating the information.

133. Plaintiffs justifiably and foreseeably relied upon this false information.

134. Plaintiffs were pecuniarily injured and damaged as a result of this reliance in an amount exceeding $15,000, including costs, interest, and attorneys' fees.

WHEREFORE, Plaintiffs pray that this Honorable Court award them a Judgment against Defendants in an amount to be determined, including all compensatory, exemplary, and punitive damages, costs, interest, and attorneys' fees, and such equitable relief as it deems to be appropriate, including rescission of the Stock Purchase Agreement and the return to Plaintiffs of not less than their $30 million purchase price plus interest.

NINTH CAUSE OF ACTION

Silent Fraud/Material Omissions (alleged by all Plaintiffs against all Defendants and Roes and Does)

135. Plaintiffs restate each allegation as set forth above.

136. As set forth above, Defendants had: (a) superior knowledge regarding Hygea and their proposed and eventual sale of Hygea stock to Plaintiffs, (b) knowledge which was not within the fair and reasonable reach of Plaintiffs and which Plaintiffs could not discover by the exercise of reasonable diligence, and/or (c) means of knowledge which were not open to both Defendants and Plaintiffs alike.

137. Defendants omitted material facts in their communications with Plaintiffs, and Defendants' conduct was fraudulent, malicious or oppressive.

138. Plaintiffs relied upon Defendants to communicate to them the true state of facts to enable them to properly, fully, and fairly evaluate the bargain.

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139. Plaintiffs were injured and damaged as a result of this reliance in an amount exceeding $15,000, including costs, interest, and attorneys' fees.

WHEREFORE, Plaintiffs pray that this Honorable Court award them a Judgment against Defendants in an amount to be determined, including all compensatory, exemplary, and punitive damages, costs, interest, and attorneys' fees, and such equitable relief as it deems to be appropriate, including rescission of the Stock Purchase Agreement and the return to Plaintiffs of not less than their $30 million purchase price plus interest.

TENTH CAUSE OF ACTION

Breach of Contract (alleged by N5HYG against Hygea, Iglesias, and Moffly)

140. Plaintiffs restate each allegation as set forth above.

141. The Stock Purchase Agreement was a valid contract to which Hygea, Iglesias, and Moffly are bound.

142. These Defendants breached the Stock Purchase Agreement as set forth above. For example, they have failed to provide the 2016 audited financials; they have elected not to complete the 2014 and 2015 audited financials; they have improperly diluted Plaintiffs' shares, or, alternatively, have improperly claimed to have diluted such shares to their benefit in other litigation involving N5HYG; they have improperly excluded Plaintiff N5HYG from Hygea Board meetings and have purportedly improperly revoked Plaintiff N5HYG's rights to appoint a designee to serve on Hygea's Board and also to designate a non-voting observer at Board meetings; they have failed to make the $175,000 Post-Closing Monthly Payments to Plaintiff N5HYG, and interest thereon (which payments and interest were personally guaranteed by Iglesias and Moffly); they have failed to provide the reports required by Section 6.4(c); and have otherwise failed to meet other obligations as required, some of which were also personally guaranteed by Iglesias and Moffly. On information and belief, these Defendants have breached the Stock Purchase Agreement by way of other acts and/or omissions which further analysis and discovery will reveal.

143. Plaintiffs have been injured and damaged by these breaches in an amount exceeding $15,000, including costs, interest, and attorneys' fees.

WHEREFORE, Plaintiffs pray that this Honorable Court award them a Judgment against Hygea, Iglesias, and Moffly in an amount to be determined and such equitable relief as it deems to

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be appropriate, including rescission of the Stock Purchase Agreement as discussed further in Count X below.

ELEVENTH CAUSE OF ACTION

Rescission of Contract (alleged by N5HYG against Hygea, Iglesias, and Moffly)

144. Plaintiffs restate each allegation as set forth above.

145. The Stock Purchase Agreement was a contract to which Hygea, Iglesias, and Moffly are bound.

146. These Defendants have failed to perform under the Stock Purchase Agreement as set forth above. For example, they have failed to provide the financials and meet other obligations as required, some of which were personally guaranteed by Iglesias and Moffly, and have denied Plaintiffs the benefits of their stock ownership through their mismanagement, misconduct, and violations of Plaintiffs' rights under the Stock Purchase Agreement and as a shareholder. On information and belief, these Defendants have breached the Stock Purchase Agreement by way of other acts and/or omissions which further analysis and discovery will reveal.

147. Moreover, Defendants have intentionally elected not to complete the process of obtaining audited 2014 and 2015 financial statements and have intentionally elected not to proceed with the RTO, both of which were also material inducements to Plaintiffs' entering into the Stock Purchase Agreement and their corresponding $30 million payment to Hygea.

148. This failure of performance defeats the very object of the contract or renders that object impossible of attainment, and/or concerns a matter of such prime importance that the contract would not have been made by Plaintiffs if default on that particular provision had been expected or contemplated.

149. Plaintiffs have been injured and damaged by these breaches in an amount exceeding $15,000, including costs, interest, and attorneys' fees.

WHEREFORE, Plaintiffs pray that this Honorable Court award them a Judgment against Hygea, Iglesias, and Moffly in an amount to be determined and such equitable relief as it deems to be appropriate, encompassing rescission of the Stock Purchase Agreement and the return to Plaintiffs of not less than their $30 million purchase price plus interest.

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TWELFTH CAUSE OF ACTION

Breach of Fiduciary Duty and Waste of Corporate Assets
(alleged by all Plaintiffs against Iglesias, Moffly, and the Other Board Member Defendants)

150. Plaintiffs restate each allegation as set forth above.

151. Iglesias, Moffly, and the Other Board Member Defendants owed a fiduciary duty to Plaintiffs for reasons including, but not limited to, their positions as officers and directors of Hygea. Based on their fiduciary relationships, Iglesias, Moffly, and the Other Board Member Defendants specifically owe Plaintiffs the highest fiduciary obligations in the management and administration of the affairs of Hygea, including oversight of compliance with federal laws and securities regulations; compliance with the letter and spirit of Plaintiffs' shareholder rights under the Stock Purchase Agreement, Hygea's governing documents, Nevada statutes, and the common law; the provision of ongoing information relating to Hygea's operations, management, and performance; and the practice of keeping themselves informed as to such issues.

152. These Defendants breached these duties.

153. These breaches have proximately caused injuries and damages to Plaintiffs and wasted valuable corporate assets of Hygea in an amount exceeding $15,000, including costs, interest, and attorneys' fees.

154. These breaches have injured Plaintiffs individually, as Defendants have violated Plaintiffs' individual shareholder rights through, for example, denying Board observation rights, withholding contractual payments, refusing information, threatening Plaintiffs' associates, and otherwise.

155. Moreover, Plaintiffs would receive the benefit of any recovery or remedy awarded relating to this claim. A substantial share of the stock is held by Defendants or their affiliates. In fact, it appears that Hygea has purportedly issued additional shares to Mr. Iglesias's family even since Plaintiffs brought this lawsuit. Thus, when these Defendants mismanage Hygea to their own benefit, the harm falls disproportionately upon innocent shareholders such as N5HYG – what Defendants "lose" as shareholders they gain back from the fruits of their misconduct, and then some. In short, these Defendants are running Hygea as an enterprise that benefits them, underwritten by and at the expense of investors such as Plaintiffs.

156. In the alternative, it would be futile for Plaintiffs to demand that Hygea's Board bring an action against Defendants here, for multiple reasons. There is overwhelming overlap between the current Board and the Board Member Defendants in this case. Such a demand would constitute a demand for the Board Members to authorize a lawsuit against themselves. Moreover, the current Board has consistently shown an inclination to fight tooth and nail against Plaintiffs. For example, in addition to this case, Plaintiff N5HYG, LLC joined other shareholders in petitioning for the appointment of a receiver over Hygea. Hygea argued that the Board Members had to be added as necessary parties, so N5HYG, LLC and its co-Plaintiffs in the receivership action named them as Defendants by stipulation with Hygea. They vigorously contested the receivership action. This vigorous contest is consistent with the Board's longstanding deference to Mr. Iglesias and Hygea's management generally.

WHEREFORE, Plaintiffs pray that this Honorable Court award them a Judgment against Iglesias, Moffly, and the Other Board Member Defendants in an amount to be determined and such equitable relief as it deems to be appropriate.

THIRTEENTH CAUSE OF ACTION

Breach of the Duty of Candor (alleged by all Plaintiffs against Iglesias, Moffly, and the Other Board Member Defendants)

157. Plaintiffs restate each allegation as set forth above.

158. Iglesias, Moffly, and the Other Board Member Defendants owed a duty of candor to Plaintiffs for reasons including, but not limited to, their positions as officers and directors of Hygea.

159. Iglesias, Moffly, and the Other Board Member Defendants issued, caused to be issued, and/or disseminated false and misleading information to Plaintiffs and to other shareholders regarding, among other things, the finances of Hygea, Hygea's business model, and the conduct of Hygea's officers and directors, as described herein.

160. By these actions, Iglesias, Moffly, and the Other Board Member Defendants breached their respective duties of candor owed to Plaintiffs and Hygea's other shareholders.

161. Moreover, Plaintiffs would receive the benefit of any recovery or remedy awarded relating to this claim. A substantial share of the stock is held by Defendants or their affiliates. In fact, it appears that Hygea has purportedly issued additional shares to Mr. Iglesias's family even since Plaintiffs brought this lawsuit. Thus, when these Defendants mismanage Hygea to their own

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benefit, the harm falls disproportionately upon innocent shareholders such as N5HYG – what Defendants "lose" as shareholders they gain back from the fruits of their misconduct, and then some. In short, these Defendants are running Hygea as an enterprise that benefits them, underwritten by and at the expense of investors such as Plaintiffs.

162. In the alternative, it would be futile for Plaintiffs to demand that Hygea's Board bring an action against Defendants here, for multiple reasons. There is overwhelming overlap between the current Board and the Board Member Defendants in this case. Such a demand would constitute a demand for the Board Members to authorize a lawsuit against themselves. Moreover, the current Board has consistently shown an inclination to fight tooth and nail against Plaintiffs. For example, in addition to this case, Plaintiff N5HYG, LLC joined other shareholders in petitioning for the appointment of a receiver over Hygea. Hygea argued that the Board Members had to be added as necessary parties, so N5HYG, LLC and its co-Plaintiffs in the receivership action named them as Defendants by stipulation with Hygea. They vigorously contested the receivership action. This vigorous contest is consistent with the Board's longstanding deference to Mr. Iglesias and Hygea's management generally.

163. These breaches have proximately caused injuries and damages to Plaintiffs in an amount exceeding $15,000, including costs, interest, and attorneys' fees.

WHEREFORE, Plaintiffs pray that this Honorable Court award them a Judgment against Iglesias, Moffly, and the Other Board Member Defendants in an amount to be determined and such equitable relief as it deems to be appropriate.

FOURTEENTH CAUSE OF ACTION

Breach of the Duty of Loyalty (alleged by all Plaintiffs against Iglesias, Moffly, and the Other Board Member Defendants)

164. Plaintiffs restate each allegation as set forth above.

165. Iglesias, Moffly, and the Other Board Member Defendants owed a duty of loyalty to Plaintiffs for reasons including, but not limited to, their positions as officers and directors of Hygea.

166. The wrongful conduct of Iglesias, Moffly, and the Other Board Member Defendants, as more fully described herein, breached their respective duties of loyalty to Plaintiffs. This conduct has included, but has not been limited to, denying Board observation rights, withholding contractual payments, refusing information, threatening Plaintiffs' associates, mismanaging or allowing the

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mismanagement of Hygea's finances, operating a wide-ranging network of affiliated corporations to the detriment of Hygea-proper, placing themselves in a conflicted position, and prioritizing their personal interests over Hygea's.

167. Moreover, Plaintiffs would receive the benefit of any recovery or remedy awarded relating to this claim. A substantial share of the stock is held by Defendants or their affiliates. In fact, it appears that Hygea has purportedly issued additional shares to Mr. Iglesias's family even since Plaintiffs brought this lawsuit. Thus, when these Defendants mismanage Hygea to their own benefit, the harm falls disproportionately upon innocent shareholders such as N5HYG – what Defendants "lose" as shareholders they gain back from the fruits of their misconduct, and then some. In short, these Defendants are running Hygea as an enterprise that benefits them, underwritten by and at the expense of investors such as Plaintiffs.

168. In the alternative, it would be futile for Plaintiffs to demand that Hygea's Board bring an action against Defendants here, for multiple reasons. There is overwhelming overlap between the current Board and the Board Member Defendants in this case. Such a demand would constitute a demand for the Board Members to authorize a lawsuit against themselves. Moreover, the current Board has consistently shown an inclination to fight tooth and nail against Plaintiffs. For example, in addition to this case, Plaintiff N5HYG, LLC joined other shareholders in petitioning for the appointment of a receiver over Hygea. Hygea argued that the Board Members had to be added as necessary parties, so N5HYG, LLC and its co-Plaintiffs in the receivership action named them as Defendants by stipulation with Hygea. They vigorously contested the receivership action. This vigorous contest is consistent with the Board's longstanding deference to Mr. Iglesias and Hygea's management generally.

169. These breaches have proximately caused injuries and damages to Plaintiffs in an amount exceeding $15,000, including costs, interest, and attorneys' fees.

WHEREFORE, Plaintiffs pray that this Honorable Court award them a Judgment against Iglesias, Moffly, and the Other Board Member Defendants in an amount to be determined and such equitable relief as it deems to be appropriate.

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FIFTEENTH CAUSE OF ACTION

Minority Shareholder Oppression (alleged by N5HYG against Iglesias, Moffly, and the Other Board Member Defendants, with Hygea as a nominal Defendant to the extent necessary to afford complete relief)

170. Plaintiffs restate each allegation as set forth above.

171. Hygea has a limited number of shareholders and is not a publically traded corporation.

172. Iglesias, Moffly, and the Other Board Member Defendants have control and have exercised control over Hygea.

173. N5HYG is a minority shareholder of Hygea.

174. Iglesias, Moffly, and the Other Board Member Defendants have abused their position of control over Hygea to violate N5HYG's rights as a shareholder.

175. N5HYG has been injured and damaged thereby in an amount exceeding $15,000, including costs, interest, and attorneys' fees.

WHEREFORE, Plaintiffs pray that this Honorable Court award them a Judgment against Defendants in an amount to be determined and such equitable relief as it deems to be appropriate.

SIXTEENTH CAUSE OF ACTION

Tortious Interference with Contract (alleged as to Defendants Iglesias, Moffly, and the Other Board Member Defendants)

176. Plaintiffs reallege the previous paragraphs as if set forth here.

177. Plaintiffs invested in Hygea and N5HYG entered into the Stock Purchase Agreement.

178. Iglesias, Moffly, and the Other Board Member Defendants knew about this contract and undertook intentional acts intended or designed to disrupt the contractual relationship by, for example, intentionally causing Hygea to withhold the payments required by the contract, causing it to violate Plaintiffs' Board observer rights under the contract, and causing it to deprive Plaintiffs of the information to which they are and were entitled. These acts have disrupted the contract and effectively negated any benefit to Plaintiffs from their investment through the conduct set forth above, and have caused Hygea to breach its obligations to N5HYG under the Stock Purchase Agreement.

179. For purposes of this Count, Plaintiffs allege in the alternative that the individual Defendants took these actions outside the scope of their agency with respect to Hygea.

180. These breaches have injured and damaged Plaintiffs in an amount exceeding $15,000, including costs, interest, and attorneys' fees.

181. These Defendants caused these breaches intentionally in order to wrongfully secure Plaintiffs' money for their own purposes.

WHEREFORE Plaintiffs requests that this Court enter a judgment in their favor for the amount of compensatory and exemplary and punitive damages to which they are found to be entitled, plus costs and attorneys' fees, and any equitable relief to which they are found to be entitled.

SEVENTEENTH CAUSE OF ACTION

Civil Conspiracy (alleged as to all Defendants and Roes and Does)

182. Plaintiffs reallege the previous paragraphs as if set forth here.

183. Defendants had an agreement or preconceived plan to commit the wrongful conduct set forth above, including to mislead Plaintiffs into acquiring Hygea stock, to refuse to honor the promises made to Plaintiffs after such acquisition, and to otherwise violate N5HYG's rights as a shareholder.

184. Defendants intended to achieve an unlawful result.

185. Defendants acted in furtherance of their agreement.

186. There was concerted action between and among Defendants.

187. Defendants wrongfully conspired with each other with the intent to and for the illegal purposes set forth above, including to mislead Plaintiffs into acquiring Hygea stock, to refuse to honor the promises made to Plaintiffs after such acquisition, and to otherwise violate N5HYG's rights as a shareholder.

188. For purposes of this Count, Plaintiffs allege in the alternative that the individual Defendants took these actions outside the scope of their agency with respect to Hygea.

189. These actions have injured and damaged Plaintiffs in an amount exceeding $15,000, including costs, interest, and attorneys' fees.

WHEREFORE, Plaintiffs pray that this Honorable Court award them a Judgment against Defendants in an amount to be determined and such equitable relief as it deems to be appropriate, including rescission of the Stock Purchase Agreement and the return to Plaintiffs of an amount not less than their $30 million purchase price plus interest.

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EIGHTEENTH CAUSE OF ACTION

Concert of Action (alleged as to all Defendants and Roes and Does)

190. Plaintiffs reallege the previous paragraphs as if set forth here.

191. Defendants engaged in a concert of action under which individually and collectively they acted tortiously pursuant to a common design by the conduct set forth above, including to mislead Plaintiffs into acquiring Hygea stock, to interfere with the promises made to Plaintiffs after such acquisition, and to otherwise violate N5HYG's rights as a shareholder.

192. Defendants jointly engaged in tortious activity.

193. For purposes of this Count, Plaintiffs allege in the alternative that the individual Defendants took these actions outside the scope of their agency with respect to Hygea.

194. Each of the Defendants is liable for the harm caused by the others because all acted jointly.

195. Plaintiffs sustained and suffered damage proximately caused by the joint concert of action Defendants in an amount exceeding $15,000, including costs, interest, and attorneys' fees.

WHEREFORE Plaintiffs request that this Court enter a judgment in their favor for the amount of damages to which they are found to be entitled, plus costs and attorneys' fees, and any equitable relief to which they are found to be entitled, including rescission of the Stock Purchase Agreement and the return to Plaintiffs of an amount not less than their $30 million purchase price plus interest.

NINETEENTH CAUSE OF ACTION

Unjust Enrichment (alleged as to Defendants Iglesias, Moffly, and the Other Board Member Defendants)

196. Plaintiffs reallege the previous paragraphs as if set forth here.

197. Each of Iglesias, Moffly, and the Other Board Members was or is being unjustly compensated by Hygea and its shareholders, despite the failure of their stewardship of Hygea and their personal implication in the wrongdoing set forth herein. Iglesias and Moffly have secured substantial financial benefits from their roles at and related to Hygea. In fact, Hygea appears to be a substantial component of Iglesias's family wealth strategy. Several Defendants are or have been paid a salary by Hygea. And all of the Board Members receive benefits of value from their position as Board Members and/or their relationship with Hygea. Again, the individual Defendants have used

Hygea for their own personal benefit. The individual Defendants were especially enriched by Plaintiffs given the significance of Plaintiffs' investment as set forth above – Plaintiffs provided a substantial "lifeline" to the corporation, which would soon be effectively out of cash despite its rosy representations *and* despite the enormous influx from Plaintiffs. .

198. Each Defendant understood and accepted the benefit of this enrichment.

199. Moreover, Plaintiffs would receive the benefit of any recovery or remedy awarded relating to this claim. A substantial share of the stock is held by Defendants or their affiliates. In fact, it appears that Hygea has purportedly issued additional shares to Mr. Iglesias's family even since Plaintiffs brought this lawsuit. Thus, when these Defendants mismanage Hygea to their own benefit, the harm falls disproportionately upon innocent shareholders such as N5HYG – what Defendants "lose" as shareholders they gain back from the fruits of their misconduct, and then some. In short, these Defendants are running Hygea as an enterprise that benefits them, underwritten by and at the expense of investors such as Plaintiffs.

200. In the alternative, it would be futile for Plaintiffs to demand that Hygea's Board bring an action against Defendants here, for multiple reasons. There is overwhelming overlap between the current Board and the Board Member Defendants in this case. Such a demand would constitute a demand for the Board Members to authorize a lawsuit against themselves. Moreover, the current Board has consistently shown an inclination to fight tooth and nail against Plaintiffs. For example, in addition to this case, Plaintiff N5HYG, LLC joined other shareholders in petitioning for the appointment of a receiver over Hygea. Hygea argued that the Board Members had to be added as necessary parties, so N5HYG, LLC and its co-Plaintiffs in the receivership action named them as Defendants by stipulation with Hygea. They vigorously contested the receivership action. This vigorous contest is consistent with the Board's longstanding deference to Mr. Iglesias and Hygea's management generally.

201. Each of the Defendants who have been unjustly enriched by the wrongdoing set forth in this Complaint should be required to account for and repay the amounts by which they have been unjustly enriched together with their earnings thereupon.

WHEREFORE Plaintiffs request that this Court enter a judgment in their favor for the amount of damages to which they are found to be entitled, plus costs and attorneys' fees, and any equitable relief to which they are found to be entitled, including rescission of the Stock Purchase

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Agreement and the return to Plaintiffs of an amount not less than their $30 million purchase price plus interest.

TWENTIETH CAUSE OF ACTION

Constructive Fraud (alleged as to all Defendants)

202. Plaintiffs reallege the previous paragraphs as if set forth here.

203. By virtue of the lengthy negotiations of the parties, the claimed expertise of Defendants Hygea, Iglesias, Moffly, and the Other Board Members in owning and operating businesses like Defendant Hygea, Defendants' represented and purported business model of Defendant Hygea, the central role Defendants Iglesias and Moffly would have in managing the day to day operations of Defendant Hygea, and Defendants' purported investment partners and the purported role of additional investors, the parties had a special and confidential relationship whereby Plaintiffs reposed special confidence in Defendants and relied upon Defendants to provide truthful and accurate information regarding the business and affairs of Defendant Hygea so that Plaintiffs could properly evaluate the risks and benefits associated with making an equity investment in Defendant Hygea before entering into the Stock Purchase Agreement.

204. Defendants breached this special and confidential relationship by providing them with false and/or fraudulent financial documents, misrepresenting and/or omitting material information related to the financial status of Defendants and the potential profitability of Defendant Hygea, as set forth herein, in order to induce Plaintiffs into executing the Stock Purchase Agreement.

205. Plaintiffs sustained and suffered damage proximately caused by the joint concert of action Defendants in an amount exceeding $15,000, including costs, interest, and attorneys' fees.

206. Defendants Hygea, Iglesias, Moffly, and the Other Board Members have acted toward Plaintiffs with oppression, fraud, or malice, express or implied, such that Plaintiffs may recover exemplary and punitive damages for the sake of example and by way of punishing Defendants Hygea, Iglesias, Moffly, and the Other Board Members pursuant to NRS 42.005 in an amount in excess of ten thousand dollars.

WHEREFORE Plaintiffs request that this Court enter a judgment in their favor for the amount of damages to which they are found to be entitled, plus costs and attorneys' fees, and any exemplary and punitive damages, statutory damages, and equitable relief to which they are found to

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be entitled, including rescission of the Stock Purchase Agreement and the return to Plaintiffs of an amount not less than their $30 million purchase price plus interest.

TWENTY-FIRST CAUSE OF ACTION

Claim for Accounting (by Plaintiff N5HYG against Iglesias, Moffly, and the Other Board Member Defendants)

207. Plaintiffs restate each allegation as set forth above.

208. Iglesias, Moffly, and the Other Board Member Defendants owed fiduciary duties to Plaintiff N5HYG for reasons including, but not limited to, their positions as officers and directors of Hygea.

209. The relationship between Plaintiff N5HYG and Iglesias, Moffly, and the Other Board Member Defendants is founded in trust and confidence, as more fully established herein.

210. Iglesias, Moffly, and the Other Board Member Defendants have mismanaged and misallocated the funds of Defendant Hygea, and specifically the invested funds of Plaintiff N5HYG.

211. Iglesias, Moffly, and the Other Board Member Defendants have a duty to render an accounting of Defendant Hygea's finances as a result of the fiduciary relationship that exists between them and Plaintiff N5HYG.

WHEREFORE, Plaintiffs pray that this Honorable Court award them a Judgment against Iglesias, Moffly, and the Other Board Member Defendants in an amount to be determined and such equitable relief as it deems to be appropriate, including without limitation an Order requiring Defendants Iglesias, Moffly, and the Other Board Member Defendants to render an accounting to Plaintiff N5HYG, that Defendants' conduct was fraudulent, malicious, or oppressive thereby entitling Defendants to punitive damages.

JURY DEMAND

Plaintiffs hereby demand a trial by jury as to all issues so triable.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs pray for judgment as follows:

A. Plaintiffs pray that this Honorable Court award them a Judgment against Defendants in an amount to be determined and such equitable relief that it deems to be appropriate, including statutory rescission;

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B. Plaintiffs pray that this Honorable Court award them a Judgment against Defendants in an amount to be determined, in excess of $15,000.00, and such equitable relief that it deems to be appropriate, including statutory rescission;

C. Plaintiffs pray that this Honorable Court award them a Judgment against Defendants in an amount to be determined, including all compensatory, exemplary, and punitive damages, costs, interest, and attorneys' fees, and such equitable relief as it deems to be appropriate, including rescission of the Stock Purchase Agreement and the return to Plaintiffs of not less than their $30 million purchase price plus interest;

D. Plaintiffs pray that this Honorable Court award them a Judgment against Hygea, Iglesias, and Moffly in an amount to be determined and such equitable relief as it deems to be appropriate, including rescission of the Stock Purchase Agreement;

E. Plaintiffs pray that this Honorable Court award them a Judgment against Iglesias, Moffly, and the Other Board Member Defendants in an amount to be determined and such equitable relief as it deems to be appropriate;

F. Plaintiffs request that this Court enter a judgment in their favor for the amount of compensatory and punitive damages to which they are found to be entitled, plus costs and attorneys' fees, and any equitable relief to which they are found to be entitled;

G. Plaintiffs request that this Court enter a judgment in their favor for the amount of damages to which they are found to be entitled, plus costs and attorneys' fees, and any punitive damages, statutory damages, and equitable relief to which they are found to be entitled;

H. Plaintiffs pray that this Honorable Court award them a Judgment against Iglesias, Moffly, and the Other Board Member Defendants in an amount to be determined and such equitable relief as it deems to be appropriate, including without limitation an Order requiring Defendants Iglesias, Moffly, and the Other Board Member Defendants to render an accounting to Plaintiff N5HYG; and

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I. Such relief against Does I-X and Roes I-X as the Court deems appropriate, including such relief as set forth above.

DATED this 13th day of July, 2018.

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CERTIFICATE OF SERVICE

I hereby certify that I am an employee of Albright, Stoddard, Warnick & Albright, and that on the 13th day of July, 2018, I served a true and correct copy of the foregoing **FIRST AMENDED COMPLAINT AND JURY DEMAND** upon all counsel of record by electronically serving the document using the Court's electronic filing system.

On the same date, July 13th, 2018, I also placed a true and correct copy of the foregoing **FIRST AMENDED COMPLAINT AND JURY DEMAND,** enclosed in a sealed envelope, in the United States Mail at Las Vegas, Nevada, with first class postage thereon prepaid, addressed to the following:

Richard Williams
8110 SW 78th Street
Miami, Florida 33143

On the same date, July 13th, 2018, I also served a true and correct copy of the foregoing **FIRST AMENDED COMPLAINT AND JURY DEMAND** via email, to Richard Williams at the following email address: rich1947@bellsouth.net.

An employee of Albright, Stoddard, Warnick & Albright

“Exhibit 4”

“Exhibit 4”

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DISTRICT COURT

CLARK COUNTY, NEVADA

N5HYG, LLC, a Michigan limited liability company; and NEVADA 5, INC., a Nevada corporation,

Plaintiffs,

vs.

HYGEA HOLDINGS CORP., a Nevada corporation; MANUEL IGLESIAS; EDWARD MOFFLY; DANIEL T. MCGOWAN; FRANK KELLY; MARTHA MAIRENA CASTILLO; LACY LOAR; RICHARD WILLIAMS, ESQ.; GLENN MARICHI, M.D.; KEITH COLLINS, M.D.; JACK MANN, M.D.; THE ESTATE OF HOWARD SUSSMAN, M.D.; JOSEPH CAMPANELLA; CARL ROSENCRANTZ; and RAY GONZALEZ; DOES I-XXX; and ROES I-XXX, inclusive,

Defendants.

CASE NO.: A-17-762664-B

DEPT. NO.: 27

PLAINTIFFS' OPPOSITION TO DEFENDANTS' MOTION FOR PARTIAL DISMISSAL OF CLAIMS AND PARTIES

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POINTS AND AUTHORITIES IN OPPOSITION TO MOTION TO DISMISS

On October 5, 2017, Plaintiffs filed their Complaint against the Defendants named herein. On November 15, 2017, Defendant Gonzalez removed the case to United States District Court for the District of Nevada with the consent of his co-Defendants. On June 7, 2018, the United States District Court remanded the case to this Court.

On June 28, 2018, Defendant Hygea Holdings Corp. ("Hygea") and Defendants Manuel Iglesias, Edward Moffly, Daniel T. McGowan, Frank Kelly, Martha Mairena Castillo, Lacy Loar, Glenn Marrichi, Dr. Keith Collins, M.D., Dr. Jack Mann, M.D., Joseph Campanella, and Carl Rosenkrantz filed a Motion for Partial Dismissal of Claims and Parties (the "Motion for Partial Dismissal").[2]

On July 13, 2018, roughly concurrent with this Opposition, Plaintiffs filed a First Amended Complaint.

NRCP 15(a), provides: "A party may amend the party's pleading once as a matter of course at any time before a responsive pleading is served". Since it is well-established that a Motion to Dismiss and/or For Summary Judgment is not a responsive "pleading" for the purposes of NRCP 15(a), Plaintiff is allowed to amend its complaint without seeking leave of court after a Motion to Dismiss (but not before an Answer) has been filed . *See e.g. Washoe Med. Ctr. v. Second Judicial Dist. Court of State of Nev. ex rel. County of Washoe*, 122 Nev. 1298, 1301, 148 P.3d 790, 792 (2006) (noting that "a motion to dismiss is not a responsive pleading"); *Moore v. Eighth Judicial Dist. Court of State ex rel. County of Clark*, 128 Nev. 920, 381 P.3d 643 (2012)(differentiating between a responsive pleading and a pre-answer motion); *Stubbs v. Strickland*, 129 Nev. 146, 297 P.3d 326 (2013)(emphasizing distinction between responsive pleading and motion to dismiss); See also *Cunningham v. Eighth Jud. Dist. Ct.*, 102 Nev. 551, 556-57, 729 P.2d 1328 (1986) ("motion to dismiss is not a responsive pleading under NRCP 15.") (dissenting opinion by J. Maupin (distinguishing a motion from a pleading). ; *James V. Hurson Assocs., Inc. v. Glickman*, 229 F.3d 277, 282–83 (D.C.Cir.2000) ("Rule 15(a) "guarantee[s] a

[2] Defendant Hygea remains in Default. Plaintiffs file this Response without prejudice to their position and arguments in their pending Motion for Entry of Default Judgment against Defendant Hygea Holdings, Corp.

plaintiff an absolute right" to amend the complaint once at any time so long as the defendant has not served a responsive pleading and the court has not decided a motion to dismiss".)

Moreover, once an amended pleading is filed, the prior pleading is superseded and rendered moot. *See, e.g., McKnight Family, LLP v. Adept Mgmt. Servs.*, 310 P.3d 555, 558, 129 Nev. Adv. Rep. 64 (2013); *Randono v. Ballow*, 100 Nev. 142, 143, 676 P.2d 807 (1984); *Las Vegas Network v. B. Shawcross and Ass.*, 80 Nev. 405, 407, 395 P.2d 520 (1964). Accordingly, pursuant to NRCP 15(a), Defendants' Motion for Partial Dismissal, which challenges a Complaint that is ~~no~~ longer extant but has been superseded~~)~~, has now been rendered moot in light of Plaintiffs' filing of their First Amended Complaint on July 13, 2018. At this time, Defendants need to answer the Amended Complaint, or file a new motion to dismiss in regard thereto. Defendants' existing motion should be withdrawn or denied by this court as moot.

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CONCLUSION

Therefore, Plaintiffs are not required to file an opposition to Defendants' original Motion for Partial Dismissal beyond what is set forth here, and the hearing on the Motion presently scheduled for July 26, 2018 at 10:30AM should be vacated and declared moot in view of Plaintiffs' filing of their First Amended Complaint.

DATED this 13th day of July, 2018.

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CERTIFICATE OF SERVICE

I hereby certify that I am an employee of Albright, Stoddard, Warnick & Albright, and that on the 13 day of July, 2018, I served a true and correct copy of the foregoing **PLAINTIFFS' OPPOSITION TO DEFENDANTS' MOTION FOR PARTIAL DISMISSAL OF CLAIMS AND PARTIES** upon all counsel of record by electronically serving the document using the Court's electronic filing system.

On the same date, July 13, 2018, I also placed a true and correct copy of the foregoing **PLAINTIFFS' OPPOSITION TO DEFENDANTS' MOTION FOR PARTIAL DISMISSAL OF CLAIMS AND PARTIES,** enclosed in a sealed envelope, in the United States Mail at Las Vegas, Nevada, with first class postage thereon prepaid, addressed to the following:

Richard Williams
8110 SW 78th Street
Miami, Florida 33143

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Barbara Clark
An employee of Albright, Stoddard,
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“Exhibit 5”

“Exhibit 5”

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DISTRICT COURT

CLARK COUNTY, NEVADA

N5HYG, LLC, a Michigan limited liability company, et al., Plaintiffs, v. HYGEA HOLDINGS CORP., a Nevada corporation, et al., Defendants.	CASE NO.: A-17-762664-B DEPT NO.: 27

MOTION TO DISMISS THE FIRST AMENDED COMPLAINT AND TO STRIKE SUPPLEMENTAL PLEADINGS AND JURY DEMAND

///

Defendant Hygea Holdings Corp. ("Hygea") and Defendants Manuel Iglesias, Edward Moffly, Daniel T. McGowan, Frank Kelly, Martha Mairena Castillo, Lacy Loar, Glenn Marrichi, Dr. Keith Collins, M.D., Dr. Jack Mann, M.D., Joseph Campanella, and Carl Rosenkrantz (together, the "Director Defendants" and with Hygea, the "Defendants")[1], by and through their counsel of record, Ballard Spahr LLP, submit this Motion to Dismiss the First Amended Complaint and to Strike Supplemental Pleadings and Jury Demand (the "Motion"). This Motion is based on N.R.C.P 12(b)(2) & (5); the pleadings and papers on file; and any oral argument presented at the hearing for this Motion.

Dated: August 17, 2018

BALLARD SPAHR LLP

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[1] In addition to the foregoing, there are three other defendants: Ray Gonzalez, Richard Williams, and The Estate of Howard Sussman, M.D. Mr. Gonzalez is represented by separate counsel and has filed a separate motion to dismiss, in which Defendants join with respect to all non-jurisdictional arguments. It is the understanding of undersigned counsel that Mr. Williams is not currently represented by counsel and is appearing *pro per*. Finally, it is the understanding of undersigned counsel that Plaintiffs have not yet served The Estate of Howard Sussman, M.D.

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NOTICE OF MOTION

PLEASE TAKE NOTICE that the undersigned will bring the above and foregoing Motion for hearing before the Court on the 26 day of SEPTEMBER, 2018 at the hour of 10:30A.m., in Department XXVII of the above-entitled Court.

Dated: August 17, 2018

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MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

The entirety of the First Amended Complaint (the "Amended Complaint" or "Am. Compl.") requires dismissal for one simple reason: *it is barred by claim preclusion*. As this Court likely recalls, Plaintiff N5HYG, LLC ("N5HYG") and Defendant Hygea Holdings Corp. ("Hygea") came before this Court in February and March 2018 in connection with N5HYG's emergency complaint and emergency petition for the appointment of a receiver over Hygea. That lawsuit, which was brought to final judgment in May 2018, was based upon the same parties and facts as alleged herein: (i) the supposed misrepresentations of Defendants Hygea, Iglesias, and Moffly; (ii) their alleged breaches of the stock purchase agreement between N5HYG and Hygea; (iii) Hygea's purported insolvency and cash flow challenges; (iv) the Director Defendants' supposed failure to properly govern and manage Hygea; and (v) the general sensations of buyer's remorse that Plaintiffs associate with their investment in Hygea. Claim preclusion thus bars the entirety of this action.

Even if Plaintiffs are not barred from bringing this action by way of claim preclusion, the vast majority of Plaintiffs' claims still require dismissal for the following reasons:

- The Court lacks personal jurisdiction over Defendants Daniel T. McGowan, Frank Kelly, Martha Mairena Castillo, Lacy Loar, Glenn Marrichi, Dr. Keith Collins, M.D., Dr. Jack Mann, M.D., Joseph Campanella, and Carl Rosenkrantz, all of whom are domiciled outside of Nevada and none of whom are alleged to have a connection to any relevant activity or an occurrence that took place in Nevada (and in fact no relevant activity or occurrence is alleged to have—in reality—taken place in Nevada).

- The integration clause contained within the stock purchase agreement between Plaintiff N5HYG, on the one hand, and Defendants Hygea, Manuel Iglesias, and Edward Moffly, on the other, precludes Plaintiffs' claims for and grounded in fraud.

- Plaintiffs have failed to plead their claims for and based in fraud with the requisite particularity demanded by N.R.C.P. 9(b). With respect to Hygea and Messrs. Iglesias and Moffly, Plaintiffs do not identify what was purportedly untrue about the representations made by these defendants. With respect to the remaining defendants, Plaintiffs fail to

attribute a single misrepresentation purportedly made by such individuals.

- Plaintiffs have failed to plead viable claims for violation of the federal or state securities laws, including because such claims are wholly inapplicable to the private securities transaction at issue in this lawsuit.
- Plaintiffs have failed to plead viable claims for breach of fiduciary duty against all individual defendants because such claims are derivative in nature, and Plaintiffs did not make the requisite pre-suit demand or sufficiently plead that demand would have been futile; in any event, the business judgment rule protects these defendants' decisions, and Plaintiffs have not pled any facts to overcome the presumption of the rule.
- Plaintiffs have failed to adequately plead their remaining common law claims, many of which are simply unavailable.
- Moreover, Nevada 5—which is neither a party to the contract at issue nor a Hygea stockholder—has no connection to this lawsuit other than as N5HYG's parent company, which in and of itself does not provide Nevada 5 any claims against Defendants.

Even if some claims survive this Motion (they should not), the Court should strike those allegations in the Amended Complaint which are in reality supplemental—and not amended—pleading, because Plaintiffs failed to seek leave of this Court to supplement their original complaint in violation of N.R.C.P. 15(d). The Court should also strike Plaintiffs' jury demand, as Plaintiffs contractually waived their right to a jury trial by way of the stock purchase agreement.

Accordingly, for these and the reasons set forth herein, the Court should grant this Motion and dismiss all claims brought by Plaintiffs with prejudice, but if all claims are not dismissed, the Court should strike Plaintiffs' supplemental pleading and jury demand.

II. BACKGROUND

This case arises from the purchase of securities in Defendant Hygea, a private Nevada corporation with a principal place of business in Doral, Florida, by Plaintiff N5HYG, a Michigan entity that is the wholly-owned subsidiary of Plaintiff Nevada 5, Inc. ("Nevada 5"), a Nevada corporation. Am. Compl. ¶¶ 1, 24–25. Plaintiffs allege a purported fraudulent course of conduct arising from that purchase by "Defendants"—Hygea, its (now former) CEO, Manuel Iglesias; (now former) CFO, Edward Moffly;

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and various of its current and former directors, including Daniel T. McGowan, Frank Kelly, Martha Mairena Castillo, Lacy Loar, Glenn Marrichi, Dr. Keith Collins, M.D., Dr. Jack Mann, M.D., Joseph Campanella, and Carl Rosenkrantz. Am. Compl. ¶¶ 2–16.

The Complaint alleges that Nevada 5 formed N5HYG to purchase securities from Hygea pursuant to a Confidential Information Memorandum and a Stock Purchase Agreement (the "SPA") between N5HYG, on the one hand, and Hygea, and Igelsias, and Moffly (the "Guarantor Defendants"), on the other. Am. Compl. ¶¶ 41, 44; **Ex. A**, SPA.[2] Importantly, neither Nevada 5 nor Defendants McGowan, Kelly, Castillo, Loar, Marrichi, Collins, Mann, Campanella, or Rosenkrantz (the "Non-Guarantor Defendants") are alleged to have been parties to the SPA. *See generally* Am. Compl. And, even if they had been alleged to have been parties, the SPA speaks for itself and would contradict such allegations. *See* **Ex. A.**, SPA (identifying N5HYG's counter-parties to be Hygea, Iglesias, and Moffly.)

The Amended Complaint asserts that, during the course of discussions leading up to N5HYG's execution of the SPA, Defendants made "two sets of misrepresentations"—one as to Hygea's financial performance and the other as to the intention to take Hygea public via a reverse takeover ("RTO") that never occurred. Am. Compl. ¶¶ 34, 36, 39, 43. The Amended Complaint sets forth a series of paragraphs attempting to describe these oral and written misrepresentations. In describing the oral and written misrepresentations the Complaint never refers to any Defendant by name other than Iglesias and Moffly. *See* Am. Compl. ¶¶ 36–79. Indeed, the Amended Complaint groups all Defendants, other than Hygea, Iglesias,

[2] The Court can consider unattached evidence on which the Complaint relies, such as the SPA, and Plaintiffs request that it do so for purposes of this Motion. N.R.C.P. 10(c) ("A copy of any instrument which is an exhibit to a pleading is a part thereof for all purposes); *Baxter v. Dignity Health*, 357 P.3d 927, 930 (Nev. 2015) (A court "may also consider unattached evidence on which the complaint necessarily relies if: (1) the complaint refers to the document; (2) the document is central to the plaintiffs claim; and (3) no party questions the authenticity of the document").

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and Moffly, as the "Other Board Member Defendants," and never refers to any of them by name or with any specificity. Am. Compl. ¶ 16. Moreover, even with respect to Hygea, Iglesias, and Moffly, the Amended Complaint never identifies precisely *what about* the information turned out to be inaccurate; it merely alleges in conclusory fashion that the information was inaccurate. *See generally* Am. Compl. Plaintiffs' lack of precision is exacerbated by their express recognition that the information was subject to adjustment. Am. Compl. ¶ 31.

Based on these allegations, Plaintiffs set forth a veritable "kitchen-sink" of claims, not only for breach of contract, but also for twenty more causes of action, including federal and state securities fraud, common law fraud, breach of fiduciary duty, and conspiracy. These causes of action, including by and against whom they are made, are set forth in a demonstrative chart attached hereto as **Exhibit B**.

III. MOTION TO DISMISS BECAUSE PLAINTIFFS' CLAIMS ARE PRECLUDED AS A RESULT OF THE RECEIVERSHIP ACTION

Following the lead of the U.S. Supreme Court and the courts of most other states, the Nevada Supreme Court has recognized that the common law doctrine of claim preclusion (or *res judicata*) protects a party's interest in "obtain[ing] finality by preventing a party from filing another suit that is based on the same set of facts that were present in the initial suit." *Weddell v. Sharp*, 131 Nev. Adv. Op. 28, 350 P.3d 80, 82 (Nev. 2015), *reh'g denied* (July 23, 2015).[3] Courts in Nevada apply a

[3] In its 2008 decision in *Five Star Capital Corp. v. Ruby*, the Nevada Supreme Court acknowledged that its prior case law had been confusing and sometimes conflicting with respect to the (now decidedly) separate doctrines of issue and claim preclusion. *See* 124 Nev. 1048, 1054, 194 P.3d 709, 713 (2008). In clarifying the law of preclusion, the court acknowledged that its prior opinions in *Ayala* and *Edwards* both contain statements regarding the application of claim preclusion that artificially narrowed the doctrine by conflating its boundaries with those of issue preclusion. *Id.* Accordingly, this Court should ignore *Edwards v. Ghandour*, 123 Nev. 105, 159 P.3d 1086 (2007), and *Ayala v. Caesars Palace*, 119 Nev. 232, 235 n.6, 71 P.3d 490, 492 n.6 (2003), in analyzing Defendants' argument. Relatedly, while this Motion seeks dismissal of all of Plaintiffs' claims on the theory of claim preclusion, Defendants expressly reserve their right to later assert issue preclusion with respect to some of the allegations in Plaintiffs' Amended Complaint if the Court denies the Motion in whole or in part.

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conjunctive three part test to determine whether claim preclusion forecloses claims in a parallel or subsequent lawsuit after judgment has been rendered in one court:

> (1) there has been a valid, final judgment in a previous action;
>
> (2) the subsequent action is based on the same claims or any part of them that were or could have been brought in the first action; and
>
> (3) the parties or their privies are the same in the instant lawsuit as they were in the previous lawsuit, or the defendant can demonstrate that he or she should have been included as a defendant in the earlier suit and the plaintiff fails to provide a good reason for not having done so.

Id. (internal quotation marks omitted).

A. The Receivership Court Rendered A Valid, Final Judgment

After this action was filed and removed to the U.S. District Court for the District of Nevada (the "Federal Court"), but before the Federal Court remanded the case to this Court, Plaintiff N5HYG—presumably dissatisfied with the proceedings in Federal Court—split its claims and filed a second lawsuit, which was also initially assigned to this Court and later to the First Judicial District, captioned *Arellano, et al. v. Hygea Holdings Corp.*, et al., 18 OC 00071 1B (the "Receivership Action").[4] *See* **Exhibit C**, Findings of Fact and Conclusions of Law in the Receivership Action (the "FFCL"), 2:8–13.[5]

In that action, N5HYG sought the appointment of a receiver to manage

[4] Hygea moved to transfer venue in the Receivership Action based on the strict locality requirements of NRS 78.630 and 78.650. *See* **Ex. C**, FFCL, 2:14–20. After this Court granted Hygea's motion to transfer venue to the First Judicial District, the Receivership Action was assigned to Department No. II of that court (the "Receivership Court"). *See id.*

[5] Defendants acknowledge that the Receivership Court recently entered an order granting N5HYG's motion to amend the FFCL in part. *See* **Ex. D**, August 9, 2018 Order. The limited amendments Plaintiffs extracted, however, have no effect on Defendants' claim preclusion arguments here, and the Receivership Court has not yet entered an amended judgment. Once an amended FFCL is filed, Defendants will supplement the record herein with the amended judgment.

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Hygea's affairs under NRS 32.010, NRS 78.630, and/or NRS 78.650 but chose not to reassert the claims that were then pending in Federal Court—and are now before this Court. *See id.* Upon filing, the parties to the Receivership Action included N5HYG as one of fourteen stockholder plaintiffs and Hygea as defendant. The defendants later expanded to include Manuel Iglesias, Edward Moffly, Daniel T. McGowan, Frank Kelly, Martha Mairena Castillo, Glenn Marrichi, Dr. Keith Collins, M.D., Dr. Jack Mann, M.D., and Joseph Campanella—i.e., the current board of directors.[6]

N5HYG pursued the Receivership Action on an emergency basis, while this action was stayed in Federal Court.[7] *See id.* at 2:21–3:10. In the interest of obtaining finality on any preliminary ruling on N5HYG's request for an appointment of a receiver, and to avoid prolonged and duplicative litigation in light of the "emergency" manufactured by N5HYG's ultimately unfounded allegations of imminent collapse, Hygea moved to advance the trial on the merits in the Receivership Action and consolidate it with the evidentiary hearing on N5HYG's application for preliminary relief under N.R.C.P. 65(a)(2). *See id.*; N.R.C.P. 65(a)(2). The Receivership Court granted the motion, setting the consolidated trial for May 14, 2018. *See* **Ex. C**, FFCL, 2:21–3:10.

The parties to the Receivership Action then engaged in limited discovery upon N5HYG's motion for relief from N.R.C.P. 16.1, while preparing for the advanced trial. *See id.* at 3:11–24. Notwithstanding Hygea's assertion of the affirmative defense of claim splitting, and after rejecting several invitations for a continuance from the Receivership Court to conduct further discovery, N5HYG proceeded to trial on its receivership claims while the claims in this action were pending in Federal Court.

[6] Hygea actually moved to dismiss the Receivership Action on the basis that plaintiffs to that action had failed to name the board of directors as necessary and indispensable parties. In response, plaintiffs stipulated to their inclusion by way of an amended complaint.

[7] This action was stayed pursuant to the Private Securities Litigation Reform Act.

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See id.

After a week-long bench trial, the Receivership Court offered N5HYG *yet another* opportunity to continue the trial if it desired to seek further discovery. *Id.* at 5:2–9. N5HYG demurred, electing to proceed to judgment following closing arguments. *See id.* The Receivership Court made an oral ruling on the last day of trial, memorialized by its Findings of Fact and Conclusions of Law, dated May 30, 2018. *Id.* The Receivership Court entered judgment in favor of Hygea and its board of directors on all claims, declining to appoint a receiver, and awarding N5HYG nothing. *See generally id.*

B. This Action Is Based On The Same Claims—And/Or Parts Of The Same Claims—That Were Or Could Have Been Brought In The First Action

The Nevada Supreme Court recently confirmed that "[t]he test for determining whether the claims, or any part of them, are barred in a subsequent action is if they are 'based on the same set of facts and circumstances as the [initial action].'" *Mendenhall v. Tassinari*, 403 P.3d 364, 370 (Nev. 2017) (quoting *Five Star Capital Corp. v. Ruby*, 124 Nev. 1048, 1055, 194 P.3d 709, 714 (2008)). In *Five Star*, the Nevada Supreme Court rejected a plaintiff's theory that if the second suit sought different relief and/or sought relief based on a different claim, the second suit would not be barred by prior judgment in defendant's favor:

> [C]laim preclusion applies to prevent a second suit based on all grounds of recovery that were or could have been brought in the first suit. Since the second suit was based on the same facts and alleged wrongful conduct of [the defendant] as in the first suit, the breach of contract claim could have been asserted in the first suit.

Five Star Capital, 124 Nev. at 1058, 194 P.3d at 715.

1. The Amended Complaint And Receivership Complaint Are Based On The Same Facts And Alleged Wrongful Conduct

This action is based on "the same facts and alleged wrongful conduct" as the Receivership Action. *Cf. id.* N5HYG's complaint for appointment of a receiver in the

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Receivership Action (the "Receivership Complaint") reads as a watered-down version of the Amended Complaint here, often parroting allegations word for word. *Compare* Amended Complaint *with* **Exhibit E**, Receivership Complaint. As shown in ***Table 1*** below, each of N5HYG's Receivership allegations, as well as the bases for appointment of a receiver set forth in their emergency petition for appointment of a receiver (the "Emergency Petition"), can be matched to one or more of the same facts and/or allegedly wrongful acts or omissions of Defendants that Plaintiffs complain of here. *Compare* Amended Complaint *with* **Exhibits E & F**, Receivership Complaint and Emergency Motion, respectively.

Table 1[8]

Substantive Receivership Complaint Allegation	Corresponding Amended Complaint Paragraph(s)
N5HYG paid $30 million for its shares of Hygea in an October 2016 Stock Purchase Agreement (the "N5HYG Stock Purchase Agreement"). Hygea represented the 23,437,500 shares that N5HYG bought to represent 8.57 percent of the shares of Hygea. ¶ 12	¶1
Hygea is managed by a Board of Directors. Its top executives are CEO Manuel Iglesias ("Iglesias") and CPO Ted Moffly ("Moffly"). ¶ 45	¶¶ 2,3, & 4

[8] ***Table 1*** is also attached hereto as **Exhibit G.**

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Hygea is managed by a Board of Directors. Its top executives are CEO Manuel Iglesias ("Iglesias") and CPO Ted Moffly ("Moffly"). Hygea's business model is that it acquires and manages independent medical practices, primarily doctors' practices, focusing on the Southeastern United States and Florida in particular. It acquires practices from their doctor owners; the doctors go from being owners to employees, paid a salary by Hygea or its subsidiary medical practice. Hygea's fundamental value proposition is: let the doctors focus on medical care, while Hygea uses its economies of scale and operational expertise to effectively operate the practices from a business perspective. ¶ 46	¶ 38
Hygea is failing and running out of cash. ¶ 48	¶¶ 29 & 57
Apparently, Hygea paid its payroll through its American Express account for some time until it was apparently poised to fail to "make payroll" this past fall, until it ultimately was apparently able to do so. Upon information and belief, Hygea owes approximately $10 million to American Express. ¶ 49	¶ 57
Given Hygea's apparent troubles, Hygea hired an outside consultant, FTI, to review its financial performance. FTI has met with constant "roadblocks," as Moffly and Iglesias have refused to share information. Nonetheless, FTI has concluded that certain financial information provided by Hygea's management to its shareholders was "fabricated"; determined that Hygea's performance was negatively impacted by severe operational deficiencies; and was told by Iglesias that Iglesias had "cooked the books" to avoid problems with a previous lender. ¶ 50	¶¶ 58, 59, 60, 61, 62, & 75
Based on the recent representations of Hygea representatives, Plaintiffs have since learned that the payroll payments have again ceased, including payments owed to physicians and some management-level and other administrative staff. Further, Hygea has failed to pay payroll taxes and is delinquent in payments to one or more large lenders. ¶ 52	¶¶ 29 & 57
These financial conditions suggest that the company is at or near the point of insolvency, which is consistent with what Plaintiffs have been able to learn about Hygea's finances. ¶53	¶¶ 29, 30, & 57

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The coming days and weeks are pivotal to Hygea's survival. Healthcare companies such as Hygea typically receive substantial public insurance reimbursements from the government (i.e., for Medicare/Medicaid.). These payments come twice a year - the first of which is traditionally early in the calendar year- and are existentially significant for the company. If these funds or other income are mismanaged or, worse, improperly diverted by Moffly or Iglesias, then then Hygea will continue to be unable to make payroll. If it fails to pay its physicians, they will abandon their Hygea-owned practices and Hygea will entirely collapse. ¶ 54	¶¶ 61, 65, 67, 73, & 75
Moreover, Hygea has periodically, and again recently, represented to shareholders that one or more "white knight" investors would provide an influx of capital to assist the company. Of course, this has never come to fruition. Moreover, even if true, such an influx of cash would further heighten the need for a receiver to oversee any such transaction, given Hygea, management's demonstrated inability to properly manage its finances. ¶ 56	¶¶ 73, 74, & 75

In short, the Amended Complaint and the Receivership Complaint are premised on the same operative nucleus of facts: (i) the supposed misrepresentations of Defendants Hygea, Iglesias, and Moffly; (ii) those same Defendants' alleged breaches of the SPA; (iii) Hygea's purported insolvency and cash flow challenges; (iv) the Director Defendants' supposed failure to properly govern and manage Hygea; and (v) the general sensations of buyer's remorse that Plaintiffs associate with their investment in Hygea.

2. N5HYG Used The Receivership Trial To Seek Evidence Relevant To The Claims In This Action

Beyond the direct relationship between the allegations in the Receivership Complaint and Amended Complaint, the evidence N5HYG adduced and/or attempted to adduce during the trial of the Receivership Action further demonstrates that the

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claims here are based on the same nucleus of facts as the Receivership Action.[9] Indeed, during the week-long bench trial, N5HYG spent substantial time seeking to introduce testimony related to (i) N5HYG's initial investment in Hygea in 2016, (ii) the representations made to N5HYG's agent by Defendants Iglesias and Moffly in connection with N5HYG's investment in Hygea during 2016, (iii) alleged breaches of the Hygea-N5HYG SPA during 2016 and 2017, and (iv) purported problems with Hygea's management and its board of director's failure to oversee management during 2016 and 2017—i.e., the allegations contained in the Amended Complaint. *See generally* **Ex. H**, Compilation of Condensed Trial Transcript Vols. 1–5 from the Receivership Action (the "Trial Transcript").

The following is a non-exhaustive list of testimony N5HYG sought regarding events that transpired during 2016 and 2017—the time frames at issue in this action—during the trial of the Receivership Action, which had no bearing on N5HYG's claims for appointment of a receiver:

- Counsel for N5HYG seeking testimony from Mr. Chris Fowler, principal of RIN Capital, LLC ("RIN"), an agent of and investment advisor to N5HYG, regarding the discussions and/or negotiations that resulted in N5HYG's investment in Hygea and the Hygea-N5HYG SPA. *See, e.g.*, Trial Transcript, 16–18.[10]
- Counsel for N5HYG seeking testimony from Mr. Fowler regarding (i) alleged breaches of the Hygea-N5HYG SPA during 2016 and 2017 and (ii) purported mismanagement of Hygea and its financial operations during the same time period. *See, e.g.*, *id.* at 18–31.
- Counsel for N5HYG seeking testimony from Mr. Timothy Dragelin, principal at FTI Consulting, a former management consultant to Hygea,

[9] Indeed, as counsel for Defendants pointed out at the time, N5HYG appeared significantly more interested in eliciting testimony regarding events that took place as between Hygea and N5HYG in 2016 and 2017 (*i.e.*, events that might prove the claims in this action) than proving that appointment of a receiver was warranted in 2018, the relevant inquiry in the Receivership Action. This type of gamesmanship—attempting to adduce evidence for one pending action in a purportedly 'distinct,' separate action—is precisely the conduct the doctrine of *res judicata* is intended to foreclose.

[10] Pin-cites to the Trial Transcript refer to the numbering in the bottom-right corner of each exhibit page and not the page numbers in the upper-right of each individual condensed transcript page within the exhibit pages.

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regarding purported issues with Hygea's financial records from 2014, 2015, and 2016—years entirely irrelevant to N5HYG's claim for appointment of a receiver based on insolvency in 2018 but ostensibly relevant to Plaintiffs' claims here. *See, e.g.*, *id.* at 138–56.

- Counsel for N5HYG seeking testimony from Mr. Iglesias regarding the accuracy of Hygea financial statements for 2013, 2014, 2015, and 2016. *See, e.g.*, *id.* at 244–46.

Moreover, N5HYG sought such testimony at the expense of *not* introducing or seeking evidence of Hygea's insolvency—the ostensible basis for N5HYG bringing an action for the exclusive purpose of seeking a corporate receiver. *See, e.g.*, **Ex. E**, Receivership Complaint, ¶¶ 48, 49, 52, & 53. In fact, when Hygea and the Receivership Defendants moved for judgment as a matter of law at the close of N5HYG's case-in-chief, the Receivership Court found that N5HYG had presented *no* evidence that Hygea had become insolvent—the underlying theme of the Receivership Complaint. *See* **Ex. C**, FFCL, 4:9–14.

C. The Parties Between The Receivership Action And This Action Are The Same Or In Privity With One Another

The Receivership Action and this lawsuit share a near identity of parties, with the only relevant differences being that the Receivership Action did not include Nevada 5 as a plaintiff or Lacy Loar, Richard Williams, and Carl Rosenkrantz as defendants.[11] These minor differences, however, matter not given that the Receivership and this lawsuit involve almost exactly the same parties. *See Smith v. Accredited Home Lenders, Inc.*, No. 2:16-cv-00869-MMD-CWH, 2017 U.S. Dist. LEXIS 131357, at *5 (D. Nev. Aug. 17, 2017) (finding that the requirements of claim preclusion were met where "the two suits involve almost exactly the same parties" with the only difference being "the addition of Lessie Riggs-Smith as a plaintiff and the addition of a few additional financial corporations as named defendants . . . .")

[11] The Receivership Action also did not include Ray Gonzalez and the Estate of Howard Sussman as defendants. However, the undersigned counsel does not represent either of these defendants (and the Estate of Howard Sussman has not yet been served), and thus do not assert this argument on behalf of Mr. Gonzalez or the Estate.

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Thus, given the substantial identity of the parties, with the only difference being the addition of one plaintiff and a few additional defendants, the third requirement for claim preclusion has been met, and the Court should accordingly dismiss this action.

If, however, the Court believes exact identity or privity of the parties is required, the Non-Receivership Parties clearly share privity with those named in the Receivership Action. First, Plaintiffs Nevada 5 and N5HYG stand in privity to one another. Among other circumstances, privity is found in "any situation in which the relationship between the parties is sufficiently close to supply preclusion," *Mendenhall v. Tassinari*, 403 P.3d 364, 369 (Nev. 2017), such as here, where there exists a substantial identity between the parties. *Id.* Nevada 5 is the parent corporation of Plaintiff N5HYG. *See* Am. Compl. ¶ 24 ("All of [N5HYG's] membership shares are owned by Plaintiff Nevada 5, Inc."). *See also id.* (finding privity between a parent and its subsidiary). Moreover, Nevada 5 formed N5HYG for the sole purpose of investing in Hygea.[12] *See* Plaintiffs' Response to Motion to Dismiss Certain Defendants and Claims Pursuant to Rules 12(b)(2) and 12(b)(6) at 13:7–8 (ECF No. 31, filed Dec. 18, 2017 in Federal Court). Indeed, Nevada 5 and N5HYG have the same agent: RIN Capital, LLC, including its chief investment officer, Chris Fowler. *See* Am. Compl. ¶ 35; **Ex. H**, Trial Transcript, 53–54, 60 (reflecting Chris Fowler's testimony that as the chief investment officer of RIN Capital, he advised Nevada 5 to make an investment in Hygea; that to do so Nevada 5 created N5HYG; and that he is now a financial representative for N5HYG for whom he oversees investments). There is clearly a substantial—if not a complete—identity between Nevada 5 and N5HYG.

[12] In fact, Plaintiffs have argued that because Nevada 5 formed N5HYG for the sole purposes of investing in Hygea, it has standing to challenge a fraudulently induced transaction. *See* Plaintiffs' Response to Motion to Dismiss Certain Defendants and Claims Pursuant to Rules 12(b)(2) and 12(b)(6) at 13:8–9 (ECF No. 31, filed Dec. 18, 2017). Defendants disagree, but if what Plaintiffs allege is correct, then this is yet another reason why privity exists between Nevada 5 and N5HYG. *Mendenhall*, 403 P.3d at 369 (finding privity where both parties obtained a legal right with respect to a contract).

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Next, Defendant Hygea and Defendants Lacy Loar, Richard Williams, and Carl Rosenkrantz (the "Non-Receivership Defendants") stand in privity to one another. Although Nevada has yet to address the issue, courts in other jurisdictions consistently hold that for purposes of claim preclusion, employees are considered to be in privity with their employers. *See, e.g., Morris v. Caberto*, No. 2:16-cv-02416-GMN-NJK, 2017 U.S. Dist. LEXIS 96252, at *7 (D. Nev. June 22, 2017); *Hanna v. Mariposa Cty. Sheriff Dep't*, No. 1:12-cv-00501-AWI-SAB, 2014 U.S. Dist. LEXIS 77734, at *14 (E.D. Cal. June 4, 2014); *Harrington v. Ward*, No. 06-460-CL, 2007 U.S. Dist. LEXIS 73063, at *14 (D. Or. Sep. 27, 2007). Here, Plaintiffs admit that Lacy Loar, Richard Williams, and Carl Rosenkrantz served as directors of Hygea, and Mr. Williams additionally as its Chief Legal Officer, and bring claims against all three in their capacities as Hygea directors and not individually.

Even if no privity exists between Hygea and the Non-Receivership Defendants, non-mutual claim preclusion can apply "where the defendant in the second suit was not a party or in privity with a party in the first suit," *Weddell v. Sharp*, 350 P.3d 80, 83 (Nev. 2015), "'if the new party can show good reasons why he should have been joined in the first action and the [plaintiff] cannot show any good reasons to justify a second chance.'" *Id. at* 84 (quoting Charles Alan Wright, et al., Federal Practice and Procedure § 4464.1 (2d ed. 2002)). Given that the Non-Receivership Defendants purportedly acted as fiduciaries to the Company and Plaintiffs, Plaintiffs should have included the Non-Receivership Defendants in the Receivership Action had Plaintiff N5HYG brought there the claims Plaintiffs bring here. Non-mutual claim preclusion can also apply "when new defendants are closely related to the earlier defendants." *Index Fund, Inc. v. Hagopian*, 677 F. Supp. 710, 716 (S.D.N.Y. 1987). As set forth above, the Non-Receivership Defendants share a close relationship with Hygea given their statuses as former directors and officers of the Company.

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D. Claim Preclusion Applies Even Though This Action Was Filed First

Defendants anticipate that Plaintiffs will argue that claim preclusion is inapplicable because this action was filed before the Receivership Action. The Nevada Supreme Court has not addressed whether a judgment rendered in a later-filed lawsuit in one court, while a prior-filed action is pending in another court, precludes claims in the prior-filed action based on the same facts and circumstances on which judgment was rendered in the later-filed action. The federal courts, however, have long recognized "the general rule that as between actions pending at the same time, *res judicata* attaches to the first judgment regardless of the sequence in which the actions were commenced." Wright Miller & Cooper, *Federal Practice & Procedure* § 4404 (3d ed. 2016) (citing *Chi., R. I. & P. R. Co. v. Schendel*, 270 U.S. 611, 615, 46 S. Ct. 420, 422 (1926)). Indeed, the U.S. Supreme Court held nearly a century ago that, for purposes of *res judicata*, it is not material "that the action or proceeding, in which the judgment . . . is rendered, was brought after the commencement of the action or proceeding in which it is pleaded." *Schendel*, 270 U.S. at 615, 46 S. Ct. at 422.

The policy for this rule is well-founded—as the U.S. Court of Appeals for the Fifth Circuit observed more recently, "[a] party gets only "one bite at the apple" and is not allowed to take two bites simply because it attempts to take both at once . . . ." *P&G v. Amway Corp.*, 376 F.3d 496, 500-01 (5th Cir. 2004). "There is no reason why defendants should be required to defend, or courts to hear, additional or multiple cases, free from the protections of *res judicata*, simply because the plaintiff chose to file them piecemeal at the same time rather than in succession." *Id.* (quoting *Sidag Aktiengesellschaft v. Smoked Foods Prods. Co.*, 776 F.2d 1270 (5th Cir. 1985)). Here, N5HYG should not get "two bites at the apple" merely because it brought its claims piecemeal and because the Receivership Action was filed later; nor should Defendants be required to defend, or this Court to hear, cumulative and multiple cases from N5HYG.

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Accordingly, the Court should dismiss the entirety of this action.

IV. MOTION TO STRIKE PLAINTIFFS' SUPPLEMENTAL ALLEGATIONS AND JURY DEMAND

N.R.C.P. 15(d) governs supplemental pleadings, which are those "setting forth transactions or occurrences or events which have happened since the date of the pleading sought to be supplemented." Importantly, all supplemental pleadings require leave of court. N.R.C.P. 15(d) ("Upon motion of a party the court may . . . .") *See also* U.S. v. Hicks, 283 F.3d 380, 385 (D.C. Cir. 2002) ("[W]hile a party may freely offer an amendment at any time before a responsive pleading is served, supplements always require leave of the court.")

Here, Plaintiffs' have added a number of supplemental allegations in their First Amended Complaint, including those set forth as follows:

- Paragraph 29, wherein Plaintiffs allege Igesias's purported testimony from the Receivership Action in May 2018;
- Paragraph 66, where Plaintiffs allege a claim made by Iglesias during the Receivership Action in May 2018;
- Paragraph 70, where Plaintiffs allege the purported deterioration of Hygea's financial situation in late 2017;
- Paragraph 76(b), where Plaintiffs allege certain assertions made by Defendants in February 2018 regarding share issuances;
- Paragraph 76(c), where Plaintiffs allege that Defendants failed to allow Plaintiff N5HYG to attend Hygea board meeting in Fall 2017.

Because the foregoing paragraphs set forth transactions or occurrences or events that have occurred since Plaintiffs filed their original complaint on October 5, 2017, Plaintiffs were required to seek leave of this Court before making such supplemental allegations. Accordingly, the foregoing paragraphs should be struck from the Amended Complaint. *See Vickery v. Jones*, 856 F. Supp. 1313, 1320 (S.D. Ill. 1994) (granting motion to strike defendants' supplemental response under Fed. R. Civ. P. 15(d) because defendants did not make a motion to file the supplemental response); *Ruston v. Gen. Tel. Co. of Sw.*, 115 F.R.D. 330, 332 (S.D. Tex. 1987)

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(finding that plaintiff's supplemental complaint was never properly before the court because plaintiff did not request leave to file the supplemental complaint).

Moreover, Plaintiffs have made a jury demand by way of their Amended Complaint. However, Plaintiffs are contractually precluded from doing so by way of the SPA, pursuant to which Plaintiff N5HYG unequivocally waived any right to a jury trial. **Ex. A**., SPA at ¶ 8.12 ("Each of the parties hereto hereby waives, and covenants that he or it shall not assert . . . any right to trial by jury in action arising in whole or in part under or in connection with this agreement.") Accordingly, the Court should strike Plaintiffs' jury demand. *See Lowe Enters. Residential Ptnrs., Ltd. P'ship v. Eighth Judicial Dist. Court*, 118 Nev. 92, 104, 40 P.3d 405, 413 (2002) (issuing a writ of mandamus to the district court directing that it strike the jury demand given the contractual jury trial waiver).

V. MOTION TO DISMISS NEVADA 5 BECAUSE IT LACKS STANDING AND IS NOT THE REAL PARTY IN INTEREST

A. Nevada 5, With No Connection to this Lawsuit, Is Not A Proper Plaintiff

Plaintiff Nevada 5 asserts claims under the state and federal securities laws, claims for and grounded in fraud, claims for breach of fiduciary duty, and other common law claims for conspiracy and unjust enrichment. *See* **Ex. B**, Chart of Claims. However, Nevada 5 lacks standing to bring its claims and, even if it had standing, is not the real party in interest with respect to the claims because it has no connection to this case other than as the parent of Plaintiff N5HYG. In fact, courts in other jurisdictions have specifically found that alleged "wrongdoing to a subsidiary does not confer standing upon the parent company, even where the parent is the sole shareholder of the subsidiary." *See In re Neurontin Mktg. & Sales Practices Litig.*, 810 F. Supp. 2d 366, 370 (D. Mass. 2011) (citation omitted)); *Clarex Ltd. v. Natixis Securities America*, LLC, 2012 WL 4849146 (denying parent corporation's standing when case concerned bonds and warrants in subsidiaries' name: "a subsidiary is a "separate corporation," and thus the parent company "has no standing to assert [the

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subsidiary's] legal rights") (citation omitted); *BNP Paribas Mortg. Corp. v. Bank of Am.*, N.A., 778 F.Supp.2d 375, 420 (S.D.N.Y.2011) (plaintiff which sued based on the injuries of its subsidiary lacked standing to do so); *Diesel Sys. Ltd. v. Yip Shing Diesel Eng'g Co.*, 861 F. Supp. 179, 181 (E.D.N.Y.1944) ("A corporation does not have standing to assert claims belonging to a related corporation, simply because their business is intertwined").

Indeed, Nevada 5 has not—and cannot—state a basis for its claims. For instance, the Amended Complaint contains no allegation that Nevada 5 has any contractual relationship with any Defendant. Accordingly, Nevada 5 has no standing to bring any claim that sounds in contract against any Defendant, and its Sixteenth Cause of Action for tortious interference with a contract must be dismissed. Am. Compl. ¶¶ 176–179. Similarly, Nevada 5 is not (and has never been) a stockholder of Hygea. The Complaint does not allege that Nevada 5 has ever purchased (or otherwise held) Hygea stock. That being the case, Nevada 5 lacks a fraud-based justiciable controversy with any Defendant, and has no standing to bring its First through Ninth and Twentieth Causes of Action.

Further, Nevada 5's remaining claims—its Twelfth through Fourteenth Causes of Action for breach of fiduciary duty and Seventeenth through Twentieth Causes of action for civil conspiracy, concert of action, unjust enrichment, and constructive fraud—fail similarly as derivative of those claims made by its subsidiary, Plaintiff N5HYG.[13] Nevada 5's parent-subsidiary relationship N5HYG

[13] Courts in other jurisdictions have specifically found that "wrongdoing to a subsidiary does not confer standing upon the parent company, even where the parent is the sole shareholder of the subsidiary." *See In re Neurontin Mktg. & Sales Practices Litig.*, 810 F. Supp. 2d 366, 370 (D. Mass. 2011) (citation omitted)); *see also Domino's Pizza, Inc. v. McDonald*, 546 U.S. 470 (2006) ("[I]t can be said to be the whole purpose of corporations and agency law – that the shareholder [] of a corporation has no rights and is exposed to no liability under the corporations contracts."); *Russo v. Lopez*, 2012 WL 846462 D. Nev 2012 (Pro, J.) (holding that as a general rule, a corporation is a separate legal entity from its shareholders, and thus "injury to the corporation is not cognizable as injury to the shareholders, for purposes of the standing requirements"); *Clarex Ltd. v. Natixis Securities America, LLC*, 2012 WL 4849146 (denying parent corporation's standing when case concerned bonds and (continued...)

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does not, in and of itself, confer standing to make claims on N5HYG's behalf. In short, Nevada 5 has no dog in this fight, and it is thus unclear why Nevada 5 is a party to this action.

VI. MOTION TO DISMISS FOR LACK OF PERSONAL JURISDICTION

"Nevada's long-arm statute permits personal jurisdiction over a nonresident defendant unless the exercise of jurisdiction would violate due process." *Consipio Holding, BV v. Carlberg*, 128 Nev. 454, 458, 282 P.3d 751, 754 (2012); *see also* NRS 14.065(1). "Due process requires 'minimum contacts' between the defendant and the forum state 'such that the maintenance of the suit does not offend traditional notions of fair play and substantial justice.'" *Trump v. District Court*, 109 Nev. 687, 692, 857 P.2d 740, 743 (1993). (quoting *Mizner v. Mizner*, 84 Nev. 268, 270, 439 P.2d 679, 680 (1968)). "Due process requirements are satisfied if the nonresident defendants' contacts [with Nevada] are sufficient to obtain either (1) general jurisdiction, or (2) specific personal jurisdiction and it is reasonable to subject the nonresident defendants to suit here." *Viega GmbH v. Eighth Judicial Dist. Court*, 130 Nev. Adv. Rep. 40, 328 P.3d 1152, 1156 (2014). The burden of pleading and establishing personal jurisdiction rests with Plaintiffs. *See, e.g.*, *Abbott-Interfast v. District Court*, 107 Nev. 871, 873, 821 P.2d 1043, 1044 (1991).

A. This Court Does Not Have General Personal Jurisdiction Over The Non-Guarantor Defendants

This Court does not have general jurisdiction over the Non-Guarantor Defendants.[14] "For an individual, the paradigm forum for the exercise of general

(...continued)
warrants in subsidiaries' name: "a subsidiary is a "separate corporation," and thus the parent company "has no standing to assert [the subsidiary's] legal rights") (citation omitted); *BNP Paribas Mortg. Corp. v. Bank of Am., N.A.*, 778 F.Supp.2d 375, 420 (S.D.N.Y.2011) (plaintiff which sued based on the injuries of its subsidiary lacked standing to do so); *Diesel Sys. Ltd. v. Yip Shing Diesel Eng'g Co.*, 861 F. Supp. 179, 181 (E.D.N.Y.1944) ("A corporation does not have standing to assert claims belonging to a related corporation, simply because their business is intertwined.").

[14] The Court has jurisdiction over Hygea, Iglesias, and Moffly by virtue of the SPA, which contains a forum selection provision.

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jurisdiction is the individual's domicile . . . ." *Goodyear Dunlop Tires Operations, S.A. v. Brown*, 564 U.S. 915, 924, 131 S. Ct. 2846, 2853 (2011). Here, Plaintiffs expressly aver that each of the Non-Guarantor Defendants resides in a state *other than Nevada*—i.e., New York for Defendants McGowan and Mann, Florida for Defendants Castillo, Loar, Collins, and Rosenkrantz, Georgia for Defendants Kelly and Marrichi, and California for Defendant Campanella. *See* Am. Compl. ¶¶ 5–8, 10–12, 14–15.

B. This Court Does Not Have Specific Personal Jurisdiction Over the Non-Guarantor Defendants

This Court also lacks specific personal jurisdiction over the Non-Guarantor Defendants. As held by the U.S. Supreme Court:

> In order for a state court to exercise specific jurisdiction, the suit must arise out of or relate to the defendant's contacts with the forum. In other words, there must be an affiliation between the forum and the underlying controversy, principally, *an activity or an occurrence that takes place in the forum State and is therefore subject to the State's regulation*. For this reason, specific jurisdiction is confined to adjudication of issues deriving from, or connected with, the very controversy that establishes jurisdiction.

Bristol-Myers Squibb Co. v. Superior Court, 137 S. Ct. 1773, 1780 (2017) (internal citations and quotations omitted).

Here, Plaintiffs have not pled any facts establishing what activity at issue took place in Nevada, much less how the Non-Guarantor Defendants were involved in such activity. The only connection between Nevada and the Non-Guarantor Defendants alleged by Plaintiffs is each Non-Guarantor's position as a director of a Hygea, a Nevada corporation. However, in *Consipio Holding, BV v. Carlberg*, the Nevada Supreme Court held that "a [nonresident] individual's position as a Nevada corporation's director does not automatically subject that individual to [specific] jurisdiction in Nevada." 128 Nev. at 461, 282 P.3d at 757. More is needed, but

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Plaintiffs simply have not alleged any more. Accordingly, this Court must dismiss the Non-Guarantor Defendants from this lawsuit for lack of personal jurisdiction.

VII. MOTION TO DISMISS FOR FAILURE TO STATE A CLAIM

Dismissal of a complaint is proper for "failure to state a claim upon which relief can be granted." N.R.C.P. 12(b)(5). "All factual allegations of the complaint must be accepted as true." *Vacation Village v. Hitachi Am.*, 110 Nev. 481, 484, 874 P.2d 744, 746 (1994) (citation omitted). However, "the allegations must be legally sufficient to constitute the elements of the claim asserted." *Sanchez v. Wal-Mart Stores, Inc.*, 125 Nev. 818, 823, 221 P.3d 1276, 1280 (2009) (citation omitted). A complaint should be dismissed where a party can prove no set of facts which, if true, would entitle it to relief. *See Buzz Stew, LLC v. City of N. Las Vegas*, 124 Nev. 224, 228, 181 P.3d 670, 672 (2008).

A. The SPA's Integration Clause and Parol Evidence Rule Bar Plaintiffs' Causes of Action For and Grounded in Fraud

Here, Plaintiffs make the following claims for or grounded in fraud:

- Violation of NRS 90.570 and 15 U.S.C. § 77q (First and Second Causes of Action),
- Common Law Fraud (Seventh Cause of Action);
- Negligent Misrepresentation (Eighth Cause of Action) [15];
- Silent Fraud/Material Omission (Ninth Cause of Action);
- Breach of Fiduciary Duty (Twelfth Cause of Action);
- Breach of Duty of Candor (Thirteenth Cause of Action);
- Breach of Duty of Loyalty (Fourteenth Cause of Action);
- Minority Shareholder Oppression (Fifteenth Cause of Action);
- Civil Conspiracy (Seventeenth Cause of Action);

[15] "Although the word 'fraud' is not found anywhere in the Restatement definition [of negligent misrepresentation]—nor is the intent requirement that normally must accompany an allegation of common law fraud—fraud is still an 'essential element' of a negligent misrepresentation claim." *Scaffidi v. United Nissan*, 425 F.Supp.2d 1159, 1169-70 (D. Nev. 2005).

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- Concert of Action (Eighteenth Cause of Action); and
- Constructive Fraud (Twentieth Cause of Action)

(collectively, the "Claims in Fraud").

The Claims in Fraud are based on Plaintiffs' assertions that Plaintiffs relied upon certain representations that Hygea had a strong financial performance and that the Company intended to "go public" after the investment. Am. Compl. ¶¶ 33–34. However, the SPA at issue in this lawsuit contains a full integration clause at Paragraph 8.4 (the "Integration Clause"). The Integration Clause unambiguously states as follows:

> 8.4. **Entire Agreement.** This Agreement, together with the Ancillary Agreement and any documents, Schedules, instruments, or certificates referred to herein or delivered in connection herewith, constitutes the entire agreement among the Parties hereto with respect to the subject matter hereof and supersedes any and all prior discussions, negotiations, proposals, undertakings, understandings, and agreements (including draft agreements) with respect thereto, whether written or oral, none of which shall be used as evidence of the Parties' intent. In addition, each Party hereto acknowledges and agrees that all prior drafts of this Agreement contain attorney work product and shall in all respects be subject to the foregoing sentence.

Ex. A, SPA at ¶ 8.4. Importantly, the Integration Clause forbids introduction of "all prior discussions, negotiations, proposals, understandings, and agreements," including for the express purpose of evidencing any party's intent. *See Alexander v. Simmons*, 90 Nev. 23, 24, 518 P.2d 160, 161 (1974) (explaining that only if the written contract is silent on a matter, may it be proven by parol). Accordingly, Plaintiffs' Claims in Fraud, each of which rely upon allegations of pre-SPA misrepresentations and require an allegation of Defendants' intent, are barred by the Integration Clause.

For similar reasons, Plaintiffs are precluded by the parol evidence rule from asserting claims for and grounded in fraud when the alleged misrepresentations contradict the very terms of a written agreement, such as that found in the Integration Clause. *See Crow-Spieker #23 v. Robinson*, 97 Nev. 302, 305, 629 P.2d 1198, 1199 (1981) (internal quotations omitted) ("The parol evidence rule forbids the

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reception of evidence which would vary or contradict the contract, since all prior negotiations and agreements are deemed to have been merged therein. If the terms of an agreement are clear, definite and unambiguous, parol evidence may not be introduced to vary those terms.") *See also Tallman v. First Nat. Bank*, 66 Nev. 248, 259, 208 P.2d 302, 307 (1949) (stating that "fraud is not established by showing parol agreements at variance with a written instrument and there is no inference of a fraudulent intent not to perform from the mere fact that a promise made is subsequently not performed"); *Rd. & Highway Builders, Ltd. Liab. Co. v. N. Nev. Rebar, Inc.*, 128 Nev. 384, 386, 284 P.3d 377, 378 (2012) ("We conclude that when a fraudulent inducement claim contradicts the express terms of the parties' integrated contract, it fails as a matter of law").

Accordingly, the Claims in Fraud must be dismissed, as Plaintiffs are barred by the Integration Clause and the parol evidence rule from introducing any evidence, including that of representations or intent, outside the SPA.

B. Plaintiffs Failed to State Their Claims For and Grounded in Fraud With the Particularity Demanded by N.R.C.P. 9(b)

Even if Plaintiffs' Claims in Fraud survive the parol evidence rule, they do not survive the heightened pleading requirements of N.R.C.P. 9(b). "The circumstances that must be detailed include averments to the time, the place, the identity of the parties involved, and the nature of the fraud or mistake." *Brown v. Kellar*, 97 Nev. 582, 583-84, 636 P.2d 874, 874 (1981). The heightened pleading requirement for fraud is designed "to give defendants notice of the particular misconduct so that they can defend against the charge and not just deny that they have done anything wrong." *Risinger v. SOC LLC*, 936 F. Supp. 2d 1235, 1242 (D. Nev. 2013). *Accord Ivory Ranch v. Quinn River Ranch*, 101 Nev. 471, 472-73, 705 P.2d 673, 675 (1985) ("NRCP 9(b) requires that special matters (fraud, mistake, or condition of the mind), be pleaded with particularity in order to afford adequate notice to the opposing party.") *Moreover*, when suing more than one defendant—as Plaintiffs do here—

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N.R.C.P. 9(b) requires a plaintiff to "differentiate [her] allegations . . . and inform each defendant separately of the allegations surrounding his alleged participation in the fraud." *Swartz v. KPMG LLP*, 476 F.3d 756, 764-65 (9th Cir. 2007) (discussing the federal counterpart to N.R.C.P. 9(b) and dismissing plaintiff's fraud claims because plaintiff "lumped" the defendant at issue with the other defendants.)

As to Hygea and the Guarantor Defendants, Plaintiffs' Complaint is based on assertions that the Guarantor Defendants misrepresented Hygea's financial performance and plans to "go public." Am. Compl. ¶ 34. Although Plaintiffs attempt to create the veneer of particularity by alleging that the Guarantor Defendants provided certain documents on certain dates reflecting a "favorable financial performance," *see* Am. Compl. ¶ 41(a)–(n), Plaintiffs do not identify the purportedly inaccurate financial figures contained in such documents *with any specificity whatsoever*. Plaintiffs' lack of specificity is exacerbated by other "wishy washy" allegations that the financial information "encompassed numbers that (even if subject to apparently reasonable *ongoing adjustment*," Am. Compl. ¶ 31, and that the last financial report Plaintiffs received "*could have*" been inaccurate. Am. Compl. ¶ 64. Such allegations do not provide Hygea and/or the Guarantor Defendants with the notice needed to defend themselves, and thus fail under Rule 9(b).

As to the Non-Guarantor Defendants, Plaintiffs plead no facts that any of the Non-Guarantor Defendants ever made *any* representations to *any* Plaintiff. *See generally* Am. Compl. Nor do Plaintiffs allege to have had any interactions with any of the Non-Guarantor Defendants. As Plaintiffs have failed to allege any facts, let alone specific facts, demonstrating that any of the Non-Guarantor Defendants made any misrepresentations to them, or that any of the Non-Guarantor Defendants were involved in any interactions where those individuals could possibly omit information, the Claims in Fraud fail as to each of the Non-Guarantor Defendants.[16] Accordingly,

[16] Indeed, Plaintiffs failure to plead any facts relating to fraud against the Non-Guarantor Defendants moots whether Plaintiffs also differentiated their allegations (continued...)

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the entirety of Plaintiffs' claims for and grounded in fraud should be dismissed for failure to plead with the requisite particularity demanded by N.R.C.P. 9(b).

C. Plaintiffs Do Not Have Any Viable Claim for Violation of the Federal Securities Laws

Plaintiffs assert three claims under the Federal Securities Act of 1933 (the "1933 Act"). All claims fail as a matter of law (even if Plaintiffs have pled such claims with the particularity demanded by N.R.C.P. 9(b)).

1. Plaintiffs Do Not Have Any Viable Claim for Federal Statutory Securities Fraud (Second Cause of Action)

In their Second Cause of Action for statutory securities fraud, Plaintiffs quote from and assert that Defendants violated Section 17(a) of the 1933 Act. Am. Compl. ¶¶ 91–92. However, every federal circuit to address this issue (including the Ninth Circuit Court of Appeals) has held that Section 17(a) has no private right of action. *See, e.g., Puchall v. Houghton, Cluck, Coughlin & Riley (In re Washington Pub. Power Supply Sys. Sec. Litig.)*, 823 F.2d 1349, 1355-58 (9th Cir. 1987) (en banc). Confusingly, Plaintiffs incorrectly quote Section 12(a)(2) for purposes of identifying the remedy to their non-existent Section 17(a) claim.

Even if the Court recognized such pleading as sufficient to trigger a cause of action under Section 12(a)(2), "for Section 12(a)(2) to apply there must be a public offering." *Artist Hous. Holdings, Inc. v. Davi Skin, Inc.*, No. 2:06-cv-893-RLH-LRL, 2007 U.S. Dist. LEXIS 25364, at *5 (D. Nev. Mar. 27, 2007). Private sales of stock are not subject to Section 12(a)(2). *Id.* Although Plaintiffs make the conclusory assertion that Defendants undertook a public offering, Am. Compl. ¶ 27, and provided Plaintiffs materials constituting a prospectus, Am. Compl. ¶ 94, their allegations are belied by the reality of the transaction, as evidenced by the SPA and

(...continued)
against the Non-Guarantor Defendants. Yet, if this question has not been mooted, then it can only be answered in the negative.

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their remaining allegations. **Ex. A**, SPA. The SPA is clearly a contract for the private sale of securities, a conclusion supported by allegations that evidence a privately-negotiated transaction between two parties, pursuant to a confidential information memorandum and other information classified as confidential. Am. Compl. ¶¶ 41 n.1, 41(a). Plaintiffs' allegations of a public offering are also contradicted by their claims for breach of contract on the basis of Hygea's failure to go public. Am. Compl. ¶¶ 54, 55, 67. The offering was either public or private—Plaintiffs cannot have it both ways. Accordingly, Plaintiffs' Second Cause of Action for violation of the 1933 Act in selling securities to Plaintiffs must be dismissed.

2. Plaintiffs Do Not Have Any Viable Claim for Failure to Comply with Federal Registration Requirements (Fourth Cause of Action)

In their Fourth Cause of Action, Plaintiffs attempt to plead a claim against Defendants for failure to comply with the federal registration requirements for securities, including by misusing the registration safe harbor of Regulation D. Plaintiffs, however, do not make clear what provision of the 1933 Act Defendants violated by their purported failure to register. As a threshold matter, neither the federal securities registration statue (Section 5, 15 U.S.C. § 773) nor Regulation D, which Plaintiffs cite in this Cause of Action, provide a private right of action.[17] *See Levitt v. J.P. Morgan Sec., Inc.*, 9 F. Supp. 3d 259, 273 (E.D.N.Y. 2014). Indeed, "the exclusive federal cause of action for failure to register public or private securities lies

[17] Further, the Complaint does not support Plaintiffs' claim that Regulation D would not apply to this transaction. The conduct for which Plaintiffs' fault Hygea—providing inaccurate information, not filing certain forms, or that the offering was part of a "scheme to evade the registration provisions"—are not bases on which a private plaintiff can argue that a Regulation D offering is invalid; instead the proper remedy for such concerns would be a Rule 10b-5 fraudulent misstatement suit. *See Hamby v. Clearwater Consulting Concepts, LLC*, 428 F. Supp. 2d 915, 920 (E.D. Ark. 2006) ("[T]he SEC has explicitly stated that filing a Form D is not a condition to obtaining an exemption under [Regulation D].") Plaintiffs, however, have made clear in their filings in Federal Court (while this matter was removed thereto) that they are not pleading a Rule 10b-5 claim. In any event, they have failed to state such a claim and are otherwise estopped from doing so given their representations to the Federal Court.

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under Section 12(a)(1) of the 1933 Securities Act . . . ." *Brown v. Earthboard Sports USA, Inc.*, 481 F.3d 901, 916 (6th Cir. 2007).

Yet, even if Plaintiffs meant to plead a claim under Section 12(a)(1) of the 1933 Act, they still have no viable cause of action against Defendants because Section 4(a)(2) of the 1933 Act provides a safe harbor exemption for "transactions by an issuer not involving any public offering." 15 U.S.C. § 77d(a)(2). Here, Plaintiffs' allege that the securities at issue were sold to Plaintiff N5HYG pursuant to a private stock purchase agreement, i.e., the SPA. *See* Am. Compl. ¶ 44; Ex. A, SPA. Accordingly, Plaintiffs' Fourth Cause of Action for violation of the 1933 Act in failing to register securities must be dismissed.

3. Plaintiffs Do Not Have Any Viable Claim for Federal Control Person Liability (Sixth Cause of Action)

In their Sixth Cause of Action, Plaintiffs attempt to plead control person liability against all Director Defendants. The 1933 Act provides for "control person" liability in limited circumstances, but Plaintiffs fail to adequately allege either required element: (1) a primary violation of Sections 11 and 12 of the 1933 Act; and (2) defendant's "control" over the primary violator. 15 U.S.C. § 77o. Here, as noted above, Plaintiffs have failed to plead any primary violation of Section 11 or 12 of the 1933 Act, whether by Hygea or any of the Director Defendants. Even if Plaintiffs have pled a primary violation, Plaintiffs do not adequately allege that any of the Director Defendants controlled Hygea or one another. Allegations that merely establish a person as a director of a company alleged to be the primary violator are insufficient. Rather, a plaintiff must set forth "specific factual allegations indicating how [the alleged] control was manifested" by, for instance, including facts "supporting that the defendant was either involved in the day-to-day business of the primary violator or connected to the fraudulent act in some way." *Richardson v. Oppenheimer & Co. Inc.*, No. 2:11-cv-02078-GMN-PAL, 2014 U.S. Dist. LEXIS 43419,

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at *34 (D. Nev. Mar. 31, 2014). Plaintiffs, here, have done neither. Accordingly, Plaintiffs' claim for control person liability must be dismissed.

D. Plaintiffs Do Not Have Any Viable Claim for Violation of the Nevada Securities Laws

Plaintiffs bring purported "claims" based on several sections of the Nevada Uniform Securities Act ("NUSA"): NRS 90.570 (First Cause of Action – Statutory Securities Fraud), NRS 90.460 (Third Cause of Action – Failure to Comply with Registration Requirements), and NRS 90.660 (Fifth Cause of Action – Control Person Liability). However, the statutes' plain language dictates that NRS 90.570, 90.460, and 90.660 apply only "if (a) an offer to sell is made in this State; or (b) an offer to purchase is made and accepted in this State." NRS 90.830(1); *see also Prime Mover Capital Partners, L.P. v. Elixir Gaming Techs.*, Inc., 793 F. Supp. 2d 651, 669 (S.D.N.Y. 2011) (dismissing NUSA claims based on the purported sale of a Nevada corporation's securities because, as is the case here, "plaintiffs have not alleged that defendants offered to sell, or that plaintiffs received and accepted an offer to buy, [the company's] stock in Nevada"). The statute further specifies that an offer to sell occurs in Nevada only if the offer "(a) originates in this State; or (b) is directed by the offeror to a destination in this State and received where it is directed . . . ." NRS 90.830(3).

Here, Plaintiffs make no allegation that any offer to sell Hygea securities occurred in Nevada. *See generally* Am. Compl. Indeed, the Complaint supports the opposite conclusion. Hygea's principal place of business is in Miami, Florida, and its business relates to acquiring physician's practices in Florida and surrounding states. *See* Am. Compl. ¶¶ 2, 38. There is no allegation that Hygea has operations in Nevada, that either Plaintiff or their agent, RIN Capital LLC, received any offer to buy Hygea securities that originated in Nevada, that any Defendant directed an offer to a destination in Nevada, that Plaintiffs or RIN correspondingly received such an offer in Nevada, or that any act whatsoever occurred in, originated from, or was in

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any way associated with Nevada. In short, none of the several communications alleged in the Complaint and related to the offer process are identified as being directed to or received in Nevada. *See, e.g.*, Am. Compl. ¶¶ 36, 37 (instead describing meetings in Miami). Indeed, the Complaint asserts that the misrepresentations were made to Plaintiffs' agent, RIN, *see* Am. Compl. ¶ 35, which is a Michigan-organized limited liability company with operations in Michigan.[18] *See* Exs. B & C to Motion To Dismiss On Behalf Of Defendant Ray Gonzalez (filed June 25, 2018).

Accordingly, Plaintiffs are barred from stating claims under NRS 90.570, 90.460, and 90.660 by the allegations (or lack thereof) in their own Amended Complaint. That being the case, Plaintiffs' First, Third, and Fifth Causes of Action must be dismissed with respect to all Defendants (with prejudice). *Cf. Prime Mover*, 793 F. Supp. 2d at 669 (dismissing similarly flawed claims). However, even if the Court construed Plaintiffs' allegations to state the requisite contacts with Nevada, Plaintiffs' causes of action for violation of the NUSA still fail as a matter of law for the reasons set forth below.

1. NRS 90.570 Does Not Apply to Nevada 5 or the Non-Guarantor Defendants (First Cause of Action)

Plaintiffs First Cause of Action purports to bring a claim under NRS 90.570 for statutory securities fraud. Plaintiffs, however, fail to state a claim under NRS 90.570 against the Non-Guarantor Defendants. NUSA provides that private civil liability for a violation of NRS 90.570 can only be pursued via NRS 90.660(1)(d). *See* NRS

[18] Plaintiffs attempt at Paragraph 84 of the Amended Complaint to allege that the "communications came from one Nevada corporation to another. Thus, they were made and received in Nevada for purposes of the Act." As an initial matter, this allegation is at odds with Plaintiffs' allegation that the "representations were made to personnel of RIN Capital," which as just stated is a Michigan company. Plaintiffs cannot have it both ways; the representations were made to RIN, or, the representations were made to Nevada 5. That said, even if the representations could be construed to have been made to Nevada 5, they still were not made *in the State of Nevada*. Just because communications may have occurred between two Nevada citizens or residents does not mean they were made *in the State of Nevada*. Such would be an absurd result and defy reason.

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90.660(1)(d). In turn, NRS 90.660 places important (and here, partially dispositive) limits on recovery.

First, direct actions for recovery under NRS 90.660(1)(d) are limited to claims against a person who "offers or sells" a security. *See* NRS 90.660(1).[19] As noted above, Hygea was the "seller" and there are no allegations that the Non-Guarantor Defendants personally made any representations[20] in connection with Hygea's purported offer to sell Plaintiff N5HYG securities. Thus, this is an additional reason for dismissal in so far it is asserted the Non-Guarantor Defendants. *See G.K. Las Vegas*, 460 F. Supp. 2d at 1258 ("Though the complaint is rife with allegations against 'Defendants' generally, [the claim] does not contain a single mention of either [director defendant].")

Second, liability attaches under NRS 90.660(1) only upon actual tender of the security or securities in question or the provision of "notice of willingness to exchange the security for the amount specified." NRS 90.660(1). Here, Plaintiffs' allege that "on September 18, 2017 they tendered back the shares they acquired under the [SPA] *conditioned upon* a full return of their purchase price plus interest, *with such tender remaining open for 30 days . . . .*" Am. Compl. ¶ 79 (emphasis added). Taking the allegations in Paragraph 79 as true, Plaintiffs notice of willingness to tender therefore expired on October 18, 2017. That being the case, Plaintiffs did not

[19] *But see* NRS 90.660(4) (setting forth control person liability). The reasons that control person liability does not attach to the Non-Guarantor Defendants in this case are set forth below.

[20] NRS 90.660(1)(d) only provides a private right of action for a violation of subsection (2) of NRS 90.570, which states that a person shall not "make an untrue statement of a material fact or omit to state a material fact . . . ." NRS 90.570(2). In interpreting identical language in the federal securities fraud rule (Rule 10b-5), the U.S. Supreme Court held that primary liability can lie only against the actual "maker" of the statement, which the Court held is limited to "the person or entity with ultimate authority over the statement, including its content and whether and how to communicate it." *Janus Capital Grp. v. First Deriv. Traders*, 564 U.S. 135, 144 (2011). Here, there is no allegation that any of the Non-Guarantor Director Defendants made any misstatement at all. *Cf.* Complaint (failing to set forth allegations that any Non-Guarantor Defendant made any misstatement to Plaintiffs).

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(actually) tender and have not alleged the existence of a (currently) effective notice of willingness to tender.[21] NRS 90.660 does not provide for "exploding" conditional tenders, which would be inconsistent with the plain meaning of the term. Black's Law Dictionary 1467 (6th ed. 1991) ("Tender" is an "unconditional offer to perform.") Accordingly, any claims Plaintiffs might otherwise enjoy under NUSA are not ripe until and unless Plaintiffs provide Hygea with a notice of its tender that is not conditional as to time.

Finally, just as with Section 12 under the 1933 Act, only "the person purchasing the security" can pursue a claim. NRS 90.660(1); *see also G.K. Las Vegas Ltd. P'ship v. Simon Prop. Grp., Inc.*, 460 F. Supp. 2d 1246, 1260 n.8 (D. Nev. 2006) (Ezra, J.) Thus, Plaintiff Nevada 5 has no claim under NRS 90.570 (which is also true for all of Nevada 5's NUSA claims, as NRS 90.660 is the only basis for private civil liability in NUSA).

2. Plaintiffs Have No Claim Against Any Defendant Under NRS 90.460 (Third Cause Of Action)

Plaintiffs' Third Cause of Action purports to set forth a claim for failure to properly register the alleged Hygea-N5HYG security offering under NRS 90.460. Once again, liability under 90.460 is limited by NRS 90.660. *See* NRS 90.660(1)(b). Accordingly, and for the same reasons set forth directly above, Plaintiff Nevada 5 (which did not purchase any securities) has no right to recovery, and the Non-Guarantor Defendants (who are not alleged to have made any misrepresentations) cannot be directly liable. Further, because the Complaint contains no allegation of a

[21] Plaintiffs attempt to cure this deficiency in the Amended Complaint by alleging that Plaintiffs "remaing willing to tender back N5HYG, LLC's shares in Hygea for their purchase price, plus the interest and contractual payments that continue to accrue and otherwise subject ot the provisions of paragraph 79 above." Am. Compl. ¶ 86. This purported offer is illusory. A "willing[ness] to tender" is not tender. Plaintiffs may be "willing" one moment and "unwilling" the next; thus, they must either tender or not.

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currently valid notice of willingness to tender, the claim must be dismissed with respect to all parties until such tender can be and/or is alleged.

Additionally, Plaintiffs' Third Cause of Action fails as a matter of law because the securities offering at issue was not required to be registered under NUSA. NRS 90.530(11) exempts from registration certain offerings that involve less than 35 in-state purchasers, no general solicitations, no commissions except to licensed broker-dealers, and belief by the issuer that the purchaser plans to use the securities for investment. NRS 90.530(11); *see also Jakemer v. Romano*, No. CV-06-2563-PHX-SMM, 2007 WL 704178, at *9 (D. Ariz. Mar. 5, 2007). Taking the allegations in the Amended Complaint as true, the offering alleged here satisfies all of these criteria.

As explained above, the Complaint alleges a privately-negotiated transaction between Hygea and a single purchaser, executed after a series of private and confidential communications, which did not involve the Non-Guarantor Defendants, and which involved zero in-state purchasers. The securities would therefore be exempt from registration under NRS 90.530(11)(a)–(d) even if NUSA otherwise applied to the transaction at issue (which it does not, as explained above). As also noted above, the allegations also do not contradict that the purported securities sale satisfied federal Regulation D requirements and/or falls under the federal Section 4(a)(2) exemption.

3. Plaintiffs Cannot Establish Control Person Liability Under NUSA (Fifth Cause of Action)

Plaintiffs' final NUSA claim, their Fifth Cause of Action, is for control person liability under NRS 90.660(4). This claim, of course, first requires a claimant to establish primary liability under NRS 90.660(1) or (3). For the reasons set forth above, Plaintiffs fail to state a claim against any Defendant for liability under NUSA, including NRS 90.660(1) and (3). That being the case, there can be no control person liability under NRS 90.660(4) with respect to any Defendant. *See* NRS 90.660(4)

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(providing that an "officer or director of the *person liable* . . . [is] also liable jointly and severally with and to the same extent as the [liable] person") (emphasis added).

E. Plaintiffs Do Not Have Any Viable Claim for Breach of Fiduciary Duty (Twelfth through Fifteenth Causes of Action)

As an initial matter, Plaintiffs cannot sustain any claim for breach of fiduciary duty—including specifically for waste, breach of the duty of candor, breach of the duty of loyal, and minority shareholder oppression—on conduct that purportedly occurred prior to October 5, 2016, the date Plaintiff N5HYG entered into the SPA and became a Hygea stockholder. *See Omnicare, Inc. v. NCS Healthcare*, 809 A.2d 1163, 1169 (Del. Ch. 2002) (noting that "a breach of fiduciary duty claim must be based on an actual, existing fiduciary relationship"). Accordingly, paragraphs 32 through 52 of the Complaint—which concern actions prior to October 5, 2016—are entirely inapplicable to any claim for breach of fiduciary duty because Plaintiff N5HYG was not a Hygea stockholder before this date, and thus, lacks the requisite standing to claim a breach. *See Omnicare, Inc. v. NCS Healthcare, Inc.*, 809 A.2d 1163, 1169 (Del. Ch. 2002) (shareholder plaintiffs may only challenge alleged breaches of fiduciary duty if they held shares of the corporation at the time of the alleged breach.)

In the meantime, although paragraphs 53 through 76 of the Amended Complaint contain allegations for conduct that purportedly occurred after October 5, 2016, such allegations are largely subsumed by Plaintiffs' claim for breach of contract. *See* Am. Compl. ¶ 54 (alleging failure to go public as purportedly promised by the SPA); ¶¶ 68–69 (alleging failure to provide financials or make payments as purportedly promised by the SPA); ¶ 76 (alleging failure to fulfill other obligations purportedly promised by the SPA). As Delaware has explained, claims for breach of fiduciary duty cannot "proceed in parallel with breach of contract claims unless there is an independent basis for the fiduciary duty claims apart from the contractual claims." *CIM Urban Lending GP, LLC v. Cantor Commer. Real Estate Sponsor, L.P.*,

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No. 11060-VCN, 2016 Del. Ch. LEXIS 47, at *7 (Ch. Feb. 26, 2016). *See also Action Nissan v. Hyundai Motor Am.*, 617 F. Supp. 2d 1177, 1192-93 (M.D. Fla. 2008) ("While the economic loss rule does not automatically bar a breach of fiduciary duty claim, the rule does apply when the claim for breach of fiduciary duty is based upon and inextricably intertwined with the claim for breach of contract.") Thus, any allegations that depend upon the SPA must give way to the contract claim. *See CIM Urban Lending*, 2016 Del. Ch. LEXIS 47, at *8.

To the extent any allegations set forth in paragraphs 53 through 76 exist independent of the SPA, such allegations could only describe a claim that is derivative in nature, but as set forth below, any derivative claim fails because Plaintiffs did not make the requisite pre-suit demand required by N.R.C.P. 23.1 and did not properly allege that demand is excused. As further set forth below, Plaintiffs make no allegations that would support a claim for breach of the duty of loyalty or waste, and Nevada does not recognize claims for minority shareholder oppression or breach of the duty of candor. Accordingly, the entirety of Plaintiffs' claims for breach of fiduciary duty must be dismissed.

1. Plaintiffs Allegations for Breach of Fiduciary Duty are Derivative in Nature

Derivative actions are those "brought by a shareholder on behalf of a corporation to recover for harm done to the corporation." *Cohen v. Mirage Resorts, Inc.*, 119 Nev. 1, 62 P.3d 720, 732 (2003) (citing *Kramer v. W. Pac. Indus.*, 546 A.2d 348, 351 (Del. 1988)).[22] "Whether a cause of action is individual or derivative must be determined from the nature of the wrong alleged and the relief, if any, which could result if plaintiff were to prevail." *Id.* at 352. Courts undertaking such a

[22] Nevada's corporate law is modeled largely after Delaware's corporate law. *See Cohen v. Mirage Resorts, Inc.*, 119 Nev. 1, 62 P.3d 720, 726–27 & n. 10 (2003). As such, Nevada courts look to decisions of Delaware courts, or decisions applying Delaware law, for guidance. *Hilton Hotels Corp. v. ITT Corp.*, 978 F.Supp. 1342, 1346 (D.Nev.1997).

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determination "look to the body of the complaint, not to the plaintiff's designation or stated intention." *Id.*

When conducting such an analysis under Nevada law, the court applies the "Direct Harm Test" to determine whether the claims are direct or derivative. *Parametric Sound Corp. v. Eighth Jud. Dist. Ct.*, 401 P.3d 1100 (Nev. 2017). In doing so, the court considers "(1) who suffered the alleged harm (the corporation or the suing stockholders, individually); and (2) who would receive the benefit of any recovery or other remedy (the corporation or the stockholders, individually)?"" *Id.* at 1107. The focus is on the direct harm, *id.* at 1108, and in order to maintain a direct claim, both questions must be answered in favor of the suing stockholder. *See id.* at 1106 (explaining that a direct claim exists when a shareholder has "injuries that are independent of any injury suffered by the corporation.")

Here, Plaintiffs' fundamental theory of the case describes what can only be called a derivative claim for mismanagement. As set forth in ¶ 74 of the Amended Complaint, "[t]he entire theory behind Hygea's business model was that Hygea would realize efficiencies from effective business and accounting practices. Such a theory is entirely at odds with the way Defendants have actually run the operation . . . . Among other things, this reflects Defendants' disorganized accounting and ineffective management." The foregoing allegation is reinforced at ¶ 151 where Plaintiffs claim that Defendants had "the highest fiduciary obligations in the management and administration of the affairs of Hygea, including oversight of compliance with federal laws and securities regulations." Plaintiffs allege that such mismanagement led to Hygea's "current distress," *see* Am. Compl. ¶ 78, but any harm Plaintiffs might have suffered as a result of such distress would be one that affected all stakeholders equally. Accordingly, any claim for breach of fiduciary duty set forth by the Complaint would be derivative in nature.

2. Plaintiffs Failed to Make a Pre-Suit Demand or Sufficiently Plead Demand Futility

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"A shareholder must make a demand on the board of directors to address the shareholder's claims prior to bringing a derivative action, or demonstrate that such a demand is futile." *Parametric Sound Corp. v. Eighth Judicial Dist. Court of Nev.*, 401 P.3d 1100, 1105 (Nev. 2017) (citing *Shoen v. SAC Holding Corp.*, 122 Nev. 621, 633, 137 P.3d 1171, 1179 (2006); NRS 41.520(2); NRCP 23.1.) Moreover, "[i]n light of the demand requirement, NRCP 23.1 imposes heightened pleading imperatives . . . . Under this rule, a derivative complaint must state, with particularity, the demand for corrective action that the shareholder made on the board of directors . . . and why he failed to obtain such action, or his reasons for not making a demand." *Shoen v. SAC Holding Corp.*, 122 Nev. 621, 633-34, 137 P.3d 1171, 1179 (2006).

Importantly, "[the] demand requirement recognizes the corporate form in two ways[:]"

> First, a demand informs the directors of the complaining shareholder's concerns and gives them an opportunity to control any acts needed to correct improper conduct or actions, including any necessary litigation
>
> . . .
>
> Second, the demand requirement protects clearly discretionary directorial conduct and corporate assets by discouraging unnecessary, unfounded, or improper shareholder actions.
>
> Thus, in "promoting . . . alternate dispute resolution, rather than immediate recourse to litigation, the demand requirement is a recognition of the fundamental precept that directors manage the business and affairs of corporations."

Shoen v. SAC Holding Corp., 122 Nev. 621, 633, 137 P.3d 1171, 1179 (2006) (quoting *Aronson v. Lewis*, 473 A.2d 805, 812 (Del. 1984)).

Plaintiffs did not make any demand on Hygea's board of directors, and by failing to do so, Plaintiffs deprived the directors of the ability to evaluate the merits of Plaintiffs' claims for breach of fiduciary duty. Nor did Plaintiffs plead why such a demand would have been futile, much less set forth their reasons with particularity. *See Shoen*, 122 Nev. at 637, 137 P.3d at 1182 (2006) (explaining that in determining

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demand futility, a court must decide whether, "under the particularized facts alleged, a reasonable doubt is created that: (1) the directors are disinterested and independent or (2) the challenged transaction was otherwise the product of a valid exercise of business judgment") (quoting *Aronson v. Lewis*, 473 A.2d 805, 812 (Del. 1984)).

Here, Plaintiffs attempt to allege that demand would be futile for three reasons: (1) the demand would be for the Board to authorize a lawsuit against themselves, among others who are not currently on the Board; (2) the Board has shown an inclination "to fight tooth and nail against Plaintiffs;" including by having "vigorously contested the receivership action"; and (3) the Board has "longstanding deference to Mr. Iglesias and Hygea's management generally." Courts have consistently held that such allegations are insufficient to create a reasonable doubt required that the directors are disinterested and independent or that the challenged transaction was not the product of a valid business judgment.

Indeed, the Nevada Supreme Court has joined numerous other courts in holding that "[a]llegations of mere threats of liability through approval of the wrongdoing or other participation, however, do not show sufficient interestedness to excuse the demand requirement." *Shoen*, 122 Nev. at 639-40, 137 P.3d at 1183. *See also Jacobi v. Ergen*, No. 2:12-cv-2075-JAD-GWF, 2015 U.S. Dist. LEXIS 40401, at *14 (D. Nev. Mar. 30, 2015) ("Numerous courts have rejected the argument that 'the mere threat of personal liability for approving a questioned transaction, standing alone, is insufficient to challenge the disinterestedness of directors.'"

Moreover, although a lack of independence can be indicated by particularized facts that show that a majority of the Board is beholden to directors who would be liable, *Kahn v. Dodds (In re AMERCO Derivative Litig.)*, 127 Nev. 196, 232, 252 P.3d 681, 706 (2011), here, Plaintiffs have not alleged any facts, much less *particularized* fact, explaining why a majority of the Board is beholden to any other director, including—but not limited to—Mr. Iglesias. Although Plaintiffs allege in conclusory

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fashion that the Board's "vigorous contest" of the receivership action demonstrates the Board's deference to Mr. Iglesias, this allegation (even if sufficiently particularized) does not logically support a finding of non-independence. Indeed, Defendants really do not know how to respond to this other than to say logic and reason dictate that the Board would defend themselves in an action in which they were accused of wrongdoing and in which Plaintiffs sought a receivership that would have been the death-knell of the Company.

3. Plaintiffs Fail to Overcome Both the Business Judgment Rule and Nevada's Exculpatory Clause

Even if Plaintiffs have pled a direct claim or sufficiently overcome demand futility for purposes of pleading a derivative claim, then pursuant to NRS 78.138, directors and officers benefit from the presumption that "in deciding upon matters of business . . . [they] act[ed] in good faith, on an informed basis and with a view to the interests of the corporation." The business judgment rule "expresses a sensible policy of judicial noninterference with business decisions and is designed to limit judicial involvement in business decision-making so long as a minimum level of care is exercised in arriving at the decision." 18B Am. Jur. 2d Corporations § 1451 (2016). It prevents a court from "replac[ing] a well-meaning decision by a corporate board" with its own decision. *Id.* And, it "posits a powerful presumption in favor of actions taken by the directors in that a decision made by a loyal and informed board will not be overturned by the courts unless it cannot be 'attributed to any rational business purpose.'" *Cede & Co. v. Technicolor*, 634 A.2d 345, 361 (Del. 1993) (citations omitted).

"To rebut the rule, a shareholder plaintiff assumes the burden of providing evidence that directors, in reaching their challenged decision, breached any one of the triads of their fiduciary duty—good faith, loyalty or due care." *Cede II*, 634 A.2d at 361. *See also Shoen*, 122 Nev. at 635-36, 137 P.3d at 1181 (2006) (explaining that the business judgment rule "applies only in the context of valid interested director

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action, or the valid exercise of business judgment by disinterested directors in light of their fiduciary duties").

The duty of loyalty and good faith mandates that the best interest of the corporation and its shareholders takes precedence over any interest possessed by a director and not shared by the stockholders generally. *Shoen*, 122 Nev. at 632, 137 P.3d at 1178. "Classic examples of director self-interest in a business transaction involve either a director appearing on both sides of a transaction or a director receiving a personal benefit from a transaction not received by the shareholders generally." *Cede II*, 634 A.2d at 362. Here, however, Plaintiffs have not pled any facts explaining how the Director Defendants were self-interested in the transaction at issue.

Meanwhile, the duty of care demands that directors of a company act on an informed basis. *Shoen*, 122 Nev. at 632, 137 P.3d at 1178. *See also Cede II*, 634 A.2d at 368. Directors violate the duty of care when they "fail[] to inform themselves fully and in a deliberate manner before voting as a board upon a transaction." *Cede II*, 634 A.2d at 368. Here, however, Plaintiffs have not pled any facts explaining how the Director Defendants failed to inform themselves in the transactions at issue.

Moreover, in addition to the business judgment rule, because Nevada limits director liability to cases where "[t]he . . . act or failure to act constituted a breach of . . . fiduciary duties . . . [that] involved intentional misconduct, fraud or a knowing violation of law, NRS § 78.138(7)(a)–(b), Plaintiffs must sufficiently allege intentional misconduct, fraud, or a knowing violation of the law in connection with the purported breach. For the reasons set forth above, Plaintiffs have not sufficiently pled fraud as to any point in time, but in particular as to that timeframe after Plaintiff N5HYG became Hygea stockholder. Nor have Plaintiffs made any allegations of intentional misconduct or a knowing violation of the law.

Accordingly, Plaintiffs' claims for breach of fiduciary duty—whether brought derivatively or directly—fail to overcome the protection of the business judgment rule

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and Nevada's exculpatory provision, and therefore, must be dismissed in their entirety.

4. Plaintiffs Fail to Plead Any Allegations to Support a Claim for Breach of the Duty of Loyalty or Waste (Twelfth and Fourteenth Causes of Action)

Even if Plaintiffs have somehow overcome the business judgment rule, they have not set forth any allegations to support their claims for the breach of the duty of loyalty or waste (beyond a mere recital of the elements). "[T]he duty of loyalty requires the board and its directors to maintain, in good faith, the corporation's and its shareholders' best interests over anyone else's interests." *Shoen*, 122 Nev. at 632, 137 P.3d at 1178. For instance, directors can breach their fiduciary duty of loyalty if they "exploit an opportunity that belongs to the corporation." *Leavitt v. Leisure Sports Inc.*, 103 Nev. 81, 87, 734 P.2d 1221, 1225 (1987). In the meantime, "[t]he essence of waste is the diversion of corporate assets for improper or unnecessary purposes. Corporate waste occurs when assets are used in a manner so far opposed to the true interests of the corporation so as to lead to the clear inference that no one thus acting could have been influenced by any honest desire to secure such interests." *Patrick v. Allen*, 355 F. Supp. 2d 704, 714-15 (S.D.N.Y. 2005). Here, the Complaint is devoid of any allegation as to how the any Individual Defendant exploited a corporate opportunity or diverted corporate assets for improper or unnecessary purposes, much less what corporate opportunity was exploited, what assets were diverted, or for what purpose(s) such assets were diverted. Accordingly, Plaintiffs' claims for breach of the duty of loyalty and waste must be dismissed.

5. Nevada Does Not Recognize Claims for Minority Shareholder Oppression or Breach of the Duty of Candor (Thirteenth and Fifteenth Causes of Action)

In their Thirteenth and Fifteenth Causes of Action, Plaintiffs attempt to set forth claims for minority shareholder oppression and breach of the duty of candor. However, Nevada does not recognize a "duty of candor;" rather, it is subsumed either within the duty of care or duty of loyalty and applies only in limited instances where

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the corporation is providing information in connection with a stockholder action, such as a merger vote. *See, e.g., Cohen v. Mirage Resorts, Inc.*, 119 Nev. 1, 17-18, 62 P.3d 720, 731 (2003). This is consistent with Delaware law on the matter. *See, e.g., Kahn ex rel DeKalb Genetics Corp. v. Roberts*, C.A. No. 12324, 1995 Del. Ch. LEXIS 151, at *21 (Ch. Dec. 6, 1995) (explaining that the "duty of candor arises when the board elects to or has a duty to seek shareholder action" and that "if the board does not seek shareholder action at a meeting, through consent, in a tender or exchange offer, or otherwise, it has . . . no distinctive state law duty to disclose material developments with respect to the company's business").

Likewise, Nevada does not recognize "minority shareholder oppression" as an independent cause of action. Indeed, a claim for shareholder oppression is the same as that for abuse of control,[23] and in *In re Amerco Deriv. Litig.*, the Nevada Supreme Court noted that "Nevada does not recognize a cause of action for abuse of control" because "claims for abuse of control are essentially claims for breach of the fiduciary duty of loyalty." 252 P.3d 681, 700 n.11 (Nev. 2011). As set forth above, Plaintiffs have not set forth any facts as to how the Director Defendants breached their duty of loyalty.

Accordingly, Plaintiffs' claims for breach of the duty of candor and minority shareholder oppression must be dismissed. Moreover, even if the Court expanded upon Nevada law to recognize a claim for breach of the duty of candor and minority shareholder oppression, Plaintiffs have not set forth any allegations to support such claims (beyond a mere recital of the elements.)

F. Plaintiffs Do Not Have Any Viable Claim For Negligent Misrepresentation (Eighth Cause of Action)

[23] Indeed, Plaintiffs allege in their Fifteenth Cause of Action for minority shareholder oppression that the Director Defendants "have abused their position of control over Hygea to violate N5HYG's rights as a stockholder."

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In their Eighth Cause of Action, Plaintiffs attempt to set forth a claim for negligent misrepresentation against Defendants. However, even if this claim survives Rule 9(b) pleading, Nevada's economic loss doctrine precludes a plaintiff from asserting a claim for negligent misrepresentation when it seeks to recover purely economic losses. *Halcrow Inc. v. Eighth Jud. Dist. Ct.*, 302 P.3d 1148, 1152 (Nev. 2013). The economic loss doctrine is "intended to mark 'the fundamental boundary between contract law, which is designed to enforce the expectancy interests of the parties, and tort law, which imposes a duty of reasonable care and thereby [generally] encourages citizens to avoid causing physical harm to others.'" *Id.* (quoting *Terracon Consultants Western, Inc. v. Mandalay Resort Group*, 125 Nev. 66, 72-73, 206 P.3d 81, 86 (2009)). The intent of this doctrine is to protect "parties from unlimited economic liability, which could result from negligent actions taken in commercial settings." *Id.* (citing *Terracon*, 125 Nev. at 74, 206 P.3d at 86-87). Here, Plaintiffs seek to pile their negligent misrepresentation claim upon their breach of contract action. Even if the Court does not dismiss the negligent misrepresentation claim for reasons related to the Integration Clause and N.R.C.P. 9(b), the claim should be dismissed as being barred by the economic loss doctrine. Plaintiffs solely seek to recover economic damages, and do not assert damages for physical harm or injury; thus the economic loss doctrine applies and bars Plaintiffs' negligent misrepresentation claim.

G. Plaintiffs' Claim for Tortious Interference Against the Director Defendants Fails as a Matter of Law (Sixteenth Cause of Action)

In the Sixteenth Cause of Action, Plaintiff N5HYG attempts to set forth a claim for tortious interference against the Director Defendants. To set forth a claim for tortious interference with a contract, a plaintiff must plead "(1) a valid and existing contract; (2) the defendant's knowledge of the contract; (3) intentional acts intended or designed to disrupt the contractual relationship; (4) actual disruption of the contract; and (5) resulting damage." *J.J. Industries, LLC v. Bennett*, 119 Nev.

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269, 274, 71 P.3d 1264, 1267 (2003). However, even presuming that Plaintiffs have sufficiently pled the foregoing elements,[24] Plaintiffs' claim for tortious interference fails because officer, directors, employees, and agents of a company cannot tortiously interfere with their own company's contracts. See *Bartsas Realty, Inc. v. Nash*, 81 Nev. 325, 402 P.2d 650, 651 (1965) (dismissing the tortious interference claim because "defendants' breach of their own contract with the plaintiff is not a tort). Here, Plaintiffs expressly plead that the Director Defendants were acting in their capacity as Hygea officers and directors in their dealings with Plaintiffs. *See, e.g.,* Am. Compl. ¶¶ 17 & 32.

Despite their express pleading that the Director Defendants were acting as Hygea officer and directors, Plaintiffs attempt to save their claim for tortious interference by alleging in conclusory fashion that "in the alternative that the individual Defendants took these actions outside the scope of their agency with respect to Hygea." Am. Compl. ¶¶ 179. *See also id.* at ¶¶ 188–189.[25] However, Plaintiffs plead *no facts* to support this new-found and alternative legal theory. Even under the standard of notice pleading, Plaintiffs must plead *some* facts to support their legal theory. *Liston v. Las Vegas Metro. Police Dep't*, 111 Nev. 1575, 1578, 908 P.2d 720, 723 (1995). Here, Plaintiffs plead no facts.

To the extent Plaintiffs aver that their allegation in paragraphs 188 and 189 constitute alternative allegations of fact and not legal theory, the Nevada Rules of Civil Procedure do not contemplate the pleading of *facts* in the alternative. *Cf.*

[24] Plaintiffs have not pled what actions each Director Defendant undertook to disrupt the contractual relationship from which motive can be inferred. However, this is a necessary element of a claim for tortious interference. Indeed, the U.S. District Court for the District of Nevada, interpreting Nevada law, explained that a plaintiff must establish a defendant had a motive to induce the breach of contract and that general intent to interfere is not enough. *Nat. Right to Life P. A. Com. v. Friends of Bryan*, 741 F. Supp. 807, 813 (D. Nev. 1990). Here, the Complaint is devoid of any allegation as to what any Individual Defendant's purported motive for interfering with the SPA might have been.

[25] Plaintiffs make the same allegation with respect to the claims for conspiracy and concert of action.

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N.R.C.P. 8(e)(2) ("A party may set forth two or more statements of a claim or defense alternatively . . . .") Indeed, doing so violates N.R.C.P. 11, which demands that a complaint be filed "to the best of the [attorney's] knowledge, information, and belief, formed after an inquiry reasonable under the circumstances . . . ." Defendants presume that Plaintiffs' counsel did not intend to violate N.R.C.P. 11, and, therefore, presume that Plaintiffs will agree that paragraphs 188 and 189 must constitute alternative allegations of legal theory without any supporting facts.

Accordingly, Plaintiffs' claim for tortious interference fails as a matter of law and must be dismissed.

H. Plaintiffs' Claims for Conspiracy and Concert of Action Fail as a Matter of Law (Seventeenth and Eighteenth Causes of Action)

In their Seventeenth and Eighteenth Causes of Action, Plaintiffs attempt to set forth claims for conspiracy and concert of action against all Defendants. However, the intracorporate conspiracy doctrine provides that "[a]gents and employees of a corporation cannot conspire with their corporate principal or employer where they act in their official capacities on behalf of the corporation and not as individuals for their individual advantage." *Collins v. Union Federal Sav. & Loan Ass'n*, 99 Nev. 284, 303, 662 P.2d 610, 622 (1983). In such situations "no unlawful combination of persons would exist" and dismissal of civil conspiracy claims is proper. *Id.* Moreover, a civil conspiracy claim cannot stand based upon any conspiracy between the employees themselves. *Id.*

Courts applying Nevada law have uniformly applied the intracorporate conspiracy doctrine to bar claims for concert of action for the same reasons as a civil conspiracy claim. *See U-Haul Co. of Nevada, Inc. v. U.S.*, Case No. 2:08-cv-0729-KJD-RJJ, 2012 WL 3042908, at *3 (D. Nev. July 25, 2012); *Rebel Communications, LLC v. Virgin Valley Water Dist.*, Case No. 2:10-cv-0513-LRH-PAL, 2010 WL 363176, at *2 (D. Nev. 2010). Again, Plaintiffs expressly plead that the Director Defendants were acting in their capacity as Hygea officers and directors in their dealings with

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Plaintiffs. *See, e.g.,* Am. Compl. ¶¶ 17 & 32. As a result, the Director Defendants could not, as a matter of law, have conspired or engaged in a concert of action by and among themselves and Hygea. Accordingly, the claims for conspiracy and concert of action must be dismissed.

I. Plaintiffs' Claim for Unjust Enrichment Fails as a Matter of Law (Nineteenth Cause of Action)

Plaintiffs' Nineteenth Cause of Action asserts unjust enrichment against the Director Defendants. Unjust enrichment is "'the unjust retention . . . of money or property of another against the fundamental principles of justice or equity and good conscience.'" *Topaz Mutual Co. v. Marsh*, 108 Nev. 845, 856, 839 P.2d 606, 613 (1992) (quoting *Nevada Industrial Dev. v. Benedetti,* 103 Nev. 360, 363 n.2, 741 P.2d 802, 804 n.2 (1987)). Plaintiffs allege that the Director Defendants were or are "being unjustly compensated by Hygea and its shareholders" as a result of all wrongdoing alleged in the Complaint. Am. Compl. ¶¶ 197–201.

Plaintiffs attempt to avoid turning their claim for unjust enrichment into a derivative claim, and thus allege that they would "receive the benefit of any recovery or remedy" relating to the unjust enrichment claim. Am. Compl. ¶ 197. Plaintiffs, however, do not allege that compensation at issue rightfully belongs to either Plaintiff—that is because such compensation does not. Indeed, any monies being improperly retained by the Director Defendants would belong to Hygea, and thus, the Director Defendants' action would harm the Company (not Plaintiffs). As set forth above, such is a derivative claim for breach of fiduciary duty, and for the same reasons Plaintiffs' claims for breach of fiduciary duty fail, Plaintiffs' claim for unjust enrichment fails. *See also Topaz Mutual Co., 108 Nev. at 856, 839 P.2d at 613; McFarland v. Long*, No. 2:16-cv-00930-RFB-PAL, 2017 U.S. Dist. LEXIS 168998, at *20 (D. Nev. Oct. 6, 2017) (a claim for unjust enrichment cannot lie where no money or property of another is being retained by defendants or where the claim is merely duplicative of a claim for breach of fiduciary duty).

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J. Plaintiffs Have Failed to Plead a Viable Claim for Constructive Fraud Against Defendants (Twentieth Cause of Action)

Plaintiffs' Twentieth Cause of Action asserts constructive fraud against all Defendants. "Constructive fraud is characterized by a breach of duty arising out of a fiduciary or confidential relationship." *Long v. Towne*, 98 Nev. 11, 13, 639 P.2d 528, 530 (1982). "A 'confidential or fiduciary relationship' exists when one reposes a special confidence in another so that the latter, in equity and good conscience, is bound to act in good faith and with due regard to the interests of the one reposing the confidence." *Id.* at 529-30. Plaintiffs here are sophisticated business entities, as are Defendants. By virtue of their arms-length negotiations, there could not have been any special confidence reposed by Plaintiffs in Defendants. Accordingly, Plaintiffs' claim for constructive fraud must be dismissed.

K. Plaintiffs Have Failed to Plead a Viable Claim for Accounting Against the Director Defendants (Twenty-First Cause of Action)

In the Twenty-First Cause of Action, Plaintiff N5HYG demands an accounting from all Director Defendants. It is not clear whether Plaintiffs' Cause of Action for accounting is that for an equitable remedy ancillary to its other causes of action, or, whether by this claim, Plaintiffs attempt to set forth an independent cause of action. If the latter, the claim is precluded because the equitable remedy of accounting is "not an independent cause of action." *Western Nevada Supply Co. Profit-Sharing Plan and Trust v. Aneesard Mgmt., LLC*, 2011 WL 1118683, at *6 (D. Nev. 2011).[26] If the former, Plaintiffs must plead "that a relationship exists between the plaintiff and defendant that requires an accounting, and that some balance is due the plaintiff that can only be ascertained by an accounting." *Teselle v. McLoughlin*, 173 Cal. App. 4th 156, 179, 92 Cal. Rptr. 3d 696, 715 (2009).

[26] Likewise, Plaintiffs' Eleventh Cause of Action for rescission is a remedy, and although Plaintiffs are entitled to demand alternative remedies, Plaintiffs cannot obtain both forms of relief because obtaining both rescission and damages for breach of contract would constitute a double recovery. *See Bergstrom v. Estate of DeVoe*, 109 Nev. 575, 578, 854 P.2d 860, 862 (1993). Accordingly, Plaintiffs' Cause of Action for rescission must be dismissed.

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There does not appear to be any Nevada cases specifically on point, but other courts have found that the requisite relationship exists where there exists a contract pursuant to which payment is collected by one party and the other party is entitled to payment by the collecting party. *See Wolf v. Superior Court*, 107 Cal. App. 4th 25, 130 Cal.Rptr.2d 860 (Cal.Ct.App. 2003). Here, Plaintiffs have pled the existence of a contractual relationship between them and the Guarantor Defendants, but not the Non-Guarantor Defendants. Moreover, even with respect to the Guarantor Defendants, Plaintiffs have not pled that the Guarantor Defendants collected any monies to which Plaintiffs are entitled. Accordingly, any independent cause of action Plaintiffs may have set forth for accounting must be dismissed.

VIII. CONCLUSION

For the reasons set forth herein, Defendants respectfully request that this Court dismiss this case in its entirety as to all Defendants on the basis of claim preclusion. Should the Court decide that some or all of Plaintiffs' claims are not precluded as a result of the Receivership Action, Defendants respectfully request that the Court dismiss Nevada 5 as a Plaintiff from this lawsuit and dismiss all claims against all Defendants, with the exception of N5HYG's claim for breach of contract against Hygea, Iglesias, and Moffly.

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CERTIFICATE OF SERVICE

I certify that on August 17, 2018, and pursuant to N.R.C.P. 5(b), a true and correct copy of the foregoing **MOTION TO DISMISS THE FIRST AMENDED COMPLAINT AND TO STRIKE SUPPLEMENTAL PLEADINGS AND JURY DEMAND** was served on the following parties via the Court's electronic service system:

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I further certify that on August 17, 2018, and pursuant to N.R.C.P. 5(b), a true and correct copy of the foregoing **MOTION TO DISMISS THE FIRST AMENDED COMPLAINT AND TO STRIKE SUPPLEMENTAL PLEADINGS AND JURY DEMAND** was served on the following parties by e-mail:

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