

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.

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Distr. Ct. Case No. A-17-702604-B
Dept. XXVII

**PETITIONERS' APPENDIX TO
PETITION UNDER
NRAP 21 FOR WRIT OF
PROHIBITION, OR IN THE
ALTERNATIVE, WRIT OF
MANDAMUS**

(VOLUME III)

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	<i>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</i>
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The Honorable Nancy Allf Eighth Judicial District Court Department 27 200 Lewis Avenue Las Vegas, NV 89155	<i>Presiding Judge over Case No. A-17-762664-B</i>

/s/ Sunny Southworth
An employee of Kaplan Cottner

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“Exhibit 3”

“Exhibit 3”

<p style="text-align: right;">Page 298</p> <p>1 11th hour should not be permitted to testify. And I 2 cannot withdraw that motion because -- because the 3 Court did order an expert disclosure be made of -- of 4 that expert. 5 But I think you'll recall, you may recall, 6 you had asked if I wanted to withdraw the motion after 7 you made the decision on the subpoenas. And I was, 8 frankly, tempted and said, Well, you know, I think 9 since we're -- since it's being granted in part as to 10 the order, I think I probably ought to, instead of 11 withdrawing it, fall on my sword that it's been denied 12 in part. But once again, this is -- this is not -- the 13 testimony of Mr. Dragelin is not testimony that we 14 intend to offer as expert opinion. 15 MS. GALL: Your Honor, I understand they may 16 not intend to offer it at this moment, but it may still 17 come in. And if it does come in as expert testimony, I 18 think we are prejudiced, including because Rule 16 19 clearly contemplates that you shall disclose an expert 20 report prior to offering any expert testimony. 21 So simply seeking -- 22 THE COURT: I think in fairness that he -- 23 Mr. Dragelin is not going to be allowed to express 24 expert opinions, but that only gets us so far as you're 25 going to have to object when you hear a question you</p>	<p style="text-align: right;">Page 300</p> <p>1 It's not clear to me what hearing 2 Mr. Dragelin's testimony might -- you know, how that's 3 going to be helpful to Mr. Savchenko. Mr. Savchenko 4 knows what he knows, and he'll be able to explain what 5 he's able to explain when he testifies. 6 MS. GALL: It's not helpful for 7 Mr. Savchenko, it's helpful for me for presenting our 8 defense, in the same way if you had an expert here, I 9 might ask for an exception for an expert in a case that 10 involves financials. 11 THE COURT: Why do you need both? 12 MS. GALL: I don't need both. I'm simply 13 saying that if we had an expert here, for instance, to 14 rebut Mr. Dragelin, I might ask that our expert be 15 allowed to be in. 16 But Mr. Savchenko is familiar with the 17 company's financials. And to the extent Mr. Dragelin 18 is testifying about the company's financials, I would 19 appreciate Mr. Savchenko's assistance in -- in my being 20 able to cross and later present my case in chief or 21 defense in chief. 22 THE COURT: Well, it seems like that unlevels 23 the table a little bit. 24 MS. GALL: I think the difference is that 25 Mr. Savchenko is an officer of -- of Hygea Holdings</p>
<p style="text-align: right;">Page 299</p> <p>1 think is calling for expert opinion. 2 MS. GALL: I understand that, Your Honor. 3 THE COURT: And this isn't a jury trial, so 4 the helpful part of that 50.265, whatever the lay 5 opinion statute is, I think there's a difference 6 between helpful to me and being helpful to a jury. So 7 I'll have that in mind when I'm ruling. 8 MS. GALL: I understand that, Your Honor. 9 And I apologize for continuing to take up the Court's 10 time. I have one very brief request. Under 50.155, I 11 would ask for an exception to the -- to the motion to 12 exclude witnesses rule. 13 I would like our acting CFO and our director 14 of finance, Sergey Savchenko, be allowed in, especially 15 for the testimony of Mr. Dragelin if he's going to be 16 testifying on financial matters. 17 Because as you'll hear when we play 18 Dr. Gaylis' deposition, Mr. Savchenko is integral to 19 understanding the financials of Hygea. And I do need 20 his assistance for my defense. 21 MR. KAYE: Your Honor, yesterday 22 Mr. Dragelin -- defense counsel asked for Mr. Dragelin 23 to leave the courtroom. We didn't have any objection 24 to that. I think that if we're going to sequester 25 witnesses, we should continue to sequester witnesses.</p>	<p style="text-align: right;">Page 301</p> <p>1 Corp. Mr. Dragelin is not their retained expert. He's 2 a third party. In fact, he was our retained 3 consultant. And in addition to that, plaintiffs' 4 counsel could have asked for the exception, and they 5 did not. 6 THE COURT: Mr. Kaye? 7 MR. KAYE: Your Honor, we didn't ask for the 8 exception because, frankly, it seems like when we've 9 got fact witnesses -- and, again, we do consider 10 Mr. Dragelin to be a fact witness, it seems as if us -- 11 the sequestration request is well taken. 12 Having said that, I would raise another issue 13 that I think would be perhaps something to consider in 14 this context, and that is that we have -- we have 15 listed, as the Court is aware, a rebuttal expert, whose 16 testimony we intend to contain strictly within rebuttal 17 context. 18 We have also arranged for a realtime 19 transcription of the -- of this trial. As you can see, 20 we've all been kind of reading this as we've gone along 21 here. 22 So one thing that we would request in -- in 23 the context of this issue is that our rebuttal expert 24 be allowed to view the rough transcript of the -- the 25 sort of case in chief expert whom he'll be rebutting</p>

<p style="text-align: right;">Page 302</p> <p>1 that the defense has, Mr. Greene. 2 MS. GALL: If they will agree to allow 3 Mr. Savchenko in, I have no problem agreeing to that. 4 MR. KAYE: Your Honor, I'm happy to leave 5 this -- leave it to the discretion of the Court and 6 allow the Court to make its -- to make its decision on 7 that for us. But that seems like a reasonable trade. 8 THE COURT: All right. So Mr. Savchenko will 9 be allowed to hear Mr. Dragelin's testimony, and the 10 rebuttal expert will be able to review the realtime 11 transcript. 12 MS. GALL: Very good. 13 MR. KAYE: Your Honor, now, I have one -- 14 MS. GALL: That's it. That is really it. 15 MR. KAYE: So I have a housekeeping matter as 16 well, Your Honor. And that is -- this is something 17 that counsel and I were discussing right before we came 18 on the record, so my apologies if any of this is -- if 19 that conversation was incomplete, and there's anything 20 that -- that maybe was left unsaid that might inform 21 this. 22 But we have -- have worked out, I believe, a 23 stipulation, I don't believe that there's a 24 substantive -- there's any substantive issues with the 25 stipulation, relating to the share -- relating</p>	<p style="text-align: right;">Page 304</p> <p>1 MR. KAYE: Thank you, Your Honor. 2 THE COURT: So you have that prepared now? 3 MR. KAYE: I have it prepared, and we need 4 to -- what's outstanding is the two wet signatures 5 for -- the hands of which are in this courtroom. 6 Perhaps at the next break, we can take care of that. I 7 think we've got one here. 8 THE COURT: Okay. 9 MR. KAYE: 15, isn't it? 10 THE COURT: 15. 11 MS. GALL: I'm trying to advance the trial 12 even further, Your Honor. 13 THE COURT: Is the video set up to where we 14 ended yesterday? 15 MR. KALAS: I believe so. I will double 16 check that. I have the time written down. 17 MR. KAYE: Your Honor, may I approach? It is 18 executed. 19 THE COURT: Yes. 20 MR. KAYE: Thank you. 21 THE COURT: I take it there is still 22 disagreement that this total number of shares is 23 10 percent? Is that still -- 24 MS. GALL: Correct, Your Honor. We are 25 stipulating to how many shares are held by each of the</p>
<p style="text-align: right;">Page 303</p> <p>1 primarily to the shares held by the plaintiffs, and in 2 particular, I don't know if N5HYG is in there, but the 3 non-N5HYG plaintiffs. 4 That is signed by Mr. Albright. We heard 5 this issue -- we heard this issue yesterday about 6 Mr. Albright is the counsel of record in Las Vegas 7 where this -- where the case originated. And in 8 particular, he is the counsel of record in Las Vegas 9 for one of the -- for one of the plaintiffs, 10 Mr. Arellano. 11 He has executed that, but it's not a wet ink 12 signature. The copy that we have is just that, a copy. 13 And if we are able to -- if I'm correct that 14 substantively there is an agreement on that, I would 15 ask the Court's leave to allow counsel here for both 16 sides to execute in wet ink and submit the stipulation 17 to the Court with Mr. Albright's signature as a copy. 18 There's going to be a signature from both 19 sides. I think there was a question as to Mr. -- is 20 the binding of Mr. Arellano, and we kind of wanted to 21 cross our Is and dot our Ts with that. 22 MS. GALL: I have no objection to if the 23 Court granted an exception to the wet ink signature 24 rule. 25 THE COURT: That's -- that's fine.</p>	<p style="text-align: right;">Page 305</p> <p>1 plaintiffs today, but I am not stipulating to their 2 collectively shareholding is 10 percent. 3 MR. KAYE: That's correct. 4 THE COURT: All right. So we are going to 5 complete Mr. -- Dr. Gaylis' testimony. 6 MR. KALAS: Your Honor, if I may, the time I 7 had written down was 3:09:14. As you can see, it's 8 currently at 3:09:15. So when I hit pause, I assume it 9 will jump one second. Assuming that's sufficient, I 10 can -- 11 THE COURT: I can live without a second. Did 12 you hear what he said? 13 MR. KAYE: I did not. 14 THE COURT: The video is set one second past 15 where I said to pause it yesterday. 16 MR. KAYE: Yes. That's fine with me, 17 Your Honor. 18 THE COURT: Go ahead. 19 (Video played.) 20 "Q. Can you turn to Page 135 of your 21 declaration? 22 A. (Witness complying.) 23 Q. Paragraph 32, can you -- can you read that 24 into the record, please? 25 A. I do not believe that the state of Hygea</p>

<p style="text-align: right;">Page 306</p> <p>1 and its affiliates is such that it can be saved without 2 immediate change in management or alternatively the 3 appointment of a receiver. I declare under penalty of 4 perjury that the foregoing is true and correct. 5 MR. VIAR: Thank you, Dr. Gaylis, I don't 6 have any more questions at this time. 7 THE WITNESS: Okay. 8 MS. GALL: Can we take a short five-minute 9 break and then come back on the record? 10 THE WITNESS: Yes. 11 MR. VIAR: Absolutely. 12 (Off the record.) 13 VIDEOGRAPHER: Here begins Media Unit 14 Number 2. We're commencing at 3:31 p.m. 15 CROSS-EXAMINATION 16 BY MS. GALL: 17 Q. Hi, Dr. Gaylis. My name is Maria Gall. 18 We've spoken before. And I -- I represent Hygea 19 Holdings Corp. and the board the directors who are 20 defendants in this lawsuit. 21 Dr. Gaylis, are you and your entities 22 still affiliated with Hygea Holdings Corp.? 23 A. Yes, we are. 24 Q. And have you taken any formal steps to 25 separate your entities from Hygea Holdings Corp.?</p>	<p style="text-align: right;">Page 308</p> <p>1 management agreement? 2 A. To the extent that it's referred to as a 3 management agreement in the contract, it's -- it's a 4 written agreement. To the extent that it's detailed in 5 terms of line item, what's involved, I don't think so. 6 Q. And that business management agreement was 7 not -- was that written management agreement attached 8 your declaration? 9 A. No. 10 Q. Dr. Gaylis, is it your understanding at 11 the Hygea Holdings Corp. level that you hold an 12 executive level position? 13 A. It's my understanding that more recently 14 the board elected me to be the, I think, executive vice 15 president of medical affairs. 16 Q. Dr. Gaylis, have you accepted that 17 position? 18 A. I've accepted that position but I've 19 requested more knowledge as to the job description of 20 that position. 21 Q. And, Dr. Gaylis, with respect to the 22 description of the -- strike that. 23 With respect to your request for a 24 description of that job, are you referring to 25 responsibilities that might fall under the job of the</p>
<p style="text-align: right;">Page 307</p> <p>1 A. No, we have not. 2 Q. Dr. Gaylis, you earlier testified about 3 the business model of Hygea. Do you recall that 4 testimony? 5 A. Yes. 6 Q. Is it fair to say that as a general matter 7 you described Hygea's business model as being a 8 sustainable business model? 9 A. When -- 10 MR. VIAR: Objection; form. 11 THE WITNESS: Sorry, Maria, the question 12 is do I think currently or in the past or at -- 13 initially? When -- when are you -- what time 14 frame are you referring to? 15 BY MS. GALL: 16 Q. Initially, when you first became 17 affiliated with Hygea Holdings Corp. 18 A. Yeah, I thought that it was a viable, 19 sustainable and potentially very possibly a suc- -- a 20 very successful business model. 21 Q. Dr. Gaylis, was the transaction you and 22 your entities entered into with Hygea structured as an 23 asset sale along with a management agreement? 24 A. Yes. 25 Q. And is that management agreement a written</p>	<p style="text-align: right;">Page 309</p> <p>1 EVP of medical affairs? 2 A. Responsibilities and goals. 3 Q. And, Dr. Gaylis, would you be willing to 4 work together with the board to formulate what those 5 responsibilities and goals might be? 6 A. Yes, I would. 7 Q. Dr. Gaylis, in your medical practice are 8 you familiar with HMOs also known as Health Maintenance 9 Organizations? 10 A. Yes, I am. 11 Q. And does your medical practice, through 12 Hygea Holdings Corp., have an agreement or a 13 relationship with certain HMOs? 14 A. We do but in a slightly different way -- 15 sorry, someone just joined us and interrupted my 16 answer. So the answer to, I think, your question 17 is we have contracts with various HMOs that are 18 effectively contracts that were grandfathered from the 19 previous practice that we have effectively continued to 20 service. 21 The management contracts that are more part 22 of the nucleus or the Hygea primary care entities are 23 different types of managed care contracts. Those are 24 traditionally more risk-based contracts where as mine 25 are more fee-for-service based contracts. Hopefully</p>

<p style="text-align: right;">Page 310</p> <p>1 that answers your question.</p> <p>2 Q. It does. And, Dr. Gaylis, have you ever</p> <p>3 reviewed the contracts that your practices fall under</p> <p>4 with respect to the HMOs?</p> <p>5 A. So which contracts are we speaking to now,</p> <p>6 the ones that my practice has traditionally had or the</p> <p>7 ones that are with Hygea?</p> <p>8 Q. The ones that are affiliated -- the ones</p> <p>9 that your practice now has with the HMOs.</p> <p>10 A. You know, once more most of my contracts</p> <p>11 are still my old contracts. There are really -- and</p> <p>12 I'm just trying to think how to answer your question</p> <p>13 best.</p> <p>14 I can't come up with a contract that I have</p> <p>15 for managed care payers that effectively takes care of</p> <p>16 all the rheumatology business per se. That contract --</p> <p>17 we would love to have those contracts but they have not</p> <p>18 evolved.</p> <p>19 Q. Are you familiar with any of the HMO</p> <p>20 contracts that Hygea has with the HMOs?</p> <p>21 A. Not to the extent of having read any of</p> <p>22 the individual contracts that Hygea may have penned</p> <p>23 with any particular HMO. That was not part of my</p> <p>24 domain and has not been so to this point.</p> <p>25 Q. Okay. Dr. Gaylis, do you know who Keith</p>	<p style="text-align: right;">Page 312</p> <p>1 been very much part of his job description.</p> <p>2 And he just is probably one of the most</p> <p>3 important people in terms of knowing what is in each</p> <p>4 different financial account, collections, receivables,</p> <p>5 et cetera, for Hygea.</p> <p>6 Q. Dr. Gaylis, would you turn back to Exhibit</p> <p>7 17, which is your declaration? Do you have that in</p> <p>8 front of you?</p> <p>9 A. I do.</p> <p>10 Q. Would you turn to the page marked</p> <p>11 NV5000135? It's the last page of your written</p> <p>12 declaration.</p> <p>13 A. Right. Got it.</p> <p>14 Q. And earlier -- earlier during your</p> <p>15 testimony you read into the record Paragraph 32.</p> <p>16 A. Correct.</p> <p>17 Q. And Paragraph 32 stated your belief as of</p> <p>18 February 28, 2018, correct?</p> <p>19 A. Correct.</p> <p>20 Q. Do you still hold the belief reflected in</p> <p>21 Paragraph 32 today?</p> <p>22 A. Yes.</p> <p>23 Q. So do you believe that Hygea cannot be</p> <p>24 saved without the appointment of a receiver?</p> <p>25 A. That's not what that paragraph says.</p>
<p style="text-align: right;">Page 311</p> <p>1 Collins is, Dr. Keith Collins is?</p> <p>2 A. Very well.</p> <p>3 Q. Who is he?</p> <p>4 A. Excuse me?</p> <p>5 Q. Who is he in relation to Hygea?</p> <p>6 A. Keith Collins was actually the previous</p> <p>7 chief medical officer prior to my being appointed that</p> <p>8 when my practice was acquired. And he subsequently has</p> <p>9 been a board member during the period of my involvement</p> <p>10 with Hygea. And more recently, as the board has tried</p> <p>11 to refresh management and bring in a new culture, he</p> <p>12 has been the acting CEO. I -- I do not know if he's</p> <p>13 been officially appointed, but as I -- as of my last</p> <p>14 knowledge, which was a week ago, he was the acting CEO.</p> <p>15 Q. And, Dr. Gaylis, do you know who Sergey</p> <p>16 Savchenko is?</p> <p>17 A. I know Sergey Savchenko very well.</p> <p>18 Q. Do you know what Sergey Savchenko's</p> <p>19 relationship is to Hygea?</p> <p>20 A. Sergey Savchenko has been acting as the</p> <p>21 quasi CFO since Mr. Ted Moffly stepped down and is very</p> <p>22 integrally involved in many of the financial issues</p> <p>23 that affect the day-to-day workings of Hygea. The more</p> <p>24 recent effort to come up with acuity and some form of</p> <p>25 statement to reflect the financial status of Hygea has</p>	<p style="text-align: right;">Page 313</p> <p>1 Q. Okay. Can you explain to me in your own</p> <p>2 words what the paragraph says?</p> <p>3 A. Yeah. I mean, it's straightforward. It</p> <p>4 says -- let me read it again. I do not believe that</p> <p>5 the state of Hygea and its affiliates is such that it</p> <p>6 can be saved without immediate change in management or</p> <p>7 alternatively the appointment of a receiver. So it's</p> <p>8 either or.</p> <p>9 Q. Okay. And what do you believe the effect</p> <p>10 of a receiver -- the appointment of a receiver would be</p> <p>11 on Hygea?</p> <p>12 MR. VIAR: Objection; foundation.</p> <p>13 A. Well, I'd rather -- if I may and you can</p> <p>14 strike this, but I rather ask -- reverse the question</p> <p>15 because it's an either or question. And pretty much my</p> <p>16 statement for everybody to understand what I was saying</p> <p>17 is that I wanted a change in management. That's why it</p> <p>18 was mentioned. That's why it comes first. It doesn't</p> <p>19 say the appointment of a receiver or alternative</p> <p>20 management, it says management or alternative a</p> <p>21 receiver. There's a reason for that.</p> <p>22 And that in my belief, and that now answers</p> <p>23 that question, a complete, I repeat that, a complete</p> <p>24 change in management would, in my mind, be desirable</p> <p>25 and preferential to bringing in a receiver.</p>

<p style="text-align: right;">Page 314</p> <p>1 I'm not pretending to be an expert in 2 receivers, having never lived with one fortunately, but 3 I really feel that, if this company is going to be 4 turned around, it will take a management that has some 5 knowledge as to what has happened to this point, an 6 understanding of the individuals who have been involved 7 and where they've gone wrong and if, in fact, everybody 8 is capable of pulling in the right direction, it would 9 be my choice that a change in -- a complete change in 10 management would be preferable to having a stranger who 11 would have a significant learning curve, especially 12 because of the different variables in Hygea. 13 And obviously if that management change 14 cannot or does not occur, then the alternative 15 unfortunately would probably need to be a receiver. 16 But my preference is well stated in that paragraph and 17 needs to be understood. 18 Q. I understand, Dr. Gaylis. Dr. Gaylis, do 19 you have any understanding of how the HMOs may react 20 with respect to the HMO contract we earlier discussed 21 if a receiver is appointed over Hygea? 22 A. Well, once more, I think it's obvious that 23 I am very qualified as a rheumatologist, not as a 24 health care attorney. 25 But most of the contracts that, even in</p>	<p style="text-align: right;">Page 316</p> <p>1 then we'll -- we'll resume in a couple of 2 minutes. 3 VIDEOGRAPHER: We'll go off the record. 4 Stand by. 5 (Off the record.) 6 VIDEOGRAPHER: We are back on the record, 7 sir. 8 MR. VIAR: Thank you. 9 REDIRECT EXAMINATION 10 BY MR. VIAR: 11 Q. Dr. Gaylis, you testified that you're not 12 actually very familiar with those HMO contracts that 13 you 14 were talking about a moment ago; is that correct? 15 A. That is correct. 16 Q. And that most of the contracts are 17 actually old contracts from your original practice; is 18 that correct? 19 A. Well, so once more, just to clarify, the 20 contracts that are with my practice are the old ones, 21 the Hygea contracts, which I'm not familiar with, are 22 the Hygea contracts, which are effectively new to me. 23 Q. So you haven't even reviewed and you know 24 nothing about the contracts, the new contracts between 25 Hygea and their providers; is that correct?</p>
<p style="text-align: right;">Page 315</p> <p>1 my particular case, that are written with an insurance 2 company, whether it be an HMO or non-HMO have very 3 strict criterion that in cases of felony, you know, 4 some kind of criminal act or bankruptcy, insolvency or 5 receivership that there's a significant likelihood that 6 those contracts will be immediately terminated. 7 Q. And do you have any understanding of why 8 HMOs might typically terminate contracts in the case of 9 a receivership? 10 A. Absolutely. I mean, it goes without 11 saying that if you basically have a company that's 12 servicing you in any business and that company goes 13 insolvent, you have a significant potential problem 14 with, number one, getting value for what you're paying 15 and, number two, for the company to continue in it's 16 ongoing form or existence, which in the case of health 17 care does not occur, could potentially interrupt the 18 care of a patient population which would be forced to 19 have to relocate to new physicians in different 20 locations and so it would be very dramatic. 21 MS. GALL: Thank you, Dr. Gaylis. I don't 22 have any more questions. 23 MR. VIAR: I do have a few questions. If 24 we could just take a break for about -- I just 25 want to confer with one of my colleges here and</p>	<p style="text-align: right;">Page 317</p> <p>1 A. That is correct. 2 Q. So if you were to testify about something 3 on those contracts, you would just be speculating; is 4 that correct? 5 A. Yes. 6 Q. And even the older contracts that you say 7 you have some familiarity with, when was the last time 8 you looked at one of those? 9 A. I don't know when but, you know, in the -- 10 in the not too distance past. We're constantly looking 11 at those contracts really more from a perspective of 12 reimbursement issues and coverage but that's pretty 13 much a standard template clause that's in most of these 14 contracts. 15 Q. Well, you're talking about the -- when you 16 say that -- 17 A. In the case of -- if you've basically 18 breached certain things, such as I mentioned, whatever 19 it is, felony, taxes, insolvency, that they have a 20 right to terminate immediately. 21 Q. Is that -- is that something that you've 22 been told or is that something that you remember 23 specifically reading? 24 A. No. No. No. Well, quite honestly, the 25 way this whole case is going, there's been conversation</p>

<p style="text-align: right;">Page 318</p> <p>1 that has much more hearsay but nevertheless has 2 occurred between different practices, as well as 3 previous situations in Florida, where we did have 4 situations where companies went insolvent after 5 acquiring practices and the consequences were that 6 there was nothing unfortunately left because the 7 contracts with all the payers were basically taken away 8 from the particular entity. 9 Q. Right. But those -- termination of those 10 contracts that you're talking about now in Florida were 11 driven by insolvency, correct? 12 A. Versus receivership presumably. And once 13 more, I don't know the facts but the reality is -- 14 Q. So you're really just speculating, aren't 15 you? 16 A. If you want to call it that. 17 Q. Now, again, this discussion of the HMOs 18 leaving in the event of an appointment of a receiver, 19 that's something that you've heard more about lately as 20 you were preparing for your deposition today, correct? 21 A. No. One thing has nothing to do with the 22 other. 23 Q. When was the last time that you talked to 24 anyone about an HMO leaving as a result of the 25 appointment of a receiver?</p>	<p style="text-align: right;">Page 320</p> <p>1 Q. And that the receiver is not the preferred 2 option because it would take time to get acclimated to 3 learn the system and to get to know the people 4 involved, correct? 5 MS. GALL: Objection; mischaracterizes his 6 testimony. 7 BY MR. VIAR: 8 Q. Is that right? 9 A. That's partially correct. 10 Q. And you mentioned that Mr. Collins right 11 now, is his interim CEO; is that correct? 12 A. Correct. 13 Q. Temporary CEO, correct? 14 A. I don't know what the long-term plan is. 15 Right now, as I said, he may in fact be more than 16 temporary but, to the best of my knowledge, when I last 17 spoke with him, which was maybe ten days ago, it was 18 interim. 19 Q. Interim; is that correct? 20 A. Correct. 21 Q. And you mentioned you had a preference 22 that the entire management at Hygea had to change or 23 they should appoint a receiver, correct? 24 A. That's what my statement -- my paragraph 25 said.</p>
<p style="text-align: right;">Page 319</p> <p>1 A. You know, maybe -- I was away for a few 2 weeks, maybe prior to my going away and coming -- and 3 before coming back. But I can -- but at no point has 4 this been a legal conversation with any of the esteemed 5 attorneys involved here today or anybody else, 6 including my own attorney. This has been a 7 conversation more from a physician perspective. 8 Q. You also -- you're aware in those HMO 9 contracts that they're predominantly no cause 10 termination contracts, that is that the HMO can 11 terminate the contract for any reason, correct? 12 A. That is true. 13 Q. So they don't need the appointment of a 14 receiver if they want to leave, correct? 15 A. No, just like you said there's lots of 16 different no cause issues. 17 Q. Right. But no cause, they don't need to 18 prove cause to terminate, correct? 19 A. They -- they do not. 20 Q. As far as you know. 21 A. To the best of my knowledge, they do not. 22 Q. And you mentioned that your opposition to 23 the receiver option was associated with the learning 24 curve; is that correct? 25 A. Amongst others, yeah.</p>	<p style="text-align: right;">Page 321</p> <p>1 Q. Okay. So if Hygea were to go outside of 2 its current management to a new person, wouldn't that 3 new person have a learning curve as well? 4 MS. GALL: Objection -- 5 BY MR. VIAR: 6 Q. Presumably. 7 MS. GALL: -- mischaracterizes his 8 testimony. 9 A. Listen, anybody who assumes a new position 10 in any company or any environment is going to have a 11 learning curve. From my perspective, and it's purely 12 my perspective, I believe bringing somebody in who has 13 background in the industry, background in particular 14 with some of the -- the pieces of Hygea that are 15 critical to -- to its survival would be far preferable 16 than bringing in someone who had no common background 17 in this environment. 18 So from my perspective -- and 19 remember one thing and, you know, I feel I need to say 20 this, I have a significant stake in Hygea's survival, 21 so I wouldn't be saying this if I didn't believe what 22 I'm saying, I truly believe we need to be very, very 23 careful in how we go about changing the way Hygea has 24 functioned and its culture, whether it be with 25 management or a receiver. This is probably the most</p>

<p style="text-align: right;">Page 322</p> <p>1 critical thing that I am saying needs to be thought 2 about long and hard. 3 And, you know, who's going to be right or 4 wrong, I don't know. We all agree, I think, that 5 something needs to change. My sense is that we should 6 change in a way in which we can do things in a much 7 more calculated fashion. 8 Q. I understand. But if -- if Hygea was to 9 bring in someone new, he would have a significant 10 learning curve in your view, correct? 11 A. You mean a receiver or not a receiver? 12 Q. No, a -- a new -- a new CEO. If Hygea 13 were to go outside of management, as you have suggested 14 they should do, if they were to follow your direction 15 and go outside of the current management and choose 16 someone new, that individual would necessarily have a 17 steep learning curve according -- according to you; is 18 that right? 19 MS. GALL: Objection; mischaracterizes his 20 testimony. 21 A. Well, I mean, so we've already got someone 22 who is effectively -- 23 Q. Doctor, doctor, just try to -- try to 24 listen to my question. Okay? 25 MS. GALL: Please allow Dr. Gaylis to</p>	<p style="text-align: right;">Page 324</p> <p>1 A. I didn't say that. 2 Q. I know that but is that what you were 3 assuming that the receiver option contemplated someone 4 who didn't know anything about the medical business? 5 A. I think my concern is as a serious -- 6 Q. Sir, listen to the question, please. 7 A. I heard the question. 8 Q. If you can answer that question. 9 MR. VIAR: Ms. Court Reporter, can you 10 read back that question? 11 MS. GALL: I'm going to object here. You 12 have asked Dr. Gaylis for his assumption and he's 13 attempting to explain his assumption. 14 MR. VIAR: You know, a speaking objection 15 I don't think is appropriate, particularly now. 16 Could you read the question back, please. 17 (Thereupon, the requested portion of the 18 record was read back by the court reporter.) 19 THE WITNESS: Why don't you repeat the 20 question, please. 21 BY MR. VIAR: 22 Q. When you expressed your opposition to the 23 receiver, was part of that a belief that the receiver 24 would be someone who was not familiar with the health 25 care business?</p>
<p style="text-align: right;">Page 323</p> <p>1 testify. 2 MR. VIAR: I will. 3 BY MR. VIAR: 4 Q. If you go out -- if Hygea was to go 5 outside of current management to find a qualified 6 individual, someone who knows something about the 7 industry, okay, he's still going to have a learning 8 curve to understand what's going on at Hygea, correct? 9 MS. GALL: Objection; mischaracterizes the 10 witness' earlier testimony. 11 BY MR. VIAR: 12 Q. Is that correct? 13 A. I think the answer is it is correct to say 14 that whether it was me or someone else or anybody, 15 there will be a learning curve. And the -- and the -- 16 no, and the fair answer is to make this learning curve 17 as easy and as simple as possible, not as difficult. 18 So that's the best answer I can say. But 19 you're right, there's a learning curve involved and 20 that will be involved regardless. 21 Q. And when -- when you testified earlier, 22 you know, in sort of opposition to the receiver, you 23 were assuming that the receiver would have little or no 24 experience or knowledge about the health care business; 25 is that correct?</p>	<p style="text-align: right;">Page 325</p> <p>1 A. Possibly, yes. 2 Q. Okay. So tell me this, if -- if we're 3 able to find someone who had some experience in that 4 business and who also had accounting experience and 5 financial management experience and turnaround 6 experience in the medical context, would that be 7 someone who would be less objectionable to you? 8 MS. GALL: Objection; vague. 9 BY MR. VIAR: 10 Q. Than someone who -- who you'd presume, you 11 know, just -- you know, just some, you know, numbers 12 guys walking in off the street? 13 A. I think possibly, yes. 14 Q. All right. So -- so your opposition to 15 the receiver will be less if the receiver had that type 16 of experience that I described; is that correct? 17 A. Well -- 18 MS. GALL: Objection; mischaracterizes the 19 witness' -- 20 BY MR. VIAR: 21 Q. It's a yes or no question. 22 A. Well, it's not a yes -- it's not a yes or 23 no answer. 24 Q. Okay. All right. I'll -- I'll take the 25 question back.</p>

<p style="text-align: right;">Page 326</p> <p>1 But that receiver who has the -- you know, 2 the medical experience and the economic experience 3 might actually have an advantage over someone that only 4 has the, you know, the medical and managerial 5 experience; is that correct? 6 A. Possibly. 7 MS. GALL: Objection; calls for 8 speculation. 9 BY MR. VIAR: 10 Q. And -- and that person might actually be 11 more preferable, you know, to the HMOs if his objective 12 was something -- was, you know, was to get the company 13 back on its feet rather than a liquidation; wouldn't 14 you agree? 15 MS. GALL: Objection; calls for 16 speculation. 17 A. That would be -- that would be very 18 desirable if that was feasible. 19 Q. So it would be very desirable to find -- 20 maybe we don't call him a receiver, but it would be -- 21 in your view it would be very desirable if we found an 22 individual who had both the medical experience and the 23 accounting and finance and turnaround experience, you 24 know, in one person, that would be desirable? 25 A. Yeah. I mean, how could I disagree with</p>	<p style="text-align: right;">Page 328</p> <p>1 89501. Please expedite it to counsel." 2 (End of video.) 3 THE COURT: We're going to take a 15-minute 4 recess and come back in at 2:15. 5 (Recess taken at 1:59, resuming at 2:14.) 6 THE COURT: Please be seated. Back on 7 18 OC 71, Arellano v. Hygea. 8 MR. VIAR: Your Honor, before we move to the 9 next witness, plaintiffs would move for the admission 10 of Dr. Gaylis' declaration, together with the exhibits, 11 except for the one that you already identified will not 12 be admitted. 13 THE COURT: Which number is that? 14 MR. VIAR: It's 93, Your Honor. 15 THE COURT: Ms. Gall? 16 MS. GALL: I believe Your Honor's order 17 stated that Your Honor would consider all the 18 declarations in this matter. So if we just want to 19 proffer all the declarations at this point, other than 20 Mr. Ewing's authenticating declaration, I would be fine 21 with that. 22 THE COURT: So that would be 84 through -- 84 23 through 98? 24 MS. GALL: Yes. I believe that's correct, 25 but maybe not 96. I don't have a problem proffering</p>
<p style="text-align: right;">Page 327</p> <p>1 that. 2 MR. VIAR: That's all I have. Thank you, 3 doctor. 4 THE WITNESS: Thank you. 5 MS. GALL: Thank you. 6 MR. SEGALL: Thank you, everybody. 7 (Off the record.) 8 COURT REPORTER: Before you hang up, are 9 you ordering the depo? 10 MR. VIAR: Yeah, on an expedited basis, 11 please. I want the -- I want disk, the video disk 12 overnighted to me or if you can email a video, 13 I'd like it emailed. If you could email me a dirty 14 tran, I would like to see that as soon as possible. 15 MR. SEGALL: Dr. Gaylis waives. 16 VIDEOGRAPHER: And we'll go off the record 17 at 4:03. 18 MS. GALL: For the court reporter, if 19 we're still on, will you please expedite it to 20 Counsel Crowell's address. 21 COURT REPORTER: I'm sorry, whose address? 22 MS. GALL: I believe -- is other counsel 23 on the phone, Sev Carlson. 24 MR. CARLSON: Yes, Sev Carlson. It's 50 25 W. Liberty Street, Suite 700, Reno, Nevada</p>	<p style="text-align: right;">Page 329</p> <p>1 Mr. Ewing's declaration, but it's an authenticating 2 declaration. I'm not sure it will have much value. 3 MR. KAYE: Your Honor, we have no objection 4 to excluding -- excluding Mr. Ewing's declaration. It 5 was authenticating for some corporate documents, but I 6 think the facts have come out. 7 MS. GALL: Correct. 8 THE COURT: 84 through 98, except for 96 -- 9 MR. KAYE: Correct, Your Honor. 10 THE COURT: -- are admitted. 11 MR. KAYE: Your Honor, I would make one note 12 that, and that is with the exhibits thereto as well to 13 the declarations. 14 THE COURT: Yes. Okay. 15 MR. KAYE: Your Honor, I had -- before we 16 proceed to Mr. Dragelin, I had one other housekeeping 17 matter, which I believe Your Honor has indicated that 18 the Court will carry forward the judicial notice of 19 other lawsuits, not taking any notice of any facts in 20 the lawsuits or the substance of the lawsuits. 21 THE COURT: Right. 22 MR. KAYE: We have -- we have included as a 23 proposed Exhibit 102, which is the notice that was 24 previously taken in -- in Las Vegas. I would seek to 25 update that for completeness, that there -- that there</p>

<p style="text-align: right;">Page 330</p> <p>1 has subsequently -- I believe it was filed subsequent 2 to them, certainly learned of subsequent to then, 3 another lawsuit, Richter v. Sheinbaum and Hygea 4 lawsuit, which is -- the caption and such is included 5 with Exhibit 107, which is the complaint in that 6 lawsuit. 7 Of course, we're not seeking to admit the 8 complaint, we're simply seeking to supplement -- 9 supplement Exhibit 102. And I would proffer 10 Exhibit 102 for completion of the record, with the 11 addition that there is the additional Richter v. 12 Sheinbaum lawsuit. And I could -- I don't have it 13 handy but could read into the record the case number 14 and such on that. 15 MS. GALL: Your Honor, I have no objection to 16 that. I don't have Exhibit 102 directly in front of 17 me. If all the Court is taking judicial notice of is 18 that Hygea is a party to lawsuits and the lawsuits 19 identified therein, the Court's already ruled that it's 20 going to take judicial notice. So I don't know if I 21 have an objection to make. 22 MR. KAYE: And that is -- Your Honor, I have 23 a copy here, the index of Hygea litigation matters 24 which the Court took judicial notice in its previous -- 25 in the cases, previous iteration in Las Vegas.</p>	<p style="text-align: right;">Page 332</p> <p>1 witness to have handy? Just one of the books that we 2 can -- one of the -- one of the binders that is 3 consistent with what the Court has and what opposing 4 counsel has. 5 Your Honor, at this time -- well, I suppose 6 there's another housekeeping matter before we call 7 Mr. Dragelin, which is I don't know if we're going to 8 finish Mr. Dragelin today. This is the conversation we 9 were having yesterday. 10 If we do finish him before 5:00, and it might 11 be a close call, you never know, we would be prepared 12 to proceed with Mr. Iglesias' examination. I don't see 13 that Mr. Iglesias is here right now. We know that he 14 was in the courtroom yesterday, and he's a presumptive 15 witness for the defense. So I would inquire as to his 16 whereabouts and ask if we can get him here in case 17 we're able to proceed with him. 18 MS. GALL: Mr. Viar already inquired with me 19 before. Mr. Iglesias is taking care of other matters 20 this morning and afternoon. He's actually on his way 21 to court right now. 22 MR. KAYE: Thank you. We had not conferred. 23 My apologies for taking up the Court's time on that. 24 At this time, plaintiffs would call Mr. Tim 25 Dragelin to the stand. If I may approach with the --</p>
<p style="text-align: right;">Page 331</p> <p>1 And I'm happy -- I do have handy, it's 2 Richter and Sheinbaum, MDPA, a Florida professional 3 association, versus Physician Management Associates, SE 4 LLC, a Florida limited -- a Florida limited liability 5 company is how the caption reads, Hygea IGP, LLC, a 6 Florida limited liability company, Hygea Holdings 7 Corp., a Nevada corporation, defendants, indicated that 8 it was filed on March 30th, 2018. And I do not have an 9 assigned case number, as the document I have is the 10 Complaint. 11 THE COURT: All right. So 102 is admitted. 12 And then there is a stipulation that the Richter case, 13 that I can take notice of that as well in addition to 14 the index? 15 MS. GALL: I think Your Honor has already 16 said you'll take judicial notice. I'm not sure what a 17 stipulation will do, especially now that you have been 18 actually notified on the record. 19 THE COURT: It's just that it's not included 20 apparently in the list in the index. 21 MS. GALL: That's fine if they want to add it 22 to the index. 23 THE COURT: Okay. All right. 24 MR. KAYE: All right, Your Honor. 25 Housekeeping matter, do we have an exhibit book for the</p>	<p style="text-align: right;">Page 333</p> <p>1 THE COURT: Yes. 2 MR. KAYE: -- binder. 3 THE COURT: About right there is fine. Face 4 the clerk and raise your right hand. 5 --oOo-- 6 TIMOTHY J. DRAGELIN, 7 having been first duly sworn to tell the 8 truth, was examined and testified as follows: 9 --oOo-- 10 THE COURT: Go ahead and have a seat. 11 DIRECT EXAMINATION 12 BY MR. KAYE: 13 Q. Can you please state and spell your name for 14 the record. 15 A. Timothy J. Dragelin. D as in David, 16 R-A-G-E-L-I-N. 17 Q. Mr. Dragelin, where do you work? 18 A. I work for FTI Consulting. 19 Q. And what is FTI Consulting? 20 A. FTI is a publicly traded consultancy. We're 21 about 4,000, 4,500 people worldwide specializing in 22 financial and operational matters ranging from 23 restructuring, performance improvement, litigation 24 consulting, mergers and acquisition, etc. 25 Q. How long have you been at FTI?</p>

<p style="text-align: right;">Page 334</p> <p>1 A. Since 2002.</p> <p>2 Q. And where did you work before that?</p> <p>3 A. I was at PricewaterhouseCoopers. Our</p> <p>4 practice was -- we sold our practice to FTI into 2002.</p> <p>5 Q. The Pricewaterhouse practice that you had</p> <p>6 been at was sold to FTI?</p> <p>7 A. Correct.</p> <p>8 Q. What is your title at FTI?</p> <p>9 A. I'm a senior managing director, which is the</p> <p>10 highest client-facing executive in the firm.</p> <p>11 Q. Can you describe generally what your work at</p> <p>12 FTI involves?</p> <p>13 A. Yes. I currently co-lead the corporate</p> <p>14 finance healthcare practice within FTI. I do</p> <p>15 everything from turnarounds, restructurings,</p> <p>16 performance improvement engagements, interim</p> <p>17 management engagements, whether that's chief</p> <p>18 restructuring officer or chief executive officer, CFO,</p> <p>19 as companies go through transitions.</p> <p>20 Q. Do you have any of those interim management</p> <p>21 arrangements or engagements going on right now?</p> <p>22 A. I -- I do, yes.</p> <p>23 Q. Excuse me?</p> <p>24 A. I do, yes.</p> <p>25 Q. What are those?</p>	<p style="text-align: right;">Page 336</p> <p>1 one of our groups to aggregate physicians, independent</p> <p>2 physicians, that they otherwise wouldn't be able to</p> <p>3 have access to. So in that instance, we have 2,400</p> <p>4 physicians that contract through us with various payors</p> <p>5 or insurance companies.</p> <p>6 Q. What's your educational background?</p> <p>7 A. I have a B.B.A. in accounting from the</p> <p>8 College of William & Mary. I am currently a CPA and</p> <p>9 also a certified valuation analyst. I passed the</p> <p>10 certified insolvency and restructuring advisor,</p> <p>11 although I don't currently hold that designation, as</p> <p>12 well as a certified turn-around professional</p> <p>13 designation, but I don't hold that designation</p> <p>14 currently either. That's about it.</p> <p>15 Q. Are you familiar with Hygea Holdings Corp.?</p> <p>16 A. I am.</p> <p>17 Q. How did you -- how are you familiar with</p> <p>18 Hygea Holdings Corp.?</p> <p>19 A. Hygea was a client of FTI for the first part</p> <p>20 of 2017.</p> <p>21 Q. How did you come to be involved with Hygea</p> <p>22 Holdings Corp.?</p> <p>23 A. I think initially I received a call from</p> <p>24 Chris Fowler at RIN Capital that they had an</p> <p>25 investment which was looking for some performance</p>
<p style="text-align: right;">Page 335</p> <p>1 A. Well, it's kind of hard to do more than one</p> <p>2 at a time, but I'm currently CEO, interim CEO, of</p> <p>3 Constellation Healthcare Technologies, which is a</p> <p>4 revenue-cycle management independent physician</p> <p>5 association and GPO and practice management company</p> <p>6 out of New York.</p> <p>7 Q. Can you describe in any more -- I'm tempted</p> <p>8 to say in any more detail, but perhaps any more</p> <p>9 layman's terms what that work at Constellation</p> <p>10 involves?</p> <p>11 A. Sure. I actually currently function as the</p> <p>12 CEO, so I have everybody reporting to me within the</p> <p>13 company. I have five divisions. I did file -- we did</p> <p>14 file for bankruptcy back in March, so I'm taking it</p> <p>15 through the bankruptcy process as the lead executive</p> <p>16 in that company.</p> <p>17 Q. And can you describe in any more, perhaps,</p> <p>18 layman's terms what it is that Constellation does?</p> <p>19 A. So Constellation is sort of a multifaceted</p> <p>20 company. One of our largest divisions is Independent</p> <p>21 Physician Association, so it is a group of physicians</p> <p>22 which contracts with one of our subsidiaries in order</p> <p>23 to get certain services, including contracts with</p> <p>24 payors.</p> <p>25 So insurance companies look to one of our --</p>	<p style="text-align: right;">Page 337</p> <p>1 improvement assistance.</p> <p>2 Q. And you said that Hygea was FTI's client?</p> <p>3 A. Correct.</p> <p>4 Q. And so Hygea was your client as well,</p> <p>5 correct?</p> <p>6 A. Yes. I was the lead on the engagement.</p> <p>7 That's correct.</p> <p>8 Q. When did you begin working for Hygea as a --</p> <p>9 for Hygea Holdings Corp. as a client?</p> <p>10 A. It may have been March -- March of '17</p> <p>11 maybe.</p> <p>12 Q. And to maybe --</p> <p>13 A. I don't recall. I'm sorry.</p> <p>14 Q. To maybe save some words, when I refer to</p> <p>15 "Hygea," unless I explain otherwise, I'm referring to</p> <p>16 Hygea Holdings Corp.</p> <p>17 A. Understood.</p> <p>18 Q. What did you understand your engagement for</p> <p>19 Hygea to involve?</p> <p>20 A. Services that we were to render were laid</p> <p>21 out in our letter of engagement. If I recall</p> <p>22 correctly, there was three components to that</p> <p>23 engagement. Again, I don't have it in front of me, so</p> <p>24 I'm going off of memory.</p> <p>25 One was to assist the company with completing</p>

<p style="text-align: right;">Page 338</p> <p>1 their audits for 2014 and 2015. One of -- there was 2 another element of the engagement, which was to help 3 develop a work plan for the company because they were 4 highly inquisitive and did not integrate the 5 acquisitions well. And so they asked us to develop a 6 work plan that they could implement as they acquired 7 companies to integrate them into Hygea. 8 And the third component, if I have them all, 9 was to develop a work plan for what was called an RTO, 10 which was essentially a go-public transaction in 11 Canada. A reverse takeover is essentially what it was. 12 And they wanted us to help stand up the company so it 13 could actually perform as a public company versus a 14 privately held company. 15 Q. And just to close the circle on something, 16 when you say "RTO," that stands for reverse takeover? 17 A. Yes. Sorry if I missed that. 18 Q. No problem. Just trying to get as much 19 clarity as we can on some of those things. 20 Was this engagement that you had with Hygea 21 broadly similar with other engagements you've had for 22 FTI? 23 A. This would have been my first RTO. However, 24 I had assisted companies with public offerings. I had 25 been a part of a public company as a CFO, division of</p>	<p style="text-align: right;">Page 340</p> <p>1 actually under management, but it was a significant 2 number of lives. 3 They managed the -- everything from 4 interaction with the providers or the physicians all 5 the way through the Medicare Advantage plans that they 6 were sort of a subcontractor to is the best word. 7 Q. Are you familiar with other businesses that 8 have this sort of model? 9 A. Yes. 10 Q. What did you expect when you began your 11 engagement with Hygea? 12 A. I don't understand. What do you mean? 13 Q. Well, as you were walking in the door, what 14 did you expect to see at Hygea? 15 A. I'm -- I'm sorry, Counselor. I'm actually 16 not sure what -- what I expect? 17 Q. If you can recall as you arrived at Hygea to 18 begin work for Hygea as your client, what did you 19 expect to see at a company like Hygea? What did you 20 expect to encounter? 21 A. Well, I guess -- I'm still struggling with 22 that question, so in terms of what did I expect in 23 terms of what my engagement was? Is that your 24 question? 25 Q. Well, to be more precise, I think you</p>
<p style="text-align: right;">Page 339</p> <p>1 a public company. I had worked over the years on -- 2 on S1s and audits, things like that, to help 3 companies. But really this was a performance 4 improvement engagement, which I've done a number of. 5 Q. And in the course of your engagement for 6 Hygea, did you come to be familiar with Hygea's 7 business model? 8 A. I believe so, yes. 9 Q. And what did you understand to be Hygea's 10 business model? 11 A. Hygea had several components to it. They 12 were an MSO. They were a physician practice 13 management company. They had a very -- various 14 subsidiaries that offered healthcare to members of 15 various plans or patients of physician practices. 16 Q. What does the term "MSO" stand for? 17 A. Management service organization. 18 Q. Can you describe generally what in your 19 experience an MSO or management service organization 20 does? 21 A. Yes. They -- for the provision of 22 healthcare, essentially you have lives that you are 23 managing for the -- under -- relative to Hygea. You 24 had Medicare Advantage plan -- Advantage plans. Hygea 25 had -- I don't remember the number of lives they had</p>	<p style="text-align: right;">Page 341</p> <p>1 testified as to what you understood your engagement to 2 be? 3 A. Yeah. 4 Q. But what did you expect to encounter at the 5 corporation when you began that engagement? 6 A. Well, there's an initial kickoff when you 7 have an engagement, sort of a level setting of 8 information exchange where the company provides us 9 information, we review it so we can actually start and 10 hit the ground running when we show up at the company 11 site. 12 We had been told that for the most part the 13 financials were complete, the books and records were 14 complete. And this was really an exercise in assisting 15 the CFO, who was going through some medical treatments, 16 to really sort of be his arms and legs to usher through 17 the auditors in a very rapid manner so we could get to 18 an RTO as soon as possible. 19 Q. Now, after you arrived and began work for the 20 client, did you form any impression as to whether or 21 not that expectation was being met or not? 22 MS. GALL: Objection, Your Honor; lack of 23 foundation. I'm not sure Mr. Dragelin has actually 24 testified as to what his expectation was yet. 25 THE COURT: Overruled. You can answer.</p>

<p style="text-align: right;">Page 342</p> <p>1 THE WITNESS: The books and records were not 2 complete. There were no financial statements. Really 3 2014 and 2015, which was the initial focus of the 4 engagement, they were in no shape to be audited. 5 Q. (By Mr. Kaye) With whom did you interact at 6 Hygea? 7 A. We interacted with virtually the entire 8 company that was at the -- I'll call it the corporate 9 headquarters. We had -- we had pretty broad access 10 to -- to everyone, Manuel Iglesias, Sr., who's CEO; 11 Ted Moffly, CFO. 12 There was various accounting personnel that 13 we had access to. They then hired -- I guess his title 14 is director of finance, Sergey Savchenko. So we 15 interacted with -- with those folks. 16 Q. Did you find the executives at Hygea to be 17 cooperative? 18 A. Generally, yes. 19 Q. Did you experience any lack of cooperation, 20 any roadblocks in your work? 21 A. We had significant impediments. I don't 22 know if I would use the word "roadblock," but 23 certainly impediments to getting our work done. 24 Q. And what were those impediments? 25 A. First off, the financials weren't complete,</p>	<p style="text-align: right;">Page 344</p> <p>1 that was often told -- told to me as essentially an 2 objective party. But that made it difficult just to 3 progress the rest of the engagement. 4 Q. In what manner did Mr. Moffly seek to have 5 you throw Mr. Iglesias under the bus, if you can 6 recall? 7 A. Mr. Moffly wanted the board to terminate 8 Mr. Iglesias. He wanted me to somehow talk to the 9 board members and -- and help him accomplish such. 10 But that's -- that was my role. 11 Q. So he thought that Mr. Iglesias should be out 12 of the corporation? 13 A. Yes. 14 Q. How would you describe Hygea's level of 15 professionalism? 16 A. That's a broad question. Can you -- 17 Q. How would you describe Hygea's level of 18 professionalism in terms of its financial management? 19 A. Prior -- prior to Mr. Savchenko arriving, 20 there was no financial management. 21 Q. In your work for Hygea as a client, did you 22 receive all the documents that you asked for? 23 A. As I said before, they were cooperative. It 24 wasn't -- it wasn't as if we were -- they wouldn't let 25 us see things, but there were things that just were</p>
<p style="text-align: right;">Page 343</p> <p>1 so that was -- that was sort of our first issue. 2 We -- the addition of Sergey Savchenko was helpful 3 because he worked on those elements. 4 There was significant discord I would say 5 in -- in the management team. There was a lack of 6 support for significant or material entries that were 7 required in order to complete the financial statements. 8 Generally a lack of support for -- for a 9 number of things that we needed to prepare for purposes 10 of completing financials, as well as the audit. So 11 those were -- those were some of the impediments that 12 we had. 13 Q. Can you describe the significant discord that 14 you observed? 15 A. So it was a -- there -- there was -- I think 16 I called it once when I was talking to Mr. Iglesias 17 and Mr. Moffly, really, the corporate ethos was such 18 that it made it difficult to really do anything, get 19 anything accomplished. 20 What I mean by that is there was -- 21 Mr. Moffly was constantly trying to convince me to, for 22 lack of a better word, throw Mr. Iglesias under the 23 bus. Mr. Moffly constantly was trying to resign. 24 Employees, there was a general fear of 25 employees of management, just a lack of trust that --</p>	<p style="text-align: right;">Page 345</p> <p>1 not available that somehow were not produced. So to 2 answer your question, yes, there were documents we did 3 not receive, but it was I think because they didn't 4 exist. 5 Q. Can you recall any of those documents 6 specifically? 7 A. There was -- so one of the large issues in 8 trying to complete the financials was what the revenue 9 numbers actually were. So there was not any support 10 for large revenue numbers that Mr. Moffly wanted to 11 book in the financials. 12 There was a lack of documentation relative to 13 number of acquisitions. There was some lack of 14 documentation relative to a loan that had been obtained 15 through an organization, I currently blank on the name 16 of that organization, but -- so there was a handful of 17 documents that just were not available. 18 Q. What was the significance for your engagement 19 to these revenue numbers? 20 A. So there was -- the question is how large 21 Hygea was. Was it a \$100 million company, was it a 22 \$300 million company in terms of revenue? We needed 23 support for -- I don't remember what the number was, 24 it was 200-plus, 2 to 300 million that Hygea was 25 supposed to be.</p>

<p style="text-align: right;">Page 346</p> <p>1 We only had documentation for a very small</p> <p>2 portion of that within the books and records. And so</p> <p>3 we needed to develop documentation for the remainder so</p> <p>4 that it could be audited and verified.</p> <p>5 Q. Just to -- to make sure I am clear, when</p> <p>6 you're talking about 200 to 300 million, that's a</p> <p>7 reference to the revenue figure. Am I understanding</p> <p>8 you correctly?</p> <p>9 A. Yes.</p> <p>10 Q. Is the issue that you're discussing something</p> <p>11 that you might call revenue recognition as an issue?</p> <p>12 A. Yes.</p> <p>13 Q. And did you ever discuss this revenue</p> <p>14 recognition issue with anyone at Hygea?</p> <p>15 A. It was -- it became one of the largest</p> <p>16 topics of conversation relative to my team, as well as</p> <p>17 the finance team, as well as the executive management</p> <p>18 at Hygea. Not the underlying employees, just the</p> <p>19 C-suite and my team.</p> <p>20 Q. And who were the individuals on those teams,</p> <p>21 if you may?</p> <p>22 A. So it would have been Mr. Iglesias,</p> <p>23 Mr. Moffly, Mr. Savchenko principally from the</p> <p>24 company's side. It was myself and an individual by</p> <p>25 the Keith Collin, who was an FTI person reporting to</p>	<p style="text-align: right;">Page 348</p> <p>1 applied to the financials. Under U.S. GAAP, those</p> <p>2 could be -- could be slightly different or they would</p> <p>3 be the same.</p> <p>4 And then we had what the numbers that Hygea</p> <p>5 was presenting in their pro forma financials. They</p> <p>6 weren't quite booked in the books and records yet, but</p> <p>7 what was proposed to be presented as the revenue</p> <p>8 numbers. And there was a difference for a number of</p> <p>9 different reasons.</p> <p>10 Q. And when you're saying that the numbers that</p> <p>11 were proposed to be presented as the revenue numbers,</p> <p>12 you mean the numbers that the management team was</p> <p>13 proposing?</p> <p>14 A. I would -- part of the management team,</p> <p>15 so...</p> <p>16 Q. Which part of the management team?</p> <p>17 A. Mr. Iglesias and Mr. Moffly.</p> <p>18 Q. Is it fair to say that there were</p> <p>19 disagreements about the revenue recognition issue?</p> <p>20 A. That's fair.</p> <p>21 Q. And can you discuss in any more detail those</p> <p>22 disagreements?</p> <p>23 A. The -- I'm not going to remember them all.</p> <p>24 There was -- there was a handful of issues that you</p> <p>25 could bridge between the company's proposal and what</p>
<p style="text-align: right;">Page 347</p> <p>1 Mr. Savchenko.</p> <p>2 Q. Now, I want to be clear here when you're</p> <p>3 talking about Keith Collin, the FTI person. That's not</p> <p>4 Keith Collins, who was a board member at Hygea,</p> <p>5 correct?</p> <p>6 A. The FTI Keith has no S. It's Collin.</p> <p>7 Q. The FTI Keith is not sitting in the</p> <p>8 courtroom?</p> <p>9 A. No, sir.</p> <p>10 Q. Can you describe in any more detail the</p> <p>11 content of those conversations relating to revenue</p> <p>12 recognition?</p> <p>13 A. That's -- it's been a year plus. The</p> <p>14 biggest issue that we had was what -- what revenue</p> <p>15 could be included -- I should actually back up to</p> <p>16 answer your question.</p> <p>17 We were going to try to have financials that</p> <p>18 were under the International Financial Reporting</p> <p>19 Standards, IFRS. Because we were going to be a</p> <p>20 Canadian filer. I apologize. I said "we," but that's</p> <p>21 my client, Hygea.</p> <p>22 Q. Correct. I understand I should say. I can't</p> <p>23 really say whether you're correct or not.</p> <p>24 A. So there are certain rules related to</p> <p>25 revenue recognition that we -- we interpreted and</p>	<p style="text-align: right;">Page 349</p> <p>1 we believed -- when I say "we," that was just the</p> <p>2 members on my team, as well as in consultation with</p> <p>3 Mr. Savchenko.</p> <p>4 We -- I'm not going to remember them. Sorry,</p> <p>5 Counselor, but I know that one of them, for example,</p> <p>6 was the timing in which you would actually recognize</p> <p>7 revenue from an acquisition.</p> <p>8 So if -- if you acquired a company on</p> <p>9 October 1st, financial reporting rules would say you</p> <p>10 would include the revenue from October 1st through</p> <p>11 December 31st. Hygea was proposing that they include</p> <p>12 the full year, so that was -- that was an example of</p> <p>13 one.</p> <p>14 There was a handful of others. The</p> <p>15 largest -- one of the largest items was whether or not</p> <p>16 to include or how to include and how to calculate</p> <p>17 Medicare risk adjustment in the financials or really</p> <p>18 the true-up component of that.</p> <p>19 Q. And I'll get to that in just a moment, but</p> <p>20 before we move on to the Medicare risk adjustment</p> <p>21 issue, is it safe to say that there was a general</p> <p>22 disagreement as to how much revenue ought to be</p> <p>23 recognized by Hygea?</p> <p>24 A. Yes, but -- but to be fair, we didn't -- we</p> <p>25 never settled on the right number.</p>

<p style="text-align: right;">Page 350</p> <p>1 Q. Excuse me?</p> <p>2 A. We never settled on the right number. There</p> <p>3 was a disagreement, but I think from -- from my</p> <p>4 standpoint, we were never locked in stone on what we</p> <p>5 believed the right answer to be. I think it was very</p> <p>6 close to the number that -- that we had developed, but</p> <p>7 it was probably -- there was probably a couple changes</p> <p>8 yet to be made.</p> <p>9 Q. When you speak about "we" there, you're</p> <p>10 referring to your FTI team?</p> <p>11 A. Yes.</p> <p>12 Q. Correct?</p> <p>13 A. Yes.</p> <p>14 Q. And just so that I'm clear, the -- the range</p> <p>15 or the general range that FTI was comfortable with,</p> <p>16 that was very different than the number that management</p> <p>17 was proposing. Am I understanding that correctly?</p> <p>18 A. Yes.</p> <p>19 Q. And management's number was significantly</p> <p>20 larger; is that correct?</p> <p>21 A. Correct.</p> <p>22 Q. Moving on to Medicare risk adjustment, can</p> <p>23 you explain what that means?</p> <p>24 A. So under Medicare Advantage plans, the --</p> <p>25 there is a payment made by -- by Medicare, by CMS on a</p>	<p style="text-align: right;">Page 352</p> <p>1 go-forward basis.</p> <p>2 What happens is when you get to the end of --</p> <p>3 when you get to the end of 2017 now, you actually have</p> <p>4 real data as to how you treat it or how those patients</p> <p>5 were treated, what the costs of those members was.</p> <p>6 And the plan will submit data on those costs</p> <p>7 to Medicare. And then there's an adjustment that's</p> <p>8 made. There's actually two adjustments for any plan</p> <p>9 year.</p> <p>10 There's a preliminary retroactive adjustment</p> <p>11 that happens in September and then another one that</p> <p>12 happens the following July. So for 2017, for example,</p> <p>13 there will be a retroactive adjustment that's paid in</p> <p>14 September of '18 because we now have real data, and</p> <p>15 then there's a final true-up that happens in July of</p> <p>16 '19.</p> <p>17 So that's -- that's how that -- there's two</p> <p>18 pieces of the risk adjustment. One is the initial one,</p> <p>19 which gets you from a benchmark rate to what you're</p> <p>20 getting paid on a monthly basis, and then there is a --</p> <p>21 sort of a final retroactive adjustment which comes in</p> <p>22 two pieces anywhere between almost a year to almost two</p> <p>23 years later.</p> <p>24 Q. So just taking one step back, what does "CMS"</p> <p>25 stand for?</p>
<p style="text-align: right;">Page 351</p> <p>1 per-member, per-month basis. It's essentially --</p> <p>2 it's -- the word "capitation" is used.</p> <p>3 The way that it is developed, there is a</p> <p>4 benchmark score per -- per life, per member. And that</p> <p>5 is multiplied by a risk adjustment. So there is --</p> <p>6 there's a benchmark score that's based on age, sex,</p> <p>7 geography, a number of demographic factors, which is</p> <p>8 then multiplied by a risk adjustment score to come up</p> <p>9 with what the monthly capitation fee is that's paid.</p> <p>10 So that -- that risk adjustment is based on</p> <p>11 various diagnoses that that member may have. If they</p> <p>12 have diabetes or have cancer, all could change the</p> <p>13 multiplier effect on that base, that benchmark rate.</p> <p>14 So that's sort of the first component of a risk</p> <p>15 adjustment that gets you to what your monthly --</p> <p>16 monthly fee is per -- per member per month.</p> <p>17 What happens is if you take, for example,</p> <p>18 Medicare Advantage payments today in terms of the first</p> <p>19 part of 2018, so you get the monthly payment every</p> <p>20 month in the beginning of 2018, that's actually based</p> <p>21 upon risk scores and data going all the way back to the</p> <p>22 latter half of 2016 and the first half of 2017.</p> <p>23 So that's what they -- so it's -- they call</p> <p>24 it a prospective payment system. So they take data,</p> <p>25 historical data, and that's what they pay you on a</p>	<p style="text-align: right;">Page 353</p> <p>1 A. Centers for Medicare/Medicaid Services.</p> <p>2 Q. And that little bit of housekeeping out of</p> <p>3 the way.</p> <p>4 At this point, see if I can phrase this how I</p> <p>5 want to. At this point, how far would -- would we be</p> <p>6 looking back for forthcoming final Medicare risk</p> <p>7 adjustment payments in your general experience?</p> <p>8 A. I'm sorry. I don't understand your</p> <p>9 question.</p> <p>10 Q. So I think you said that there might be some</p> <p>11 forthcoming payments from early 2017. The second</p> <p>12 adjustment that you said comes a year to two years</p> <p>13 later?</p> <p>14 A. Right. I think in my example, what I was</p> <p>15 trying to say is what we're getting paid today -- what</p> <p>16 will be paid in 2018 relates to data from 20 --</p> <p>17 actually '16 and '17.</p> <p>18 Q. And does it relate to all of 2016, or would</p> <p>19 some of 2016 be, so to speak, in the book already?</p> <p>20 A. So some of '16 is -- will already have been</p> <p>21 paid because you'll have a retroactive adjustment in</p> <p>22 September of '17. Your final will come in July of '18</p> <p>23 for 2016.</p> <p>24 Q. I'm assuming based on how you've explained</p> <p>25 that that you've come across Medicare risk adjustment</p>

<p style="text-align: right;">Page 354</p> <p>1 in your work prior to coming to Hygea?</p> <p>2 A. Yes.</p> <p>3 Q. In your experience, how big an adjustment do</p> <p>4 those adjustments end up being?</p> <p>5 A. So this was actually something we researched</p> <p>6 while we were working with Hygea. We spoke both</p> <p>7 internally and externally with other -- other players.</p> <p>8 Internally, one of my partners had run an MRA plan.</p> <p>9 We did some research on public filings in terms of</p> <p>10 publicly available data from like Humana I think was</p> <p>11 maybe one of them. There was some publicly available</p> <p>12 information.</p> <p>13 We also had a conversation or couple</p> <p>14 conversations with a local company in Miami that was</p> <p>15 similar to Hygea. And it was our expectation that it</p> <p>16 would be material, but in the 5 to 10 percent range.</p> <p>17 Q. And that's for both adjustments taken</p> <p>18 together?</p> <p>19 A. That your -- your retroactive MRA would be</p> <p>20 5 percent. It could be as high as 10, but it was sort</p> <p>21 of unlikely.</p> <p>22 Q. In your work for Hygea, did any issues emerge</p> <p>23 concerning Medicare risk adjustments?</p> <p>24 A. What do you mean by "issues"?</p> <p>25 Q. Well, let me rephrase that.</p>	<p style="text-align: right;">Page 356</p> <p>1 numbers to -- but it was -- I know that for '15 -- no,</p> <p>2 I remember like relatively for 2015, our proposal was</p> <p>3 75 to \$100 million roughly, and the company's was over</p> <p>4 200 million. I don't -- I don't recall how much of</p> <p>5 that was the MRA, but probably a large portion of that</p> <p>6 was the MRA.</p> <p>7 Q. And management wanted to show this on the</p> <p>8 corporation's books?</p> <p>9 A. That was the proposal, to include that in</p> <p>10 the financials.</p> <p>11 Q. And you discussed this proposal with them,</p> <p>12 correct?</p> <p>13 A. Yes.</p> <p>14 Q. And with whom did you talk about this</p> <p>15 proposal?</p> <p>16 A. Mr. Iglesias, Mr. Moffly, Mr. Savchenko.</p> <p>17 Those -- those were the management team.</p> <p>18 Q. Do you remember what you told them about</p> <p>19 their proposal?</p> <p>20 A. We had a general disagreement on the level</p> <p>21 of revenue that -- that should be included for both</p> <p>22 IFRS, but also even U.S. GAAP.</p> <p>23 Q. And that included a disagreement about the</p> <p>24 Medicare risk adjustment figure, correct?</p> <p>25 A. Correct.</p>
<p style="text-align: right;">Page 355</p> <p>1 In your work for Hygea, did any issues emerge</p> <p>2 concerning how to account for Medicare risk adjustments</p> <p>3 in the company's financial records or its books?</p> <p>4 A. So the first question was what -- how much</p> <p>5 is it? That was -- before you actually get to how you</p> <p>6 account for it, it's what -- what's the number? So</p> <p>7 that was really the -- I can talk about the accounting</p> <p>8 elements of it because there was -- there was</p> <p>9 questions around the accounting, but it was really</p> <p>10 what the number was, how big is it. And then once we</p> <p>11 figured that out, could try to figure that out, then</p> <p>12 the accounting should be -- should be fairly</p> <p>13 straightforward.</p> <p>14 Q. Were there any disagreements about how big</p> <p>15 the number should be?</p> <p>16 A. So the number proposed by management was in</p> <p>17 the many tens of millions. I don't remember the exact</p> <p>18 order of magnitude, but it was almost doubling of --</p> <p>19 of the at-risk revenue.</p> <p>20 Q. So when you say "doubling of the at-risk</p> <p>21 revenue," is that suggesting that they were -- that</p> <p>22 management was proposing that there would be almost a</p> <p>23 100 percent adjustment?</p> <p>24 A. I don't remember the exact percentage, but</p> <p>25 it -- it was significant. So I'd have to look at</p>	<p style="text-align: right;">Page 357</p> <p>1 Q. And what did they tell you? What did they</p> <p>2 say?</p> <p>3 A. I mean, to some degree it was going to be</p> <p>4 left up to the auditors to be the arbitrators of -- of</p> <p>5 it. I mean, ultimately if -- if the numbers could</p> <p>6 be -- if the number could be supported both from a</p> <p>7 calculation standpoint, which was the first hurdle,</p> <p>8 and then the accounting rules could be shown that you</p> <p>9 could book it, then -- and the auditors could get</p> <p>10 comfortable, it could be booked generally speaking.</p> <p>11 But none of those happened, right? So there</p> <p>12 was no support for the calculation. We certainly could</p> <p>13 not find enough justification within the accounting</p> <p>14 regulations to book it. And I think it was left --</p> <p>15 left at that, sort of a big question mark.</p> <p>16 Q. Do you remember anything else specifically</p> <p>17 that you said to anyone in management about this issue?</p> <p>18 A. It's going back a long -- I mean, it's a</p> <p>19 year, so sorry.</p> <p>20 Q. In your professional experience, have you</p> <p>21 come across the term "real cash"?</p> <p>22 A. I use it a lot.</p> <p>23 Q. What does the term "real cash" mean?</p> <p>24 A. So -- so it's sort of a tongue-in-cheek,</p> <p>25 which is what -- if a company has earnings, the</p>

<p style="text-align: right;">Page 358</p> <p>1 question is is it real cash earnings? Because</p> <p>2 ultimately you can put earnings up on your balance</p> <p>3 sheet in the form of accounts receivable.</p> <p>4 But if you can actually never liquidate that</p> <p>5 accounts receivable to turn into real cash, the</p> <p>6 question is whether or not that receivable is a valid</p> <p>7 receivable in the first place. So we always say, you</p> <p>8 know, is it real cash or not?</p> <p>9 Q. In your work for Hygea, did you encounter any</p> <p>10 issues relating to real cash?</p> <p>11 A. Yes.</p> <p>12 Q. And what were those issues?</p> <p>13 A. So -- so our role initially was not to deal</p> <p>14 with the financials, it was not to monitor liquidity</p> <p>15 of the company, we were there to help with the audit</p> <p>16 and do some performance improvement activities.</p> <p>17 At one point, though, it appeared that</p> <p>18 liquidity was -- was strained, and board members asked</p> <p>19 for or investors asked for liquidity analysis, which we</p> <p>20 had problems preparing because of lack of data.</p> <p>21 So we did on a -- really did it on a</p> <p>22 historical sort of look-back basis, assuming that since</p> <p>23 very little had been changing, that historical numbers</p> <p>24 would be pretty good proxy for a go-forward. What it</p> <p>25 showed was that the company on an operating basis was</p>	<p style="text-align: right;">Page 360</p> <p>1 A. He controlled a lot of cash. He was really</p> <p>2 the only signatory.</p> <p>3 THE COURT: I'm sorry. I missed the last</p> <p>4 part.</p> <p>5 THE WITNESS: He was the only signatory.</p> <p>6 Signatory. Sorry.</p> <p>7 Q. (By Mr. Kaye) Did you ever review how Hygea's</p> <p>8 books accounted for the valuation of acquisitions?</p> <p>9 A. Yes. That was part of our scope.</p> <p>10 Q. And did you encounter any issues with how</p> <p>11 acquisitions were valued?</p> <p>12 A. So some of the acquisitions had not been</p> <p>13 valued yet. There was some spreadsheets, so we</p> <p>14 undertook an effort to create the valuations. We</p> <p>15 tried to use Hygea's form that they had used</p> <p>16 historically. However, a number of the assumptions</p> <p>17 that they used were just -- were not proper. So we</p> <p>18 fixed -- we fixed those.</p> <p>19 Ultimately, it came down to we still didn't</p> <p>20 have support for the financial forecasts of the</p> <p>21 acquisitions, which drove a big part of the valuation.</p> <p>22 So that -- that remained -- when we left, that remained</p> <p>23 outstanding.</p> <p>24 Q. Can you remember any of the -- any of the</p> <p>25 assumptions that you found to be improper?</p>
<p style="text-align: right;">Page 359</p> <p>1 barely break even. After debt service, they could</p> <p>2 not -- it was losing money.</p> <p>3 Q. Did you ever discuss these real cash issues</p> <p>4 with management?</p> <p>5 A. Yes.</p> <p>6 Q. And with whom at management did you discuss</p> <p>7 these real cash issues?</p> <p>8 A. Mostly Mr. Iglesias and Mr. Savchenko.</p> <p>9 Q. Do you remember what you said to them about</p> <p>10 the real cash issues?</p> <p>11 A. That we -- Hygea was -- was losing a</p> <p>12 significant amount of money; that we did not have</p> <p>13 adequate cash, either in cash balances, nor were we</p> <p>14 producing enough cash to take care of all our</p> <p>15 expenses.</p> <p>16 Q. Did they have any response to this?</p> <p>17 A. One of the initial responses from</p> <p>18 Mr. Iglesias was that the bookkeeper who did all the</p> <p>19 bank reconciliations and paid all the bills didn't</p> <p>20 know -- didn't know everything, didn't know all about</p> <p>21 all the cash that the company had. So that was --</p> <p>22 that was sort of one issue. The other was sort of</p> <p>23 somewhat of an ignoring of the issue.</p> <p>24 Q. Did Mr. Iglesias ever explain to you why the</p> <p>25 bookkeeper wouldn't know about all the cash?</p>	<p style="text-align: right;">Page 361</p> <p>1 A. So it -- in some ways, right, many of them</p> <p>2 were hockey stick. You always hear sort of hockey</p> <p>3 stick projections, which is -- which was fixable,</p> <p>4 right, if all we had to do was come up with reasonable</p> <p>5 projections that were supportable by history.</p> <p>6 And then there were a number of sort of</p> <p>7 technical issues within the -- within the valuation</p> <p>8 methods themselves where -- didn't use proper -- proper</p> <p>9 buildup of a discount rate, they didn't use proper</p> <p>10 rates of return on -- on various intangible assets.</p> <p>11 And ultimately the result was in large ways</p> <p>12 overvaluation of the individual components of the</p> <p>13 acquisition.</p> <p>14 Q. Now, I just want to take a step back real</p> <p>15 quick to make sure I'm clear when you talk about a</p> <p>16 hockey stick projection, I believe is the term you</p> <p>17 used.</p> <p>18 That suggests that it's like a -- like a</p> <p>19 hockey stick that's been set on its side where the</p> <p>20 numbers are one thing, and then they're going to kind</p> <p>21 of take off down the line?</p> <p>22 A. Correct.</p> <p>23 MS. GALL: Objection; leading.</p> <p>24 THE COURT: Overruled.</p> <p>25 Q. (By Mr. Kaye) I want to come back to something</p>

<p style="text-align: right;">Page 362</p> <p>1 you said at the very end before I went back to the hockey 2 stick, and that is, correct me if I'm wrong, the 3 individual components of acquisitions were overvalued? 4 A. Yes. 5 Q. And did -- did anyone in management propose 6 any way to address this overvalue -- this overvaluation 7 on the company's books? 8 A. So I was working mostly with Mr. Moffly on 9 the valuations. One of the largest components of the 10 valuation is a value of the patient base. So if you 11 have what your -- what your patient revenue is going 12 to be or the base of your -- if you think about it, 13 it's your customer base, right? What's the value of 14 your customer base? 15 Those -- that component of the valuation of 16 all the individual valuations was very high, such that 17 the total of all the assets as valued was greater than 18 the cash or -- the amount of money in cash or otherwise 19 that was paid for for the acquisition. 20 So the acquisition was a million dollars in 21 value paid, but the components were adding up to a 22 million-five, for example. So it resulted in a booking 23 of a negative goodwill. 24 And that was significant debate as to whether 25 or not you could have negative goodwill. It was also a</p>	<p style="text-align: right;">Page 364</p> <p>1 issue. 2 MS. GALL: I believe that plaintiffs have put 3 the valuation of the company at issue at least or it 4 seems that way because they're talking about the 5 solvency or the insolvency of the company at this 6 point. 7 And the fair market value of assets is a 8 solvency question. Even in their -- in their expert 9 disclosure that they made last night, it's even a large 10 part of their rebuttal expert disclosure. 11 So I don't think they need to bolster any 12 rebuttal testimony that their expert may or may not be 13 providing at the end of this week with Mr. Dragelin's 14 testimony as to whether assets were or were not 15 overvalued. 16 MR. KAYE: Your Honor, without getting too 17 far ahead of ourselves, I believe that the rebuttal 18 expert testimony is talking about the salience of that 19 analysis to a solvency concern, not -- you know, not 20 saying this is the solvency issue that the Court ought 21 to be looking at. 22 Once again, it's a component and it's part of 23 the whole picture, and it also gets to, as we just 24 heard from Mr. Dragelin, and I think -- expect I'm 25 going to ask about this some more, some of the issues</p>
<p style="text-align: right;">Page 363</p> <p>1 debate with the auditors as well as to whether or not 2 that was proper. But it all revolved around whether or 3 not you could support the value of the patient base. 4 MS. GALL: Your Honor, at this point I'm just 5 going to make an objection to strike those portions of 6 Mr. Dragelin's testimony regarding valuation, 7 overvaluation. I believe this goes to my earlier 8 motion in limine to exclude expert opinion. I believe 9 at that point he's making an ultimate conclusion on 10 valuation. 11 MR. KAYE: Your Honor, a couple of responses 12 to that. First of all, I believe he just testified, 13 and what I intend to proceed to ask him about, is that 14 there was a debate on this issue, not that, you know, 15 that's not an opinion as to ultimate conclusions. He's 16 talking about a debate that was going on within Hygea. 17 Second of all, I believe that the testimony 18 relates to the valuation of components, so this is not 19 getting at -- in a holistic way to the valuation of the 20 corporation. 21 Third of all, this is not a case -- does not 22 constitute a case over Hygea's valuation as an ultimate 23 issue. Of course, valuation of a company as a whole or 24 its assets could be a component of the analysis, but 25 this is a receivership action. This is not an ultimate</p>	<p style="text-align: right;">Page 365</p> <p>1 that were coming up with the audit process, which for 2 all the reasons we've explained throughout this case, 3 which is an important part of the story. 4 THE COURT: The objection is overruled. 5 MR. KAYE: Thank you, Your Honor. 6 Q. (By Mr. Kaye) You mentioned I believe that there 7 was a debate about the negative goodwill/valuation issue; 8 is this correct? 9 A. Yes. That's fair. 10 Q. Can you tell me, generally speaking, who are 11 the participants in this debate? 12 A. Mostly myself and Mr. Moffly, but also with 13 the auditors as well. 14 Q. And who were the auditors to whom you're 15 referring? 16 A. It was a couple of initials. MNP I think. 17 Sorry. I'm -- I think it's MNP. 18 Q. It's either MNP or something close to MNP? 19 A. Sorry, something like that. 20 Q. What position did you take in these -- in 21 this debate? 22 A. I really -- I didn't necessarily take a 23 position as much as if we can support it and it 24 follows acceptable valuation methodologies, again, the 25 auditor gets to be the final sort of arbiter of that.</p>

<p style="text-align: right;">Page 366</p> <p>1 However, I had never seen any goodwill 2 before, so theoretically it's possible. But it then -- 3 it then also broke down to we couldn't support the 4 forecasts of the individual acquisitions. 5 And so that was sort of where we -- that's 6 where I left all the valuations, which was they were 7 complete but for supporting, potentially amending the 8 forecasts. 9 So -- so ultimately where the math was coming 10 out, the negative goodwill was disappearing because the 11 forecasts were essentially being adjusted downwards 12 from where they otherwise were. 13 Q. And within this debate, what position did 14 Mr. Moffly take? 15 A. It was an important component of the overall 16 Hygea story that they were trying to portray; that 17 they were highly inquisitive; they were acquiring 18 assets that were high accretive to -- to the balance 19 sheet. So that's -- that was essentially part of the 20 concept of -- of what was Hygea. 21 Q. But so was that another way of saying 22 Mr. Moffly's -- Mr. Moffly's part or as you took his 23 position to be that when Hygea acquired a -- when Hygea 24 made an acquisition, that that medical practice 25 instantly became more valuable because it's accretive,</p>	<p style="text-align: right;">Page 368</p> <p>1 anywhere within the fairway, but you're in the fairway. 2 And so accounting -- "accounting rules," sort 3 of put that in quotes, allows you in some way to play 4 from one side of the fairway to the other. And there's 5 nothing wrong with that as long as it's sort of within 6 sort of the veil of orthodoxy of accounting. 7 On the valuation side of things, the negative 8 goodwill is theoretically possible, but you still have 9 to support it. It actually has to pass the 10 straight-face test, and it really didn't. 11 So it wasn't really for me to determine that 12 as much as it was to help the company to the point of 13 you need credibility, and -- and the numbers didn't 14 have credibility. So that's really sort of where 15 the -- probably the biggest disconnect was. 16 Q. Did you ever see any support for the negative 17 goodwill numbers? 18 A. Well, so it's math, right? So let's say I 19 have three pieces of a valuation - the patient base, 20 non-compete contracts with the doctors, let's say, and 21 furniture. Those are the three pieces of a valuation. 22 If those all add up to a million-five but I 23 only paid a million for it, then the negative goodwill 24 by definition has to be half a million negative in 25 order for the two to equal. Because what you're buying</p>
<p style="text-align: right;">Page 367</p> <p>1 because it's part of Hygea? 2 MS. GALL: Objection; leading. 3 THE COURT: Overruled. 4 THE WITNESS: I didn't actually follow that 5 question. I'm sorry if -- 6 Q. (By Mr. Kaye) My apologies. I'll try to do 7 better. 8 Did you take Mr. Moffly's position in this 9 debate to be that when Hygea bought a medical practice, 10 that its purchase of the medical practice increased the 11 value of the medical practice because now it's part of 12 Hygea? 13 A. I don't -- I don't know if I can answer it 14 that way. I don't -- yeah. Sorry can't answer that. 15 Q. Did you have any response to Mr. Moffly when 16 he would argue that the negative goodwill ought to be 17 on the books? 18 A. So management's responsible for the 19 financials, and I wasn't management, I was their 20 consultant. I was -- I was there to help them pass -- 21 pass through -- sort of pass the straight-face test. 22 And so within -- within accounting standards, 23 there's also guidelines. So if you actually think of 24 it as -- I don't know if anybody plays golf here, but 25 if you think about a fairway, you can sort of play</p>	<p style="text-align: right;">Page 369</p> <p>1 has to equal what you paid for it. 2 And if -- if -- sort of in the theory that 3 these were sort of bargain purchases that they were 4 getting sort of -- that in Hygea's hands, they were 5 much more valuable than they ever could be alone maybe. 6 But you still need to support those first 7 three components. You still need to -- the value of 8 the patients, the furniture. If you don't have 9 furniture, you can't put a value on it, right? If 10 there is no chairs or desks, you can't put a number on 11 your balance sheet of \$10,000 of chairs and desks. 12 That's really where the disconnect example comes. 13 Q. Did you ever use the fairway example a moment 14 ago, did you ever use that and communicate that to 15 Mr. Moffly? 16 A. I'm probably sure I did. I've used it for a 17 long time. 18 Q. Did you ever express a conclusion to 19 Mr. Moffly whether or not the figures that he was 20 proposing were on the fairway or not? 21 A. Ultimately, it came down to he needed to 22 support those numbers. By the time we left, those 23 numbers had yet to be supported. 24 Q. You mentioned that the auditors were involved 25 in this debate as well?</p>

<p style="text-align: right;">Page 370</p> <p>1 A. Yes.</p> <p>2 Q. Did the auditors take a position on this</p> <p>3 issue?</p> <p>4 A. The auditors did not believe you could have</p> <p>5 a negative goodwill. And so the adjustment of the</p> <p>6 other assets would have to -- there would have to be</p> <p>7 adjustments to the other assets.</p> <p>8 Q. Other than what you've discussed already, did</p> <p>9 you ever encounter an issue at Hygea relating to</p> <p>10 whether or not cash flow should be used in acquisition</p> <p>11 valuation?</p> <p>12 A. I don't understand that question.</p> <p>13 Q. Well, I'll take a step back because I might</p> <p>14 have made it more confusing than it needed to be.</p> <p>15 Did you ever encounter any issues at Hygea</p> <p>16 whether or not cash flow should be used to value</p> <p>17 acquisitions?</p> <p>18 A. Well, your -- what you're valuing is --</p> <p>19 is -- is cash flow. So that -- that's a big part of</p> <p>20 the value of the patient base or -- is the cash flow</p> <p>21 that you're getting from the practice.</p> <p>22 Q. Did you ever encounter any issues relating to</p> <p>23 the cash flow figures for practices that management was</p> <p>24 proposing?</p> <p>25 A. So I think it goes back to the support. So,</p>	<p style="text-align: right;">Page 372</p> <p>1 which entity it was, but it was the one that we sort</p> <p>2 of were using as the test case for all the other</p> <p>3 valuations, if we could get that one done and the</p> <p>4 auditors through it, then sort of the other ones were</p> <p>5 going to be a lot easier. And so the issue is really</p> <p>6 around the supporting of that cash flow forecast.</p> <p>7 Q. Are you familiar with the term "internal</p> <p>8 controls"?</p> <p>9 A. Yes.</p> <p>10 Q. Can you describe what are a company's</p> <p>11 internal controls?</p> <p>12 A. So any company has a system of internal</p> <p>13 controls that make sure that the -- a couple things.</p> <p>14 One, what is actually being reported in the books and</p> <p>15 records is actually what is happening in the company;</p> <p>16 but also safeguards dissipation of assets so that</p> <p>17 assets of a company are not dissipated improperly.</p> <p>18 And documenting internal controls is a part of -- part</p> <p>19 of the audit.</p> <p>20 Q. Are internal controls important not just</p> <p>21 from -- they're important for an audit, correct?</p> <p>22 A. Yes.</p> <p>23 Q. I believe that's what you just said. Are</p> <p>24 they important also just for the company's operations</p> <p>25 generally?</p>
<p style="text-align: right;">Page 371</p> <p>1 for example, I don't remember the name of the company</p> <p>2 that was acquired, but it had been acquired a couple</p> <p>3 years earlier.</p> <p>4 So we actually had some real -- real life</p> <p>5 data on the cash flow of that company. So by the time</p> <p>6 that you sort of plug it into '14, '15, '16 -- sorry,</p> <p>7 2014, 2015, 2016, you sort of kind of know the answer</p> <p>8 already.</p> <p>9 But you're supposed to put yourself in the</p> <p>10 shoes as if you are standing there at the time, sort of</p> <p>11 not using hindsight. But when you looked at the cash</p> <p>12 flows, I don't remember which entity it was, I</p> <p>13 apologize, but they did not match up at all with --</p> <p>14 with what the cash flows were being projected.</p> <p>15 So one of the conversations was with the</p> <p>16 auditors, as well as with Mr. Moffly was, well, then</p> <p>17 there -- either something happened to the business</p> <p>18 after acquisition, meaning it failed, or that the</p> <p>19 original forecast was -- was unreasonable, which was</p> <p>20 it? And that was a -- that was sort of left -- left as</p> <p>21 an unknown.</p> <p>22 Q. When you had that conversation with</p> <p>23 Mr. Moffly, did he have any response?</p> <p>24 A. It went back to the idea that it should have</p> <p>25 done better, I mean, the entity. I don't remember</p>	<p style="text-align: right;">Page 373</p> <p>1 A. Yes.</p> <p>2 Q. And in your work for Hygea, did you encounter</p> <p>3 any issues relating to internal controls?</p> <p>4 A. What do you mean "issues"?</p> <p>5 Q. Well, just as a general matter, did you</p> <p>6 encounter any issues with the company's internal</p> <p>7 controls?</p> <p>8 A. So part of what we did is we documented</p> <p>9 internal controls that existed, and then we identified</p> <p>10 areas for -- for improvement. There were certain --</p> <p>11 there was like five areas that were critical to -- to</p> <p>12 the audit that needed to be documented.</p> <p>13 And so we documented what those existing</p> <p>14 controls were. We then provided where there were</p> <p>15 deficiencies. We provided those -- recommendations on</p> <p>16 those deficiencies to management.</p> <p>17 Q. Do you remember what those deficiencies were?</p> <p>18 A. No, I really don't.</p> <p>19 Q. Excuse me?</p> <p>20 A. I really don't. Sorry.</p> <p>21 Q. Do you remember what management did with</p> <p>22 respect to the recommendations that you made?</p> <p>23 A. I don't think they did anything.</p> <p>24 Q. Do you remember what the five critical areas</p> <p>25 were, even if you don't recall the specific</p>

<p style="text-align: right;">Page 374</p> <p>1 deficiencies that you identified?</p> <p>2 A. So one's cash management, accounts</p> <p>3 receivable, accounts payable, PP&E, which is your</p> <p>4 property, plant, and equipment, your capital</p> <p>5 expenditures on those things. I forget the fifth.</p> <p>6 Q. Without, perhaps, remembering the specific</p> <p>7 deficiencies that you identified, do you remember</p> <p>8 anything about the deficiencies that you found?</p> <p>9 A. I'd say the biggest issue that I'd say our</p> <p>10 recommendation was was around the whole idea of</p> <p>11 treasury, who could approve vendors, who could approve</p> <p>12 payments to vendors, who controlled cash.</p> <p>13 Our recommendation was that Mr. Iglesias</p> <p>14 would not have those sort of power of approving vendors</p> <p>15 and also paying -- paying vendors. Just you need --</p> <p>16 you need a segregation of duties, and there wasn't one</p> <p>17 within Hygea.</p> <p>18 And so in order for this to -- company to</p> <p>19 ultimately get to sort of more professional or -- not</p> <p>20 even an RTO standpoint, but just sort of get -- just be</p> <p>21 a more healthy organization, they were going to need to</p> <p>22 have a system of controls around cash management.</p> <p>23 Q. When you say "segregation of duties," what</p> <p>24 does that mean?</p> <p>25 A. So it's -- it's if -- if one executive is --</p>	<p style="text-align: right;">Page 376</p> <p>1 didn't have the authority.</p> <p>2 Q. Were you able to determine whether you had</p> <p>3 access to all of Hygea's accounts?</p> <p>4 A. What do you mean "accounts"?</p> <p>5 Q. Well, I think you testified earlier that at</p> <p>6 one point Mr. Iglesias said that there was a</p> <p>7 bookkeeper, previous bookkeeper I believe was the</p> <p>8 testimony, who lacked access to all of the company's</p> <p>9 cash or lacked knowledge of all the company's cash.</p> <p>10 Is that a fair recitation of what you said?</p> <p>11 A. That's fair.</p> <p>12 Q. Were you able to determine whether or not you</p> <p>13 had access to all of the company's cash?</p> <p>14 A. So we -- I don't -- one of the outstanding</p> <p>15 items that I recall was at the -- there was a bank</p> <p>16 account that we found, which was sort of a mystery</p> <p>17 bank account that we asked for documentation of what</p> <p>18 was it, where did the money come from?</p> <p>19 I don't -- I don't recall anything more</p> <p>20 specific about it than that at the moment. I just</p> <p>21 remember it was one of the sort of hot topics of sort</p> <p>22 of our to-do lists, to develop that or get that</p> <p>23 information. In terms of other -- other documents or</p> <p>24 other accounts, we had no way of knowing.</p> <p>25 Q. Do you remember discussing that issue with</p>
<p style="text-align: right;">Page 375</p> <p>1 has check signing authority, there should be a check</p> <p>2 and balance that they can't just take money out and,</p> <p>3 you know, go buy a car with it or whatever, right?</p> <p>4 There actually has to be a valid purpose</p> <p>5 checked by somebody else, approved by somebody else in</p> <p>6 order to have that check and balance on -- on cash --</p> <p>7 on cash management. So you segregate through the</p> <p>8 duties to different people.</p> <p>9 Q. You concluded that those checks and balances</p> <p>10 were in some respect lacking; is that correct?</p> <p>11 A. Correct.</p> <p>12 Q. And that in the absence of those checks and</p> <p>13 balances, too much authority was vested in</p> <p>14 Mr. Iglesias; is that correct?</p> <p>15 A. I would agree.</p> <p>16 Q. Did you discuss this issue with management?</p> <p>17 A. Yes. It was part -- it was part of the</p> <p>18 recommendations on the internal controls, certainly</p> <p>19 with Mr. Moffly, who did not have check signing</p> <p>20 authority. It was discussed with him. I don't think</p> <p>21 I ever discussed it directly with Mr. Iglesias. I</p> <p>22 don't -- I don't recall that.</p> <p>23 Q. Do you remember what Mr. Moffly told you</p> <p>24 about the issue?</p> <p>25 A. Sort of wasn't his issue because he -- he</p>	<p style="text-align: right;">Page 377</p> <p>1 anyone at management?</p> <p>2 A. Not -- not specifically. The auditors do</p> <p>3 cash confirmations, so they confirm -- we gave them a</p> <p>4 list of bank accounts that we knew about, and those</p> <p>5 were then to be confirmed by -- by the auditors.</p> <p>6 Q. How did you come across the "mystery</p> <p>7 account"?</p> <p>8 A. I don't actually recall. It was -- there</p> <p>9 was a bank statement somehow within Hygea that we</p> <p>10 found, somebody found it, and then presented it to us.</p> <p>11 Q. Now I want to move away from my earlier rule,</p> <p>12 so to speak, of "Hygea" meaning Hygea Holdings Corp.</p> <p>13 Do you remember making -- could you tell if</p> <p>14 the mystery account was in the name of Hygea Holdings</p> <p>15 Corp. or in the name of a different entity?</p> <p>16 A. I don't -- I don't remember.</p> <p>17 Q. Did you ever learn or determine whether or</p> <p>18 not Hygea Holdings Corp. had any subsidiaries?</p> <p>19 A. I don't remember.</p> <p>20 Q. I'm going to go back to the rule that "Hygea"</p> <p>21 means Hygea Holdings Corp.</p> <p>22 At any point in time when you were at Hygea,</p> <p>23 did you ever during that time determine that Hygea had</p> <p>24 the ability to produce financial statements?</p> <p>25 A. I'm sorry. Can you repeat that? That was</p>

<p style="text-align: right;">Page 378</p> <p>1 a --</p> <p>2 Q. Was there any time when you were at Hygea</p> <p>3 that you determined that they were, in fact, able to</p> <p>4 produce financial statements?</p> <p>5 A. They were pretty close. I mean, we -- we</p> <p>6 essentially had financial statements almost ready to</p> <p>7 go. I say "we." I should probably define that.</p> <p>8 Mr. Savchenko, along with Mr. Collin, who was</p> <p>9 an FTI person, had been working on the financials, and</p> <p>10 there were -- they were very close to being complete.</p> <p>11 The biggest issue was the revenue recognition element</p> <p>12 that we spent some time talking about.</p> <p>13 On a go-forward basis, so that was for '14,</p> <p>14 '15, 2014, 2015. 2016 I believe had a -- was close to</p> <p>15 being complete as well. The harder part was trying to</p> <p>16 do sort of the monthly close on a prospective basis, on</p> <p>17 a go-forward basis. That wasn't quite ready, but Keith</p> <p>18 Collin, working -- worked with Mr. Savchenko to try to</p> <p>19 do that. And, again, the big element then was the</p> <p>20 revenue recognition on the MRA.</p> <p>21 Q. And those are the disagreements and debates</p> <p>22 about which you testified earlier; is that correct?</p> <p>23 A. Yes.</p> <p>24 Q. Did you ever get the sense when you were</p> <p>25 working for Hygea that Hygea's management had ever</p>	<p style="text-align: right;">Page 380</p> <p>1 taken care of.</p> <p>2 Q. Did you ever get the sense when you were</p> <p>3 working for Hygea that anyone had taken benefits from</p> <p>4 Hygea without properly accounting for them, without the</p> <p>5 books and records properly reporting them?</p> <p>6 A. Can you be more specific on that? I'm not</p> <p>7 sure what you're -- I don't know if it's like health</p> <p>8 benefits? What's your --</p> <p>9 Q. Any sort of personal benefit. Did you ever</p> <p>10 get the sense -- I'll limit the question a little bit</p> <p>11 more.</p> <p>12 Did you ever get the sense that anyone from</p> <p>13 within the executive ranks had ever taken any sort of</p> <p>14 personal benefits from the corporation, not benefits in</p> <p>15 the -- in the human resources sense of the word, but</p> <p>16 any sort of benefit from the corporation without having</p> <p>17 the books properly reflect those benefits?</p> <p>18 A. Only secondhand knowledge.</p> <p>19 Q. And from whom did you receive this secondhand</p> <p>20 knowledge?</p> <p>21 A. The -- the bookkeeper/controller individual,</p> <p>22 Ms. Perez I believe.</p> <p>23 Q. And was she working for Hygea?</p> <p>24 A. Yes.</p> <p>25 Q. And what did she tell you?</p>
<p style="text-align: right;">Page 379</p> <p>1 intentionally manipulated any of its books or records?</p> <p>2 A. Yes.</p> <p>3 Q. And what made you think that?</p> <p>4 A. Mr. Iglesias told me.</p> <p>5 Q. What did Mr. Iglesias tell you?</p> <p>6 A. There was a loan -- I don't remember the</p> <p>7 name of the entity. There was -- there was some type</p> <p>8 of financial arrangement which was a -- which was</p> <p>9 allegedly structured as a loan that we had partial</p> <p>10 documentation for but was recorded -- the payments on</p> <p>11 that loan were recorded as professional fees in the</p> <p>12 financials.</p> <p>13 And the reason was, according to</p> <p>14 Mr. Iglesias, that their lender, which was Macquarie, I</p> <p>15 believe, at the time, there was a covenant that there</p> <p>16 would be no other debt on the company. And so that --</p> <p>17 they recorded it as professional fees so that they</p> <p>18 would not breach -- breach that covenant.</p> <p>19 Q. What did you do after Mr. Iglesias told you</p> <p>20 this?</p> <p>21 A. My response was that, Well, now we get to</p> <p>22 clean it up. Now we get to fix. Essentially</p> <p>23 Macquarie was gone as a lender. We were going through</p> <p>24 an audit, and so now we could properly record it so</p> <p>25 that on a go-forward basis it would be -- would be</p>	<p style="text-align: right;">Page 381</p> <p>1 MS. GALL: Objection; hearsay.</p> <p>2 MR. KAYE: Your Honor, I believe Mr. Dragelin</p> <p>3 testified she was working for Hygea, so that's a</p> <p>4 statement made by a Hygea agent or employee, falls</p> <p>5 outside of the definition of hearsay.</p> <p>6 MS. GALL: Your Honor, just because somebody</p> <p>7 is an agent doesn't necessarily mean it's a party</p> <p>8 admission. Has to be within the scope of their</p> <p>9 authority to make that statement.</p> <p>10 MR. KAYE: Your Honor, I would have a couple</p> <p>11 responses to that. One is that I do believe that</p> <p>12 inherently, the bookkeepers -- the scope of the</p> <p>13 bookkeeper's agency would be to keep the books and to</p> <p>14 communicate what is in the books.</p> <p>15 Beyond that, I think that the -- the</p> <p>16 exception to the exception to hearsay, the carve-out,</p> <p>17 if you will, that the exception that defense counsel</p> <p>18 suggests proffers too much.</p> <p>19 We've already seen in one of their papers</p> <p>20 from defendants the suggestion that damaging statements</p> <p>21 about Hygea could not possibly be within the scope of</p> <p>22 agency. Well, that's too big of a -- that's too big of</p> <p>23 an exception to the carve-out. This was presumptively</p> <p>24 within the agent's agency.</p> <p>25 THE COURT: The objection is sustained.</p>

<p style="text-align: right;">Page 382</p> <p>1 Q. (By Mr. Kaye) Did you have any disagreements 2 with Mr. Moffly or Mr. Iglesias about FTI's role at Hygea? 3 A. Yes. 4 Q. And what were those disagreements? 5 A. It was -- I think it was principally 6 thematic is the way I would describe it where 7 Mr. Moffly wanted me to sell the auditors on -- on 8 their -- on whether it's the MRA adjustment or whether 9 it's the valuations, that it was in his words my job 10 to convince them. 11 And that was not -- that was not my role. It 12 was not -- I was there to assist the company in the 13 process of getting their audits complete, but it was 14 not my job to be a -- to help spin or otherwise color 15 specific presentation. It was, rather, get it 16 supported, get the auditors comfortable with it, and 17 move on. 18 Q. If you could please turn in the exhibit book 19 to Exhibit No. 28. 20 A. I'm there. 21 Q. And this is a document that begins Bates 22 number NV5001587 and runs through to the end NV5001594. 23 What is this document? 24 A. This appears to be an email that I wrote to 25 Mr. Fowler on August 12th dealing with the follow-up</p>	<p style="text-align: right;">Page 384</p> <p>1 document almost daily. 2 Q. And did you make the email in the course of 3 your business? 4 A. Yes. 5 Q. And did you make the attachment in the course 6 of your business? 7 A. Yes. 8 Q. And I believe you just testified that you 9 updated the attachment nearly daily. So at the time 10 you sent the attachment to Mr. Fowler as reflected in 11 this document, that would have been an up-to-date copy 12 of the attachment? 13 A. It would have most likely been the most 14 recent version. 15 Q. And did you make the attachment and the email 16 based on your own knowledge or -- from the knowledge 17 that you gained from others working in the course of 18 business? 19 A. Yes. 20 Q. I am going to turn or direct your attention 21 to the last page of the document as a whole, NV5001594. 22 A. I'm there. 23 Q. And this references up at the top "walk of 24 non-IFRS KPI to IFRS financial statement element." 25 Can you explain what that means?</p>
<p style="text-align: right;">Page 383</p> <p>1 items for -- for this week is the subject matter. 2 Q. And -- and how do you recognize this 3 document? 4 A. How do I recognize it? Looks like it's from 5 my email address. 6 Q. And is there an attachment to this email that 7 you sent? 8 A. Just give me a minute, see if I can -- it 9 says, "I've attached a file with two tabs." So there 10 must have been. 11 Q. And in looking through the document in its 12 entirety, do you see some -- do you see the attachments 13 there, the attachment there? 14 A. Could you make it any smaller print? Sorry. 15 It looks like what's described here in the body of the 16 email is -- is included in this tab. 17 Q. And is this a true and accurate copy of the 18 email that you sent? 19 A. It looks to be an email. It doesn't have my 20 header on it, but it does appear to be an email that I 21 sent. The subject matter is certainly something that 22 I would have been talking about. 23 Q. And does the attachment appear to be a true 24 and accurate copy of the attachment to the email? 25 A. I recognize attachments. We updated this</p>	<p style="text-align: right;">Page 385</p> <p>1 A. So this -- this analysis is really part -- 2 it's a two-page analysis. This is a summary where we 3 were trying to bridge the reason for why we thought 4 that the revenue was what we thought the revenue was 5 under IFRS guidance versus the numbers that Hygea were 6 presenting as we discussed earlier today. 7 Q. And can you tell me what the -- well, let me 8 ask you this: Does this page show what management was 9 proposing to be used as the figures? 10 A. Generally speaking, yes. Their figures 11 were -- were bouncing around a little bit. They were 12 moving around as -- as calculations were -- were still 13 being developed. 14 But I believe this would have been as close 15 to -- as close to what they had intended at that point 16 in time. So there was still work being done by 17 Mr. Moffly on -- on the revenue recognition. And so 18 that number probably -- if I remember correctly, that 19 number changed every -- every other week or so. 20 Q. And what were the figures that management was 21 proposing? 22 A. I'm sorry. I don't -- 23 Q. As you look at the -- at the different 24 numbers that are on this sheet, which are the ones that 25 management was proposing?</p>

<p style="text-align: right;">Page 386</p> <p>1 A. So that's that first line item where it says 2 "health premium revenue managed by Hygea." I can tell 3 you that I -- I termed it that way because it's -- it 4 was fair that they actually managed a certain number 5 of lives; that if you multiply out the revenue 6 associated with those lives, it would get into that 7 order of magnitude. But it wasn't actual revenue. 8 Q. What was the number that management proposed 9 as showing here for 2014? 10 A. Roughly 61 million. 11 Q. And what was the number that management 12 proposed for 2015? 13 A. Roughly 212 million. 14 Q. Now, down at the bottom here, I see -- down 15 at the bottom of that chart, I see line item "pro forma 16 revenue including (b)." 17 Can you tell me what that line item 18 reflected? 19 A. So it was sort of where we were -- where we, 20 my team, was coalescing around what we thought the -- 21 the proper revenue number would be in the financials, 22 although it was slightly different under IFRS 23 principles, which is just the line above it. 24 So there was a -- again, that was sort of 25 part of -- when I said earlier -- I think I did. If I</p>	<p style="text-align: right;">Page 388</p> <p>1 (Recess taken at 3:50, resuming at 4:07.) 2 THE COURT: Please be seated. 18 OC 71, 3 Arellano v. Hygea. All counsel are present. 4 Go ahead, Mr. Kaye. 5 MR. KAYE: Thank you, Your Honor. 6 Q. (By Mr. Kaye) Mr. Dragelin, continuing on with 7 the document that we were looking at that's been marked as 8 number 28, I would like you to turn, if possible, back to 9 the email. 10 A. Okay. 11 Q. And walking through the emails, first of all, 12 is it safe to say that within the email, there are some 13 forwarded emails? 14 A. Yes. 15 Q. And looking at the first of those in time, is 16 that an email that begins at the bottom of NV5001588? 17 Do you recognize that email included within this larger 18 forward? 19 A. I don't recall exactly, but I understand the 20 content. That's something that Sergey and I would 21 have discussed. 22 Q. That's the sort of email that you and Sergey 23 would have shared in the course of your business at 24 Hygea? 25 A. Yes.</p>
<p style="text-align: right;">Page 387</p> <p>1 didn't, meant to -- where even internally, we were 2 still adjusting our views as to the fairway, exactly 3 where in the fairway do we go with revenue recognition. 4 Q. And what does "IFRS" mean again? I think we 5 talked about it earlier. 6 A. International Financial Reporting Standards. 7 Q. And the "pro forma revenue including (b)," 8 that I believe you just said -- reflected what your 9 team was roughly coalescing around, what did that 10 indicate for 2014? 11 A. 32 million. 12 Q. And what did it indicate for 2015? 13 A. 92 million. 14 Q. And the line above that, the "health premium 15 revenue per IFRS principles," what did that indicate 16 for 2014? 17 A. 17 million. 18 Q. And what did that indicate for 2015? 19 A. 73 million. 20 Q. I'd like to turn back to the text of the 21 email. 22 THE COURT: Let's -- before we do that, we're 23 going to take a 15-minute recess. We'll come back in 24 at 5 after 4. You can step down. 25 THE WITNESS: Thank you, sir.</p>	<p style="text-align: right;">Page 389</p> <p>1 Q. And do you remember receiving this list of 2 critical outstanding items for the 2014-15 audits? 3 A. This -- this was the critical list that was 4 in existence for some time during the process. 5 Q. And is that a true and accurate copy of the 6 list that Mr. Savchenko emailed to you? 7 A. I have no reason to believe it's not. 8 Q. And looking at -- looking up on the page from 9 there, there's an email from you to Mr. Iglesias, 10 Mr. Moffly, and Dan Miller that copies Mr. Savchenko, 11 and that -- is it safe to say there you're forwarding 12 Mr. Savchenko's email on to Mr. Iglesias, Moffly, and 13 Miller? 14 A. Yes, I see that. 15 Q. And that, once again, is something that you 16 did in the context of your business with Hygea? 17 A. It would have been, yes. 18 Q. Looking at that list, I'd like to discuss 19 some of the -- some of the issues. Can you describe 20 what number 1, "Audit testing of plans," what that 21 related to? 22 A. So I believe that the auditors wanted to 23 send confirmations to -- to the plans. This is the 24 Medicare Advantage plans which -- which Hygea received 25 its funding from.</p>

<p style="text-align: right;">Page 390</p> <p>1 And the auditors wanted to send 2 confirmations, letters going out from the auditors 3 to -- to the plans to confirm the -- if there was a 4 positive or negative balance in the plan, so did Hygea 5 owe them money or did the plans owe Hygea money. 6 And it was discussed at one point that 7 management didn't want that to occur or because they 8 didn't want to upset the plans. And so I believe 9 Sergey -- Mr. Savchenko came up with this alternative 10 plan where the plans could actually send income 11 statements they had directly to the auditors versus the 12 auditors reaching out to the plans in order to make 13 sure no sort of feathers were ruffled in the process. 14 Q. Looking at number 2, "Complete shareholder 15 register," can you read that into the record? 16 A. "Complete shareholder register. Ted Moffly 17 should review shareholder register prepared by 18 Danielle Eisenberg for reasonableness and 19 completeness. He should concentrate on changes and 20 balances for 2014 and 2015." 21 Q. Do you know who Danielle Eisenberg was? 22 A. She worked for me. She was an FTI senior 23 consultant. 24 Q. And did you agree that it was uncertain 25 whether or not the shareholder register was reasonable</p>	<p style="text-align: right;">Page 392</p> <p>1 A. This was the bank account which we needed to 2 get confirmation for for the auditors. So as I think 3 I mentioned earlier, auditors will confirm balances 4 with -- with banks directly. 5 And in order to do that, there needs to be an 6 authorization letter provided by the signatory on the 7 account. And it looks like this -- this specific bank 8 account, we needed to have balances confirmed. 9 Q. And turning the page now, I'm on NV5001591, 10 which I believe has gone back into the attachment, it 11 says at the top "Hygea Holding Corp. 2014-2015 audit, a 12 list of outstanding -- list of outstanding critical 13 items." 14 Number 1, "Revenue calculation developed and 15 support to be provided to auditors." Can you describe 16 what that is referring to? 17 A. Yeah. We -- we've spoken a lot about that 18 today. That was the calculation of -- of the basic 19 revenue recognition calculation needed to be developed 20 and supported and then provided to the auditors, and 21 that was within Mr. Moffly's domain. 22 Q. And number 2 says, "Costs/expenses related to 23 at risk contracts." 24 Do you know what that's a reference to? 25 A. So you have both the revenue side and you</p>
<p style="text-align: right;">Page 391</p> <p>1 and complete? 2 MS. GALL: Objection, Your Honor. It 3 mischaracterizes what's actually stated there. 4 MR. KAYE: Your Honor -- well, let me 5 rephrase the question. 6 THE COURT: Go ahead. 7 Q. (By Mr. Kaye) Did you agree that the shareholder 8 register referenced in paragraph 2 needed to be reviewed 9 for reasonableness and completeness? 10 A. Yes. 11 Q. And looking to number 3, can you read that 12 into the record? 13 A. "Share warrants register. Ted Moffly should 14 provide warrant schedule for 2014 and 2015, which we 15 would need to validate." 16 Q. And, to your knowledge, was number 2, was 17 that review ever concluded? 18 A. I don't know. 19 Q. And, to your knowledge, was number 3 ever -- 20 ever addressed? 21 A. I don't know. 22 Q. Moving down to number 5, there is a reference 23 to a Wells Fargo Bank account, and then a number is 24 listed. 25 Do you know what that is referring to?</p>	<p style="text-align: right;">Page 393</p> <p>1 also have the cost side of -- of -- of your P&L, of 2 your profit and loss statement. And so we've talked a 3 lot about the revenue side of the equation, but 4 there's also a cost side. And that had yet to be 5 developed. But once you ended up having the revenue, 6 the cost should not have been that -- that hard to 7 come up with. 8 Q. Turning back to the first page of this 9 document, this is the email which we initially 10 discussed wherein you send these materials to 11 Mr. Fowler, correct? 12 A. Yes. 13 Q. And there in number 1, it says, "Audit 14 completion. I have attached below an email string 15 along with examples of the critical items for 16 completion of the audit. A few things to note." 17 Can you read letter A, please. 18 A. "Sergey and I met with Manny and Ted 19 numerous times to discuss the audit status and open 20 items leading up to the creation, memorialization in 21 Excel of the critical items list on June 20th." 22 Q. And that's a reference to the list and the 23 attachment? 24 A. I believe so, yes. That makes sense. 25 Q. Can you please read B.</p>

<p style="text-align: right;">Page 394</p> <p>1 A. "There were many more items which Sergey and 2 I were handling, but the critical items truly were 3 critical and were solely in the purview of me and 4 Ted." 5 Q. Can you please read C. 6 A. "Manny and Ted never met with us as 7 suggested in my email of June 20th." 8 Q. And can you please read D. 9 A. "I continued to send the same list every few 10 days, and the last time I sent the list was on 11 August 3rd. However, the file was dated July 19th, as 12 no progress had been made by Manny and Ted." 13 MR. KAYE: Your Honor, at this time 14 plaintiffs would move to admit Exhibit No. 28 into 15 evidence? 16 THE COURT: Ms. Gall? 17 MS. GALL: We have no objection. 18 THE COURT: 28 is admitted. 19 Q. (By Mr. Kaye) Mr. Dragelin, in your professional 20 experience, have you come across the concept of EBITDA? 21 A. Yes. 22 Q. And I'm going to put myself at risk of 23 embarrassment here, but that's E-B-I-T-D-A, correct? 24 A. Correct. 25 Q. And is that -- can you tell me what EBITDA</p>	<p style="text-align: right;">Page 396</p> <p>1 objection as before. They're asking for an ultimate 2 conclusion within the scope of an expert. 3 MR. KAYE: Your Honor, I'm happy to lay some 4 more foundation for that that perhaps would assuage 5 some of those concerns. I'll withdraw the question. 6 We may revisit that. 7 THE COURT: All right. 8 Q. (By Mr. Kaye) Did you ever revisit the issue of 9 EBITDA in the course of your work for Hygea? 10 A. Not specifically to calculate a new EBITDA 11 number, no. 12 Q. Did you, however, ever form any -- well, let 13 me ask you this: Did you ever discuss the issue of 14 EBITDA with anyone at management after those initial 15 conversations? 16 MS. GALL: Objection, Your Honor. There's no 17 foundation for initial conversations. In fact, 18 Mr. Dragelin testified he couldn't remember where he 19 had learned the 50 to \$60 million EBITDA figure. 20 THE COURT: Sustained. 21 Q. (By Mr. Kaye) After you initially learned the 50 22 to \$60 million EBITDA figure, did you ever discuss the 23 issue of Hygea's EBITDA with management? 24 A. Yes. 25 Q. And can you describe those conversations?</p>
<p style="text-align: right;">Page 395</p> <p>1 means? 2 A. EBITDA is an acronym of earnings before 3 interest, taxes, depreciation, and amortization. 4 Q. In your work with Hygea, are you -- did you 5 ever become familiar with any management assertions 6 relating to EBITDA? 7 A. Yes. 8 Q. And what did you learn about that issue? 9 A. Well, EBITDA is not presented on the face of 10 a financial statement. You actually have to calculate 11 it by taking either operating income or net income and 12 adding back the elements that get you earnings before 13 interest, taxes, depreciation, amortization. 14 When we initially were engaged, the idea was 15 that Hygea was roughly a 50 to \$60 million EBITDA 16 company, so they generated about 50 to \$60 million 17 EBITDA. 18 Q. How did you learn or who told you that? 19 A. I don't recall. It was -- may have seen 20 documents, may have -- certainly discussions with 21 management that that's what -- it was a \$300 million 22 company with 50 to \$60 million EBITDA. 23 Q. And did you ever draw any conclusions about 24 whether that EBITDA figure was accurate? 25 MS. GALL: Objection, Your Honor. Same</p>	<p style="text-align: right;">Page 397</p> <p>1 A. Well, it's partly in context of the revenue 2 conversation. So if -- I think we talked about -- we 3 saw the document before that if -- that if Hygea was 4 producing \$90 million of revenue, it would be very 5 difficult for them to be producing 50 or \$60 million 6 of EBITDA. 7 There's just too much expenses in between 8 our -- the pro forma income statement that's actually 9 attached to -- to this shows an earnings number that's 10 very low. And there wouldn't be enough interest, 11 taxes, depreciation, amortization to add back to get to 12 that number. 13 So we -- we -- part of the conversation I 14 think even at the board meeting in August was that the 15 company -- if it didn't produce any cash, there's no 16 way it could be a \$50 million EBITDA company. 17 And Manny and I also had that conversation, 18 actually, now that I'm remembering as I'm -- and I 19 posited the same point to him at one point that there's 20 no way we could be a \$50 million EBITDA company. 21 Q. Did Mr. Iglesias have any response to that? 22 A. I do recall because I actually found it 23 humorous at the time because he said, "Well, it's 24 balance sheet EBITDA." There's no such thing as 25 balance sheet EBITDA. EBITDA is a concept that you</p>

<p style="text-align: right;">Page 398</p> <p>1 derive from your profit and loss statement or income 2 statement, not off your balance sheet. 3 Q. Did you have any idea what he meant by 4 "balance sheet EBITDA"? 5 A. So if -- I think I mentioned it before. If 6 you have accounts receivable that are sitting on your 7 balance sheet but they never turn into cash, an EBITDA 8 is really sort of a surrogate for cash. 9 And so if it stays on the balance sheet, it 10 will never turn into cash unless that AR is liquidated. 11 Maybe that's what he was talking about. That's the 12 only way I could bridge those two concepts. 13 Q. Can you turn to what's been marked as 14 Exhibit No. 29 in the book there. Let's first look 15 at -- well, let me strike that. 16 Can you tell me what Exhibit No. 29 is? 17 A. Looks like an email from myself to Chris 18 Fowler on August 5th, 2017. 19 Q. And turning on to page -- pages ending 1628 20 and 1629, that document, do you recognize that 21 document? My apologies again for the small type. I 22 don't think I apologized for the last time, but a 23 couple earlier. 24 A. Sorry. Is there a question? Sorry. 25 Q. Do you recognize this document?</p>	<p style="text-align: right;">Page 400</p> <p>1 A. Yes. 2 Q. And sort of working backwards through the 3 email chain -- through the emails, it appears, if I'm 4 not mistaken, that there's an underlying email from you 5 to Mr. Iglesias; is that correct? 6 A. Yes, it appears to be. 7 Q. And is that a true and accurate copy of the 8 email that you sent to Mr. Iglesias? 9 A. I have no reason to believe it's not. 10 Q. And is that an email that you sent to 11 Mr. Iglesias in the course of your business relating to 12 Hygea? 13 A. Yes. 14 Q. And is the content of the email based on what 15 you learned in the course of your business with Hygea? 16 A. Yes. 17 Q. And I see above that, there seems to be 18 almost what I might call an intermediate email where 19 you forward this again to -- to Mr. Iglesias on 20 August 4th as opposed to the first email being 21 August 3rd. Okay. Is that a true and accurate copy of 22 the forwarding email to Mr. Iglesias? 23 A. It appears to be. 24 Q. And above that, it appears that there's an 25 email wherein you forward all of this to Chris Fowler;</p>
<p style="text-align: right;">Page 399</p> <p>1 A. Yes. 2 Q. And what is this document? 3 A. I think I mentioned this before where we had 4 attempted to prepare a cash flow analysis because RIN 5 Capital had been asking for it. 6 Q. And is this document the cash flow analysis? 7 A. Yes. 8 Q. And is this a true and accurate copy of the 9 cash flow analysis that you prepared? 10 A. Sorry. I'm trying to look at the small 11 print. It -- it appears to be. 12 Q. And did you prepare that cash flow analysis 13 in the course of your business with Hygea? 14 A. It was prepared under my direction. 15 Q. And who else would have been involved in 16 preparing that under your direction? 17 A. Danielle Eisenberg, who was a senior 18 consultant that worked for FTI. She would and did 19 interact with Ms. Perez. And I'm -- I'm not sure if 20 Mr. Savchenko would have been involved or not. He may 21 have been. 22 Q. And was this document based on either your 23 knowledge or the people who reported to you under your 24 direction from their knowledge gained in the ordinary 25 course of business?</p>	<p style="text-align: right;">Page 401</p> <p>1 is that correct? 2 A. Yes. 3 Q. And is that a true and accurate copy of the 4 email you sent to Mr. Fowler? 5 A. I have no reason to believe it's not. 6 Q. And is that an email that you sent to 7 Mr. Fowler in the course of your business relating to 8 Hygea? 9 A. Yes. 10 Q. And is the content of that email reflective 11 of information you learned in the course of your 12 business with Hygea? 13 A. Yes. 14 Q. And was it ordinary within your work for 15 Hygea to draft and send emails such as the emails set 16 forth in this chain? 17 A. Yes. 18 Q. Can you please read your email that you -- 19 the text there of the email that you sent to 20 Mr. Fowler, just the forwarding part. 21 A. Starting with "Chris"? 22 Q. Starting at Chris, yes. 23 A. "Chris, Manny has been rather unresponsive 24 regarding this analysis. I assume he will ignore it 25 or attempt to discredit it because it is missing a few</p>

<p style="text-align: right;">Page 402</p> <p>1 acquisitions or does not have some of the other 2 elements. 3 "But since he controls all the cash, it is 4 difficult to determine how complete this is until he 5 responds. Unfortunately, we do not have access to 6 those accounts to prepare the analysis. 7 "Notwithstanding this is the core business 8 and, therefore, the case that it was generating 9 60 million in EBITDA, we would have significant cash 10 flow versus what this shows is essentially break even 11 before debt service. 12 "I'm happy to discuss at your convenience. 13 The other element to note is that we only completed 14 through June. However, as of Thursday, there was 15 minimal cash in the accounts, likely 200-300,000." 16 Q. Was that true what you wrote, that Manny was 17 rather unresponsive regarding the analysis? 18 A. Yes. I don't -- I wouldn't have written it 19 if I didn't believe it to be the case. 20 Q. What did you mean by, "We do not have access 21 to those accounts"? 22 A. So there -- there were a couple of 23 acquisitions that had happened in sort of Q1-Q2 of 24 2017, and those accounts were still under the control 25 of the prior owners or the management team of -- of</p>	<p style="text-align: right;">Page 404</p> <p>1 A. That's fine. 2 Q. -- before any -- aside from the fees, can you 3 think of any other disagreements that you had with 4 Hygea's management regarding the substantive issues of 5 your engagement? 6 A. You know, we've talked a lot about the 7 audit, the financial statements. There was also the 8 whole RTO process, trying to stand the company up. 9 And there was -- I think there was a fundamental 10 difference in -- in view as to how this company should 11 be in order to be a publicly-traded company, including 12 things like the segregation of duties or creating a 13 proper organizational chart, things that were just 14 part and parcel of -- of what we were hired to do. 15 But I wouldn't -- to say it's a disagreement 16 is probably strong for -- for that, as much it was we 17 were there to recommend things. Management was 18 ultimately responsible for further implementing or not. 19 Q. When did you depart Hygea? 20 A. So I believe we -- we stood down I think 21 sometime in July possibly, maybe late June. And then 22 we -- I was asked by Manny and Ted to come back for a 23 board meeting, in which I then attended I think in 24 August, which must have been August 11th based on this 25 email.</p>
<p style="text-align: right;">Page 403</p> <p>1 those entities. 2 Q. And was that accurate what you wrote that as 3 of Thursday, which I take to be the preceding Thursday 4 or August 3rd, 2017, there was minimal cash in the 5 accounts, likely 200,000 to \$300,000? 6 A. On information and belief, that would have 7 been what I was relaying. 8 MR. KAYE: Your Honor, at this time 9 plaintiffs move for the admission of Exhibit 29. 10 MS. GALL: Your Honor, I have no objection to 11 admission. I would just like to state for the record 12 that Hygea does object to either 28 or 29 being 13 described at least with respect to the top emails, the 14 most recent emails in the chain being part of Hygea's 15 business records. 16 THE COURT: The Exhibit 29 is admitted on 17 that basis. Go ahead, Mr. Kaye. 18 Q. (By Mr. Kaye) Other than what we've discussed 19 this afternoon, and I appreciate that we've discussed 20 quite a bit, did you have any other disagreements with 21 Hygea's management? 22 A. Probably -- I mean, yeah. The largest one 23 or one of the largest ones was payment of our fees. 24 Q. If I can set that aside for a moment, and I 25 appreciate that that may cut a little bit, but --</p>	<p style="text-align: right;">Page 405</p> <p>1 Q. And what happened after that board meeting, 2 did you continue to work for Hygea? 3 A. I did not. 4 Q. And why did you not continue to work for 5 Hygea after that board meeting? 6 A. So they had continually been delinquent on 7 paying our fees. There had been a discussion even at 8 one point that with -- with Manny that we would 9 require a retainer in order to continue because of 10 the -- this was before we did the liquidity analysis; 11 that they were short on liquidity and not entitled to 12 liquidity, and, therefore, I could not be exposed. My 13 firm could not be exposed on that. 14 Manny assured me that the cash flow -- that 15 the company was awash in cash, and it was fine. So we 16 continued for a little bit longer, but then the next 17 couple invoices did not get paid. 18 So I went to Manny and said that I needed -- 19 and Ted and said that we're pulling out of the 20 engagement until some agreement would be made on -- on 21 catching our fees up. 22 And I even said that it would be fine if they 23 took what was outstanding and paid it over time, that 24 I'd be willing to do that, but had no real response on 25 that. But they did ask me to come back to the board</p>

<p style="text-align: right;">Page 406</p> <p>1 meeting, which I agreed to attend.</p> <p>2 Q. And how much money do they owe you now?</p> <p>3 A. Roughly \$500,000.</p> <p>4 Q. Is that a bona fide debt?</p> <p>5 A. Yes.</p> <p>6 Q. And they've never -- have they ever suggested</p> <p>7 that they don't owe you the money?</p> <p>8 MS. GALL: Objection, Your Honor, to the term</p> <p>9 "bona fide debt." As there is a bona fide debt, Hygea</p> <p>10 may have a bona fide dispute over it. That hasn't come</p> <p>11 to any sort of judgment or conclusion.</p> <p>12 THE COURT: Mr. Kaye?</p> <p>13 MR. KAYE: Your Honor, I can rephrase the</p> <p>14 question.</p> <p>15 THE COURT: Go ahead.</p> <p>16 Q. (By Mr. Kaye) Did you ever form a conclusion as</p> <p>17 to whether or not that was a bona fide debt?</p> <p>18 A. Yes. We did the work under their direction.</p> <p>19 Q. And did anyone at Hygea ever dispute the</p> <p>20 debt?</p> <p>21 A. No.</p> <p>22 Q. I think you've testified to this, but I want</p> <p>23 to ask it comprehensively.</p> <p>24 The financial information that you were</p> <p>25 working on at Hygea, what years did that encompass?</p>	<p style="text-align: right;">Page 408</p> <p>1 The auditors had completed a substantial</p> <p>2 amount of their substantive testing, which is their --</p> <p>3 for ticking and tying in the books and records. And it</p> <p>4 really related to those few items, plus the revenue</p> <p>5 recognition, and then ultimate agreement on what the</p> <p>6 valuations were, all of which I think we collectively</p> <p>7 believed the concentrated effort within a couple weeks</p> <p>8 could have been done.</p> <p>9 Q. At the time you were at Hygea, is it safe to</p> <p>10 say based on what you've testified today that you found</p> <p>11 it to be a very troubled company?</p> <p>12 A. Define "troubled." I mean, troubled -- how</p> <p>13 so?</p> <p>14 Q. Did you believe that it was a corporation as</p> <p>15 to which the status quo was -- was operationally</p> <p>16 sustainable?</p> <p>17 A. They weren't going to make it much longer, I</p> <p>18 don't believe.</p> <p>19 Q. And did you -- when you were at Hygea, did</p> <p>20 you ever form a conclusion that it was just enough to</p> <p>21 terminate Mr. Iglesias and Mr. Moffly and leave the</p> <p>22 rest of the issues untouched?</p> <p>23 MS. GALL: Objection, Your Honor. I find the</p> <p>24 question confusing. I don't know what the witness</p> <p>25 says.</p>
<p style="text-align: right;">Page 407</p> <p>1 A. 2014, 2015, and 2016.</p> <p>2 Q. And those were the years for which you were</p> <p>3 engaged in some capacity -- you were trying to help get</p> <p>4 the audits done those years, correct?</p> <p>5 A. Assist with the audit, yes.</p> <p>6 Q. And at the time you left Hygea, none of those</p> <p>7 audits were done; isn't that correct?</p> <p>8 A. That is correct.</p> <p>9 Q. To your knowledge as we sit here in May of</p> <p>10 2018, are any of those audits done?</p> <p>11 A. I'm -- I'm not aware if they are.</p> <p>12 Q. But let me ask you this: If you had been</p> <p>13 wrong in your disputes with management about revenue</p> <p>14 recognition, MRA, Medicare risk adjustment payments,</p> <p>15 etc., would you have expected those audits to be</p> <p>16 completed by now?</p> <p>17 A. So in the one email, I think it's</p> <p>18 Exhibit 28, we talk about it being very close, and all</p> <p>19 the items were really under Mr. Iglesias and</p> <p>20 Mr. Moffly's control to answer.</p> <p>21 I think I noted in the beginning of that</p> <p>22 email that actually just that week, Mr. Iglesias had</p> <p>23 provided the catalyst loan, which that's the name of</p> <p>24 the loan that I couldn't remember before. So -- so</p> <p>25 they were very close.</p>	<p style="text-align: right;">Page 409</p> <p>1 MR. KAYE: I'm happy to lay some additional</p> <p>2 foundation, Your Honor.</p> <p>3 THE COURT: Go ahead.</p> <p>4 Q. (By Mr. Kaye) I believe you testified a moment</p> <p>5 ago that you didn't believe the company was going to make</p> <p>6 it much longer?</p> <p>7 A. Correct. I said that.</p> <p>8 Q. Do you think it would have been enough for</p> <p>9 the company simply to terminate Mr. Iglesias and</p> <p>10 Mr. Moffly?</p> <p>11 A. As a -- as a cure for my comment about it</p> <p>12 probably not lasting much longer?</p> <p>13 Q. Correct?</p> <p>14 A. Is that what you're saying?</p> <p>15 Q. Correct. Would that have been a cure?</p> <p>16 A. There was \$70 million of debt and almost no</p> <p>17 cash flow, so there was -- there was more than just a</p> <p>18 change in management. I believe that a -- from an</p> <p>19 objective standpoint, the way that things were managed</p> <p>20 needed to change.</p> <p>21 And we -- we provided in our recommendations</p> <p>22 ways for that to change. Generally speaking, if -- if</p> <p>23 management won't enact appropriate change, then you</p> <p>24 enact change on management.</p> <p>25 Q. Do you think that with the sorts of changes</p>

<p style="text-align: right;">Page 410</p> <p>1 that you were recommending that the company could have 2 made it much longer? 3 A. You still had the cash flow problem, so that 4 was going to have to be addressed. Debt was going to 5 be restructured. It was going to need an infusion of 6 capital. Probably take out some overhead. 7 Q. In your experience with other businesses that 8 have a similar business model to Hygea, have you found 9 that sort of business model to be inherently difficult 10 to succeed? 11 MS. GALL: Objection, Your Honor. This goes 12 to my earlier objection about a motion in limine about 13 soliciting expert opinion here. I'm not sure what 14 we're asking here or if Mr. Kaye is attempting to 15 solicit an ultimate expert opinion about the 16 sustainability of Hygea's business model. 17 THE COURT: Overruled. You can answer, if 18 you can answer. 19 THE WITNESS: Can you repeat the question, 20 please? 21 MR. KAYE: Can we read the question back. 22 (The following was read by the reporter: "In 23 your experience with other businesses that 24 have a similar business model to Hygea, have 25 you found that sort of business model to be</p>	<p style="text-align: right;">Page 412</p> <p>1 MR. KAYE: Thank you, Your Honor. 2 THE COURT: All right. Thank you. 3 (The proceedings concluded at 4:45 p.m.) 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25</p>
<p style="text-align: right;">Page 411</p> <p>1 inherently difficult to succeed?") 2 THE WITNESS: So can you define "business" -- 3 I'm not trying to be difficult -- "business model"? 4 Can you define -- we talked about that earlier, but I 5 want to make sure I answer it correctly. 6 Q. (By Mr. Kaye) I believe you testified earlier 7 about Hygea's business model, and I believe you used 8 the term "MSO." I'm going to botch what that stands 9 for. Can you say what -- 10 A. Management service organization. So I 11 understand your question. 12 So really the business model of Hygea was one 13 that was very inquisitive, right? It was -- it was a 14 roll-up for the most part. Roll-ups are difficult to 15 enact. 16 But there are roll-ups that succeed, partly 17 through integration, partly for appropriate management 18 with controls put in place. Those are all very 19 possible. It's all within the control of management. 20 MR. KAYE: No further questions, Your Honor. 21 THE COURT: I think rather than start your 22 exam today, we'll go ahead and adjourn for the evening. 23 Again, this will be locked up if you want to leave 24 anything in here. You can go ahead and step down. 25 We'll start up at 9:00 in the morning.</p>	<p style="text-align: right;">Page 413</p> <p>1 CERTIFICATE 2 STATE OF NEVADA) 3 COUNTY OF CLARK) 4 I, Daren S. Bloxham, a Certified Shorthand Reporter and Registered Professional Reporter, do 5 hereby certify: That I reported the proceedings commencing on the 15th of May, 2018. 6 That I thereafter transcribed my said shorthand notes into typewriting; and that the 7 typewritten transcript is a complete, true, and accurate transcription of my said shorthand notes. 8 I further certify that I am not a relative or 9 employee of counsel of any of the parties, nor a relative or employee of the parties involved in said 10 action, nor a person financially interested in the action. 11 Witness my signature at Las Vegas, Nevada, on this 16th day of May, 2018. 12 13 14 15 16 17 18 19 20 21 22 23 24 25</p> <p style="text-align: right;"><i>Daren Bloxham</i> DAREN S. BLOXHAM C.C.R. #685</p>

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1 FIRST JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
2 IN AND FOR CARSON CITY
3
4 CLAUDIO ARELLANO; CROWN EQUITIES
5 LLC; FIFTH AVENUE 2254 LLC; HALEVI
6 ENTERPRISES LLC; HALEVI SV I LLC,
7 et al,
8 Plaintiffs,
9 -vs- Case No. 18 OC 00071 1B
10 HYGEA HOLDINGS CORP,
11 Defendant.
12 _____/
13
14 TRIAL TRANSCRIPT
15 BEFORE THE HONORABLE JAMES E. WILSON JR.
16 VOLUME III
17 PAGES 414 - 648
18
19 DATE: Wednesday, May 16, 2018
20 TIME: 9:00 a.m.
21 LOCATION: Carson City District Court
22 885 E. Musser Street
23 Carson City, Nevada
24
25 REPORTER: Daren Bloxham RPR/CSR-685

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FIRST JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
IN AND FOR CARSON CITY

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885 E. Musser Street

Carson City, Nevada

REPORTER: Daren Bloxham RPR/CSR-685

<p>Page 415</p> <p>1 APPEARANCES: 2 THE MILLER LAW FIRM, PC 3 By: Mr. Christopher D. Kaye 4 Mr. David B. Viar 5 Mr. William Kallas 6 950 West University Drive, Suite 300 7 Rochester, Michigan 48307 8 248.841.2200 9 cdk@millerlawpc.com 10 dbv@millerlawpc.com 11 wk@millerlawpc.com 12 Appearing on behalf of the Plaintiffs 13 OAKLAND LAW GROUP 14 By: Mr. Kevin J. Watts 15 38955 Hills Tech Drive 16 Farmington Hills, Michigan 48331 17 248.536.3282 18 kwatts@oaklandlawgroup.com 19 Appearing on behalf of the Plaintiffs 20 HOLLEY DRIGGS WALCH FINE WRAY PUZEY THOMPSON 21 By: Mr. Clark V. Vellis 22 800 S. Meadows Parkway, Suite 800 23 Reno, Nevada 89521 24 775.851.8700 25 cvellis@nevadafirm.com 26 Appearing on behalf of the Plaintiffs 27 BALLARD SPAHR, LLP 28 By: Mr. Kyle E. Ewing 29 Ms. Maria A. Gall 30 1980 Festival Plaza Drive, Suite 900 31 Las Vegas, Nevada 89135 32 702.471.7000 33 ewingk@ballardspahr.com 34 gallm@ballardspahr.com 35 Appearing on behalf of the Defendant 36 KAEMPFER CROWELL 37 By: Mr. Severin A. Carlson 38 Ms. Tara Zimmerman 39 50 West Liberty Street, Suite 700 40 Reno, Nevada 89501 41 775.852.3900 42 scarlson@kcnvlaw.com 43 tzimmerman@kcnvlaw.com 44 Appearing on behalf of the Defendant</p>	<p>Page 417</p> <p>1 P-R-O-C-E-E-D-I-N-G-S 2 --oOo-- 3 THE COURT: Please be seated. 18 OC 71, 4 Arellano v. Hygea. Almost all counsel? 5 MS. GALL: Good morning, Your Honor. My 6 colleague, Mr. Ewing, is not here right now, taking 7 care of some other legal matters. With the Court's 8 indulgence and permission, if he can be absent this 9 morning, we would appreciate it. 10 THE COURT: That will be fine. Mr. Dragelin 11 is present. You're still under oath. 12 Ms. Gall, your cross? 13 CROSS-EXAMINATION 14 BY MS. GALL: 15 Q. Good morning, Mr. Dragelin. 16 A. Good morning. 17 Q. Mr. Dragelin, you were engaged by Hygea as a 18 consultant, correct? 19 A. Correct. 20 Q. Do you recall your hourly rate at Hygea? 21 A. Standard hourly rate at the time was 22 probably 900 something, but we had agreed on -- on an 23 either cap or fixed fee for me per month. 24 Q. Do you recall what that cap or fixed fee was? 25 A. I do not.</p>
<p>Page 416</p> <p>1 I N D E X 2 3 WITNESS: Timothy J. Dragelin 4 EXAMINATION PAGE 5 Cross By: Ms. Gall 417 6 Redirect By: Mr. Kaye 432 7 Recross By: Ms. Gall 433 8 9 WITNESS: Manuel Iglesias 10 EXAMINATION PAGE 11 Direct By: Mr. Kaye 436 12 Cross By: Ms. Gall 566 13 Redirect By: Ms. Gall 580 14 Direct By: Ms. Gall 612 15 Cross By: Mr. Kaye 632 16 17 EXHIBITS RECEIVED PAGE 18 Exhibits 125 439 19 Exhibit 70-75 453 20 Exhibit 6 468 21 Exhibit 26 489 22 Exhibit 33 495 23 Exhibit 37 498 24 25</p>	<p>Page 418</p> <p>1 Q. If I told you that it was 120,000 per month, 2 would that sound familiar to you? 3 A. That would be not unreasonable. 4 Q. And pursuant to the terms of your engagement, 5 you had no authority to bind Hygea contractually; is 6 that correct? 7 MR. KAYE: Objection; calls for a legal 8 conclusion. 9 THE WITNESS: I was a consultant. 10 THE COURT: Hang on just a second. Ms. Gall? 11 MS. GALL: I think that Mr. Dragelin can 12 testify as to the scope of his agency and the parties' 13 agreement and what the parties' agreement provided for 14 to the extent he can remember. 15 THE COURT: The way the question's phrased, 16 the objection is sustained. 17 MR. KAYE: Thank you, Your Honor. 18 Q. (By Ms. Gall) Mr. Dragelin, did you have any 19 understanding as to whether pursuant to the terms of your 20 engagement with Hygea you had authority to bind Hygea? 21 A. I was merely a consultant. I was not part 22 of management. 23 Q. And you were not an employee of Hygea; is 24 that correct? 25 A. That is correct.</p>

<p style="text-align: right;">Page 419</p> <p>1 Q. And pursuant to the terms of your engagement, 2 did you have any understanding as to whether or not you 3 had any authority to speak on Hygea's behalf? 4 A. Yes, in some respects. 5 Q. In what respects were those? 6 A. So there was some delegation relative to the 7 audit that was -- ultimately, the financial statements 8 were the responsibility of management, which they 9 always are. However, relative to the interaction with 10 the auditors, I was given a lot of -- a lot of rein 11 relative to do that. 12 Q. So any authority that you may have had to 13 speak on behalf of Hygea was with the auditors; is that 14 correct? 15 MR. KAYE: Objection; foundation, misstates 16 testimony. 17 THE COURT: I'm sorry. I'm going to need you 18 to repeat the question. 19 Q. (By Ms. Gall) The authority that you just 20 testified to speak on behalf of Hygea was with respect to 21 your interactions with the auditors; is that correct? 22 THE COURT: Overruled. You can answer. 23 THE WITNESS: For the most part, my 24 interactions with other third parties was limited. 25 Q. (By Ms. Gall) Mr. Dragelin, are you familiar</p>	<p style="text-align: right;">Page 421</p> <p>1 Q. And you were not an agent of Mr. Fowler; is 2 that correct? 3 A. That is correct. 4 Q. And you had a written engagement agreement 5 with Hygea; is that correct? 6 A. Correct. 7 Q. And FTI incorporated its standard terms and 8 conditions into that agreement; is that correct? 9 A. FTI Consulting, yes. 10 Q. And pursuant to its standard terms and 11 conditions, it included a mutual confidentiality 12 provision; isn't that correct? 13 A. Correct. 14 Q. Okay. And pursuant to that provision, both 15 parties agreed that any confidential information 16 received from the other party shall only be used for 17 providing and receiving services under that agreement; 18 isn't that correct? 19 A. I would have to look at the agreement, but 20 that is a general concept, yes. But you'd -- we'd 21 have to look at the letter. 22 Q. Okay. 23 MS. GALL: Your Honor, may I approach the 24 witness with a copy of the agreement to refresh his 25 recollection?</p>
<p style="text-align: right;">Page 420</p> <p>1 with the plaintiff in this case named N5HYG, LLC? 2 A. I believe that is a -- a name of -- of the 3 investment vehicle that RIN Capital used, I believe. 4 Q. Okay. And are you familiar with RIN Capital? 5 A. I am. 6 Q. Do you have an understanding of the 7 relationship between RIN Capital and N5HYG, LLC? 8 A. No. 9 Q. When you were engaged by Hygea as a 10 consultant, were you also engaged by N5HYG? 11 A. No. 12 Q. How about RIN Capital? 13 A. No. 14 Q. And were you engaged by Chris Fowler? 15 A. No. 16 Q. So you were not an agent of RIN Capital, 17 N5HYG, or any other agents; is that correct? 18 MR. KAYE: Objection; vague as to "any other 19 agents." 20 Q. (By Ms. Gall) Okay. So you were not an agent of 21 RIN Capital, correct? 22 A. That's correct. 23 Q. And you were not an agent of N5HYG; is that 24 correct? 25 A. That is correct.</p>	<p style="text-align: right;">Page 422</p> <p>1 THE COURT: Yes. 2 MR. KAYE: Your Honor, as counsel does that, 3 I'm going to object to this whole line of questioning 4 as to relevance. 5 THE COURT: How is it relevant? 6 MS. GALL: Your Honor, it's relevant as to 7 Mr. Dragelin's potential bias. As we heard yesterday, 8 Mr. Dragelin was communicating with third parties, 9 including the agent, the client representative, who's 10 sitting here today for N5HYG. 11 THE COURT: Mr. Kaye? 12 MR. KAYE: Your Honor, it's not clear to me 13 how that would go to -- how the contents of the -- of 14 the retainer agreement as they relate confidentiality 15 would go to bias. 16 It seems to me almost that this is perhaps -- 17 perhaps some issue that Hygea has with relation to 18 Mr. Dragelin and perhaps some defense that they'll 19 present to any sort of hypothetical claim that FTI 20 might have for its payment. That's ancillary to this 21 proceeding, and I don't see how it's relevant. 22 THE COURT: It's -- it's not clear to me 23 either, but I'm going to overrule the objection, and 24 we'll see. 25 MS. GALL: Okay. Thank you, Your Honor.</p>

<p style="text-align: right;">Page 423</p> <p>1 Q. (By Ms. Gall) Mr. Dragelin, if you could take a 2 look, take your time to review this, and then let me know 3 when you're ready to proceed. 4 THE COURT: Is this not one of the pre-marked 5 exhibits? 6 MS. GALL: It is not. We're not admitting it 7 for purposes of the exhibit. It's merely to refresh 8 the witness's recollection. 9 THE WITNESS: Yes. 10 Q. (By Ms. Gall) Mr. Dragelin, does this appear to 11 be the engagement agreement you entered into with Hygea 12 or, rather, FTI Consulting entered into with Hygea? 13 A. It appears to be a copy. 14 Q. And can you please turn to page -- turn 15 towards the back. It's page 2 of the standard terms 16 and conditions. 17 A. I'm there. 18 Q. Okay. And could you read, please, to 19 yourself, not necessarily into the record, Section 4.1 20 and Section 4.2. 21 A. I've read it. 22 Q. Okay. And does that refresh your 23 recollection as to whether as -- pursuant to the 24 standard terms and conditions included a mutual 25 confidentiality provision by which both parties agree</p>	<p style="text-align: right;">Page 425</p> <p>1 that they knew about this agreement, but I haven't 2 heard about that yet, RIN. 3 MS. GALL: That's correct. I'm getting 4 there. 5 THE COURT: I'm still giving you some 6 latitude. 7 MS. GALL: Thank you. 8 Q. (By Ms. Gall) Mr. Dragelin, is it your 9 understanding that the confidentiality provision survived 10 any termination of this agreement? 11 MR. KAYE: Objection; calls for a legal 12 conclusion. 13 THE COURT: Ms. Gall? 14 MS. GALL: I think Mr. Dragelin can testify 15 as to whether -- his understanding was whether the -- 16 his -- the confidentiality provision survived the terms 17 of the agreement between Hygea and FTI Consulting. 18 THE COURT: He can testify to his 19 understanding. 20 THE WITNESS: My understanding is that our 21 confidentiality agreement still stands. 22 Q. (By Ms. Gall) And yesterday you testified that 23 you walked from your engagement in June or July 2017 and 24 only came back for the August 2017 board meeting, correct? 25 A. Correct.</p>
<p style="text-align: right;">Page 424</p> <p>1 that any confidential information received from the 2 other party would only be used for purposes of 3 providing or receiving services under the parties' 4 agreement? 5 A. Yes. 6 MR. KAYE: Your Honor, I would object to 7 that. I do not believe that -- that accurately states 8 what's in there. Even more so, in addition to the 9 continuing objection from earlier, it seems like this 10 is sort of a backdoor way to try to get some of these 11 contractual terms into the record by way of having the 12 witness's memory refreshed as to the technical terms of 13 a technical contract that we seem to be arguing here. 14 THE COURT: Overruled. And I'm still looking 15 for the relevance. 16 MS. GALL: In addition to that, Your Honor, I 17 would say it not only goes to the witness's credibility 18 and bias, but we do have an affirmative defense, which 19 is in our answer, of unclean hands. 20 And that also goes to if Mr. Dragelin, who's 21 under a confidentiality provision, was communicating 22 with a third party such as RIN Capital, it goes to RIN 23 Capital's -- whether they come to this Court asking for 24 equity with clean or unclean hands. 25 THE COURT: I suppose if there's evidence</p>	<p style="text-align: right;">Page 426</p> <p>1 MS. GALL: Can we please hand the witness 2 Exhibit 28, the volume that contains Exhibit 28 and 29. 3 THE WITNESS: Can I clarify my last answer? 4 Q. (By Ms. Gall) Of course. 5 A. So you said "walked." We were still under 6 our engagement letter. That's never been terminated. 7 Q. Okay. 8 A. Even to this day, there was an agreement 9 that if they continue to pay us, if they would 10 actually make good on our outstanding invoices, we 11 would continue to provide services. That's still -- 12 that offer was outstanding back in August and 13 continued, although I had no response from the 14 company. 15 Q. Understood. So just so that I'm clear, your 16 understanding is that -- that the agreement, written 17 engagement agreement, has not been terminated by either 18 party? 19 A. That's correct. 20 Q. Mr. Dragelin, could you please turn to 21 Exhibit 28. 22 A. I'm there. 23 Q. All right. Do you see the email in the 24 middle of the page that's from you? 25 A. The first page of the exhibit?</p>

<p style="text-align: right;">Page 427</p> <p>1 Q. I believe so.</p> <p>2 A. Yes.</p> <p>3 Q. Okay. What is the date of this email?</p> <p>4 A. August 12th.</p> <p>5 Q. Okay. And it's addressed to Chris Fowler,</p> <p>6 correct?</p> <p>7 A. Correct.</p> <p>8 Q. Okay. This email was not sent to</p> <p>9 Mr. Iglesias, correct?</p> <p>10 A. I don't believe so, no.</p> <p>11 Q. And Mr. Iglesias was the CEO of Hygea at the</p> <p>12 time of this email, correct?</p> <p>13 A. Correct.</p> <p>14 Q. And this email was not sent to Ted Moffly,</p> <p>15 correct?</p> <p>16 A. Correct.</p> <p>17 Q. And Mr. Moffly was the CFO of Hygea at the</p> <p>18 time of this email, correct?</p> <p>19 A. Possibly.</p> <p>20 Q. And this email was not sent to Sergey</p> <p>21 Savchenko, correct?</p> <p>22 A. I do not believe so.</p> <p>23 Q. And Sergey Savchenko was the director of</p> <p>24 finance of Hygea at this time, correct?</p> <p>25 A. I think in capacity, but I don't know about</p>	<p style="text-align: right;">Page 429</p> <p>1 A. Define "relationship."</p> <p>2 Q. Has FTI Consulting been engaged by RIN</p> <p>3 Capital previously?</p> <p>4 A. Possibly.</p> <p>5 Q. And has FTI Consulting been engaged by</p> <p>6 Mr. Fowler previously?</p> <p>7 A. I believe so, yes.</p> <p>8 Q. And would FTI Consulting have entered into a</p> <p>9 standard engagement letter with its standard terms and</p> <p>10 conditions with Mr. Fowler?</p> <p>11 A. What do you mean?</p> <p>12 Q. If you had been engaged by Mr. Fowler</p> <p>13 previously, would there have been an engagement letter?</p> <p>14 A. Our standard practice is to enter into</p> <p>15 engagement letters in any matter.</p> <p>16 Q. Would your standard engagement letter have</p> <p>17 incorporated your standard terms and conditions?</p> <p>18 A. Generally, but they're always -- there's</p> <p>19 always some negotiation that happens with the LOEs,</p> <p>20 letters of engagement.</p> <p>21 Q. Do you believe that your -- any negotiation</p> <p>22 would have negotiated out the confidentiality provision</p> <p>23 that we previously looked at?</p> <p>24 A. Generally speaking, that's a -- that's a</p> <p>25 standard that both parties want to have in there.</p>
<p style="text-align: right;">Page 428</p> <p>1 title.</p> <p>2 Q. Okay. Mr. Savchenko was one of the</p> <p>3 individuals at Hygea with whom you regularly worked; is</p> <p>4 that correct?</p> <p>5 A. Correct.</p> <p>6 Q. Will you please turn to Exhibit 29.</p> <p>7 A. I'm there.</p> <p>8 Q. What is the date of this email?</p> <p>9 A. August 5th.</p> <p>10 Q. And it's an email from you to Chris Fowler,</p> <p>11 correct?</p> <p>12 A. Correct.</p> <p>13 Q. And the email was not sent to Mr. Iglesias,</p> <p>14 correct?</p> <p>15 A. It's a forward of an email that I sent to</p> <p>16 Mr. Iglesias.</p> <p>17 Q. You sent the very top email, the one you sent</p> <p>18 to Chris Fowler. Is Mr. Iglesias cc'd on that email?</p> <p>19 A. No.</p> <p>20 Q. Is Mr. Moffly cc'd on that email?</p> <p>21 A. No.</p> <p>22 Q. Is anyone from Hygea cc'd on that email?</p> <p>23 A. No.</p> <p>24 Q. Mr. Dragelin, does FTI Consulting have a</p> <p>25 relationship with RIN Capital?</p>	<p style="text-align: right;">Page 430</p> <p>1 Q. Mr. Dragelin, you previously -- yesterday</p> <p>2 testified about purchase price valuations, correct?</p> <p>3 A. Correct.</p> <p>4 Q. And you were looking at those purchase price</p> <p>5 valuations at latest as of June or July 2017, correct?</p> <p>6 A. Yes.</p> <p>7 Q. And so sitting here today, you do not know</p> <p>8 the status of the purchase price valuations at Hygea;</p> <p>9 is that correct?</p> <p>10 A. That's correct.</p> <p>11 Q. Okay. And you do not know what the financial</p> <p>12 statement of Hygea today is, correct?</p> <p>13 A. No.</p> <p>14 Q. Okay. And do you know whether Hygea remains</p> <p>15 a going concern today?</p> <p>16 A. I do not.</p> <p>17 Q. And do you know whether Hygea implemented</p> <p>18 many of the internal controls you suggested be</p> <p>19 implemented?</p> <p>20 A. I do not.</p> <p>21 Q. And do you know whether Mr. Iglesias remains</p> <p>22 Hygea's CEO?</p> <p>23 A. I believe he is, but I'm not exactly sure.</p> <p>24 Q. Okay. And do you know whether Mr. Moffly is</p> <p>25 Hygea's CFO?</p>

<p style="text-align: right;">Page 431</p> <p>1 A. I do not.</p> <p>2 Q. Okay. And you're aware that Hygea is a</p> <p>3 private company, correct?</p> <p>4 A. Correct.</p> <p>5 Q. Okay. And I believe you testified yesterday,</p> <p>6 but correct me if I'm wrong, you have experience with</p> <p>7 helping companies go public, correct?</p> <p>8 A. Correct.</p> <p>9 Q. And so you had some understanding at least of</p> <p>10 the regulatory requirements associated with companies</p> <p>11 that are going public, correct?</p> <p>12 A. Can you be more specific?</p> <p>13 Q. For instance, do you have an understanding as</p> <p>14 to whether or not a company who is going public or who</p> <p>15 is public has a requirement for audited financials from</p> <p>16 a regulatory perspective?</p> <p>17 A. To be an SEC registrant or registrant on</p> <p>18 other exchanges, there's usually a requirement to have</p> <p>19 audited financials, yes.</p> <p>20 Q. Okay. And so as a private company, are you</p> <p>21 aware based on your experience that Hygea has no</p> <p>22 regulatory obligation to conduct audits?</p> <p>23 A. Typically speaking, a private company does</p> <p>24 not have a regulatory requirement, but they may have</p> <p>25 other requirements, such as loan documents or things</p>	<p style="text-align: right;">Page 433</p> <p>1 And to the extent that I had conversations</p> <p>2 with RIN, Mr. Iglesias, I would tell him that I would</p> <p>3 talk to Mr. Fowler, etc., as well as the other board</p> <p>4 members who were part of the audit committee or, I</p> <p>5 guess, what they call the executive committee of the</p> <p>6 board, who I had regular contact with without</p> <p>7 Mr. Iglesias present or Mr. Moffly.</p> <p>8 MR. KAYE: Thank you. I don't have anything</p> <p>9 else, Your Honor.</p> <p>10 THE COURT: Recross on those questions?</p> <p>11 RE CROSS-EXAMINATION</p> <p>12 BY MS. GALL:</p> <p>13 Q. Mr. Dragelin, did anyone at Hygea give you</p> <p>14 permission to send the emails that we looked at at</p> <p>15 Exhibits 28 and 29?</p> <p>16 A. I did not believe permission was necessary</p> <p>17 specifically.</p> <p>18 Q. I understand. My question is did anyone at</p> <p>19 Hygea give you permission to send the emails at</p> <p>20 Exhibits 28 and 29?</p> <p>21 A. Mr. Iglesias knew that I would be sending</p> <p>22 cash flow to -- to the board members, as well as RIN</p> <p>23 Capital. He also knew that there was a request for</p> <p>24 information from the follow-up at the board meeting,</p> <p>25 which I think Exhibit 28 dealt with.</p>
<p style="text-align: right;">Page 432</p> <p>1 like that that require audits.</p> <p>2 Q. And do you know sitting here today whether</p> <p>3 Hygea intends to go public?</p> <p>4 A. I do not.</p> <p>5 MS. GALL: That's all the questions I have,</p> <p>6 Your Honor.</p> <p>7 THE COURT: The continuing relevance</p> <p>8 objection is overruled.</p> <p>9 Mr. Kaye, redirect?</p> <p>10 REDIRECT EXAMINATION</p> <p>11 BY MR. KAYE:</p> <p>12 Q. Mr. Dragelin, if I use the term "zone of</p> <p>13 confidentiality" to mean -- to mean the people with</p> <p>14 whom you could communicate, does that concept make</p> <p>15 sense to you?</p> <p>16 A. I don't know if I've heard that term before,</p> <p>17 but as you describe it, I -- I can understand it.</p> <p>18 Q. In your engagement with Hygea, did you</p> <p>19 understand RIN Capital to fall within the zone of</p> <p>20 confidentiality?</p> <p>21 A. So I had relatively free rein to talk with</p> <p>22 the members of the board, which I did regularly. I</p> <p>23 believe RIN Capital was an observer of the board.</p> <p>24 They were not a member of the board, but they were an</p> <p>25 observer.</p>	<p style="text-align: right;">Page 434</p> <p>1 Q. I understand that. And so my question is</p> <p>2 very specific.</p> <p>3 Did you receive permission to send the emails</p> <p>4 at Exhibits 28 and 29? Let me be very clear. I also</p> <p>5 mean the statements that you made within those emails</p> <p>6 about Mr. Iglesias and about Mr. Moffly and anybody</p> <p>7 else at Hygea.</p> <p>8 A. Permission meaning pre -- pre-review?</p> <p>9 Q. I mean permission.</p> <p>10 A. As I stated, I had permission, generally</p> <p>11 speaking, to speak to the board members and RIN</p> <p>12 Capital about the ongoing activities that I was</p> <p>13 involved in, as well as the company. So there was,</p> <p>14 although no specific saying that specific email can be</p> <p>15 sent, generally speaking, I had free rein.</p> <p>16 Q. Okay. And in August, you had not been at the</p> <p>17 company for probably at least a month; is that correct?</p> <p>18 A. Possibly a month, yes.</p> <p>19 Q. And you -- again, I'll repeat, you did not CC</p> <p>20 anybody at Hygea on those emails; is that correct?</p> <p>21 MR. KAYE: Objection; asked and answered.</p> <p>22 THE COURT: Overruled.</p> <p>23 THE WITNESS: Those two emails that we</p> <p>24 reviewed, no one was copied.</p> <p>25 MS. GALL: Thank you.</p>

<p style="text-align: right;">Page 435</p> <p>1 THE COURT: You can step down. 2 THE WITNESS: Thanks. 3 THE COURT: Your next witness? 4 MR. KAYE: Your Honor, at this time 5 plaintiffs call Manuel Iglesias to the stand. 6 THE COURT: Please be mindful of the rugs and 7 cords there. 8 --oOo-- 9 MANUEL E. IGLESIAS, 10 having been first duly sworn to tell the 11 truth, was examined and testified as follows: 12 --oOo-- 13 THE COURT: Go ahead and have a seat. Is he 14 going to need that -- the first binder, 1 through 44? 15 MR. KAYE: I believe he will, Your Honor. 16 THE COURT: Okay. 17 MR. KAYE: Your Honor, at the outset, state 18 for the record that plaintiffs intend to examine 19 Mr. Iglesias as an adverse witness and would ask 20 permission to do so. 21 THE COURT: Ms. Gall? 22 MS. GALL: I defer to the Court's judgment on 23 that matter. 24 THE COURT: You will be able to treat him as 25 an adverse witness.</p>	<p style="text-align: right;">Page 437</p> <p>1 be 125. 2 THE COURT: I don't believe he has that yet. 3 MR. KAYE: My apologies. I didn't -- wasn't 4 aware of what was up there and what wasn't. 5 THE WITNESS: You want me to look at 121? 6 Q. (By Mr. Kaye) 125, please. 7 Do you recognize this document? 8 A. Seems to be the board minutes for the 9 January 27th meeting of the board of Hygea Holdings 10 Corp. 11 Q. And how do you recognize this document? 12 A. It's executed only the second page by Lacy 13 Loar, the assistant secretary of the company. 14 Q. Is it Hygea's usual business practice to 15 maintain such minutes of board meetings? 16 A. Yes, sir. 17 Q. And is this a true and accurate copy of the 18 board minutes of this meeting? 19 A. I'd have to read it if you want me to and -- 20 it looks correct. 21 Q. I do want to point out one -- one issue with 22 it. The date at the top says January 27th, 2016, but 23 if you look at the first paragraph, it indicates 24 January 27th, 2017. 25 Am I correct that these minutes were January</p>
<p style="text-align: right;">Page 436</p> <p>1 MR. KAYE: Thank you, Your Honor. 2 DIRECT EXAMINATION 3 BY MR. KAYE: 4 Q. Mr. Iglesias, can you please state and spell 5 your name for the record. 6 A. Manuel Ernesto Iglesias. M-A-N-U-E-L, 7 middle name E-R-N-E-S-T-O, last name I-G-L-E-S-I-A-S. 8 Q. Have you ever been referred to as Manuel 9 Iglesias, Sr.? 10 A. Yes. 11 Q. Mr. Iglesias, can you please turn to 12 Exhibit 125 in the -- 13 A. Actually, sir, I have been referred to as 14 Manuel Iglesias. My son has been referred to as 15 Manuel Iglesias, Jr. I don't recall being referred to 16 as Sr. 17 Q. Is your father named Manuel Iglesias? 18 A. Yes, sir. 19 Q. All right. 20 THE COURT: I don't think he has -- you want 21 121? 22 MR. KAYE: Yeah. I think we're going to use 23 probably -- I don't know how many binders the Court's 24 exhibits are broken down into. I think we'll probably 25 go kind of across the set of numbers. This is going to</p>	<p style="text-align: right;">Page 438</p> <p>1 of 2017? 2 A. Let me read the content, and I'll tell you. 3 Yes, it would be 2017. 4 Q. And Mr. Iglesias, there's a paragraph, second 5 paragraph from the bottom of those minutes. Can you 6 read that, please, into the record. 7 A. The one that starts "Mr. Moffly"? 8 Q. Yes. 9 A. "Mr. Moffly spoke about the challenges of 10 concluding the audits under both U.S. GAAP and 11 Canadian IFRS rules, but concurred that the '14 and 12 '15 audits should be complete in a matter of weeks." 13 Q. They were not complete in a matter of weeks; 14 isn't that right? 15 A. That is correct. 16 Q. And they are still not complete, are they? 17 A. That is correct. 18 Q. And the 2016 audit is not complete yet 19 either, is it? 20 A. That is correct. 21 Q. Are you aware that the Court in this matter 22 ordered Hygea to produce the 2017 audited quality of 23 earnings report? 24 A. I am aware that the Court ordered that the 25 quality of earning report for 2017 be provided, yes,</p>

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1 sir.
2 Q. And that that be provided by April 23rd?
3 A. Yes, sir.
4 Q. And Hygea did not provide that, did they?
5 A. They have provided a draft of the report.
6 Q. The report itself is not done yet, is it?
7 A. It may be done as of today or tomorrow.
8 Q. Are you aware that that same court order
9 required Hygea to produce HMO contracts that
10 purportedly preclude appointment of a receiver?
11 A. I believe the Court was provided a copy of
12 our HMO contracts with the termination language.
13 MR. KAYE: And if I can step back a moment,
14 plaintiffs move for the -- move for the admission of
15 Exhibit 125.
16 THE COURT: Ms. Gall?
17 MS. GALL: I have no objection to the
18 admission of Exhibit 125.
19 THE COURT: 125 is admitted.
20 MR. KAYE: Thank you. And my apologies for
21 taking that issue a little bit out of order.
22 Q. (By Mr. Kaye) So you're aware that Hygea has
23 taken the position in this litigation that HMO contracts
24 preclude the appointment of a receiver?
25 MS. GALL: Objection, Your Honor. We have --

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1 I think that misstates the position that Hygea has
2 taken with respect to HMO contracts.
3 THE COURT: Overruled. That's the question
4 to him. Go ahead.
5 THE WITNESS: Could you repeat the question,
6 sir?
7 Q. (By Mr. Kaye) Can you repeat the question,
8 please.
9 (The following was read by the reporter: "So
10 you're aware that Hygea has taken the
11 position in this litigation that HMO
12 contracts preclude the appointment of a
13 receiver?")
14 THE WITNESS: HMOs historically have two
15 types of termination provisions in most contracts, one
16 for cause and one without cause. When a company is
17 deemed to be in bankruptcy, receiver, deemed insolvent,
18 most HMOs historically in Florida have canceled their
19 provider agreements. They do so mostly on a
20 not-for-cause basis because they don't want themselves
21 to be -- get into litigation as to the rationale.
22 But one of the reasons that they use most
23 commonly is lack of financial liability. And naming a
24 receiver in -- some of the contracts actually state
25 that if you name a receiver, it's a cause for

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1 cancellation. Others leave it more vague.
2 But the practical -- as a practical matter,
3 the naming of a receiver we feel would create the
4 cancellation of most, if not all of our HMO contracts.
5 Q. (By Mr. Kaye) And just to repeat my question,
6 you're aware that Hygea has taken the position in this
7 litigation that appointment of a receiver or that the HMO
8 contracts would preclude the appointment of a receiver?
9 A. I think the appointment of a receiver would
10 be a death nail to our HMO business. Our HMO Medicare
11 Advantage business represents about 70 percent of our
12 revenue. It would destroy Hygea as a going concern,
13 yes, sir. That is a position that we're taking.
14 Q. And you understand that the Court ordered
15 Hygea to produce the HMO contracts that purportedly
16 preclude appointment of a receiver, correct?
17 A. The contracts -- my understanding is the
18 contracts have been provided. And if the lawyers
19 involved in both sides understand what the language
20 means and how they are interpreted by the entities
21 that issue those contracts, they will understand that
22 the language there and the way they are interpreted
23 historically means that a company that goes into
24 receiver, a company deemed -- that goes into
25 bankruptcy, a company deemed insolvent will more than

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1 likely cause -- some are specific that it will happen
2 automatically. Others will give the HMO the latitude
3 of canceling those contracts. And it is my personal
4 belief that most of our contracts will be canceled
5 upon the appointment of a receiver.
6 Q. Well, with all due respect, Mr. Iglesias, I
7 didn't ask about your personal belief. I asked if you
8 understood that the Court ordered the HMO contracts
9 that purportedly preclude appointment of a receiver.
10 You're aware of that, right?
11 A. And I think we've complied.
12 Q. Okay. And I want to talk about the documents
13 that -- that have been produced that as you say comply
14 with that.
15 Can you turn to Exhibit 70, please.
16 THE COURT: He's going to need the second
17 volume.
18 THE WITNESS: ??
19 Q. (By Mr. Kaye) 70. 7-0, please.
20 If you'd turn to the first substantive page,
21 which is Bates number Hygea underscore a bunch of zeros
22 and then 4. And before we continue, Mr. Iglesias --
23 A. I'm sorry. What -- what page are we
24 talking?
25 Q. I was about to say something that might make

<p style="text-align: right;">Page 443</p> <p>1 this a little bit more helpful. When we're talking 2 about the Bates numbers, I'm just -- you're familiar 3 with what Bates numbers are, correct? 4 A. Yes, sir. 5 Q. And I'm just going to -- I'm not going to 6 mention all the zeros. I'm just going to mention the 7 numbers at the end to make it a little easier. That 8 sound good? 9 A. I don't see any here. 10 THE COURT: I don't have them on mine either. 11 There are no Bates stamps on -- if this is the Primary 12 Care Provider Agreement between Simply Healthcare 13 Plans, Inc. and Medcare Quality Medical Centers, LLC? 14 MR. KAYE: Yes, with a handwritten 2 of 2. 15 THE COURT: But no Bates stamp. 16 MR. KAYE: Okay. I -- honestly don't know 17 how that happened. My apologies if that was -- that 18 was something that happened on our end. 19 Q. (By Mr. Kaye) I'll direct you to the page of 20 the -- of the document itself. And this is -- the first 21 substantive page that begins up at the top "Simply 22 Healthcare Plans, Inc. Primary Care Provider Agreement." 23 Are you there? 24 A. Yes, sir. 25 Q. Can you read that first paragraph that</p>	<p style="text-align: right;">Page 445</p> <p>1 terminating party will also provide written notice of 2 such termination to AHCA and the OIR." 3 Q. Mr. Iglesias, I did just ask you to read the 4 first sentence. 5 A. I'm sorry. 6 Q. That's okay. That's okay. 7 And can you please turn to Exhibit No. 71. 8 And I'll ask you, does this -- does your copy of 9 Exhibit 71 have the Bates numbers on it? 10 A. Yes, sir. 11 Q. Okay. So looking at Bates page 70, under the 12 title "Group Participation Agreement," can you please 13 read the -- can you please read the first paragraph of 14 that page? 15 A. "This Group Participation Agreement 16 (Agreement) is made and entered into the 1st day of 17 blank, "2017 (Effective Date) by and between Freedom 18 Health, Inc. (Plan) and Palm All Care MSO, Inc. 19 (Group), an entity licensed and/or organized under the 20 laws of the State of Florida and the principals of 21 which are listed in Attachment A." 22 Q. And Mr. Iglesias, can you please turn to 23 page 24 of the document, which is Bates range 93. And 24 can you please read into the record Section 4.3.1. 25 A. 4.3.1?</p>
<p style="text-align: right;">Page 444</p> <p>1 begins, "This Primary Care Provider Agreement" and ends 2 with the federal tax identification number, although 3 I'm certainly fine and would prefer that you not read 4 the tax identification number into the record. 5 A. "This Primary Care Provider Agreement (The 6 Agreement) is made and entered into as of the 1st day 7 of January, 2012," 2011 being crossed out, "by and 8 between Simply Healthcare Plans, Inc., a Florida 9 corporation (Simply) and Medcare Quality Medical 10 Centers, a Florida limited liability company, a 11 corporation (Provider), federal tax identification 12 number," and then the numbers. 13 Q. Yes. And can you please turn to -- it looks 14 like all the page numbers here on the document itself 15 are all A-1, so that's not going to be much help. But 16 I'm looking for Section 9.4, which is about 20 or so 17 pages in. 18 A. I'm here. 19 Q. Can you please read the header and first 20 sentence of Section 9.4? 21 A. "9.4, Termination Without Cause. This 22 agreement may be terminated by either party, without 23 cause, effective only at the end of a calendar month, 24 which is at least ninety (90) days following the 25 delivery of a written notice to the other party. The</p>	<p style="text-align: right;">Page 446</p> <p>1 Q. Yes. 2 A. Can I read the section above that, 4.3? 3 Q. Certainly. 4 A. 4.3 is entitled "Termination." 4.3.1, "Plan 5 or group may terminate this agreement at any time for 6 business reasons by providing at least ninety (90) 7 days prior written notice to the other party, CMS, 8 AHCA, and DFS." 9 Q. Mr. Iglesias -- 10 A. Period. 11 Q. -- can you please turn to Exhibit 72. 12 THE COURT: I think that's your last volume, 13 number 3. 14 THE WITNESS: 72? 15 Q. (By Mr. Kaye) Yes. 16 A. I'm here. 17 Q. Can you please read -- I'll ask you this 18 again. Is that copy that you have Bates stamped? 19 A. Yes, sir. 20 Q. Can you please read at the top of page 122 21 and the Bates stamps the first paragraph under "Network 22 Risk Agreement"? 23 A. "Preferred Care Partners, Inc., a Florida 24 corporation (Plan) and MedPlan Clinic, LLC, (The 25 Network) enter into this Medicare Advantage Network</p>

<p style="text-align: right;">Page 447</p> <p>1 Risk Agreement (Agreement) effective June 01, 2015."</p> <p>2 Q. And Mr. Iglesias, can you please turn to</p> <p>3 Bates page 131. And I direct your attention to</p> <p>4 Section 9.4.</p> <p>5 A. Let me get there, sir.</p> <p>6 Q. Certainly. My apologies.</p> <p>7 A. 131?</p> <p>8 Q. Yes, 131.</p> <p>9 And directing your attention to 9.4, can you</p> <p>10 please read the caption of section 9.4 and the first</p> <p>11 sentence of section 9.4 into the record.</p> <p>12 A. 9.4, "Termination Without Cause. Network, a</p> <p>13 network provider, or plan may terminate this agreement</p> <p>14 without cause upon one hundred twenty (120) days prior</p> <p>15 written notice to the other party."</p> <p>16 Q. And can you please turn your attention to</p> <p>17 Exhibit 73?</p> <p>18 A. Yes, sir.</p> <p>19 Q. And in Exhibit 73, can you please turn your</p> <p>20 attention to the first -- on the first page there, 172</p> <p>21 in the Bates range, can you please read the first</p> <p>22 paragraph of text under the title of the document?</p> <p>23 A. "This Independent Practice Association</p> <p>24 Participation Agreement (Agreement) is made and</p> <p>25 entered into by and between the party named on the</p>	<p style="text-align: right;">Page 449</p> <p>1 Q. There isn't a date, is there?</p> <p>2 A. Not on this page.</p> <p>3 Q. And what is the address of note -- for notice</p> <p>4 for the IPA? What does the document say there?</p> <p>5 A. There is the name of the IPA, First Harbor</p> <p>6 MSO. But on this page, there is no address.</p> <p>7 Q. And do you know that this is -- that the IPA</p> <p>8 is First Harbor MSO? Because it says "copy to,"</p> <p>9 doesn't it.</p> <p>10 A. I know that the IPA agreement with Humana is</p> <p>11 with First Harbor. There are a variety of First</p> <p>12 Harbors. I couldn't tell you sitting here which First</p> <p>13 Harbor entity.</p> <p>14 Q. Thank you.</p> <p>15 Turning to Exhibit -- one more bit of -- one</p> <p>16 more item on Exhibit 73. Can you please turn to page 3</p> <p>17 of the document.</p> <p>18 A. Yes, sir.</p> <p>19 Q. And can you please read Section 7.2 into the</p> <p>20 record.</p> <p>21 A. "Notwithstanding anything to the contrary</p> <p>22 herein, either party may terminate this agreement</p> <p>23 without cause by providing the other party one hundred</p> <p>24 twenty (120) days prior written notice of</p> <p>25 termination."</p>
<p style="text-align: right;">Page 448</p> <p>1 signature page below (hereafter referred to as IPA)</p> <p>2 and Humana Insurance Company, Humana Health Insurance</p> <p>3 Company of Florida, Inc., Humana Medical Plan, Inc.,</p> <p>4 and their affiliates that underwrite or administer</p> <p>5 health plans, hereinafter referred to as 'Humana.'"</p> <p>6 Q. Can you please turn to page 184.</p> <p>7 THE COURT: Mine doesn't have Bates stamps</p> <p>8 again. What page of the document is it?</p> <p>9 MR. KAYE: Page 13 of the document.</p> <p>10 THE COURT: Thank you.</p> <p>11 THE WITNESS: Page 13?</p> <p>12 MR. KAYE: I want to state something just for</p> <p>13 the record. Suspect if I didn't do this, we'd hear</p> <p>14 from the other side, but these were marked as</p> <p>15 confidential and attorneys' eyes only. And I state</p> <p>16 that for the record because it seems like the Bates --</p> <p>17 the Bates footer has come off of some of these</p> <p>18 documents.</p> <p>19 Q. (By Mr. Kaye) Sorry about that. Housekeeping</p> <p>20 matter.</p> <p>21 Under "IPA authorized signatory," what is the</p> <p>22 printed name of this document -- on this?</p> <p>23 A. Bruce Romanello.</p> <p>24 Q. There's not a signature, is there?</p> <p>25 A. No, there isn't.</p>	<p style="text-align: right;">Page 450</p> <p>1 Q. Thank you.</p> <p>2 Proceeding on to Exhibit 74, I don't know if</p> <p>3 your copy is Bates numbered?</p> <p>4 A. Yes, sir, it is.</p> <p>5 Q. And so looking at page 219 up at the top, can</p> <p>6 you read the first paragraph under "Network Agreement"</p> <p>7 into the record.</p> <p>8 A. "This Network Agreement (Agreement) is made</p> <p>9 and entered into on this 29th day of July, 2008, by</p> <p>10 and between CarePlus Health Plans, Inc. (Plan) and</p> <p>11 Palm Medical Network, LLC (Network)."</p> <p>12 Q. And turning to page 243 in the Bates range,</p> <p>13 page 25 of the document, can you please read</p> <p>14 Section 6.5 into the record.</p> <p>15 A. 6.5, "Termination Without Cause.</p> <p>16 Notwithstanding the foregoing, either party may not</p> <p>17 terminate this agreement without cause during the</p> <p>18 Medicare lock-in period. Upon 60 days written notice</p> <p>19 to the other party hereto, the agreement may be</p> <p>20 terminated during the Medicare open enrollment</p> <p>21 period."</p> <p>22 Q. Can you please turn to Exhibit 75. Is your</p> <p>23 copy Bates stamped?</p> <p>24 A. Yes. Yes, sir.</p> <p>25 Q. Looking at the top of page 259, can you</p>

<p style="text-align: right;">Page 451</p> <p>1 please read the first paragraph of text under the title</p> <p>2 "Network Risk Agreement or Medicare Advantage Network</p> <p>3 Risk Agreement"?</p> <p>4 A. "Medica Healthcare Plan, Inc., a Florida</p> <p>5 corporation (Plan) and MedPlan Clinic, LLC (The</p> <p>6 Network) enter into this Medicare Advantage Network</p> <p>7 Risk Agreement (Agreement) effective June 1, 2015."</p> <p>8 Q. And can you please turn to page 268 in the</p> <p>9 Bates range?</p> <p>10 A. I no longer have -- the only --</p> <p>11 Q. Look on the side.</p> <p>12 MR. KAYE: I would instruct the witness.</p> <p>13 THE WITNESS: 268?</p> <p>14 Q. (By Mr. Kaye) Yes.</p> <p>15 A. This is upside down. Okay.</p> <p>16 Q. And can you please read the heading and first</p> <p>17 sentence of Section 9.4 into the record.</p> <p>18 A. "9.4, Termination Without Cause. A network</p> <p>19 provider or plan may terminate this agreement without</p> <p>20 cause upon 120 days prior written notice to the other</p> <p>21 party."</p> <p>22 Q. You testified earlier that Hygea had complied</p> <p>23 in your estimation with the court order requiring it to</p> <p>24 produce the HMO contracts that purportedly preclude</p> <p>25 appointment of a receiver, correct?</p>	<p style="text-align: right;">Page 453</p> <p>1 I at the beginning of this trial discussed, we would be</p> <p>2 moving at the end of the trial to redact any copies --</p> <p>3 redact portions of certain confidential documents.</p> <p>4 These are one of them.</p> <p>5 And in particular, I would want to make sure</p> <p>6 that any copy that got admitted into the public record</p> <p>7 had the confidential - attorneys' eyes only stamp on</p> <p>8 them.</p> <p>9 THE COURT: All right. 70 through 75 are</p> <p>10 admitted. So I don't know what's in that original</p> <p>11 binder. Some -- some of them have confidential -</p> <p>12 attorneys' eyes only, and some of them on my copy</p> <p>13 don't. So 70 through 75 though are admitted.</p> <p>14 Q. (By Mr. Kaye) Mr. Iglesias, you gave a</p> <p>15 declaration in this matter; is that correct?</p> <p>16 A. Yes, sir.</p> <p>17 Q. Can you please turn to Exhibit 90.</p> <p>18 A. Yes, sir.</p> <p>19 Q. And this is -- I will state for the record</p> <p>20 that this is your declaration which has been admitted</p> <p>21 into evidence in this matter.</p> <p>22 Can you please turn to Bates page 109.</p> <p>23 A. Yes, sir.</p> <p>24 Q. And can you please read paragraph 56 into the</p> <p>25 record.</p>
<p style="text-align: right;">Page 452</p> <p>1 A. Yes.</p> <p>2 Q. And are those the contracts that we just</p> <p>3 looked at?</p> <p>4 A. Yes. And I believe there are more.</p> <p>5 Q. Well, those are the ones that were produced</p> <p>6 in response to the court order, correct?</p> <p>7 A. I don't know if those are all the ones that</p> <p>8 were produced. You've shown me a series of contracts,</p> <p>9 and I've read the heading.</p> <p>10 Q. Do you believe that there are others that</p> <p>11 were produced?</p> <p>12 A. I assume we produced all the ones that we</p> <p>13 have.</p> <p>14 Q. Well, I can represent to you that that's what</p> <p>15 was produced.</p> <p>16 A. Okay.</p> <p>17 MR. KAYE: Your Honor, I would move to admit</p> <p>18 those exhibits. Read them in there. 70, 71, 72, 73,</p> <p>19 74, 75, and that's it.</p> <p>20 THE COURT: Ms. Gall?</p> <p>21 MS. GALL: Your Honor, we have no objection</p> <p>22 to their admission. I don't think all the foundation</p> <p>23 has been laid, but we have no objection to their</p> <p>24 admission.</p> <p>25 One thing I would note is that as counsel and</p>	<p style="text-align: right;">Page 454</p> <p>1 A. "While Hygea has not received correspondence</p> <p>2 from any taxing authority regarding a failure to pay</p> <p>3 payroll taxes, Hygea has acknowledged that it</p> <p>4 continues to owe back payroll taxes for the 4th</p> <p>5 quarter of 2017 and is incurring payroll tax</p> <p>6 liabilities for 2018."</p> <p>7 Q. And that statement that you made under oath</p> <p>8 was a true and accurate statement, correct?</p> <p>9 A. Yes, sir.</p> <p>10 Q. If you can turn back to the previous page,</p> <p>11 108, page 9 of the document. Can you please read</p> <p>12 paragraph 47.</p> <p>13 A. "All payments to physicians and other</p> <p>14 administrative staff have always been remitted to</p> <p>15 those employees, including on February 9, 2018. As</p> <p>16 for the C-suite executives, those executives who have</p> <p>17 not been paid include myself, Mr. Edward Moffly</p> <p>18 (Hygea's Chief Financial Officer), Aaron Kaufman</p> <p>19 (Hygea's former Chief Technology Officer), and Dan</p> <p>20 Miller (Hygea's former Chief Operating Officer)."</p> <p>21 Q. And that statement that C-suite executives</p> <p>22 who had not been paid -- C-suite executives have not</p> <p>23 been paid, that was a true and accurate statement,</p> <p>24 correct?</p> <p>25 A. As of that date, yes.</p>

<p style="text-align: right;">Page 455</p> <p>1 Q. Was Mr. Moffly the chief financial officer at 2 that time? 3 A. He was acting chief financial officer. 4 Q. What's -- please continue. 5 A. We were in the process of reorganizing the 6 C-suite, and he was probably acting in that capacity 7 at that time. 8 Q. Excuse me? 9 A. He was acting in that capacity at that time. 10 Q. Turn to page 101. Is that a true and 11 accurate statement at paragraph 10 that Hygea currently 12 manages over 100,000 members and patients? 13 A. I'm sorry. Which paragraph? 14 Q. Paragraph 10. 15 A. We provide services to over 100,000 patients 16 throughout our system, yes, sir. 17 Q. Thank you. 18 Can you please turn to 105. I'm looking here 19 from 105 to 106 under paragraph 30(e)? 20 A. Paragraph E? 21 Q. Paragraph E, yes. And starting at "Hygea's 22 certified public accountant, CliftonLarsonAllen," do 23 you see that language? 24 A. Yes, sir. 25 Q. Can you read that starting from there.</p>	<p style="text-align: right;">Page 457</p> <p>1 were referring to in the declaration, correct? 2 A. Yes, sir. 3 Q. Turn to Bates page 646. 4 A. 646. 5 Q. And the second paragraph of full text in that 6 page, can you please read that, the first sentence of 7 that paragraph into the record. 8 A. I'm sorry. The first -- which one? 9 Q. The first paragraph -- excuse me. The second 10 paragraph of full text that begins "our consulting," do 11 you see that? 12 A. "Our consulting procedures were conducted 13 primarily in March/April 2018. A significant portion 14 of our work consisted of inquiries of accounting and 15 management personnel of the company, without further 16 verification." 17 Q. Thank you. Thank you. 18 So when you said in your declaration that CLA 19 was currently in the process of completing this 20 document on February 20th, that wasn't accurate, was 21 it? 22 A. It was accurate as they stated. We expected 23 to have the Q of E completed by mid-March, and we 24 don't control CliftonLarsonAllen. They're a national 25 firm. They have their own internal priorities.</p>
<p style="text-align: right;">Page 456</p> <p>1 A. "Hygea's certified public accountant, 2 CliftonLarsonAllen (CLA), a tier 1 accounting firm 3 ranking the ninth largest in the nation, is currently 4 in the process of completing an audited 2017 QOE 5 report. Hygea expects to provide financials to the 6 prospective investors by mid-March." 7 Q. And turning to page 119, is this accurate 8 that you executed the declaration on February 20th, 9 2018? 10 A. Yes, sir. 11 Q. Ask you to turn your attention to 12 Exhibit 193. 13 A. 193? 14 Q. Yes. 15 THE COURT: That's going to be a different 16 volume. 193 would be volume 4. 17 THE WITNESS: Thank you, Your Honor. 18 193? 19 Q. (By Mr. Kaye) Yes. 20 A. Yes, sir. 21 Q. Can you turn to Bates page 646. 22 First, let me ask this: This is the Q of E 23 draft you referred to earlier? 24 A. This is a draft of the Q of E, yes, sir. 25 Q. This draft Q of E is the draft Q of E you</p>	<p style="text-align: right;">Page 458</p> <p>1 We kept pushing them to get it done on a 2 timely basis. It took longer, and I apologize to the 3 Court and to the world, but at the time I made the 4 declaration, I fully believed that based on 5 conversations that we had -- we talked to them on a 6 daily basis from the beginning of 2018 when they began 7 the work that it would be done by mid-March. 8 Q. Turn your attention to Exhibit 6. 9 A. Exhibit 6. 10 Q. Do you recognize this document? 11 A. It seems -- can I read it? 12 Q. Certainly. 13 A. Give me a chance to -- yes, sir. It's a 14 letter from Bridging Finance, Inc. 15 Q. And how do you recognize this document? 16 A. The heading. 17 Q. You remember receiving this document, don't 18 you? 19 A. Probably, yes. Or a document like it. 20 Q. Excuse me? 21 A. I don't remember the contents of this 22 document, but it seems to be a letter from Bridging 23 Finance. 24 Q. Is this a true and accurate copy of the 25 letter you received from Bridging Finance?</p>

<p style="text-align: right;">Page 459</p> <p>1 A. It seems to be a letter that we received, 2 yes, sir. 3 Q. And you're familiar with Bridging Finance, 4 correct? 5 A. Yes, I am. 6 Q. And you're familiar with their business? 7 A. Yes. 8 Q. Did you have the impression that Bridging 9 sent you this letter in the course of its business? 10 A. I believe they did. 11 Q. And did you forward this letter on to Hygea's 12 board of directors? 13 A. I assume so. 14 Q. And I would ask you to turn to Exhibit 41 and 15 ask if that refreshes your recollection whether you 16 sent this letter from Bridging Finance to the board? 17 A. Exhibit 41? 18 Q. 41. I think I'm right on that. 19 A. Yes. This seems to be an email from me to 20 the board. 21 Q. And you forwarded to the board a copy of the 22 letter that we were looking at as Exhibit 6; isn't that 23 correct? 24 A. I'm sure I had -- it may have been under 25 separate cover.</p>	<p style="text-align: right;">Page 461</p> <p>1 moment ago," the third paragraph of text in the letter. 2 A. "Nevertheless, the borrowers acknowledge 3 that the last monthly cash interest payment made by 4 the borrowers occurred on July 6, 2017, and was to be 5 applied towards the interest owing for the month of 6 June '17. 7 "Furthermore, the borrowers acknowledge and 8 agree that the monthly cash interest payment for the 9 month of July 2017 and August 2017 have not been made 10 and are owed to the agents." 11 Q. And that was accurate, right, Hygea had 12 missed those payments? 13 A. That is correct. 14 Q. And turning to the next page -- well, 15 actually, turning to the bottom of that, can you please 16 read the last sentence of text in this letter -- on 17 this page, page 1634. 18 A. Paragraph starting with, "Please"? 19 Q. Yeah. Why don't you read that whole 20 paragraph. 21 A. "Please be advised that this constitutes a 22 breach of covenant and an event of default under the 23 Credit Agreement (see item 1 of the section titled 24 'Covenants' and item 1 of the section titled 'Events 25 of Default').</p>
<p style="text-align: right;">Page 460</p> <p>1 Q. But you -- you agree that you sent this 2 letter to the board? 3 A. Yes. The board had copies or received 4 copies of that letter. 5 Q. Was anything in the letter inaccurate? 6 MS. GALL: Objection, Your Honor. It's 7 vague. I'm not sure if Mr. Iglesias can testify as to 8 another entity's letter, whether there was anything 9 inaccurate. 10 MR. KAYE: I'll withdraw the question. 11 Q. (By Mr. Kaye) Can you read in Exhibit 6 the 12 third paragraph of text? Actually, let me take a step 13 back before you do. I'll withdraw that question as well. 14 What was Bridging -- Bridging Finance was 15 Hygea's primary lender, correct? 16 A. That is correct. 17 Q. We've heard a lot about that, but I wanted to 18 ask you that question. And so when this letter talks 19 about borrowers, it's talking about Hygea, correct? 20 A. Yes. It talks about -- under the caption, 21 I'm assuming collectively the borrowers is Hygea 22 Holdings Corp., the parent company, and Hygea Health 23 Holdings, Inc., the Florida operating company. 24 Q. Thank you. We'll get back to -- to that 25 issue. But can you please read the, "Where I was a</p>	<p style="text-align: right;">Page 462</p> <p>1 "However, the agent has agreed not to 2 constitute the borrowers in 'default' under the Credit 3 Agreement at this time and will not be taking any other 4 action on such breaches because the borrowers have 5 agreed to do all of the following." 6 Q. And the word "default" there in that last 7 sentence is in quotation marks; isn't that right? 8 A. Yes, sir. 9 Q. And can you please read the first bullet 10 point on the next page? 11 A. First bullet point, "At or before 5 p.m. EST 12 on November 10th, 2017, provide the agent with audited 13 financials for both the 2014 and 2015 fiscal year and 14 the draft management financials for the 2016 fiscal 15 year." 16 Q. That hasn't happened, has it? 17 A. No, it hasn't. 18 Q. Can you please read the second bullet point. 19 A. "At or before 5 p.m. EST on December 15, 20 2017, provide the agent with audited financials for 21 2016 fiscal year." 22 Q. That hasn't happened, has it? 23 A. No, sir. 24 Q. Can you please read the next bullet point. 25 A. "Appoint an additional signatory, such</p>

<p style="text-align: right;">Page 463</p> <p>1 additional signatory to be mutually agreed upon 2 between the agent and RIN Capital, LLC (RIN) for cash 3 management purposes and for any future payments (all 4 checks to be signed by Mr. Manuel E. Iglesias and)" 5 underlined "(such newly appointed signatory)." 6 Q. That hasn't happened, has it? 7 A. We have a treasury management per our 8 agreement with Bridging Finance where they approve 9 signors on the accounts, and we implemented that 10 program for a while. That has since changed. And as 11 we evolve, I'm in the process of being taken off 12 the -- as we speak, taken off the check signing. 13 Presently, we have three signors. And 14 there's a process before a check is produced, it goes 15 through our finance department that gets pre-approved 16 before one of the signors approves it. Part of that 17 number 3, it evolved. But in essence, we have created 18 treasury management processes based on Bridging Finance 19 requirements. 20 Q. Mr. Iglesias, it's a yes-or-no question. 21 I'll rephrase it. 22 Has -- is there an additional signatory 23 mutually agreed upon between -- that RIN Capital has 24 agreed to? 25 A. I have no idea of the relationship between</p>	<p style="text-align: right;">Page 465</p> <p>1 A. We have, I think, a very good relationship 2 with Bridging Finance, and this letter evolved. There 3 were a lot of other subsequent conversations and 4 negotiations. And I would tell you that we're in 5 compliance with our lending -- Bridging Finance as our 6 lender. 7 Q. Mr. Moffly -- that was a yes or no question. 8 That bullet point wasn't complied with, correct? 9 A. I think we have complied with everything 10 requested to us by Bridging Finance. 11 Q. Meaning that at or before -- it's your 12 position that at or before 5 p.m. EST on October 15th, 13 2017, Hygea hired a new chief financial officer? 14 A. No. There were a lot of subsequent 15 conversations between the time this letter was sent 16 to -- to today. It's an interactive relationship with 17 our financial backer, our bank. 18 And I -- A, we're in compliance with the 19 bank. We're not in default. And we have met all their 20 requirements. There have been changes. This is a 21 snapshot of a request at the time, which was then 22 subsequently renegotiated. I would tell you that 23 whatever has been requested to us by Bridging Finance, 24 we're currently in covenant with Bridging Finance. 25 MR. KAYE: Your Honor, I'm going to move to</p>
<p style="text-align: right;">Page 464</p> <p>1 Bridging Finance and RIN Capital. The person dealing 2 with us has been Bridging Finance, who is our banker. 3 And we have complied with all the requirements. 4 Q. I want to go down a little bit to the third 5 bullet point from the bottom that reads, "At or before 6 5 p.m. EST." Can you please read that into the record. 7 A. "At or before 5 p.m. EST on October 15, 8 2017, hire a new chief financial officer for the 9 borrowers." 10 Q. And the incumbent chief financial officer at 11 that time was Mr. Moffly, correct? 12 A. We have tried to replace Mr. Moffly on 13 multiple occasions. He has been already -- we have an 14 interim chief financial officer in Sergey Savchenko. 15 Mr. Moffly is currently not the chief financial 16 officer. That said, I am not -- I do not remember if 17 he had been replaced by October 15th. 18 Q. You testified a few minutes ago that he was 19 the -- I believe you said acting CFO at the time you 20 signed your declaration in February 20th of 2018; isn't 21 that right? 22 A. He had offered his resignation. And until 23 we named Mr. Savchenko as interim financial officer, 24 he fulfilled some of those functions. 25 Q. So that bullet point was not met, correct?</p>	<p style="text-align: right;">Page 466</p> <p>1 strike that answer. That was a yes-or-no question, and 2 we got a long disquisition about Hygea's relationship. 3 THE COURT: The objection is sustained. 4 Q. (By Mr. Kaye) So, again, that bullet point was 5 not complied with, correct? 6 A. Correct. 7 MR. KAYE: Your Honor, at this time 8 plaintiffs do move to admit Exhibit 6 into evidence. 9 MS. GALL: Your Honor, we object. It's 10 hearsay. It's a writing and statements made by 11 Ms. Natasha Sharpe of Bridging. It's not part of 12 Hygea's business records, if that is the exception that 13 Mr. Kaye seeks. So I would object based on hearsay and 14 a lack of foundation. 15 MR. KAYE: Your Honor, there's a couple of 16 reasons why I don't think that that objection prevails. 17 First of all, while it may have been generated by -- by 18 Bridging Finance, that doesn't mean that it's not a 19 business record, something that came to -- I believe -- 20 and I believe we've had testimony that this was 21 within -- was within Hygea's business records, but we 22 can lay additional foundation. 23 In fact, I don't think that's necessary 24 because we've already heard the testimony that this was 25 forwarded on to the board, and thereby came within</p>

<p style="text-align: right;">Page 467</p> <p>1 Hygea's business records, forwarded by -- sent by 2 Mr. Iglesias to the board. 3 Moreover, there are additional indicia of 4 trustworthiness here, including the fact that this is 5 in certain respects a statement against interest from 6 an unavailable witness. 7 I say "unavailable" because, once again, as 8 we have heard and as shown on the face of the document, 9 Bridging is a Canadian entity, outside of the usual 10 subpoena process for a case such as this. And the 11 statement from Bridging that they are not being paid is 12 a statement against interest. Presumably, they want to 13 be paid. 14 Beyond that, I would -- I would say that by 15 presenting this to the board, Mr. Iglesias adopted as 16 an admission the statement, which he has said here 17 that -- that the monthly cash interest payments were 18 not made for those months as indicated, that Hygea had 19 missed those payments. 20 Beyond all of that, even if the Court is not 21 inclined to admit this document for the truth of the 22 matter asserted therein, which in some respects is a 23 tree falling in the forest because the witness has 24 already testified to the truth of the matter admitted 25 therein, this is still a -- it's still admissible as a</p> <p style="text-align: right;">Page 468</p> <p>1 verbal act. 2 We have heard a lot of testimony, some of 3 it's been stricken from the record, but not all of it, 4 from Mr. Iglesias that there have been ongoing 5 discussions about the topic of this letter. 6 Well, those sort of -- those sort of 7 discussions and the documents that comprise those sort 8 of discussions are very relevant to what's going on in 9 this case and are not at all excludable as hearsay. 10 That's -- if it's, as Mr. Iglesias has postured it, 11 almost a draft of an ongoing arrangement, that's 12 certainly admissible. 13 THE COURT: I'm going to overrule the hearsay 14 objection. I'm accepting it on the basis that it's not 15 as evidence of the truth of the matters asserted, 16 separate from Mr. Iglesias' testimony. The foundation 17 objection is also overruled. Exhibit 6 is admitted. 18 MR. KAYE: Thank you, Your Honor. 19 Q. (By Mr. Kaye) Mr. Iglesias, can you please turn 20 to Exhibit 14. 21 A. Yes. 22 Q. Do you recognize this document? 23 A. Yes. 24 Q. What is this document? 25 A. This is an email from Dr. Ewaul Persaud, one</p>	<p style="text-align: right;">Page 469</p> <p>1 of our Atlanta physicians, to us regarding the 2 February 23rd payroll. 3 Q. And Dr. Persaud is a physician within the 4 Hygea network of providers, correct? 5 A. Yes, he is. 6 Q. Do you remember receiving this email? 7 A. Yes, I do. 8 Q. And is this a true and accurate copy of the 9 email you received? 10 A. I believe it is. 11 Q. And I'm going to state one thing for the 12 record before I forget this. My copy has an indication 13 at the bottom of the page "Exhibit A." And I think I 14 discussed this with -- with opposing counsel. 15 And I think we sort of are in agreement that 16 we'll disregard the Exhibit A for right now. And if 17 this is eventually admitted as an exhibit, we would ask 18 to have the Exhibit A removed from this copy. But I 19 wanted to get that out there before I forgot it, that 20 that issue was out there. 21 MS. GALL: Your Honor, at this point I would 22 object to both any admission or use of this exhibit, 23 Your Honor has already ruled this exhibit inadmissible 24 based on hearsay. 25 MR. KAYE: Your Honor, we've not moved for</p> <p style="text-align: right;">Page 470</p> <p>1 admission -- 2 THE COURT: Right. 3 MR. KAYE: -- of the exhibit. I do intend to 4 move for admission of the exhibit. But this is an 5 additional examination about the exhibit that I 6 think -- not to get ahead of ourselves, I think we're 7 going to have probably some of the same issues we had 8 with the last exhibit. 9 THE COURT: It has not been offered. At this 10 point there is no outstanding question, so go ahead 11 with your next question. 12 MR. KAYE: Thank you. 13 Q. (By Mr. Kaye) If you read in this -- the main 14 paragraph of text here, there's a sentence that begins, 15 "The most disturbing." Do you see that? 16 A. I'm sorry. Could you repeat? 17 Q. There's a sentence that begins, "The most 18 disturbing"? 19 A. "The most disturbing issue was when two of 20 the employees in my office had their most recent 21 checks bounce." 22 Q. What did you do when you got that email? 23 A. We covered the checks, the payments to the 24 employees, plus any fees charged by their financial 25 institutions.</p>
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1 Q. And because those checks had bounced,
2 correct?
3 **A. Yes, sir.**
4 MR. KAYE: Your Honor, at this time
5 plaintiffs do move to admit Exhibit 14. I will state
6 for the record that we believe that this falls within a
7 hearsay exception for similar reasons to the last
8 exhibit that we discussed, business record, and as
9 well -- anticipate the objections, but I think we know
10 what's coming. I'll let -- I'll let --
11 MS. GALL: Your Honor, I suppose Mr. Kaye is
12 trying to admit it for the truth of the matters
13 asserted based on the one statement that Mr. Iglesias
14 has just stated. However, there are many more
15 statements in this email, and we have not laid the
16 foundation as to those statements.
17 This was written by Dr. Persaud. This is not
18 necessarily a Hygea business record, and it has not
19 been in -- the proper foundation it has not been
20 established. Dr. Persaud is not here today to testify
21 about his out-of-court statements.
22 MR. KAYE: Your Honor, the witness testified
23 that Dr. Persaud was a -- was a physician within the
24 Hygea network of -- of doctors. That is to my mind a
25 business relationship and makes this a business record.

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1 Having said that, I believe that there is
2 again an alternative basis for the admission of this
3 document, which is not for the truth of the matter
4 asserted, which, once again, as to the issue that we
5 just discussed, there's, again, now been an admission
6 from the witness, so there's independent evidence of
7 that.
8 And so, once again, the hearsay issue on that
9 is to me -- is to me a moot point. This is, once
10 again, a verbal act. And the Court can certainly admit
11 it not for the truth of any matters asserted, which,
12 once again, I think the significance of which has been
13 minimized by the testimony, but, rather, as evidence
14 that this notification was sent to -- to Mr. Iglesias,
15 and that this -- now this fills in the story of what
16 prompted the action that Mr. Iglesias took.
17 THE COURT: Ms. Gall?
18 MS. GALL: If counsel wants to admit for
19 purposes of demonstrating that Mr. Iglesias received a
20 notification, I do not have any objection. If it's for
21 the truth of the matters asserted, I repeat my
22 objection.
23 THE COURT: I'm not going to accept it for
24 the truth of the matters asserted. Again, I have
25 addition -- testimony from Mr. Iglesias that addresses

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1 the checks. So I'm going to admit it, though, on -- on
2 that basis, not for the truth of the matter asserted,
3 but for the notice that Mr. Iglesias received.
4 Q. (By Mr. Kaye) Mr. Iglesias, can you turn back
5 now to Exhibit 90.
6 **A. 90?**
7 THE COURT: Before we do that, we're going to
8 go ahead and take our morning recess. It will be 15
9 minutes, so we'll come back in 10:45.
10 MR. KAYE: Thank you.
11 THE COURT: You can step down.
12 **THE WITNESS: Thank you, sir.**
13 (Recess taken at 10:30, resuming at 10:45.)
14 THE COURT: Please be seated. 18 OC 71,
15 Arellano v. Hygea. Counsel, except for Mr. Ewing, are
16 present.
17 Mr. Kaye, go ahead with your direct.
18 Q. (By Mr. Kaye) Mr. Iglesias, before we took a
19 break there, I referred you to Exhibit 90. Do you have
20 Exhibit 90?
21 **A. 90, 9-0?**
22 Q. 9-0, yes.
23 **A. Yes, sir.**
24 Q. And this is the declaration that you made on
25 February 20th, 2018, correct?

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1 **A. That is correct.**
2 Q. And I will direct your attention on Bates
3 page 108, document page 9, to paragraph 45 of your
4 declaration. Can you please read that into the record.
5 **A. "In fact, with the exception of a handful of**
6 **C-suite executives, all the Hygea employees" -- I'm**
7 **sorry -- "in fact, with the exception of a handful of**
8 **C-suite executives, all of Hygea's approximately 600**
9 **employees have always been paid on time."**
10 Q. And "always" is italicized in your
11 declaration, correct?
12 **A. Yes, sir.**
13 Q. Within about a week of you making that
14 declaration, there was at least one bounced paycheck,
15 correct?
16 **A. That is correct.**
17 Q. I want to turn to something from earlier. I
18 believe you testified that the completed quality of
19 earnings report could be done any day now; isn't that
20 right?
21 **A. Yes, sir.**
22 Q. Could you please go back to the first
23 exhibit, I think it's the first exhibit we looked at,
24 125.
25 **A. 125.**

<p style="text-align: right;">Page 475</p> <p>1 Q. And I earlier referenced something Mr. -- had</p> <p>2 you read something into the record that Mr. Moffly</p> <p>3 had -- had indicated according to these minutes.</p> <p>4 Can you please look at the paragraph that</p> <p>5 begins, "Mr. Iglesias provided a state of the company</p> <p>6 review." And could you please -- could you please read</p> <p>7 the first sentence of that paragraph.</p> <p>8 A. "Mr. Iglesias provided a state of the</p> <p>9 company review, including about the investment by RIN</p> <p>10 Capital (plan), the status of the 2014 and '15 audits</p> <p>11 (to be completed with the next few weeks), and a</p> <p>12 synopsis of the company's strategy going forward in</p> <p>13 light of the changes to federal healthcare laws, which</p> <p>14 are anticipated under the Trump administration."</p> <p>15 Q. And could you please turn to Exhibit 19.</p> <p>16 This has been previously admitted. And in this email,</p> <p>17 you indicate that the audit should be completed no</p> <p>18 later than the end of July 2017; isn't that correct?</p> <p>19 A. I'm sorry. Your question is?</p> <p>20 Q. Didn't you state in this email that the audit</p> <p>21 should be complete no later than the end of July of</p> <p>22 2017?</p> <p>23 A. I state in the email, "The audit should be</p> <p>24 complete no later than the end of July with a call or</p> <p>25 a board meeting immediately thereafter."</p>	<p style="text-align: right;">Page 477</p> <p>1 Q. Well, Mr. Travaglini has some relationship</p> <p>2 with Bridging of which you're aware; isn't that right?</p> <p>3 A. If you say so.</p> <p>4 Q. Did you communicate with Mr. Travaglini about</p> <p>5 the situation at Hygea?</p> <p>6 MS. GALL: Objection, Your Honor; vague. I'm</p> <p>7 not sure what situation he's referring to.</p> <p>8 MR. KAYE: I'm asking if he ever communicated</p> <p>9 with Mr. Travaglini about Hygea.</p> <p>10 THE COURT: Overruled. You can answer.</p> <p>11 THE WITNESS: Thank you, Your Honor. He has</p> <p>12 consulted to Hygea, and we -- he's a financial advisor</p> <p>13 to Hygea.</p> <p>14 Q. (By Mr. Kaye) So he's a consultant to Hygea you</p> <p>15 say?</p> <p>16 A. Yes, sir.</p> <p>17 Q. Do you know if he's also a consultant to</p> <p>18 Bridging Finance?</p> <p>19 A. I could not tell you.</p> <p>20 Q. When you were speaking or when you were</p> <p>21 communicating with Mr. Travaglini, did you understand</p> <p>22 yourself to be communicating with someone who had a</p> <p>23 relationship with Bridging Finance?</p> <p>24 A. He knows -- I believe he knows Bridging</p> <p>25 Finance. But when I communicate with Mr. Travaglini,</p>
<p style="text-align: right;">Page 476</p> <p>1 Q. And, again, the audits remain incomplete,</p> <p>2 correct?</p> <p>3 A. That is correct.</p> <p>4 Q. I believe you testified earlier that you are</p> <p>5 familiar with Bridging Finance?</p> <p>6 A. Yes, sir.</p> <p>7 Q. I believe you testified that you think you</p> <p>8 have a good relationship with Bridging Finance?</p> <p>9 A. Yes, sir.</p> <p>10 Q. Do you know who John Travaglini is?</p> <p>11 A. He's a principal of a consulting firm out of</p> <p>12 Canada. The answer is -- I'm sorry. Yes.</p> <p>13 Q. Who is John Travaglini to your knowledge?</p> <p>14 A. He is a principal stakeholder in a</p> <p>15 consulting firm called, I believe, 4Front Financial</p> <p>16 Advisors or something like that.</p> <p>17 Q. And he does a lot of work with Bridging,</p> <p>18 correct?</p> <p>19 A. I'm not -- I couldn't tell you if he does a</p> <p>20 lot or not.</p> <p>21 Q. Well, he -- you know him from his work with</p> <p>22 Bridging; isn't that right?</p> <p>23 A. No. I met him two years ago in Canada</p> <p>24 through our attorneys when we started investigating</p> <p>25 the opportunity to go public in the Toronto exchange.</p>	<p style="text-align: right;">Page 478</p> <p>1 I do so as his -- he is a consultant to Hygea.</p> <p>2 Q. So he's giving Hygea advice?</p> <p>3 A. Yes, sir.</p> <p>4 Q. And do you think he was giving Hygea good</p> <p>5 advice?</p> <p>6 A. He has given Hygea a lot of advice.</p> <p>7 Q. Hygea was paying him for this advice,</p> <p>8 correct?</p> <p>9 A. Hygea has an engagement agreement with</p> <p>10 Mr. Travaglini.</p> <p>11 Q. Under the engagement agreement, is Hygea</p> <p>12 supposed to pay Mr. Travaglini?</p> <p>13 A. I think we're compliant with the engagement</p> <p>14 agreement with Mr. Travaglini.</p> <p>15 Q. I didn't ask if you were compliant. I asked</p> <p>16 if the agreement required you to pay him.</p> <p>17 A. The agreement requires that we compensate</p> <p>18 him for his -- for the services of his company.</p> <p>19 Q. And has Hygea compensated him for the</p> <p>20 services of his company?</p> <p>21 A. I believe we have.</p> <p>22 Q. Can you please turn to Exhibit 26.</p> <p>23 A. Yes, sir.</p> <p>24 Q. Now, putting aside the top email where this</p> <p>25 is -- the email is forwarded to Mr. Fowler, do you</p>

<p style="text-align: right;">Page 479</p> <p>1 recognize this document?</p> <p>2 A. I'm sorry. What is the question?</p> <p>3 Q. If you recognize the document.</p> <p>4 A. Obviously it was sent by John Travaglini.</p> <p>5 Q. So you recognize that email address there,</p> <p>6 4Front -- John@4frontcapitalpartners.com to be</p> <p>7 Mr. Travaglini?</p> <p>8 A. Yes, sir.</p> <p>9 Q. And he sent the email to you, didn't he?</p> <p>10 A. Yes.</p> <p>11 Q. Now, do you know why he sent it to you at</p> <p>12 something other than a Hygea email address?</p> <p>13 A. No idea.</p> <p>14 Q. Well, what is -- that is though your email</p> <p>15 address, the Yahoo address there?</p> <p>16 A. That is a personal email of mine, yes, sir.</p> <p>17 Q. So can you explain the user name, how you</p> <p>18 came -- what that stands for, how you came up with that</p> <p>19 in this personal email account?</p> <p>20 MS. GALL: Objection, Your Honor; relevance.</p> <p>21 THE COURT: Mr. Kaye?</p> <p>22 MR. KAYE: Your Honor, I -- what I'm</p> <p>23 intrigued by here is that I think that there's</p> <p>24 reference to "law" at the end, and I'm wondering if</p> <p>25 this is an email address that might be affiliated with</p>	<p style="text-align: right;">Page 481</p> <p>1 A. Raj, I believe, is Mr. Travaglini's partner</p> <p>2 at 4Front Capital Partners.</p> <p>3 Q. Can you read the first five lines of that</p> <p>4 email beginning, "Raj and I."</p> <p>5 A. Read them all?</p> <p>6 Q. Yes, please.</p> <p>7 A. "Raj and I read your email, and it was very</p> <p>8 good. Thank you. I'm giving you this analysis</p> <p>9 because it's what people think as opposed to what you</p> <p>10 believe. The cash flow was so sobering, but now that</p> <p>11 we know what we're dealing with, we can work on it.</p> <p>12 Now onto the business...what you see but what everyone</p> <p>13 else is asking about and sees is very different...we</p> <p>14 need to bridge this gap."</p> <p>15 Q. Now, that reference there to, "I am giving</p> <p>16 you this analysis," does that refresh your memory about</p> <p>17 the second part of the email at all?</p> <p>18 A. No. Actually, it doesn't.</p> <p>19 Q. Would you agree there isn't much analysis in</p> <p>20 the part of the email that you do remember?</p> <p>21 A. I'm sorry? Say that again.</p> <p>22 Q. Would you agree that the part of the email</p> <p>23 that you do remember, the part that goes from "Manny"</p> <p>24 down to "everyone forgets given time and effort," would</p> <p>25 you agree that there isn't a whole lot of analysis in</p>
<p style="text-align: right;">Page 480</p> <p>1 some sort of legal practice other than Hygea.</p> <p>2 THE COURT: Why would that be relevant or how</p> <p>3 would that be relevant?</p> <p>4 MR. KAYE: Your Honor, we'll have some</p> <p>5 questions later on about -- that might, I think, shed</p> <p>6 some light on the relevance issue, but I'm happy to</p> <p>7 withdraw that question. It's not that important.</p> <p>8 THE COURT: All right. Go ahead.</p> <p>9 Q. (By Mr. Kaye) But this is your personal email</p> <p>10 address?</p> <p>11 A. Yes, sir.</p> <p>12 Q. And do you recognize this email that</p> <p>13 Mr. Travaglini sent you? Do you remember this email?</p> <p>14 A. I'm sorry. Could you repeat the question?</p> <p>15 Q. Do you remember this email?</p> <p>16 A. You know, actually, I do not. I remember</p> <p>17 the top part, the first part. I don't remember the --</p> <p>18 the second page.</p> <p>19 Q. When you say "the second page," do you mean</p> <p>20 starting where it says "-- after the line where it says</p> <p>21 "John"?</p> <p>22 A. Yes.</p> <p>23 Q. So in that first page that you do remember,</p> <p>24 there's a reference to a Raj. Who is Raj, do you</p> <p>25 remember?</p>	<p style="text-align: right;">Page 482</p> <p>1 that part of the email?</p> <p>2 A. I -- I remember that part of the email.</p> <p>3 Q. But it doesn't seem to contain a lot of</p> <p>4 analysis, does it?</p> <p>5 A. No.</p> <p>6 Q. So that -- doesn't that suggest to you that</p> <p>7 the analysis that he's referencing is the subsequent</p> <p>8 part of the email?</p> <p>9 A. He's addressing, A, an email that I -- that</p> <p>10 I apparently forwarded to him, and you may have it</p> <p>11 here. And it is that context. I would have to see</p> <p>12 that email to put it in the context of what this is</p> <p>13 responding to. I'm sorry.</p> <p>14 Q. Well, I'm not asking what it's responding to,</p> <p>15 I'm asking if the part of the email that you remember</p> <p>16 seems to contain a lot of analysis?</p> <p>17 MS. GALL: Your Honor, objection; asked and</p> <p>18 answered.</p> <p>19 MR. KAYE: Your Honor, I don't think he's</p> <p>20 answered the question.</p> <p>21 THE COURT: Overruled. Go ahead.</p> <p>22 THE WITNESS: I don't see anybody signing</p> <p>23 the -- under that line -- what confuses me is under</p> <p>24 that line in the middle of the second page, something</p> <p>25 is addressed to John. And yet it's John who is signing</p>

<p style="text-align: right;">Page 483</p> <p>1 it. So did he write a letter to himself? It 2 doesn't -- I don't remember seeing this, and I don't 3 remember the context it's in. 4 Q. (By Mr. Kaye) Perhaps I had you stop reading a 5 little bit too early. 6 Could you read the -- could you read the 7 bottom two lines of the first page again? 8 A. "I asked Raj." 9 Q. I realize there's some typos there. 10 A. Yes. "For his honest comments and they are 11 below. As you know, he is a big fan so these are 12 things we need to fix. This is not judgment, just 13 things that need to be fixed." 14 Q. So does that perhaps remind you or -- or 15 suggest to you that the below email that -- the below 16 text below the lines that you seemed a little confused 17 by perhaps, that that was Raj's comments? 18 A. Apparently, yes. 19 Q. And I want to go in those comments to 20 number 3. Could you please read -- could you please 21 read the first -- first couple lines under 3 up through 22 the line that begins "(B)." 23 A. "3, theoretical EBITDA. Manny believes that 24 for the patient count, they should be at 500 million 25 in sales and 60 million." It doesn't say what</p>	<p style="text-align: right;">Page 485</p> <p>1 we're talking here again at the bottom of the page, the 2 email from Mr. Travaglini to Mr. Iglesias. I want to 3 take those -- want to take those issues in -- in order 4 here. 5 First of all, we've heard testimony that 6 Mr. Travaglini was a consultant who was, you know, a 7 professional who was presumably going to be paid. I 8 think we heard that he was paid by Hygea to provide 9 advice to Hygea. 10 I think that that puts this squarely 11 within -- within a business record exception. I don't 12 think that it becomes something other than a business 13 record by virtue of the fact that it was going to a 14 personal email address. 15 I suppose we could ask some more questions 16 about that email account and so forth, but it seems to 17 me that this is all very -- that this is all very 18 business related. So a consultant report falls 19 squarely within that exception. 20 Having said that, I think there's another 21 exception here for some of what -- some of the content 22 is in here, and that is a present sense impression as 23 to Mr. Travaglini's present sense of the situation at 24 Hygea, September of 2017. 25 He says the cash flow was sobering. That's</p>
<p style="text-align: right;">Page 484</p> <p>1 60 million is. "But the actual numbers are much 2 lower. This only means that two links are broken: 3 (A) converting the patient count to revenue - this 4 seems to be only mildly broken." 5 Is that where you want me to stop? 6 Q. I want you to read B, also. 7 A. I'm sorry. "(B) converting 10 to 12 EBITDA 8 from that revenue. This seems to be badly broken." 9 Q. 10 to 12 percent EBITDA, correct? 10 A. Yes. Is there a question though? 11 Q. Did you believe at that time that for the 12 patient count, Hygea should be at those kind of 13 figures? 14 A. Actually, close, yes. 15 MR. KAYE: Your Honor, plaintiffs move to 16 admit Exhibit 26. 17 THE COURT: Ms. Gall? 18 MS. GALL: Your Honor, same objections as 19 before. This constitutes hearsay. It is not even sent 20 to a Hygea business address. As we have discussed, it 21 was sent to Mr. Iglesias' personal address. So before 22 I can address further, I would need to know if Mr. Kaye 23 intends on putting in the record a hearsay exception. 24 MR. KAYE: Your Honor, first of all, let me 25 clarify the move -- the move for admission. Of course,</p>	<p style="text-align: right;">Page 486</p> <p>1 a -- quite literally a present sense impression and a 2 mental impression that he had at that time. So that 3 falls within a hearsay exception as well. 4 Beyond that, I believe -- I believe that it 5 is fully admissible for all those reasons. But, again, 6 this is something that could be taken as something not 7 for the truth of the matter asserted but, rather, as -- 8 as something that is part of the ongoing -- a document 9 that is constitutive of the ongoing efforts at Hygea to 10 run the corporation. 11 Once again, whether or not the comments that 12 are set forth in the document are true or not, it's an 13 indicia of issues at the corporation that its 14 consultants are raising these sort of -- these sort of 15 problems. If they're wrong, then -- then that's also 16 an issue of corporate instability. If they don't know 17 what they're talking about, that's an issue. 18 So it -- it, once again, provides context for 19 what management was doing. I would also add going back 20 a step that we have heard again that Mr. Travaglini was 21 hired by Hygea, so these -- these constitute 22 admissions. 23 MS. GALL: Your Honor, my responses to that 24 are a few fold. First, with respect to the business 25 records exception, again, I reiterate this was sent to</p>

<p style="text-align: right;">Page 487</p> <p>1 Mr. Iglesias' -- what Mr. Iglesias has testified is a 2 personal address. 3 In fact, it is addressed to Mr. Iglesias 4 personally. And even if you read the first few lines, 5 it is talking about giving Mr. Iglesias, I'm 6 paraphrasing here, some advice or comments personally, 7 not to Hygea. I do think Mr. Kaye has established that 8 this was necessarily within Mr. Travaglini's scope of 9 agency for Hygea. 10 In addition to that, we not only have what 11 appears to be Mr. Travaglini's words, we also have a 12 cut-and-paste of a separate email that appears to be 13 from Raj, Mr. Natarajan, to Mr. Travaglini. So we have 14 two potential hearsay issues within this document. 15 I do not really understand the exception 16 about demonstrating the issues at -- the potential 17 issues at Hygea at this time as being part of any of 18 the hearsay exceptions that I'm at least familiar with. 19 So I would ask that the hearsay objection be sustained. 20 THE COURT: I'm going to admit the 21 September 19, 2017, from 4Front, John, to Manny, 22 Mr. Iglesias, not for the truth of the matter asserted, 23 but for information that was sent to him. 24 What about the -- the part from John to John, 25 anything else, Mr. Kaye, you want to tell me about that</p>	<p style="text-align: right;">Page 489</p> <p>1 he does not even recall receiving the portion 2 underneath the two double lines on page 2 of the email. 3 THE COURT: Well, wasn't that -- looking at 4 the first NV5001042, it -- the last sentence, "I asked 5 Raj for his honest comments, and they are below." 6 So wasn't this attached to -- at least isn't 7 there a preponderance that this was also included to 8 Mr. Iglesias? 9 MS. GALL: I, of course, allow Your Honor to 10 decide whether there's a preponderance. I would state 11 there is not a preponderance. But, of course, I would 12 defer to Your Honor's judgment on that. 13 THE COURT: I'm going to admit it for the 14 same -- on the same grounds. It's not for the truth of 15 the matter asserted, but to show information that was 16 relayed to Mr. Iglesias. So it's 26 admitted under 17 that for those purposes. 18 Q. (By Mr. Kaye) Move on to Exhibit 33, 19 Mr. Iglesias. Do you recognize this document? 20 A. Yes, I do. 21 Q. What is this document? 22 A. It's an email from John Travaglini to me. 23 Q. Dated September 14th of 2017? 24 A. Yes, sir. 25 Q. Did you receive this email in the course of</p>
<p style="text-align: right;">Page 488</p> <p>1 objection? 2 MR. KAYE: Certainly you're talking about the 3 part beginning under the double -- under the two lines 4 on the second page? 5 THE COURT: Right. 6 MR. KAYE: I believe that the witness's 7 testimony has -- has shown by -- certainly by a 8 preponderance that that is -- preponderance of the 9 evidence, the inference as well, that that is the 10 analysis that Raj provided. My apologies, I don't 11 remember Raj's last name offhand. 12 But that the analysis that Raj provided that 13 Mr. Travaglini was sending along to Mr. Iglesias. And 14 I think that that falls within the same, you know, 15 exactly the same sort of rationale -- rationale that 16 the Court is employing for the initial -- the initial 17 email. 18 And preserving all of our arguments that it 19 ought to come in fully, once again, if none of this is 20 being admitted for the truth of the matter asserted, 21 that's part of the email that -- that constituted the 22 advice and the analysis that was being presented to the 23 witness. 24 MS. GALL: Your Honor, I would say 25 Mr. Iglesias has repeatedly testified here today that</p>	<p style="text-align: right;">Page 490</p> <p>1 your business? 2 A. Yes. 3 Q. And this is again sent to the Yahoo account, 4 correct? 5 A. Yes. 6 Q. Based on your understanding of 4Front and how 7 Mr. Travaglini operated, did 4Front send this to you in 8 the course of its business? 9 A. I don't know why he sent it to my personal 10 account. 11 Q. But based on your understanding of 4Front, do 12 you believe that 4Front sent this to you as part of its 13 professional engagement? 14 A. Let me read the email, and I'll give you my 15 opinion. I think this was a personal email between 16 John and I, basically Dutch uncle advice to me 17 personally, not part of his engagement with Hygea and, 18 therefore, not part of the work product. 19 Q. Do you know if he billed for this letter or 20 for this email? 21 A. No idea. I think we have a strong personal 22 relationship independent of Hygea. 23 Q. Can we please read the second paragraph of 24 the email. 25 A. "The audit is painful because the company</p>

<p style="text-align: right;">Page 491</p> <p>1 has not paid any attention to operational efficiencies 2 and prioritize the maximizing revenues. Simply put, 3 the company has limited infrastructure, records and 4 process to make, monitor and manage money. 5 "This is evident by the fact and is not an 6 emotional statement. The audit is proving to be true. 7 Comparable companies to Hygea are making much more 8 money in terms of cash coming in. I say all this is an 9 opportunity, not a threat." 10 Q. How did you respond to that? 11 A. There's a lot of truth to what he said. We 12 stopped -- we had been a growth company. We grew 30 13 sometimes over the last five years. We went from 14 \$10 million in 2012 to this year 400 in top line 15 revenue in large part by both internal growth as well 16 as aggressive acquisition. 17 Just last year, we acquired approximately 20 18 entities, practices and IPOs, MSOs, the year before 19 probably a comparable number. When you integrate all 20 that together, we grew too fast possibly. 21 And then we stopped making acquisitions over 22 the last year and have been focused on doing a lot of 23 the things he's talking about, as a matter of fact, 24 doing a lot of things that RIN had suggested that we do 25 privately and not through a court-ordered receiver. A</p>	<p style="text-align: right;">Page 493</p> <p>1 some stuff prior to going to the UK to raise money." 2 Q. Did you ever sit down with Mr. Travaglini as 3 he suggested -- 4 A. Many times. 5 Q. -- as he suggested in that email? 6 A. I like the part where, "Your company is 7 great, and we need to fix some things." We fixed some 8 things. The company's still great. 9 MR. KAYE: I would move to strike that answer 10 as non-responsive. 11 THE COURT: Sustained. 12 Q. (By Mr. Kaye) Did you ever sit down with 13 Mr. Travaglini as suggested in the email? 14 A. With both Mr. Travaglini and his partner, 15 Raj, who have spent months physically in our offices 16 in Miami, in addition to constant interaction by email 17 or phone, focused on improving Hygea. 18 Q. So the sit-down that he's talking about is a 19 Hygea-related business sit-down, right? 20 A. We have sat down with Mr. Travaglini on 21 multiple occasions and his firm, basically his 22 partner, to work on improving infrastructure and other 23 things at Hygea. 24 Q. But it's not a personal sit-down he wants to 25 have. The stuff that he wants to go over with you</p>
<p style="text-align: right;">Page 492</p> <p>1 court-ordered receiver would be the death nail to 2 Hygea. 3 But a lot of the suggestions made we've taken 4 to heart. We have brought in a new senior executive 5 suite. We have brought in people in the industry who 6 are really knowledgeable. We have a new CEO. We have 7 a new CFO. We have a new COO. We have a new director 8 of MSO activities. 9 We have brought in senior consultants in 10 terms of utilization management. All these people have 11 20-plus years each in the industry in managed care in 12 Florida. And I think that we were very responsive to a 13 lot of the comments made last year to people who have 14 spoken before the Court. 15 Q. So there is nothing in that paragraph that 16 you just read with which you disagree? 17 A. It was more correct at the time it was 18 written than it is today. I think that the company 19 today is a strong ongoing concern, and we've addressed 20 a lot and would be happy to go into detail with you. 21 Q. Can you look -- can you please read the first 22 sentence of the email into the record. 23 A. The first sentence? 24 Q. Yes. 25 A. "I think that we should sit down and go over</p>	<p style="text-align: right;">Page 494</p> <p>1 isn't some sort of personal matter, is it? 2 MS. GALL: Objection, Your Honor, at this 3 point. We don't know at this point what 4 Mr. Travaglini's intent was in writing this email. I 5 don't think Mr. Iglesias can speak to his intent. 6 MR. KAYE: Your Honor, Mr. Iglesias has, I 7 believe, in response to this question testified that he 8 did have sit-down meetings with Mr. Travaglini. And 9 presumably based on the fact that he had those 10 meetings, he can say whether this was a suggestion of a 11 professional business-related meeting or a 12 friendship-related meeting. 13 THE COURT: He can state his impression of 14 what it was. 15 THE WITNESS: I've had conversations with 16 John Travaglini both as -- on a personal level, as well 17 as a professional. And this was a private email I 18 believe from John to me. There are other emails in 19 here that are from John to me as -- as CEO and John as 20 a consultant of the company. I don't believe that's 21 what this is. 22 Q. (By Mr. Kaye) So your impression of wanting to 23 sit down and go over stuff was that he wasn't talking 24 about Hygea-related stuff? 25 A. We've actually worked very closely with John</p>

<p style="text-align: right;">Page 495</p> <p>1 and had referred other clients that he currently has 2 and has raised money for. And so it may be in that 3 context. It's a continuing relationship, and they're 4 in parallel tracks. 5 Q. It's a business relationship though, correct? 6 A. Everything's a business relationship, but we 7 had both a business and personal relationship. 8 MR. KAYE: Your Honor, plaintiffs move to 9 admit Exhibit 33. 10 THE COURT: Ms. Gall? 11 MS. GALL: Your Honor, I would object it's 12 being admitted for the truth of the matters asserted. 13 If counsel wants to admit it for -- based on the 14 exception Your Honor ruled on with the prior email, I 15 have no objection. 16 THE COURT: I'm going to admit it not for the 17 truth of the matter asserted, but for information that 18 was transmitted or communicated to Mr. Iglesias. 19 MR. KAYE: Thank you, Your Honor. I would 20 just state for the record that we do -- we did seek 21 admission under the hearsay exception as well. 22 Q. (By Mr. Kaye) Can you please turn your attention 23 to Exhibit 37. 24 A. Yes, sir. 25 Q. And I'm going to ask you to turn to the --</p>	<p style="text-align: right;">Page 497</p> <p>1 revenues from the base we currently have." 2 Q. (By Mr. Kaye) And "bolting revenue," that means 3 you're buying new practices and trying to put those 4 practices -- revenue based on those practices on your 5 books; is that correct? 6 A. Bolting on revenue means that we identify 7 and acquire practices and add that to our revenue 8 pool, yes, sir. 9 Q. Let's go on to the next paragraph, and I'd 10 like you to begin reading -- I'd like you to read the 11 second sentence of that next paragraph. 12 A. I'm sorry. Which sentence? 13 Q. The second sentence beginning at the end of 14 the first line, "The audit process." 15 A. Oh. I'm sorry. The third full paragraph, 16 second sentence? 17 Q. Yes. "The audit process." 18 A. I'm sorry. "The audit process for 2014-2015 19 and to some extent 2016 has demonstrated that the 20 company had limited infrastructures, record and 21 process to make, monitor and manage money during those 22 periods." 23 Q. And read the next sentence, please. 24 A. "Historically, the company's biggest 25 weakness has been financial accounting, managerial</p>
<p style="text-align: right;">Page 496</p> <p>1 for now at least to turn to the -- the page that begins 2 1823. 3 Do you recognize this document? 4 A. Yes. 5 Q. What is this document? 6 A. It's a status report to the board by me 7 dated October 1, 2017. 8 Q. Is this a true and accurate copy of the 9 status report memorandum that you provided to the 10 board? 11 A. I'd have to read it totally, but it seems to 12 be correct. 13 THE COURT: I'm sorry. What was the exhibit 14 number? 15 MR. KAYE: My apologies, Your Honor. This is 16 37. But we're looking at the -- few pages in, 1823. 17 Essentially I've disregarded the cover email to the 18 memorandum. 19 THE COURT: Okay. 20 Q. (By Mr. Kaye) And can you please read the 21 second paragraph of the memorandum that you provided to 22 the board. 23 A. "We have stopped 'bolting' on revenue and 24 are now focused on organic (growing inward) to 25 maximize both efficiencies and create additional</p>	<p style="text-align: right;">Page 498</p> <p>1 accounting, and data analytics." 2 MR. KAYE: Your Honor, plaintiffs move to 3 admit Exhibit 37, but I would exclude the first two 4 pages, such that were beginning at 1823. So just the 5 memorandum, not the cover email. 6 MS. GALL: Your Honor, I have no objection to 7 its admission. 8 THE COURT: Exhibit 37 beginning at NV5001823 9 through the end NV5001826 are admitted. 10 Q. (By Mr. Kaye) Now, earlier we talked about 11 Exhibit 6. I'd like to turn your attention back to 12 Exhibit 6 if you don't mind. 13 You testified earlier relating to the 14 definition of borrowers up at the top of the page; 15 isn't that right? 16 A. I said that the two companies, Hygea 17 Holdings Corp. and Hygea Health Holdings, Inc., were 18 collectively referred to as "borrowers" in the letter 19 from Bridging Finance. 20 Q. Now, is Hygea Holdings Corporation as 21 indicated there, you understand that to mean Hygea 22 Holdings Corp.? 23 A. Yes. 24 Q. Which is the corporation that is a party to 25 this lawsuit, correct?</p>

<p style="text-align: right;">Page 499</p> <p>1 A. Which is a parent company, yes, sir. 2 Q. What is Hygea Health Holdings, Inc.? 3 A. It's our operating subsidiary, Florida 4 based. The Hygea Holding Corporation is a 5 Nevada-based corporation. 6 Q. How many other Hygea entities are there, 7 correspondent entities? 8 A. Companies owned by Hygea? 9 Q. Let me ask you this: How many other 10 corporations are there that have Hygea in their name? 11 A. I couldn't tell you. I -- I don't know. 12 Maybe three, maybe half a dozen. I couldn't tell you. 13 Q. What's the most that you think might 14 reasonably be the number? 15 A. Half a dozen. 16 Q. So you don't think there could be more than 17 half a dozen? 18 A. I'm guessing. I don't know. I know we have 19 active about 35 companies under Hygea Holdings Corp., 20 but I don't -- I don't know how many of those have the 21 Hygea name in it. 22 Q. There's 35 corporations under Hygea Holdings 23 Corp.? 24 MS. GALL: Objection; mischaracterizes the 25 witness's testimony.</p>	<p style="text-align: right;">Page 501</p> <p>1 Q. -- corporation, LLC, etc. Do I need to 2 restate any of my questions? 3 A. No, sir. 4 MS. GALL: I would object, Your Honor. It's 5 been asked and answered. There's a pending question 6 about whether Mr. Iglesias has any idea. 7 THE COURT: Sustained. 8 Q. (By Mr. Kaye) Do any of the -- what do you mean 9 when you say "inactive corporation"? 10 MS. GALL: Objection, Your Honor; 11 mischaracterizes the witness's testimony. Those were 12 Mr. Kaye's words. 13 THE COURT: Overruled. 14 Q. (By Mr. Kaye) What do you mean when you say 15 "inactive corporation"? 16 A. Can I give you an example? 17 Q. I want an answer to the question. If an 18 example helps, you can give an example. 19 A. Is a corporation that at some point we 20 acquired that was probably active in terms that it 21 created revenue. It's no longer active because it 22 creates no revenue or has no purpose. So we in most 23 instances did not renew it as we do with our annual 24 filings and let it lapse. 25 Q. Do any of these inactive corporations retain</p>
<p style="text-align: right;">Page 500</p> <p>1 MR. KAYE: I'm asking if that's correct. 2 THE COURT: Overruled. 3 THE WITNESS: There's a list I believe in the 4 draft Q of E of our active companies. 5 Q. (By Mr. Kaye) Are there any inactive companies? 6 A. I'm assuming so, yes, sir. 7 Q. How many inactive companies are there? 8 A. No idea. 9 Q. More than 10? 10 A. No idea, sir. 11 Q. More than 100? 12 MS. GALL: Objection, Your Honor. 13 THE COURT: Sustained. 14 MS. GALL: Asked and answered. 15 THE COURT: Sustained. 16 Q. (By Mr. Kaye) So you have no idea at all how 17 many inactive companies? 18 A. Do not. 19 Q. Let me be precise. When I'm saying 20 "companies," I'm meaning corporations as well. 21 A. I'm assuming you mean limited liability 22 corporations and incorporated companies? 23 Q. That was the next thing I was going to say, 24 some sort of corporate entity, be it a -- 25 A. That's what I understood.</p>	<p style="text-align: right;">Page 502</p> <p>1 bank accounts? 2 A. No. 3 Q. But it's true that when a corporation's 4 existence lapses, the bank account could still remain 5 at the bank; isn't that right? 6 MS. GALL: Objection, Your Honor. This calls 7 for a legal conclusion. 8 MR. KAYE: Your Honor, I'm not asking about a 9 legal conclusion, I'm asking operationally. 10 THE COURT: Overruled. 11 THE WITNESS: I don't believe that that's 12 something that we do. 13 Q. (By Mr. Kaye) I'm not asking what you do. I'm 14 just saying that could happen, correct? 15 MS. GALL: Objection, Your Honor. He's 16 asking the witness a hypothetical, which may or may not 17 be within the witness's knowledge to even answer. 18 THE COURT: Overruled. If you know, you can 19 answer. 20 THE WITNESS: I don't know. 21 Q. (By Mr. Kaye) The corporations that became 22 inactive, at one time they had bank accounts, right? 23 A. Not all of them. 24 Q. Why wouldn't one of them have a bank account? 25 A. It may have been created as an acquisition</p>

<p style="text-align: right;">Page 503</p> <p>1 vehicle, and the acquired, usually practice or MSO, 2 but practice over time was incorporated into our 3 integrated group practice so that that doctor no 4 longer had his own individual PA. 5 So there was no need for either the historic 6 PA that that doctor owned or which we controlled or the 7 intervening corporation that was set up to make that 8 acquisition. 9 So in that case, once that doctor's fully 10 integrated into one of our regional integrated group 11 practices, neither the acquiring intermediary 12 subsidiary of Hygea or the acquired physician practice 13 have a reason for being. 14 MS. GALL: Your Honor, I'm also going to 15 object at this point to relevance. I'm not sure what 16 the relevance of this line of questioning is. 17 THE COURT: What is the relevance? 18 MR. KAYE: Your Honor, let me ask some 19 questions that may shed some light on the relevance, if 20 I may. 21 THE COURT: You may. 22 Q. (By Mr. Kaye) Hygea Holding Corp. makes money 23 from insurance reimbursements, correct? 24 A. That's one of its major sources of income, 25 yes, sir.</p>	<p style="text-align: right;">Page 505</p> <p>1 MS. GALL: Objection, Your Honor, 2 mischaracterizes the witness's testimony about which 3 entity receives revenue. 4 THE COURT: Overruled. You can answer. 5 THE WITNESS: We have entities, MSO entities. 6 THE COURT: Can you raise your voice just a 7 little bit? 8 THE WITNESS: I'm sorry, Your Honor. Could 9 you repeat the question? 10 (By Mr. Kaye) Other than Hygea Holdings 11 Corp., what other entities -- what other Hygea entities 12 receive insurance reimbursements? 13 A. Hygea Health Holdings and its subsidiaries, 14 for example, Palm Medical Network, the IPA. Under 15 Palm Medical Network, there are a series of sub MSO 16 agreements. 17 You referenced some earlier in the contracts. 18 They're subsidiaries of Hygea Health Holdings. The 19 doctors' practices, for example, Dr. Gaylis, who spoke 20 via video, Norman Gaylis, MDPA receives reimbursement 21 from insurance companies. 22 We have three regional integrated group 23 practices. Each one receives reimbursements from 24 insurance companies, so there are multiple entities 25 that receive -- are the direct recipient of the funds.</p>
<p style="text-align: right;">Page 504</p> <p>1 Q. Do all of those insurance reimbursements come 2 into Hygea Holdings Corp.? 3 A. I would say that none of them come into 4 Hygea Holding Corp. They go into -- I can't tell you 5 right now if any of the contracts are contracted 6 directly with Hygea Holdings Corp. 7 It is my belief that they are the -- the HMO 8 contracts I believe are contracted with Hygea 9 subsidiaries, and the medical revenue from -- on the 10 fee for service side are contracted with the Hygea 11 integrated group practices and/or the individual 12 practices that have yet to be integrated. 13 I don't believe there's any actual revenue 14 coming into, it's all consolidated on a financial 15 statement basis. But I do not believe that Hygea 16 Holdings Corp. per se is a recipient of revenue. 17 Q. Are you testifying that you don't know how 18 the money gets into Hygea from the insurance companies? 19 A. I know per contract, yes. 20 Q. Didn't you just say you don't know what the 21 contracts say? I'm asking what you know. 22 A. In that case, I don't know. 23 Q. What entities other than Hygea Holdings Corp. 24 received payments from insurance providers? And I 25 include in there the United States government.</p>	<p style="text-align: right;">Page 506</p> <p>1 Q. And not all that money gets to Hygea Holdings 2 Corp., does it? 3 A. It -- we sweep all the accounts and -- where 4 possible and make payments either through Hygea Health 5 Holdings and/or through Hygea Holdings Corp. 6 Q. Where possible. So Hygea Holdings Corp. 7 doesn't get all of the money to your knowledge? 8 A. That is correct. 9 Q. Have you ever determined how much of the 10 money coming in to the Hygea system fails to reach 11 Hygea Holdings Corp.? 12 A. No. 13 Q. Doesn't that seem to you to be an important 14 issue for Hygea Holdings Corp.? 15 A. We end up having consolidated statements, 16 and our accounting department is very capable of 17 understanding where the funds are within the Hygea 18 family of companies. And so I -- I think your 19 question is incorrect from an accounting standpoint 20 how a large corporation works respectfully. 21 MR. KAYE: I would move to strike the 22 commentary about the evaluation of the -- of the 23 question. 24 THE COURT: Sustained. 25 MR. KAYE: Okay.</p>

<p style="text-align: right;">Page 507</p> <p>1 Q. (By Mr. Kaye) As we sit here today, can you name 2 any other entity that received funds that should have 3 flowed through the network into Hygea Holdings Corp.? 4 MS. GALL: Objection, Your Honor; 5 mischaracterizes the witness's earlier testimony. 6 MR. KAYE: Your Honor, that didn't 7 characterize any testimony. 8 THE COURT: Overruled. You can answer. 9 THE WITNESS: To my knowledge at this point, 10 there are only three practices that are currently not 11 allowing us to transfer money, wholly-owned practices, 12 to Hygea. And those are the Cohen, Gaylis, and 13 Horowitz practices, but I am now removed from 14 day-to-day management, so my information on this issue 15 may be stale. 16 Q. (By Mr. Kaye) Are there any other entities other 17 than those three that you mentioned that you know or have 18 any knowledge of receiving money that should have gone to 19 Hygea Holdings Corp. that did not arrive at Hygea Holdings 20 Corp.? 21 MS. GALL: Objection, Your Honor. Perhaps I 22 should make the correct objection now. It's a lack of 23 foundation. I don't think there's any facts in 24 evidence right now that certain monies should have gone 25 into Hygea Holdings Corp. versus any other entity.</p>	<p style="text-align: right;">Page 509</p> <p>1 be used for operational purposes at the Hygea Health 2 Holdings level, but all of the, for lack of a better 3 term, profit is supposed to flow to Hygea Holdings 4 Corp.; is that correct? 5 A. No, that is not correct. Money stays where 6 accounting -- our chief financial officer deems it 7 best to stay in. Profit is -- respectfully, I think 8 you're confusing cash flow with profits. 9 Q. Why don't you explain the difference to me. 10 A. We're a very profitable company from an 11 EBITDA standpoint. We've had -- have helped 12 identify -- have had a cash flow issue over the last 13 six, nine months. 14 Q. So I'll use -- I'll use cash flow then. 15 Am I correct that the model for the Hygea 16 network is supposed to be that even if cash is used at 17 the Hygea Health Holdings level to pay certain 18 expenses, the cash flow is supposed to flow up to Hygea 19 Holdings Corp.? 20 A. I do not believe that's the way it actually 21 works. 22 Q. And did you testify a moment ago that the way 23 it actually works is that the CFO kind of determines 24 where the money is supposed to be within the Hygea 25 network?</p>
<p style="text-align: right;">Page 508</p> <p>1 THE COURT: Sustained. 2 Q. (By Mr. Kaye) Hygea Holdings Corp. is the parent 3 company of the Hygea network, is that what you've 4 testified to? 5 A. Yes, sir. 6 Q. And is the business model -- isn't the 7 business model of the Hygea network predicated on money 8 ultimately coming to Hygea Holdings Corp.? 9 A. Or Hygea Health Holdings as its operational 10 entity, major operational entity. For example, Hygea 11 Holding -- I'm sorry -- Hygea Health Holdings, Inc. is 12 where monies go in to make such payments as all 13 payroll. I believe that from that company, most rents 14 are paid. 15 So the actual operations of the company in 16 large part rest at a combination of either Hygea Health 17 Holdings and/or Hygea Holdings Corp. And our finance 18 department, revenue enters both. 19 All the revenue that enters into Hygea Health 20 Holdings doesn't necessarily get deposited into Hygea 21 Holdings Corp. A lot of that is paid directly -- a lot 22 of the expenses are paid for directly by Hygea Health 23 Holdings. Its wholly-owned subsidiary and operating 24 company. 25 Q. So let me see if I follow this. Money might</p>	<p style="text-align: right;">Page 510</p> <p>1 A. Based on availability of cash and 2 requirements of payments that need to be made, yes. 3 Q. So there's a lot of money moving around 4 within the system; is that right? 5 A. That is correct. 6 Q. What are the other corporations other than 7 Hygea Holdings Corp. and Hygea Health Holdings that you 8 remember that have Hygea in their name? 9 MS. GALL: Objection, Your Honor; asked and 10 answered. 11 MR. KAYE: Your Honor, I believe we -- I 12 asked about the number of corporations, and he gave an 13 answer as to that. I don't think we've talked about 14 what the actual corporations were. 15 THE COURT: Overruled. Go ahead. 16 THE WITNESS: I don't remember specifically 17 which companies may have the Hygea in their name. 18 Q. (By Mr. Kaye) Of the corporations, the roughly 19 35 corporations within the Hygea network, other than Hygea 20 Holdings Corp. and other than Hygea Health Holdings, Inc., 21 what do those other corporations do? 22 A. They have -- they house individual HMO, MSO 23 agreements. They're practices that are in the process 24 of being integrated. They're inactive from the 25 standpoint that they're not active companies.</p>

<p style="text-align: right;">Page 511</p> <p>1 They're active legally, but they're</p> <p>2 pass-through from the standpoint they were created to</p> <p>3 make certain discrete acquisitions. So it's an</p> <p>4 intermediary company between either Hygea Holdings</p> <p>5 Corp. and/or Hygea Health Holdings, both of which have</p> <p>6 made acquisitions and the ultimate acquiring --</p> <p>7 acquired party.</p> <p>8 We have two management companies that we use</p> <p>9 to manage a lot of our acquired entities. That's</p> <p>10 pretty much the mix of types of companies. Was that</p> <p>11 your question? I'm sorry. Did I respond to your</p> <p>12 question?</p> <p>13 Q. Well, can you think of any specific</p> <p>14 corporation within the network that matches up to any</p> <p>15 of the specific roles you've discussed?</p> <p>16 A. Physicians Management Company Southeast and</p> <p>17 Physicians Management Company are two of our two</p> <p>18 management companies. Sussman and Staller, MDPA has</p> <p>19 been converted to Hygea South Florida IGP, integrated</p> <p>20 group practice.</p> <p>21 We own MedCare clinics. We own MedPlan</p> <p>22 Medical Centers. We own MedPlan Discount Plan. It's</p> <p>23 a -- not an insurance, but a discount plan that Hygea</p> <p>24 owns. We own the Amir Family, MDPA. We own Mid</p> <p>25 Florida Adult Medicine. Those are some of the firms</p>	<p style="text-align: right;">Page 513</p> <p>1 practice, they would be receiving insurance</p> <p>2 reimbursements.</p> <p>3 Q. And any of these entities could be -- could</p> <p>4 be housing cash within the Hygea network?</p> <p>5 A. Anybody who houses cash in our organization?</p> <p>6 Yes, it could be in theory.</p> <p>7 Q. During your time with Hygea, how many bank</p> <p>8 accounts has Hygea Holdings Corp. had?</p> <p>9 A. Hygea Holdings Corp.? We have, I believe,</p> <p>10 three accounts with Wells Fargo under Hygea Holdings</p> <p>11 Corp. or Hygea Health Holdings, and a similar number</p> <p>12 with another bank.</p> <p>13 Q. What's that other bank?</p> <p>14 A. City National Bank.</p> <p>15 MS. GALL: Your Honor, I'm going to renew my</p> <p>16 objection. We sat here I think for maybe 20 or</p> <p>17 30 minutes now, and I still don't understand the</p> <p>18 relevance of this line of questioning.</p> <p>19 MR. KAYE: Your Honor, I can speak to a</p> <p>20 couple things I think is relevant about it. We just</p> <p>21 heard that within -- there's a network of about 35</p> <p>22 corporate entities that any -- any one of those</p> <p>23 corporate entities could be storing cash or housing</p> <p>24 cash. I think there was some -- some suggestion that</p> <p>25 right now there's not cash, but if they were, they</p>
<p style="text-align: right;">Page 512</p> <p>1 that we --</p> <p>2 Q. Are these wholly-owned subsidiaries?</p> <p>3 A. Yes.</p> <p>4 Q. Are there any partially owned subsidiaries</p> <p>5 or, to put it another way, are there any other</p> <p>6 corporate entities in which Hygea Holdings Corp. has an</p> <p>7 interest?</p> <p>8 A. They're all listed, but I believe at this</p> <p>9 point all the entities that Hygea owns Hygea owns</p> <p>10 100 percent of.</p> <p>11 Q. That Hygea Holdings Corp. owns?</p> <p>12 A. That Hygea Holdings Corp. or that Hygea</p> <p>13 Health Holdings own, they own 100 percent of.</p> <p>14 Q. Do any of the subsidiaries have an interest</p> <p>15 in any other corporations?</p> <p>16 A. Except for those pass-through subsidiaries,</p> <p>17 for example, that were created to acquire a practice.</p> <p>18 So Hygea Health Holding, we may have created an LLC to</p> <p>19 acquire practice ABC, but we own 100 percent of the</p> <p>20 intervening practice. And we either own 100 percent</p> <p>21 of the acquired medical office, or we have an option</p> <p>22 to acquire the entity.</p> <p>23 Q. And any one of these entities could be</p> <p>24 receiving insurance reimbursements?</p> <p>25 A. If they're still active as a medical</p>	<p style="text-align: right;">Page 514</p> <p>1 could be storing them.</p> <p>2 We also heard that is allocated by the CFO.</p> <p>3 We've also heard that any one of those corporations</p> <p>4 that is active could be receiving -- could be receiving</p> <p>5 insurance reimbursements.</p> <p>6 So I think that this goes to the</p> <p>7 managerial -- the management issues, the financial</p> <p>8 management issues that have been at issue throughout</p> <p>9 this case.</p> <p>10 We heard just a few moments ago -- we were</p> <p>11 looking at some materials talking about some of those</p> <p>12 issues and the operational difficulties, the</p> <p>13 difficulties of integrating all these things. This</p> <p>14 gets exactly to that.</p> <p>15 As to the bank accounts, we heard yesterday</p> <p>16 from Mr. Dragelin that he found a bank account that he</p> <p>17 had not previously known about in the course of his</p> <p>18 work for Hygea.</p> <p>19 So at the very least, this gets to some of --</p> <p>20 I think two things that might be two sides of the same</p> <p>21 coin. One is the operational difficulties here, and</p> <p>22 the other is some explanation, perhaps, shedding some</p> <p>23 light on why there have been some of these difficulties</p> <p>24 with getting audited financial statements.</p> <p>25 MS. GALL: Your Honor, I will say I didn't</p>

<p style="text-align: right;">Page 515</p> <p>1 realize operational difficulties was a basis for the 2 appointment of a receiver under 78.650, 630, or 32.010. 3 Certainly the existence of bank accounts or a loan I 4 don't think is relevant to this action. 5 THE COURT: It seems to me what is missing 6 is -- and I -- I'm not saying you said this exactly, 7 but as I was writing while you were speaking, Mr. Kaye, 8 they could be storing cash, could be receiving -- if 9 there's not evidence connecting that up, I'm not seeing 10 relevance. 11 If you have evidence that, in fact, they are 12 storing cash and that is some ground for appointment of 13 a receiver, that the -- that they are, in fact, 14 receiving insurance reimbursements and that. But it 15 seems to me there's a break between the interesting 16 information you've been eliciting and the cause of 17 action. 18 MR. KAYE: Your Honor, I -- I appreciate 19 that. First of all, that's why I'm asking the 20 questions because as we have discussed throughout this 21 proceeding, we don't know the answers to these 22 questions, and we don't have the evidence of this. 23 And in the context of this case in particular 24 where we haven't done, you know, any sort of 25 conventional discovery, we don't have records that we</p>	<p style="text-align: right;">Page 517</p> <p>1 be done by 1:15. I apologize. We're back on 18 OC 71, 2 Arellano v. Hygea. Everybody but Mr. Ewing is present. 3 Mr. Iglesias is on the -- 4 MR. CARLSON: Your Honor, if I may for a 5 second, Ms. Zimmerman had to step out for -- 6 THE COURT: We are apparently not running 7 yet. 8 (A discussion was had off the record.) 9 THE COURT: We are back on 18 OC 71, 10 Arellano v. Hygea. Almost all counsel are present. 11 Mr. Carlson? 12 MR. CARLSON: Yes. Ms. Zimmerman had to step 13 out to handle another client matter. I expect her back 14 this afternoon. 15 THE COURT: Mr. Ewing is not present right 16 now. Mr. Iglesias is on the stand. 17 Mr. Kaye, your continued direct. 18 MR. KAYE: Thank you, Your Honor. 19 Q. (By Mr. Kaye) Mr. Iglesias, can you please 20 turn your attention to Exhibit -- 21 COURT CLERK: I don't think he has any 22 exhibits. We have them. 23 MR. KAYE: Oh, my apologies. I didn't 24 realize they had gone back. 25 COURT CLERK: What did you guys need?</p>
<p style="text-align: right;">Page 516</p> <p>1 can show, okay, Can you explain this transaction, can 2 you explain that transaction? 3 What -- and so the reason for the questions 4 is to -- is to get at that. But I do have -- I do have 5 some -- perhaps some questions that can tie that in 6 that I'm happy to proceed with. 7 THE COURT: We're going to take our lunch 8 break. I'm going to give him some latitude to show me 9 how it's connected up. So we'll do that after lunch. 10 MR. KAYE: Thank you, Your Honor. 11 THE COURT: We will be in recess. I have -- 12 we're going to have to take a little longer lunch than 13 normal. How are we doing on remaining time? 14 COURT CLERK: Plaintiffs have 3 hours, 21 15 minutes, and 53 seconds. And defendants have 10 hours, 16 17 minutes, and 4 seconds. 17 THE COURT: I will try to be back at 1:15. 18 I'm not sure I can make that. It won't be later than 19 1:30, but it sounds like we need that 15 minutes if we 20 can get it done. So let's plan on 1:15. 21 MR. KAYE: Thank you, Your Honor. 22 THE COURT: You can step down. 23 THE WITNESS: Thank you, sir. 24 (Recess taken at 11:57, resuming at 1:30.) 25 THE COURT: Please be seated. Just couldn't</p>	<p style="text-align: right;">Page 518</p> <p>1 MR. KAYE: 193. 2 THE WITNESS: Yes, sir. 3 Q. (By Mr. Kaye) And if you can -- well, first of 4 all, this is the quality -- the draft quality of earnings 5 report that we discussed earlier; isn't that correct? 6 A. Yes, sir. 7 Q. And can you please turn to page Bates 654. I 8 think the Bates is on the side of that -- of that page, 9 if that's something that helps you find it. 10 A. 654. 11 Q. And earlier I believe you testified that the 12 wholly-owned subsidiaries of Hygea were illustrated or 13 were show on a -- on -- in a chart or something along 14 those lines in the quality of earnings report draft; is 15 that correct? 16 A. That is correct. 17 Q. And is this that chart or that image to which 18 you were referring? 19 A. Yes, sir. 20 Q. And are the entities that are listed in the 21 largest of the -- of the boxes there, are those all of 22 the wholly-owned subsidiaries? 23 A. All the entities in any one of the four 24 boxes are wholly-owned subsidiaries of Hygea Holdings 25 Corp., some directly and some indirectly.</p>

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1 Q. In what respect would a -- in what respect do
2 you mean "indirectly"?

3 **A. Well, for example, in the big box at the**
4 **bottom, those are owned directly by Hygea Health**
5 **Holdings, Inc., which in turn is owned by Hygea of**
6 **Delaware, LLC, which in turn is owned by Hygea**
7 **Holdings Corp., the parent company.**

8 Q. So they're wholly-owned subsidiaries, but
9 there's a corporation in between?

10 **A. Yes, sir.**

11 Q. And what is Hygea of Delaware, LLC?

12 **A. Hygea of Delaware, LLC I'm not very familiar**
13 **with. It's inactive. It was going to be active**
14 **with -- in regards to -- utilized when Hygea was going**
15 **to go public through Toronto, through the Toronto**
16 **exchange.**

17 Q. And are all the -- are the entities shown on
18 this sheet, is that all of the wholly-owned
19 subsidiaries?

20 **A. I would suggest yes, sir, that I'm aware of.**

21 Q. And the flipside of that, are there -- are
22 there any entities shown on here that are not
23 wholly-owned subsidiaries?

24 **A. My belief is that -- for some of the**
25 **practices, we buy them in two steps or acquire them in**

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1 **two steps, and we do an asset acquisition of the**
2 **practice. We do not acquire the interest in the**
3 **entity. We have an option under our contracts to**
4 **acquire that entity if we want to.**

5 **But in essence, what we do over the course of**
6 **a year is transfer the physician to our integrated**
7 **group practice and transfer -- contract with them under**
8 **our integrated group practice, at which point at the**
9 **end of that process, we just dissolve or let the -- the**
10 **PA dissolve statutorily.**

11 Q. Have any insurance reimbursements for Hygea,
12 for the Hygea network, ever gone to an entity that was
13 not a wholly-owned subsidiary of Hygea?

14 **A. Again, when we buy a practice on day one, we**
15 **take management control and ownership of all revenue.**
16 **But technically from a legal standpoint, we may not**
17 **own the PA, the licensed provider. I can get a lot**
18 **more specific if you want. I don't want to take your**
19 **time, but --**

20 Q. Is the short answer that insurance
21 reimbursements have gone to entities that are not
22 wholly-owned subsidiaries?

23 **A. No insurance reimbursement has gone to an**
24 **entity that is not controlled 100 percent by Hygea,**
25 **whether through ownership or a management agreement.**

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1 Q. But insurance reimbursements have gone to
2 entities that are not wholly-owned subsidiaries,
3 correct?

4 **A. Yes.**

5 Q. Earlier we were discussing some bank
6 accounts. I believe you testified that there were
7 three Hygea Holdings accounts -- perhaps Hygea Health
8 Holdings at Wells Fargo, and that there were three at
9 another bank; is that correct?

10 **A. With the name of Hygea.**

11 Q. What other names would there be?

12 **A. There were -- there are bank accounts for**
13 **most of these entities listed in this page.**

14 Q. Now, do you currently have signatory rights
15 to the Hygea bank accounts?

16 **A. Yes, I do.**

17 Q. Okay. Who else has rights to those,
18 signatory rights to them?

19 **A. Currently Ted Moffly and Sergey Savchenko.**

20 Q. Now, for a long time, you were the only
21 person with signature --

22 **A. That never happened. There were at least**
23 **three signors on that account. That information said**
24 **yesterday in court was incorrect.**

25 Q. So it's your contention, it's your testimony

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1 that you never had sole signatory rights to any of the
2 Hygea accounts?

3 **A. That is correct.**

4 Q. And what about the accounts for the
5 wholly-owned subsidiaries other than Hygea Holdings
6 Corp., which is not a subsidiary, Hygea of Delaware,
7 LLC, and Hygea Health Holdings, Inc., as to the other
8 subsidiaries?

9 **A. What's the question?**

10 Q. I'm getting there.

11 As to the other subsidiaries --

12 **A. So Hygea of Delaware --**

13 Q. If I can finish?

14 **A. I'm sorry.**

15 Q. Of the other subsidiaries, who has control
16 over those bank accounts?

17 **A. Hygea of Delaware is a passive entity, has**
18 **no bank accounts. Hygea Health Holdings is one of two**
19 **entities that I mentioned had three accounts in**
20 **Wells Fargo and one or two accounts in CNB, City**
21 **National Bank.**

22 **In those accounts, the signors are -- we've**
23 **been in the process of getting Sergey on the accounts.**
24 **Definitely in CNB, he's on the accounts. And I believe**
25 **he's also on the accounts at Wells Fargo currently.**

<p style="text-align: right;">Page 523</p> <p>1 Q. I may have been unclear in how I asked the 2 question. I'm asking about the subsidiaries other than 3 Hygea of Delaware, other than Hygea Health Holdings, 4 Inc., the bottom-level or ground-level subsidiaries, 5 who has signatory rights over to those entities' bank 6 accounts. 7 A. Most of those, someone -- and I -- I don't 8 believe I have sole signature on any. I believe that 9 there are at least two or three signors on each one of 10 those entities. 11 Q. Who are the other signors? 12 A. Most of the ones that are still PAs that are 13 active have the signors of the selling physician, if 14 he was a signor at the time. And the rest, it's a 15 combination of Ted, now Sergey, and I. 16 Q. So the CFO wouldn't have signature -- 17 signatory rights to all those accounts, correct? 18 A. Ted Moffly was the CFO for the first umpteen 19 years of our organization, and he's always had 20 signature rights. As we transition now from his being 21 the CFO to Mr. Savchenko, Mr. Savchenko has been 22 brought in as a signor. 23 So currently we have in most of these 24 practices, in addition to the potentially selling 25 physician or an administrator in that practice who has</p>	<p style="text-align: right;">Page 525</p> <p>1 MedPlan Clinics; Medcare Quality Medical Centers; Mid 2 Florida Adult Medicine; Norman B. Gaylis, MDPA; 3 Patricia M. Martindale, MDPA; Physicians Group of 4 South Florida, PA; Solomon & Solomon Medical Clinic, 5 LLC; Saverstein & Horowitz, MDPA. 6 Q. You're no longer the CEO? 7 A. I am no longer the CEO. 8 Q. Is that correct? 9 A. That is correct. 10 Q. Were you terminated, or did you resign? 11 A. I resigned. 12 Q. When did you resign? 13 A. About two, three weeks ago. 14 Q. How did you effectuate that resignation? 15 A. At the board. We had a board meeting, and I 16 resigned, and we named Keith Collins initially interim 17 CEO -- actually, more than three weeks ago. And 18 subsequent to that, we've named a full -- full-term 19 CEO. We took the interim out. He's now full. 20 Q. So Mr. Keith Collins is the permanent CEO at 21 that point? 22 A. Yes, he is. 23 Q. And there is no other ongoing search for a 24 CEO? 25 A. Not at this point. We had a national</p>
<p style="text-align: right;">Page 524</p> <p>1 just discrete signing authority for PA, a combination 2 of Mr. Moffly, Mr. Savchenko, and I. And I'm in the 3 process of being taken out of signing authority across 4 the board as we speak. 5 Q. If there's a single CFO who has signatory 6 rights across the board, how does the CFO move money 7 between the entities within the network? 8 A. That's an accounting -- we move -- they're 9 in the same banks, and we move -- they're related 10 entities. They're wholly owned. And the way it's 11 structured within the entities, they can be moved, the 12 funds can be moved within the entities. 13 Q. Even without signature rights on the bank 14 accounts? 15 A. With electronic banking. 16 Q. What were the entities that were not 17 wholly-owned subsidiaries that received insurance 18 reimbursements? 19 A. At some point every physician practice for a 20 time being was not wholly owned, so -- 21 Q. Can you name a specific one? Can you 22 remember any specific one? 23 A. Sure. Amir Family, MDPA. 24 Q. Can you remember any other specific ones? 25 A. Cardella Consultants of West Broward;</p>	<p style="text-align: right;">Page 526</p> <p>1 search, interviewed a whole series of people, made one 2 or two offers. And at the end during the process 3 during which he had been interim CEO, we determined 4 that we had a tremendous CEO already sitting in place. 5 The board decided to offer him a permanent position. 6 Q. He's a better CEO than you were? 7 A. I hope so. 8 Q. Who did you make the offers to? 9 A. At one point we made an offer to a gentleman 10 identified by RIN Capital with their national search, 11 Michael Muchnicki, who had been the president of 12 United Health Care for South Florida. There are one 13 or two others that we interviewed. 14 Q. That you interviewed or that you made an 15 offer to? 16 A. We -- with the other one, I can't remember 17 the gentleman's name, but we negotiated, and at the 18 end it didn't work out. 19 Q. Why didn't it work out? 20 A. Well, with Michael Muchnicki, he's still 21 affiliated with us. He didn't want the full 22 responsibility of CEO. He is -- so we're trying to 23 renegotiate another status with him as well, either as 24 an in-house executive or as a consultant. 25 But he still works with us on a daily basis.</p>

<p style="text-align: right;">Page 527</p> <p>1 And the other gentleman just didn't work out. We 2 didn't think he had the qualities necessary for the 3 position. 4 Q. When you resigned to the board, did you do 5 that verbally or in writing? 6 A. I believe I did it verbally, but it was 7 memorialized in the board minutes, so it would be -- 8 Q. Have those board minutes been circulated to 9 your knowledge? 10 A. I assume so. 11 Q. You're still on the board, right? 12 A. I am on the board. 13 Q. In fact, you're the co-chair of the board; 14 isn't that correct? 15 A. I am the co-chair of the board. 16 Q. The board minutes have not been approved? 17 A. I believe for that position, they have been. 18 That position has been approved. And I believe those 19 board minutes, which are not -- have been circulated. 20 But I can't warrant that right now. 21 Q. You're not a CPA, correct? 22 A. No, sir. 23 Q. And you're not a doctor, correct? 24 A. Only in jurisprudence. 25 Q. And you are a lawyer?</p>	<p style="text-align: right;">Page 529</p> <p>1 Q. Have you ever received a referral fee for 2 work that somebody performed for or relating to Hygea? 3 A. Never. 4 Q. Has any law practice with which you were 5 engaged ever received such a -- such a referral fee? 6 A. No. Hygea was a client of a practice that I 7 was a member of ten years ago. Ruden McClosky, which 8 was one of the three largest healthcare practices in 9 Florida, and I was a member of the healthcare group in 10 that practice. 11 It was through Ruden McClosky that we evolved 12 the program for what ultimately became Hygea. And 13 Hygea at one point was a client and paid a lot of money 14 to Ruden McClosky, not for my work product. 15 Q. Has Hygea ever promised you compensation on 16 the basis of Hygea's EBITDA figures? 17 A. No. 18 Q. Have you ever negotiated on Hygea's behalf? 19 A. I'm sorry? 20 Q. You've negotiated things on Hygea's behalf, 21 correct? 22 A. Yes. 23 Q. You consider yourself to be a good 24 negotiator? 25 A. Adequate.</p>
<p style="text-align: right;">Page 528</p> <p>1 A. That is correct. 2 Q. You're a securities lawyer; isn't that true? 3 A. I've had two careers in law, one as a 4 corporate securities, and then this century -- that 5 was last century. This century I've been a healthcare 6 lawyer primarily. 7 Q. You've drafted documents as a lawyer, 8 correct? 9 A. Yes, I have. 10 Q. And been very careful when you draft 11 documents, right? 12 A. They always look worse in court, but yes. 13 Q. You never had a reputation as a lawyer of 14 someone who was prone to mistakes; is that true? 15 A. You're being too nice. 16 Q. Are you familiar -- do you currently maintain 17 a law practice? 18 A. I do not. 19 Q. When was the last time you represented 20 somebody, you had a legal client? 21 A. Eight years ago. Other than family, they 22 never go away, but -- and some friends. Basically 23 about eight years ago. 24 Q. Are you familiar with referral fees? 25 A. Yes.</p>	<p style="text-align: right;">Page 530</p> <p>1 Q. And you think you're good at sort of the 2 figuring out what the other side is looking for in 3 negotiation. Is that fair to say? 4 A. I haven't been able to figure out what 5 you're looking for. 6 Q. I'm tempted to move to strike, but I think 7 that's an answer. 8 You understand that you're a fiduciary to 9 Hygea Holdings Corp., correct? 10 A. Yes. 11 Q. And you continue to be a fiduciary as 12 co-chair of the board, correct? 13 A. Yes. 14 Q. Even though you're no longer CEO? 15 A. Could you define what your version of -- 16 definition of fiduciary is, please. 17 Q. Well, I'm asking your definition. You 18 consider yourself to be a fiduciary to Hygea; isn't 19 that correct? 20 A. I think so, yes. 21 Q. You understand that you have a duty of 22 loyalty to Hygea; isn't that correct? 23 A. Absolutely. 24 Q. Have you ever put yourself in an inherent 25 conflict of interest vis-a-vis Hygea Holdings Corp.?</p>

<p style="text-align: right;">Page 531</p> <p>1 A. Never.</p> <p>2 Q. Have you ever put yourself in any kind of</p> <p>3 conflict of interest vis-a-vis Hygea Holdings Corp.?</p> <p>4 A. Not to my knowledge.</p> <p>5 Q. If you thought that a receiver was the right</p> <p>6 thing for Hygea, would you advise the board as such?</p> <p>7 A. Absolutely.</p> <p>8 Q. And you wouldn't have any personal interest</p> <p>9 that would interfere with making a fair and impartial</p> <p>10 recommendation on that issue, would you?</p> <p>11 A. I don't think so.</p> <p>12 Q. Have you ever promised anyone to make any</p> <p>13 particular testimony regarding Hygea?</p> <p>14 A. No.</p> <p>15 Q. Have you ever promised to refrain from making</p> <p>16 any particular testimony regarding Hygea?</p> <p>17 A. Ask other people?</p> <p>18 Q. No. Have you ever -- have you ever promised</p> <p>19 to refrain from testifying as to some fact or condition</p> <p>20 relating to Hygea?</p> <p>21 A. Promised that I would not?</p> <p>22 Q. Correct.</p> <p>23 A. No, never.</p> <p>24 Q. If a receiver gets appointed, would that cost</p> <p>25 you money personally?</p>	<p style="text-align: right;">Page 533</p> <p>1 This is not part of the exhibit binder because this was</p> <p>2 produced subsequent to -- to the exchange of exhibit</p> <p>3 lists. It was produced I believe last Wednesday as</p> <p>4 part of the expert witness disclosure and along with</p> <p>5 the expert witness disclosure.</p> <p>6 THE COURT: You can show him.</p> <p>7 MR. KAYE: Thank you, Your Honor. If I may</p> <p>8 approach?</p> <p>9 THE COURT: When did you say it was produced</p> <p>10 last?</p> <p>11 MR. KAYE: Last Wednesday, I believe. We</p> <p>12 can, of course, double-check.</p> <p>13 THE COURT: Have you --</p> <p>14 MS. GALL: I have no idea what document this</p> <p>15 is.</p> <p>16 MR. KAYE: May I approach, Your Honor?</p> <p>17 THE COURT: Yes. Thank you.</p> <p>18 MR. KAYE: And I would ask to have it marked</p> <p>19 as an exhibit before we -- my apologies for failing to</p> <p>20 do that. I'm not sure what number we are at.</p> <p>21 THE COURT: The clerk will tell us.</p> <p>22 COURT CLERK: 194.</p> <p>23 MS. GALL: Your Honor --</p> <p>24 THE COURT: It's being marked. Go ahead.</p> <p>25 MS. GALL: I would object to it entirely even</p>
<p style="text-align: right;">Page 532</p> <p>1 A. I think it would be the death nail of Hygea</p> <p>2 as we know today as an ongoing entity, and it would</p> <p>3 cost my family a substantial amount of family. My</p> <p>4 family group is the largest shareholder in Hygea, and</p> <p>5 I would do nothing -- my goal is to enhance</p> <p>6 shareholder value for all because if we do, my boat</p> <p>7 floats rather high.</p> <p>8 Q. Aside from the indirect financial harm that</p> <p>9 you believe -- that you contend would come in the</p> <p>10 manner you just explained, would the appointment of a</p> <p>11 receiver cost you something personally?</p> <p>12 A. Not at all.</p> <p>13 Q. Have you promised anyone that you're going to</p> <p>14 keep this Court from appointing a receiver?</p> <p>15 A. I will do everything I can to persuade the</p> <p>16 Court that a receiver is a very bad idea for Hygea.</p> <p>17 Q. Have you promised anyone that you're going to</p> <p>18 keep it from happening?</p> <p>19 A. I promised myself I'm going to do everything</p> <p>20 possible to demonstrate to the Court that it would be</p> <p>21 a grave mistake for the benefit of Hygea and its</p> <p>22 shareholders, its 600 employees and the patients that</p> <p>23 we serve to have a receiver appointed.</p> <p>24 MR. KAYE: Your Honor, at this point I have a</p> <p>25 document that I would like to present to the witness.</p>	<p style="text-align: right;">Page 534</p> <p>1 being moved for an admission as an exhibit. It wasn't</p> <p>2 on the exhibit list. It wasn't requested in discovery.</p> <p>3 We simply produced this with our expert disclosure,</p> <p>4 even without counsel's request and even without any</p> <p>5 request for expert discovery in good faith.</p> <p>6 MR. KAYE: Your Honor, I have a couple of</p> <p>7 responses to that. First of all, this was -- as I</p> <p>8 mentioned, this was produced subsequent to the exchange</p> <p>9 of exhibit lists.</p> <p>10 And, in fact, we retained a placeholder on</p> <p>11 our exhibit list for any materials produced</p> <p>12 subsequent -- produced by defendants subsequent to</p> <p>13 April 30th. And this was produced subsequent to</p> <p>14 April 30th, several days after April 30th.</p> <p>15 Beyond that, the fact that -- that it was not</p> <p>16 requested in discovery, I mean, I hardly think that</p> <p>17 that somehow ought to count against us, in particular</p> <p>18 given the fact that there was, as we've discussed on</p> <p>19 several occasions, very circumscribed discovery in this</p> <p>20 case. We didn't ask about this because we didn't know</p> <p>21 about this document.</p> <p>22 Moreover, I think that the document -- and we</p> <p>23 have not yet moved to admit the document. So I</p> <p>24 certainly think that the -- at the very least we can</p> <p>25 examine the witness on it, although I do anticipate</p>

<p style="text-align: right;">Page 535</p> <p>1 that we're going to move for admission. 2 But the probative value here is quite -- is 3 quite significant, I believe. And I say that I believe 4 that in part because I personally have a lot of -- you 5 know, a lot of questions about this not even in the 6 lawyerly sense, but in the sense that it's a very 7 mysterious piece of paper to me. 8 THE COURT: Well, because Hygea produced it 9 I'm not going to prohibit them from asking questions. 10 It hasn't been offered yet. At this point no question 11 has been asked about it, so I'm not -- I'm not saying 12 there aren't objections that can be made. 13 MS. GALL: Okay. 14 THE COURT: But I'm not going to prohibit 15 them from asking Mr. Iglesias questions about it. Go 16 ahead. 17 MR. KAYE: Thank you, Your Honor. 18 Q. (By Mr. Kaye) Do you recognize this document? 19 A. Yes, I do. 20 Q. You signed this document, right? 21 A. Yes, I did. 22 Q. You initialed the first four pages of this 23 document; isn't that correct? 24 A. Yes, I did. 25 Q. You drafted this, didn't you?</p>	<p style="text-align: right;">Page 537</p> <p>1 'Borrower,' unconditionally promises and agrees to pay 2 to the order of \$3 million hereafter referred to, 3 together with each subsequent holder of this 4 promissory note (Note) as holder or lender, addresses 5 may be designated from time to time by holder, the 6 aggregate principal sum \$63 million (The Principal) in 7 lawful money of the United States, together with 8 interest in like lawful money from the date of 9 execution of this note at the interest rate and in the 10 manner set forth below." 11 Q. Now, I'm going to -- I think you skipped a 12 line saying whose place of business. And that came 13 between the definition of lender and address. 14 A. Yes. 15 Q. So could you read that line to complete that 16 record? 17 A. "With each subsequent holder of this 18 promissory note (as holder or lender) whose place of 19 business is 8750 N.W. 36th Street, Suite 300, Doral, 20 Florida 33178, or at such other addresses that may be 21 designated from time to time by any holder, the 22 aggregate outstanding principals on the \$3 million." 23 Q. Thank you. Who borrowed this money? 24 A. I did. 25 Q. And who lent you this money?</p>
<p style="text-align: right;">Page 536</p> <p>1 A. No, I didn't. 2 Q. Who did draft this? 3 A. I don't know. 4 Q. Well, who presented it to you to sign? 5 A. Lawyers for Bridging Finance. 6 Q. All right. And what lawyers for Bridging 7 Finance presented this to you? 8 A. I do not remember the name of the lawyer. 9 THE COURT: Did you say this is 194? 10 COURT CLERK: Yes. 11 THE COURT: Sorry. Go ahead. 12 Q. (By Mr. Kaye) Do you remember if it was the 13 gentleman from Bridging Finance who was listed on the 14 defendants' witness list? 15 A. I do not remember. 16 Q. Was it American counsel or Canadian counsel 17 for Bridging Finance? 18 A. To be honest with you, I don't remember. 19 Q. And I'm just going to ask you to read the 20 first paragraph into the record. 21 A. The one that says "for value received"? 22 Q. Yes, "for value received." 23 A. "For value received, and at times here 24 after -- hereinafter specified, the undersigned, Manny 25 Iglesias, a Florida resident, hereafter referred to as</p>	<p style="text-align: right;">Page 538</p> <p>1 A. Bridging Finance. 2 Q. What are you using this money for? 3 A. I put it into the company to address cash 4 flow shortages. 5 Q. Why did they lend it to you instead of just 6 lending it to the company? 7 A. I gave -- I asked for additional funding and 8 gave additional personal guarantees. 9 Q. We'll discuss that in -- in a moment. 10 Who did you negotiate this with? 11 A. Natasha Sharpe. 12 Q. Do you know why this says "pay to the order 13 of \$3 million"? 14 A. I think that's why -- the amount that they 15 were lending. 16 Q. But does it say anywhere in that first 17 paragraph who you owe the money to? 18 A. No, it doesn't. 19 Q. That wasn't a typo, was it? 20 A. I don't understand your point. 21 Q. Well, was it a typo or an oversight that it 22 doesn't say who is -- who is owed the money? 23 A. I -- again, I don't know enough about how 24 promissory notes are -- we received the money, and I 25 agreed to guarantee it.</p>

<p style="text-align: right;">Page 539</p> <p>1 Q. This isn't the first promissory note you've 2 come across in your professional life; isn't that true? 3 A. Couple others. 4 Q. And usually when it says paid -- "the 5 borrower promises and agrees to pay to the order of" 6 blank, what goes in the blank is the person who's owed 7 the money; isn't that right? 8 A. It doesn't have a blank. It's the holder of 9 the note is the one that is going to be repaid, so... 10 Q. Who is the holder of the note based on this? 11 A. In financial institutions, you have a lot of 12 people oftentimes who the financial institution is -- 13 does the paper, and they sell the paper to a third 14 party. 15 At the end of the day in a financial 16 instrument, you never know who the ultimate owner is. 17 And so it can be very sophisticated and have all kinds 18 of names, or it can be something as vanilla as this 19 where the ultimate holder is somebody not the one who 20 originally issued it. 21 Q. Don't they usually say who originally issued 22 it? 23 A. I wouldn't know. I couldn't opine. 24 Q. Because it looks to me here -- isn't it the 25 case that you signed a note where you're agreeing to</p>	<p style="text-align: right;">Page 541</p> <p>1 MR. KAYE: I'll withdraw the question. 2 Q. (By Mr. Kaye) That address, 8750 N.W. 36th 3 Street, Suite 300, what address that? 4 A. That's the corporate headquarters of Hygea 5 Holdings Corp. 6 Q. And the reference to Manny Iglesias is a 7 reference to you? 8 A. Yes, sir. 9 Q. Is there a reason that it says Manny Iglesias 10 instead of Manuel Iglesias? 11 A. No. Most people call me Manny, but it is 12 somewhat informal. 13 Q. Have you ever signed a loan document before 14 in which you were referred to as "Manny"? 15 A. If I was getting money, I would sign it. 16 Q. Humorous, but I move to strike because you 17 didn't answer the question. 18 THE COURT: Sustained. 19 THE WITNESS: I may have. I really can't 20 remember. 21 Q. (By Mr. Kaye) Have you ever listed Hygea's 22 address as your address on a personal promissory note 23 before? 24 A. It was a personal promissory note for funds 25 to go directly into Hygea, so that is my office.</p>
<p style="text-align: right;">Page 540</p> <p>1 pay \$3 million, \$2-\$3 million? 2 A. I wasn't the drafter of this note. I 3 will -- it has been reviewed by lawyers at my end, and 4 it's considered an adequate or correct legal document. 5 Q. Did you discuss -- I don't -- you don't need 6 to tell me what you talked about with your lawyers, but 7 did discuss that issue -- 8 A. Not at all. 9 Q. -- with Bridging? 10 A. No. 11 Q. Did your lawyers discuss that issue with 12 Bridging's lawyers to your knowledge? 13 A. I have no idea. 14 Q. As you look at it today, you realize that's 15 not a typo though, right? 16 A. I don't understand what you're trying to 17 infer. I think this is a perfectly legal promissory 18 note, personal guarantee, which I gladly made for the 19 benefit of Hygea. 20 Q. But it's written in a way such that when we 21 read the first paragraph, you can't tell who the lender 22 is; isn't that right? 23 MS. GALL: Objection, Your Honor. It's been 24 asked and answered. 25 THE COURT: Sustained.</p>	<p style="text-align: right;">Page 542</p> <p>1 Q. Who was in the room when you signed this 2 note? 3 A. I can't remember. 4 Q. Do you remember where you were when you 5 signed it? 6 A. Probably at Hygea. 7 Q. You gave a guarantee I believe you've already 8 testified; isn't that right? 9 A. Yes, sir. 10 Q. You gave that guarantee to Bridging, correct? 11 A. Yes, sir. 12 Q. Who was in the room when you signed the 13 guarantee? 14 A. The same person that was in the room -- I 15 don't remember. I think -- I really do not remember. 16 I signed them at the same time, so... 17 Q. Well, look at the dates though. Does that 18 change your recollection as to whether or not you 19 signed them on the same time? 20 And to unpack that a bit, perhaps, isn't it 21 true that the first page, and this is Bates number 22 9446, has a date up at the top right of March 4th, 23 2018; isn't that right? 24 A. It may have been a difference of timing in 25 terms of when each of these documents was produced by</p>

<p style="text-align: right;">Page 543</p> <p>1 the lender. I'm pretty sure I signed them both at the 2 same time, but I can't remember. 3 Q. Can you please read paragraph 2 of the 4 promissory note on the first page, Bates 9446. 5 A. "Unless an event of default" -- I'm sorry. 6 Number 2? 7 Q. Correct. 8 A. "Interest rate," bold, underlined, period, 9 "unless an event of default (as hereinafter defined) 10 shall have occurred and the default -- the default 11 rate (as hereinafter defined) shall be applicable, the 12 unpaid principal amount of this note shall bear the 13 interest rate equal to 14 (14 percent) per annum. 14 "For the period from March 10, 2018, to 15 September 9, 2018, interest will be in the form of 16 payment in kind (PIK) and be added to the principal. 17 For the period from September 10, 2018, until maturity 18 date, interest will be paid -- interest would be 19 current pay, paid on the 30th of every month." 20 Q. What does "payment in kind" mean? 21 A. Frankly, I don't know. 22 Q. Well -- 23 A. I'm assuming it's the interest that would be 24 accrued and added to the principal. That was my 25 understanding.</p>	<p style="text-align: right;">Page 545</p> <p>1 attempt to settle them in the best interests of 2 Hygea, (5) allow and assist Michael Muchnicki to focus 3 in all operational issues which he will have authority 4 over, (6) mandatory one-hour meeting to evaluate 5 spending for the following week and evaluate business 6 plan milestones." 7 Q. You talked about Mr. Muchnicki earlier. He 8 was considered to be CEO and did not become CEO? 9 A. That is correct. 10 Q. Are you complying with all these covenants 11 right now? 12 A. If you change the name of Muchnicki to Keith 13 Collins, he's actually been given a lot more 14 authority, and I'm much less involved. But basically 15 I think we're way beyond the spirit of this letter of 16 intent in terms of what we're doing now. 17 Q. It's not a letter of intent? 18 A. I mean this promissory note vis-a-vis the 19 lender. 20 Q. Have you discussed that noncompliance with 21 Bridging? 22 A. There is no noncompliance. This document 23 has evolved, and the relationship has evolved. Things 24 that are happening now are in full compliance with the 25 current agreements that we have, both verbal and in</p>
<p style="text-align: right;">Page 544</p> <p>1 Q. Have you made any payments on the note thus 2 far? 3 A. It's not September 10, 2018, yet. 4 Q. So right now you're in payment in kind mode? 5 A. Yes, sir. 6 Q. And you understand "payment in kind" means 7 money is added to the principal? 8 A. Yes, sir. 9 Q. Do you believe you're in default of this 10 note? 11 A. Not at all. 12 Q. Can you please read paragraph 5 on the next 13 page. And -- 14 A. Paragraph 5, "Covenants" underlined. "The 15 borrower agrees to the following changes and 16 improvements to Hygea. I work with Michael Muchnicki 17 to provide business plan with measurable milestones 18 and six months cash flows and budget broken down on a 19 weekly and monthly basis, (2) Michael Muchnicki and 20 Manny Iglesias to jointly agree to all Hygea's 21 disbursements (any conflict to be arbitrated by the 22 lender), (3) all of Hygea's current and future bank 23 accounts to be co-signed by Michael Muchnicki and 24 Manny Iglesias, (4) Manny Iglesias to focus on all of 25 Hygea's outstanding litigation -- litigations pool and</p>	<p style="text-align: right;">Page 546</p> <p>1 writing, with Bridging Financing, the lender. 2 Q. You testified that the relationship has 3 evolved. Are you testifying that this document has 4 evolved as well? 5 A. This document is a promissory note, and that 6 is still in full force. We have evolved the covenants 7 in number 5, and I think the lender is very happy with 8 where we are today in terms of this document and the 9 relationship. 10 Q. Isn't it true that paragraph 6 sets forth 11 certain events of default? 12 A. I'm sorry. And what is the question? 13 Q. The question is whether paragraph 6 sets 14 forth events of default? 15 A. That's what it's entitled, "Events of 16 Default." 17 Q. In fact, it says that, "The entire unpaid 18 principal balance under the note, together with all 19 unpaid interest, shall become immediately -- in 20 substance shall become immediately due and payable 21 without notice or demand upon the occurrence of any of 22 the events of default, regardless of the cause thereof, 23 and whether within or beyond the control of the 24 borrower"; isn't that correct? 25 A. That is correct.</p>

<p style="text-align: right;">Page 547</p> <p>1 Q. And can you please read the event of default 2 set forth at Section 6(c)? 3 A. "C, borrower shall (1) apply for all or 4 consent to the appointment of a receiver, trustee in 5 bankruptcy for the benefit of creditors, or liquidator 6 or borrower, or of any of its property; (2) admit in 7 writing its inability to pay its debt as they mature 8 or generally fail to pay such debts as they mature; 9 (3) make a general assignment for the benefit of 10 creditors; (4) be adjudicated -- be adjudicated, 11 bankrupt, or insolvent; (5) file a voluntary petition 12 in bankruptcy, or a petition or an answer seeking 13 reorganization or an arrangement with creditors, or 14 seeking to take advantage of any bankruptcy, 15 reorganization, insolvency, creditors, readjustments 16 of debt, dissolution or liquidation or law statute or 17 an answer admitting missing an act of bankruptcy 18 alleged in a petition filed against it in any 19 proceedings under any such law; or (6) take any action 20 for the purpose of affecting any of the foregoing; 21 or" -- that's the end of the paragraph. 22 Q. So that means that you promised not to admit 23 in writing that Hygea is unable to pay debts as they 24 mature; isn't that true? 25 A. No. I am the borrower. This is something I</p>	<p style="text-align: right;">Page 549</p> <p>1 A. Not at all. My family is a substantial 2 family with substantial assets, and I believe this 3 document deals with the assets that we've pledged and 4 deals with the receiver -- all the language here deals 5 with the assets of my family personally, not Hygea. 6 Q. And you haven't pledged any interest in Hygea 7 as part of this note? 8 A. I have pledged some -- the family's interest 9 in Hygea as part of this note, but Bridging Finance 10 has -- with its own agreement as a lender with Hygea 11 hasn't affected a demand note on Hygea and could 12 foreclose -- they have all kinds of remedies. They 13 don't need this to execute against Hygea. 14 Q. But they wanted this, didn't they? 15 A. They got it. 16 Q. And they asked you to -- they asked that 17 their name be minimized on here; isn't that true? 18 A. That's not my recollection. 19 Q. Has Bridging ever told you that they wanted 20 to avoid having to say that they are -- that the loan 21 to Hygea is in "default"? 22 A. The loan to Hygea is not in default. 23 Q. That's not what I asked. I asked has -- 24 excuse me. Has Bridging -- I may have misspoken. If I 25 did, I'm sorry.</p>
<p style="text-align: right;">Page 548</p> <p>1 can't do personally. I'm not binding Hygea. This 2 does not -- the way I read it, this does not apply to 3 Hygea, this applies to me personally. 4 Q. You don't think that Bridging had the issue 5 of Hygea's solvency, Hygea's litigation, Hygea's 6 potential receivership in mind when they drafted this? 7 MS. GALL: Objection, Your Honor; calls for 8 speculation. 9 THE COURT: Overruled. 10 THE WITNESS: I have no idea. 11 Q. (By Mr. Kaye) Let's -- can you please read 6(d). 12 A. "D. An order, judgment, or decree shall be 13 entered against borrower without borrower's 14 application, approval, or consent, by any court or of 15 competent jurisdiction, approving a petition 16 appointing a receiver, trustee, or liquidator of 17 borrower or of all or a substantial part of the assets 18 of borrower and such order, judgment, or decree shall 19 continue unstayed and in effect for a period of 30 20 consecutive days from the date of entry thereof." 21 Q. When they're talking about a petition 22 appointing a receiver, you understood -- over any or 23 all of -- all or a substantial part of your asset, you 24 understand that they're talking about a potential 25 receiver over Hygea, correct?</p>	<p style="text-align: right;">Page 550</p> <p>1 Has Bridging or any representative thereof 2 ever told you that they wanted to avoid having to say 3 that their loan to Hygea is in "default"? 4 MS. GALL: Objection, Your Honor. The 5 question calls for hearsay. 6 MR. KAYE: Your Honor, that's not asked for 7 the truth of the matter asserted. I'm asking if Hygea 8 has ever -- excuse me -- if Bridging has ever expressed 9 a desire. 10 THE COURT: Overruled. You can answer. 11 THE WITNESS: Could you repeat the question, 12 please. 13 (The following was read by the reporter: 14 "That's not what I asked. I asked has -- 15 excuse me. Has Bridging -- I may have 16 misspoken. If I did, I'm sorry. Has 17 Bridging or any representative thereof ever 18 told you that they wanted to avoid having to 19 say that their loan to Hygea is in 20 'default'?") 21 THE WITNESS: No. 22 Q. (By Mr. Kaye) Do you understand that if the loan 23 does go into technical default, that Bridging would have 24 to report that in some way? 25 A. I have no idea.</p>

<p style="text-align: right;">Page 551</p> <p>1 Q. That's not something you've ever discussed</p> <p>2 with anyone from Bridging?</p> <p>3 A. All I've discussed with Bridging is making</p> <p>4 sure we don't go into default.</p> <p>5 Q. And you've never discussed that with anyone</p> <p>6 on your side of the issue so to speak?</p> <p>7 A. No.</p> <p>8 Q. It's never something that's crossed your</p> <p>9 mind?</p> <p>10 A. No.</p> <p>11 Q. Has anyone from Bridging ever told you that</p> <p>12 they wanted to avoid a receiver over Hygea because that</p> <p>13 would trigger some sort of reporting requirement?</p> <p>14 A. Never. Never. They have told me they</p> <p>15 thought a receiver would be a bad business decision</p> <p>16 for Hygea for the same reasons that we've laid out so</p> <p>17 far.</p> <p>18 Q. Have you ever formed an understanding or an</p> <p>19 impression that Bridging wanted to avoid the</p> <p>20 appointment of a receiver because of a potential</p> <p>21 reporting requirement?</p> <p>22 A. Not at all.</p> <p>23 Q. Did you inform the board of the promissory</p> <p>24 note and personal guarantee?</p> <p>25 A. I believe so.</p>	<p style="text-align: right;">Page 553</p> <p>1 through the time of trial.</p> <p>2 This was not mentioned to us, even after</p> <p>3 April 30th when we did produce it as part of our expert</p> <p>4 disclosures without request by plaintiffs, without</p> <p>5 demand by plaintiffs in good faith, and after</p> <p>6 April 30th when they have amended their exhibit lists.</p> <p>7 MR. KAYE: Your Honor, I'm quite certain this</p> <p>8 was produced long after April 30th.</p> <p>9 MS. GALL: I apologize. I mean the</p> <p>10 Wednesday -- I can't remember the exact date, but it</p> <p>11 would be Wednesday, May 2nd.</p> <p>12 MR. KAYE: I still think that that's --</p> <p>13 MS. GALL: Is that still --</p> <p>14 MR. KAYE: I believe it's Wednesday, May 9th.</p> <p>15 MS. GALL: Okay. It was a Wednesday, which I</p> <p>16 remember. The day we were required to disclose our</p> <p>17 experts.</p> <p>18 MR. KAYE: That was one week ago today. I</p> <p>19 don't remember offhand, and I can find this out,</p> <p>20 Your Honor, there were a great deal of documents</p> <p>21 produced as part of that -- as part of that production.</p> <p>22 And I think upwards of -- well, this is Bates 9446 to</p> <p>23 begin with.</p> <p>24 So I think upwards of at least -- about</p> <p>25 10,000 pages that were produced on Wednesday, the 9th.</p>
<p style="text-align: right;">Page 552</p> <p>1 Q. When did you inform the board of that?</p> <p>2 A. After it was executed.</p> <p>3 Q. Do you remember the date that you informed</p> <p>4 the board?</p> <p>5 A. Sometime after March 10th.</p> <p>6 Q. Did you provide a copy of this to the board?</p> <p>7 A. I do not remember, but I know the board has</p> <p>8 totally -- intimately aware of this transaction. It's</p> <p>9 been discussed.</p> <p>10 Q. Who has discussed it?</p> <p>11 A. Actually, our -- my co-chair, Dan McGowan,</p> <p>12 on the board explained to the board what the</p> <p>13 components of this was. Obviously he's seen it.</p> <p>14 Q. Which components did he discuss with the</p> <p>15 board?</p> <p>16 A. I don't remember, but he just mentioned the</p> <p>17 fact that I had come through and had additional</p> <p>18 guarantees to bring additional funds into the company.</p> <p>19 MR. KAYE: Your Honor, at this time</p> <p>20 plaintiffs do move to introduce the exhibit. I believe</p> <p>21 it's 194?</p> <p>22 MS. GALL: Again, Your Honor, I renew my</p> <p>23 objection. This was not included on any exhibit list,</p> <p>24 including supplemental exhibit lists that were</p> <p>25 provided, amended by plaintiffs up to -- up to and</p>	<p style="text-align: right;">Page 554</p> <p>1 And that is, of course, just days before trial.</p> <p>2 Everyone was in the thick of preparations.</p> <p>3 Without getting into any sort of work product</p> <p>4 insight, this is not -- it's not like we got this along</p> <p>5 with two or three other pages last Wednesday. This was</p> <p>6 something that had to be dug out.</p> <p>7 That is simply a feature of the fact that it</p> <p>8 wasn't on the witness list, except in the form of the</p> <p>9 catchall reservation of exhibits, exhibit list. My</p> <p>10 apologies. That's simply a function of the late</p> <p>11 production and the expedited nature of the proceeding.</p> <p>12 THE COURT: Hang on one second. When did it</p> <p>13 get dug out?</p> <p>14 MR. KAYE: Your Honor, I think I -- you know,</p> <p>15 without waiving any sort of privilege, I think I saw it</p> <p>16 either -- probably very late on Monday evening, so</p> <p>17 that's -- right around midnight. I don't remember</p> <p>18 which -- which side of midnight. But it was probably</p> <p>19 about -- I think it was the Monday side of midnight.</p> <p>20 It was Monday evening.</p> <p>21 THE COURT: And who before you would have</p> <p>22 seen it on your side?</p> <p>23 MR. KAYE: Your Honor, I -- I believe that</p> <p>24 Ms. Szymanski on our team had originally found it.</p> <p>25 That may have been a few days earlier. It did not come</p>

<p style="text-align: right;">Page 555</p> <p>1 to my attention, what with all the traveling and -- and</p> <p>2 trial preparation.</p> <p>3 And I think it's sort of -- I saw it, like I</p> <p>4 said, Monday evening, and, you know, formed the</p> <p>5 impression that this was something that was -- that was</p> <p>6 worth -- that was worthwhile presenting to the Court,</p> <p>7 in part for all of the reasons I think you can -- I</p> <p>8 think my -- the questions sort of speak for themselves.</p> <p>9 I think this sheds light on what's happening here.</p> <p>10 THE COURT: Why couldn't -- why didn't you</p> <p>11 produce this to Ms. Gall Tuesday or this morning?</p> <p>12 MS. GALL: Well, Your Honor, once again, it</p> <p>13 was produced by -- by defendants. I take it the</p> <p>14 question to be why was it not -- why was it not --</p> <p>15 THE COURT: Identified as a document that</p> <p>16 would be used.</p> <p>17 MR. KAYE: Identified as an exhibit,</p> <p>18 disclosed as an exhibit. Your Honor, the reason is</p> <p>19 that, once again, this was -- there was a catchall</p> <p>20 reservation on the exhibit list for documents that</p> <p>21 would be produced by defendants after April 30th.</p> <p>22 This came well after -- well after</p> <p>23 April 30th. I have to believe that defendants were</p> <p>24 well aware of the document. I know Mr. Iglesias is</p> <p>25 obviously aware of the document, and he's indicated</p>	<p style="text-align: right;">Page 557</p> <p>1 working with the expert in this manner. And we</p> <p>2 disclosed everything that was sent to the expert to</p> <p>3 plaintiffs in good faith as part of our expert</p> <p>4 disclosure and without even request by plaintiffs'</p> <p>5 counsel for such documents.</p> <p>6 THE COURT: So in light of the questions that</p> <p>7 Mr. Kaye has asked Mr. Iglesias that weren't objected</p> <p>8 to --</p> <p>9 MS. GALL: And I haven't made that -- I</p> <p>10 haven't made that objection yet, Your Honor.</p> <p>11 THE COURT: Let's get to that objection.</p> <p>12 MS. GALL: Which is simply I would move to</p> <p>13 strike the entire line of questioning related to this</p> <p>14 document as completely irrelevant to the claims made in</p> <p>15 this case and the bases for the appointment of a</p> <p>16 receiver.</p> <p>17 MR. KAYE: Your Honor --</p> <p>18 THE COURT: To me the reason -- it seems to</p> <p>19 me it's obvious. But Mr. Kaye, what's the relevance?</p> <p>20 MR. KAYE: Your Honor, I think there's a</p> <p>21 couple of reasons why this is relevant. The first one</p> <p>22 is that it seems to me -- look, perhaps Mr. Iglesias</p> <p>23 has a different interpretation of the language, but it</p> <p>24 certainly seems to me that a lot of this language about</p> <p>25 receivership and so forth and the, you know, ability to</p>
<p style="text-align: right;">Page 556</p> <p>1 that the board was generally aware of the document.</p> <p>2 So I can't -- I would be surprised if there</p> <p>3 was a big element of surprise to it. And the -- given</p> <p>4 the comprehensive sort of late -- late production</p> <p>5 catchall and given the fact that I think as a practical</p> <p>6 matter it would seem to be something that -- that at</p> <p>7 least Mr. Iglesias was well aware of, and he's</p> <p>8 indicated that the rest of the board was aware of, we</p> <p>9 thought that there would not be an element of surprise</p> <p>10 to the party.</p> <p>11 MS. GALL: Your Honor, first of all, I would</p> <p>12 object to the characterization of this is a late</p> <p>13 production. Plaintiffs moved, as Your Honor is likely</p> <p>14 aware, for a motion for limited discovery under</p> <p>15 Rule 16.1. Your Honor granted that. We produced</p> <p>16 documents on April 23rd. In fact, they have taken</p> <p>17 issue with the documents we produced.</p> <p>18 This document would not have fallen within</p> <p>19 any of the documents that they requested in discovery.</p> <p>20 In addition, we produced on May 9th, not as a late</p> <p>21 production, but as part of our expert disclosure,</p> <p>22 although I was aware that this document existed as</p> <p>23 Hygea's lawyer.</p> <p>24 I did not even know that it was within the</p> <p>25 expert production because I have not been directly</p>	<p style="text-align: right;">Page 558</p> <p>1 pay its debts as they mature, it's not his debts, its</p> <p>2 debts. It seems to me that this is geared towards</p> <p>3 exactly the sort of proceeding that we're having here</p> <p>4 right now.</p> <p>5 And it certainly raises a question as to</p> <p>6 Mr. Iglesias' interests vis-a-vis Hygea and vis-a-vis</p> <p>7 this litigation. It seems to me that this puts him in</p> <p>8 a conflicted position.</p> <p>9 And that's significant for two reasons. It's</p> <p>10 significant, first of all, because it calls into</p> <p>11 question his -- you know, his credibility and so forth</p> <p>12 as -- as both -- as a witness, but also as a litigant</p> <p>13 in this matter because it seems as if he has a</p> <p>14 \$3 million stake in avoiding a receivership.</p> <p>15 But it also calls into question his adherence</p> <p>16 to his duty of loyalty, which he's admitted, to his</p> <p>17 fiduciary duties that he seems to have put himself in a</p> <p>18 conflicted position.</p> <p>19 Now, once again, he's got -- it seems as if</p> <p>20 he's got arguments about that, and those are certainly</p> <p>21 fair arguments to have, but the document itself</p> <p>22 certainly has evidentiary significance.</p> <p>23 And I would also say it's relevant even</p> <p>24 taking a step back -- a general sense. Defendants have</p> <p>25 said in -- I believe it was in their -- in their trial</p>

<p style="text-align: right;">Page 559</p> <p>1 statement that Bridging Finance has -- is ready, 2 willing, and able to -- I'm paraphrasing there -- but 3 ready, willing, and able to continue to finance Hygea. 4 And Mr. Iglesias testified earlier this morning that he 5 enjoys a good relationship with Bridging Finance. 6 Well, it's -- in light of that claim and in 7 light of that testimony, I think it's significant that 8 Mr. Iglesias has entered into this arrangement with 9 Hygea -- with Bridging Finance whereby he owes this 10 money with these rather -- some of these provisions 11 that seem to me to be rather onerous. 12 Conversely, it brings into question 13 Bridging's commitment to Hygea itself if this is the 14 sort of mechanism by which it is going to provide 15 additional financing to Hygea. 16 So I think in that first sense it's relevant, 17 and in the second sense it's relevant. Frankly, the 18 financing of Hygea is an important issue, and this is 19 an important document in considering that financing. 20 THE COURT: Have you stated all of your 21 objections? 22 MS. GALL: Yes, I had. 23 THE COURT: Is there anything -- you're the 24 one that objected, so I'll give you the last word. 25 MS. GALL: Your Honor, I would just say I</p>	<p style="text-align: right;">Page 561</p> <p>1 addition to -- to contending so, examine -- examine the 2 witness. 3 THE COURT: I'm not going to admit 194 on 4 grounds that this -- this has -- I mean, you're trying 5 to get a case through the court system in a very, very 6 short timeframe. 7 And -- but I asked both sides repeatedly 8 prior to trial if they wanted a continuance, and so 9 this is one of the costs of proceeding without full 10 discovery. 11 So I'm not going to admit 194. We're going 12 to go ahead and take a break until a quarter 'til, 13 2:45. You can step down. 14 THE WITNESS: Thank you, sir. 15 (Recess taken at 2:32, resuming at 2:45.) 16 THE COURT: 18 OC 71, Arellano v. Hygea. 17 Mr. Carlson and Ms. Gall are present on the defense 18 side. The plaintiffs' counsel are here. 19 So Ms. Gall, I'm not the most observant guy, 20 but I've noticed when Mr. Kaye has been doing his exam, 21 you've been doing this. Can you see now? 22 MS. GALL: I can. Thank you, Your Honor. 23 THE COURT: Are you able to see, Mr. Carlson? 24 MR. CARLSON: I can. Thank you, Your Honor. 25 THE COURT: That doesn't mess up anything on</p>
<p style="text-align: right;">Page 560</p> <p>1 don't want to take up the Court's time, but obviously I 2 disagree on the legal matter of whether this has placed 3 Mr. Iglesias into a conflict of interest position or 4 whether it's a violation of his duty of loyalty. 5 In addition, this is clearly an individual 6 loan agreement and security for an individual loan 7 agreement. And in addition to that, I do think we're 8 prejudiced by having this admitted into the record. 9 I understand Your Honor's point about the 10 testimony. But at the very least, if Your Honor is 11 going to allow the testimony to stand, I would say the 12 testimony could at least stand on its own, and the 13 document itself wouldn't exist in the public record. 14 THE COURT: Well, that is a way for me to 15 attempt to balance the document could have been 16 provided to the defense earlier than when it was handed 17 to the witness to review. 18 So is there something in here that you have 19 not asked Mr. Iglesias about you think is relevant and 20 otherwise admissible? 21 MR. KAYE: Your Honor, I would -- there are a 22 few other things that -- that I would inquire about 23 that I do believe are relevant. I think that the -- 24 the -- the best way to address the issue is to simply 25 have it admitted as an exhibit, but I'm happy to, in</p>	<p style="text-align: right;">Page 562</p> <p>1 this side? Good. 2 Go ahead, Mr. Kaye. 3 Q. (By Mr. Kaye) The documents that we've been 4 considering which is marked as 194, if you could refer 5 back to that, and I'm going to refer -- 6 A. The promissory note. Yes. 7 Q. The promissory note. Yes. 8 A. Yes, sir. 9 Q. Looking at Hygea_Greene_9447, could you 10 please read paragraph 4 into the record. 11 A. I'm sorry. Which -- 12 Q. Paragraph 4 at the top of the page, 9447. 13 A. There are no numbers here. You're talking 14 about the security? 15 THE COURT: It's the second page of the 16 promissory note. 17 Q. (By Mr. Kaye) Page 2 of the document. 18 A. Right. 19 Q. Paragraph 4. 20 THE COURT: Mine doesn't have Bates stamps 21 either. 22 MR. KAYE: My apologies. They must have been 23 cut off. I can state for the record that this is 24 Hygea_Greene_009446 through 009452. 25 Q. (By Mr. Kaye) So looking at page 2 of the</p>

<p style="text-align: right;">Page 563</p> <p>1 document, my apologies for referring to the Bates stamps 2 that weren't on your copy throughout the exam. 3 If you can please read paragraph 4 into the 4 record. 5 A. "4, Security," underscore. "The note is 6 secured by borrower's full and unconditional personal 7 guarantee, which includes but is not restricted to (1) 8 all of borrower's real estate (farm, house, condo), 9 (2) borrower's shares in Hygea Holdings Corp. (and all 10 of its affiliates and subsidiaries), collectively 11 referred to as Hygea, and (3) borrower's personal and 12 family trust signed by all trustees. Related 13 documentation including all forms of chattel and 14 mortgages will be perfected within 30 days." 15 Q. Does Bridging know all -- about all of your 16 assets? 17 A. They do now. 18 Q. So you have -- you have disclosed all of your 19 assets to Bridging? 20 A. I believe so. 21 Q. Can you please read the handwriting in the 22 space above paragraph 4. 23 A. "The security below does not include certain 24 insurance policies for the benefit of my sons. They 25 are comprised of one or more annuities for Manuel</p>	<p style="text-align: right;">Page 564</p> <p>1 Alejandro Iglesias and whole life policy for Carlos 2 Andreas Iglesias." 3 Q. And then you initialed that? 4 A. Yes. 5 Q. Who wrote that? 6 A. I wrote it in. 7 Q. And you underlined the word "not"; isn't that 8 correct? 9 A. That's correct. 10 Q. And can you turn to the first page, which is 11 page 6 of the personal guarantee. 12 A. Yes. 13 Q. And can you please read the first sentence of 14 that document into the record. 15 A. "In consideration of and as an inducement 16 for the granting, execution, and delivery of the 17 promissory note, dated March 10, 2018 (Note) by Manny 18 Iglesias (Borrower), to Bridging Finance, Inc. 19 (Lender), and in further consideration of the sum of 20 \$10 and other good and value consideration paid by 21 lender to the undersigned, the receipt and sufficiency 22 of which is hereby acknowledged, Manny Iglesias 23 (Guarantor and hereafter referred to collectively as 24 Guarantors) having an address of 8750 N.W. 36th 25 Street, Suite 300, Doral, Florida 33178, hereby</p>	<p style="text-align: right;">Page 565</p> <p>1 guarantees absolutely and unconditionally and joint 2 and several (1) the full and prompt payment of 3 principal and interest and all other charges or sums 4 payable by borrower pursuant to the note and (2) and 5 the prompt and full" -- I'm sorry -- "prompt, full and 6 faithful performance by borrower of all terms and 7 conditions of the note." 8 Q. And when that refers to the note, did you 9 understand that to be referring to the note that we've 10 been looking at here? 11 A. The front of Exhibit 194, yes, sir. 12 Q. And the amount of that note is \$3 million? 13 A. \$3 million. 14 Q. And if you can look at page -- page 5 of the 15 document, you signed the note, correct? 16 A. Yes, sir. 17 Q. And if you can look at page 7 of the 18 document, you signed the guarantee? 19 A. Yes, sir. 20 MR. KAYE: No further questions, Your Honor. 21 THE COURT: Ms. Gall? Do you want to 22 cross-examine now? 23 MS. GALL: I do, Your Honor, but I'd like to 24 reserve my right to recall Mr. Iglesias on direct. 25 THE COURT: You will have that right.</p>	<p style="text-align: right;">Page 566</p> <p>1 CROSS-EXAMINATION 2 BY MS. GALL: 3 Q. Good afternoon, Mr. Iglesias. Could you 4 please, if you have it -- do you have the volume 3 with 5 Exhibit 90 in front of you? 6 A. No, I have number 4. 7 MS. GALL: May I approach the witness, 8 Your Honor? 9 THE COURT: Yes. 10 Q. (By Ms. Gall) Mr. Iglesias, would you turn to 11 Exhibit 90 and specifically to the page Bates stamped 12 NV5000111. 13 A. I'm sorry. 90? 14 Q. Correct. Exhibit 90. 15 A. Which -- what number, ma'am? 16 Q. NV5000111. It's page 12 of the document. 17 A. Yes. 18 Q. Mr. Iglesias, do you remember earlier 19 testifying today regarding an email from Dr. Persaud to 20 yourself and a few others? 21 A. Yes. 22 Q. And do you recall testifying as to the 23 accusation made in the email regarding bounced checks? 24 A. Yes. 25 Q. And do you remember the date of that email</p>
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<p style="text-align: right;">Page 567</p> <p>1 being February 27th, 2018?</p> <p>2 A. Yes.</p> <p>3 Q. Mr. Iglesias, what is the date of your</p> <p>4 declaration?</p> <p>5 A. February 20th, 2018.</p> <p>6 Q. And so if you look at paragraph 74 on page 12</p> <p>7 of your declaration, where you state, "Hygea is not</p> <p>8 aware of any of its checks bouncing or any reason a</p> <p>9 check might bounce, any errors in the processing of one</p> <p>10 of Hygea's checks is not due to insufficiency of</p> <p>11 funds," was that a true and correct statement as of</p> <p>12 February 20th, 2018?</p> <p>13 A. Yes. I checked both for '17 and '18. We</p> <p>14 issued more than 15,000 payroll checks in '17, 2017.</p> <p>15 One check bounced, but not for insufficiency of funds,</p> <p>16 a technicality with the bank in 2017. And through</p> <p>17 February 20th of 2018, no payroll check, I believe for</p> <p>18 that matter any other check, had bounced in Hygea.</p> <p>19 Q. Do you have an explanation for why certain</p> <p>20 paper checks may have bounced after February 20th,</p> <p>21 2018?</p> <p>22 A. Certain practices that were cash flow</p> <p>23 positive, we swept all the practice revenue to Hygea</p> <p>24 Health Holdings and from there issued payroll. And on</p> <p>25 Wednesday and Thursday before the Friday --</p>	<p style="text-align: right;">Page 569</p> <p>1 A. It's the contract between Simply Healthcare</p> <p>2 Plans, which is an HMO owned by Anthem, and Medicare</p> <p>3 Quality Medical Centers, which is a wholly-owned</p> <p>4 subsidiary of Hygea.</p> <p>5 Q. Mr. Iglesias, would you please turn to the</p> <p>6 page marked HYGEA_000022.</p> <p>7 A. The pages here are not marked.</p> <p>8 Q. You're right. Would you please turn to the</p> <p>9 page that begins with the Section 9.2.</p> <p>10 A. Yes.</p> <p>11 Q. And do you recall earlier when plaintiffs'</p> <p>12 counsel had you read into the record the section</p> <p>13 beginning 9.4?</p> <p>14 A. Yes.</p> <p>15 Q. Would you please turn to the next page to</p> <p>16 Section 9.6.</p> <p>17 A. Yes.</p> <p>18 Q. Would you please read Section 9.6 into the</p> <p>19 record.</p> <p>20 A. Yes, ma'am. "Insolvency, bankruptcy,"</p> <p>21 underlined. "This agreement shall terminate (1) on</p> <p>22 the filing of a voluntary petition in bankruptcy or</p> <p>23 for reorganization under any bankruptcy law, or a</p> <p>24 petition for the appointment of a receiver of all or</p> <p>25 any substantial portion of the assets of either party,</p>
<p style="text-align: right;">Page 568</p> <p>1 February 23rd payroll, we were estopped by the doctors</p> <p>2 who were managing the Cohen practice, the Gaylis</p> <p>3 practice, and the Horowitz practice from sweeping</p> <p>4 money from those accounts to complete the payroll.</p> <p>5 So when we issued the approximate 600 checks</p> <p>6 for the 26th -- for the 23rd, we bounced 28 checks.</p> <p>7 Since then, we have bounced two other payroll checks</p> <p>8 that were held out of sequence. We have very tight</p> <p>9 cash management we've been going through. But those</p> <p>10 are the only payroll checks that have bounced.</p> <p>11 Q. With respect to the payroll checks that have</p> <p>12 bounced since February 20th, 2018, how has Hygea</p> <p>13 addressed that issue?</p> <p>14 A. The payments were made to the employees with</p> <p>15 additional monies to cover NSF charges, etc., within</p> <p>16 24 hours, maximum 48 in one case, but immediately upon</p> <p>17 hearing that a check had bounced.</p> <p>18 Q. Thank you very much. You can put that</p> <p>19 exhibit away. Could I have -- you can put that exhibit</p> <p>20 away, but please keep the exhibit binder.</p> <p>21 MS. GALL: Could I have volume 2, please.</p> <p>22 Q. (By Ms. Gall) Mr. Iglesias, would you please</p> <p>23 turn to Exhibit 70, please.</p> <p>24 A. Yes.</p> <p>25 Q. Mr. Iglesias, what is this document?</p>	<p style="text-align: right;">Page 570</p> <p>1 or any voluntary or involuntary steps to dissolve</p> <p>2 unless such steps to dissolve are promptly reversed or</p> <p>3 voided; 2) upon the consent by either party of an</p> <p>4 order for relief under the federal bankruptcy laws or</p> <p>5 the failure to vacate such an order for relief within</p> <p>6 ninety days (90) days from and after the date of entry</p> <p>7 thereof; (3) upon the entry of an order, judgment, or</p> <p>8 decree adjudging a party as bankrupt or insolvent or</p> <p>9 which appoints or provides for the taking of</p> <p>10 possession by a receiver, trustee, liquidator, or</p> <p>11 similar official for any of the property of a party</p> <p>12 and any such order, judgment, or decree continuing</p> <p>13 unstayed and, in effect, for a period of 90 days."</p> <p>14 Q. Thank you, Mr. Iglesias.</p> <p>15 Would you please turn to Exhibit 71, which is</p> <p>16 in the same volume. Mr. Iglesias, do you recognize</p> <p>17 this document?</p> <p>18 A. This is the Freedom contract with AllCare.</p> <p>19 Q. And --</p> <p>20 A. HMO contract. Sorry.</p> <p>21 Q. Understood. I apologize.</p> <p>22 And does your version of this document have</p> <p>23 Bates stamps?</p> <p>24 A. Yes, it does.</p> <p>25 Q. Would you please turn to the page marked</p>

<p style="text-align: right;">Page 571</p> <p>1 HYGEA_000093.</p> <p>2 A. Yes.</p> <p>3 Q. And do you remember earlier today reading</p> <p>4 this -- reading this document into the record or</p> <p>5 reading -- I'm sorry -- Section 4.3 and 4.3.1 into the</p> <p>6 record?</p> <p>7 A. Yes.</p> <p>8 Q. Would you please turn to the next page at</p> <p>9 4.3.4.</p> <p>10 A. 4.3.4. Yes.</p> <p>11 Q. Would you please read 4.3.4 into the record.</p> <p>12 A. "4.3.4: Plan may terminate this agreement</p> <p>13 and/or any group physician with cause effective</p> <p>14 immediately upon written notice. Plan may reasonably</p> <p>15 determine costs such that: A, group and/or group</p> <p>16 physicians continued participation in this agreement</p> <p>17 may adversely affect the health, well-being of any</p> <p>18 member or the reputation of the plan; B, group</p> <p>19 physician fails to pass plan credentialing criteria;</p> <p>20 C, group physician becomes unable to perform covered</p> <p>21 services under this agreement."</p> <p>22 Q. Thank you, Mr. Iglesias.</p> <p>23 Would you please turn to the other volume of</p> <p>24 documents that you have and turn to Exhibit 72.</p> <p>25 A. Yes, ma'am.</p>	<p style="text-align: right;">Page 573</p> <p>1 provider, plan must also provide (3) information</p> <p>2 regarding the network's provider's right to appeal the</p> <p>3 termination.</p> <p>4 "Cause' means any of the following events:</p> <p>5 A, if network or a network provider commences an action</p> <p>6 for relief as a debtor under the United States</p> <p>7 bankruptcy laws, or any bankruptcy, receivership,</p> <p>8 insolvency, reorganization, dissolution, liquidation or</p> <p>9 similar proceedings is instituted against network or</p> <p>10 any of the network's physicians or principals;"</p> <p>11 Q. Thank you. Would you please turn to the</p> <p>12 exhibit in the same binder, Exhibit 73.</p> <p>13 A. Yes, ma'am.</p> <p>14 Q. Do you recognize this document, Mr. Iglesias?</p> <p>15 A. Yes.</p> <p>16 Q. What is it?</p> <p>17 A. It's a Humana Health Plan Agreement, HMO</p> <p>18 agreement with somebody. One of our -- can't tell you</p> <p>19 who with. I'm sorry. Give me a second. With First</p> <p>20 Harbor MSO.</p> <p>21 Q. Okay. Mr. Iglesias, do you remember reading</p> <p>22 a provision of this document into the record earlier</p> <p>23 today?</p> <p>24 A. Yes, ma'am.</p> <p>25 Q. Would you please turn to HYGEA_000174.</p>
<p style="text-align: right;">Page 572</p> <p>1 Q. Mr. Iglesias, what is this document?</p> <p>2 A. It is the HMO agreement between Preferred</p> <p>3 Care Partners and MedPlan Clinic, LLC.</p> <p>4 Q. And you recognize this document, correct?</p> <p>5 A. MedPlan Clinic, LLC is a wholly-owned</p> <p>6 subsidiary of Hygea.</p> <p>7 Q. Is your version of the document Bates</p> <p>8 stamped?</p> <p>9 A. Yes, ma'am.</p> <p>10 Q. Would you please turn to the page Bates</p> <p>11 stamped HYGEA_000130.</p> <p>12 A. 130?</p> <p>13 Q. Correct.</p> <p>14 A. I'm here.</p> <p>15 Q. And do you remember reading a provision from</p> <p>16 this document into the record earlier?</p> <p>17 A. Yes.</p> <p>18 Q. Would you at this time read into the record</p> <p>19 Section 9.1, including section 9.1(a)?</p> <p>20 A. .1, "Termination for cause by plan,"</p> <p>21 underlined. "This agreement may be terminated by plan</p> <p>22 for cause with regard to network or any network</p> <p>23 provider by delivering to network written notice</p> <p>24 stating: (1) effective date of termination; (2)</p> <p>25 reasons for termination. If terminating a network</p>	<p style="text-align: right;">Page 574</p> <p>1 THE COURT: Mine doesn't have the Bates</p> <p>2 stamp. What paragraph are you going to be looking at?</p> <p>3 MS. GALL: It is the page beginning with</p> <p>4 Section 6.2 and going into section 7.1.</p> <p>5 THE COURT: Okay.</p> <p>6 Q. (By Ms. Gall) Mr. Iglesias, was the provision</p> <p>7 that you read into the record earlier today Section 7.2?</p> <p>8 A. Yes.</p> <p>9 Q. Would you please read into the record</p> <p>10 Section 7.3.</p> <p>11 A. 7.3. "Humana may terminate this agreement,</p> <p>12 or any individual participating provider, immediately</p> <p>13 upon written notice to IPA or any IPA provider,</p> <p>14 stating the cause for such termination, in the event;</p> <p>15 (1) APAs or any APA providers, or any individual</p> <p>16 participating providers, continue participation under</p> <p>17 this agreement may adversely affect the health, safety</p> <p>18 or welfare of any member or brings Humana or its</p> <p>19 healthcare network into disrepute; (2) IPA or any IPA</p> <p>20 provider or any individual participating provider</p> <p>21 fails to meet Humana credentialing or recredentialing</p> <p>22 criteria; (3) IPA or any IPA provider or any</p> <p>23 individual participating provider is excluded from</p> <p>24 participating in any federal healthcare program; (4)</p> <p>25 IPA or any IPA provider or any individual</p>

<p style="text-align: right;">Page 575</p> <p>1 participating provider voluntarily or involuntarily 2 seeks protection from creditors through bankruptcy 3 proceedings or engages in or acquiesces to 4 receivership or assignment of accounts for the benefit 5 of creditors; or (5) Humana loses its authority to do 6 business in total or as to any limited segment of the 7 business, but then only as to that segment." 8 Q. Thank you, Mr. Iglesias. 9 Would you please turn to Exhibit 75 in the 10 same binder. 11 A. Yes. 12 Q. Okay. Would you please turn -- is your 13 version Bates stamped, Mr. Iglesias? 14 A. Yes, ma'am. 15 MS. GALL: Your Honor, is your version Bates 16 stamped? 17 THE COURT: It is. 18 Q. (By Ms. Gall) Would you please turn to the page 19 where the Bates stamp is on side to HYGEA_000268. 20 A. Yes, ma'am. 21 Q. And do you recall reading a provision of this 22 document into the record earlier today? 23 A. Yes. 24 Q. Was that provision 9.4? 25 A. Yes.</p>	<p style="text-align: right;">Page 577</p> <p>1 Mr. Iglesias, do you have an opinion as to 2 whether or not the HMOs would exercise their -- the 3 termination for cause provisions we've just read if 4 this Court appoints a receiver over Hygea Holdings 5 Corp.? 6 MR. KAYE: Objection, Your Honor. I don't 7 believe that the foundation has been laid for -- 8 THE COURT: Sustained. 9 Q. (By Ms. Gall) Mr. Iglesias, what is your 10 experience with HMOs? 11 A. I'm a member of the health law section of 12 the Florida Bar. I've practiced healthcare law for 13 approximately 12 years before devoting full-time 14 efforts to Hygea. 15 I have been the founder and general counsel 16 of an HMO as -- as a lawyer. I feel comfortable and 17 knowledgeable of what -- regulatory processes for HMOs 18 and how they work. 19 Q. Are you aware of any instances in which HMOs 20 have canceled HMO contracts similar to these upon the 21 appointment of a receiver over a company? 22 A. Yes. 23 Q. I'll repeat my question. 24 Do you hold an opinion as to whether or not 25 the HMOs under the contracts we've just looked at would</p>
<p style="text-align: right;">Page 576</p> <p>1 Q. Okay. Would you please turn to the page -- 2 the next page, HYGEA_000267. 3 A. The previous page? 4 Q. Correct. I apologize. The previous page. 5 A. Yes. 6 Q. Okay. Would you please read into the record 7 Section 9.1, including 9.1(A). 8 A. 9.1. "Termination for cause by plan," 9 underscored. "This agreement may be terminated by 10 plan for cause with regard to network or any network 11 provider by delivering to network written notice 12 stating: (1) the effective date of termination; (2) 13 reasons for the termination. 14 "If terminating a network provider, plan must 15 also provide (3) information regarding the network 16 provider's right to appeal the termination. The term 17 'cause' means any of the following events: A, if 18 network or a network provider commences an action for 19 relief as a debtor under the United States bankruptcy 20 laws, or any bankruptcy, receivership, insolvency, 21 reorganization, dissolution, liquidation or similar 22 proceedings is instituted against network or any of 23 network's physicians or principals." 24 Q. Thank you. You can put the exhibit binder 25 away.</p>	<p style="text-align: right;">Page 578</p> <p>1 exercise the termination for cause provision if this 2 Court appointed a receiver over Hygea? 3 MR. KAYE: Your Honor, I'm going to renew my 4 objection. I still don't believe there's sufficient 5 foundation for a lay opinion as to this. There's -- 6 the witness has testified the instances of 7 cancellation, but nothing further beyond that and his 8 general background. 9 THE COURT: Overruled. You can answer. 10 THE WITNESS: It is my opinion that the HMOs 11 would cancel upon the appointment of a receiver, but 12 would use the not for cause provision because what they 13 have found is when they use the for cause provision, it 14 usually brings collateral litigation to the HMO for 15 issues that they haven't created. But the fact is they 16 will cancel or are apt to cancel if an entity goes into 17 receivership. 18 Q. (By Ms. Gall) Mr. Iglesias, do you have a basis 19 for your opinion? 20 A. I've discussed it with the president of 21 Health Sun Health Plan, the past president and CEO. 22 He just left about two weeks ago. And other people in 23 the healthcare industry. 24 MR. KAYE: Objection; hearsay. This is 25 statements that another individual conveyed to him</p>

<p style="text-align: right;">Page 579</p> <p>1 apparently.</p> <p>2 THE COURT: Ms. Gall?</p> <p>3 MS. GALL: I believe Mr. Iglesias is merely</p> <p>4 testifying to he has not made -- he has not introduced</p> <p>5 into the record any hearsay statements. He's merely --</p> <p>6 he's merely testifying as to discussions that he's had.</p> <p>7 THE COURT: The hearsay objection is</p> <p>8 sustained.</p> <p>9 Q. (By Ms. Gall) Mr. Iglesias, do you still have</p> <p>10 with you the promissory note and personal guarantee that</p> <p>11 plaintiffs' counsel --</p> <p>12 A. 194?</p> <p>13 Q. Correct.</p> <p>14 A. Yes.</p> <p>15 Q. -- that plaintiffs' counsel questioned you</p> <p>16 on? And do you recall the questioning regarding</p> <p>17 conflicts of interest?</p> <p>18 A. Yes.</p> <p>19 Q. Do you believe that by having entered into</p> <p>20 this promissory note and personal guarantee that you</p> <p>21 have placed yourself into a position of a conflict of</p> <p>22 interest?</p> <p>23 A. No, not at all.</p> <p>24 Q. Can you explain why?</p> <p>25 A. My family group is the largest shareholder</p>	<p style="text-align: right;">Page 581</p> <p>1 So, for example, we achieved -- you just</p> <p>2 received the final QOE showing \$35 million EBITDA for</p> <p>3 '17. We have internally completed numbers for the</p> <p>4 first quarter of '18 and are on a 60 million annualized</p> <p>5 EBITDA for '18.</p> <p>6 If you averaged those out -- assuming a sale,</p> <p>7 for example, June 30th we'll have about \$45 million in</p> <p>8 EBITDA times eight, it's approximately a \$400 million</p> <p>9 valuation. And my family owns about 25 percent of the</p> <p>10 company.</p> <p>11 MR. KAYE: Your Honor, I'm going to move to</p> <p>12 strike everything that came after the indication that,</p> <p>13 "I had just received a copy of the QOE." It is true,</p> <p>14 it is accurate that something purporting to be the QOE</p> <p>15 was handed to me during I think the most recent break,</p> <p>16 within the past hour or so.</p> <p>17 That is something that I -- I assume we're</p> <p>18 going to have some motion practice about going forward,</p> <p>19 but I don't believe the foundation for that has been</p> <p>20 laid in any respect thus far.</p> <p>21 THE COURT: Ms. Gall?</p> <p>22 MS. GALL: Your Honor, Mr. Kaye asked the</p> <p>23 question about how Mr. Iglesias is valuing his family's</p> <p>24 stake in the company. That is how Mr. Iglesias is</p> <p>25 valuing the stake in the company. I think it's fair to</p>
<p style="text-align: right;">Page 580</p> <p>1 in Hygea, and we have a stake that's valued in the</p> <p>2 market today north of \$50 million in Hygea. And to --</p> <p>3 during this very difficult period that we've gone</p> <p>4 through, to add a personal guarantee of an additional</p> <p>5 3 million to make sure that not only my interests but</p> <p>6 the interests of the other shareholders comes out</p> <p>7 positive at the end of this process is worth the risk.</p> <p>8 And I thought not only it's not a conflict of</p> <p>9 interest, I should have been patted on the back.</p> <p>10 MS. GALL: Thank you, Your Honor. I have no</p> <p>11 further questions.</p> <p>12 THE COURT: Cross-exam -- redirect? Excuse</p> <p>13 me.</p> <p>14 REDIRECT EXAMINATION</p> <p>15 BY MR. KAYE:</p> <p>16 Q. Mr. Iglesias, you testified within about the</p> <p>17 past minute as to the stake that your family has in</p> <p>18 Hygea and its value in the market, correct?</p> <p>19 A. Yes, sir.</p> <p>20 Q. How have you valued it in the market?</p> <p>21 A. There's been a tremendous consolidation in</p> <p>22 the marketplace at least in Florida over the last two</p> <p>23 years, and the market value of a company today in</p> <p>24 Florida is conservatively eight times -- eight to nine</p> <p>25 and a half times EBITDA on a 12-month back-looking.</p>	<p style="text-align: right;">Page 582</p> <p>1 allow it in.</p> <p>2 THE COURT: The objection's overruled.</p> <p>3 MR. KAYE: Thank you.</p> <p>4 Q. (By Mr. Kaye) Mr. Iglesias, you spoke in some</p> <p>5 detail about the -- about the circumstances relating to</p> <p>6 some bounced paychecks a few moments ago; isn't that</p> <p>7 correct?</p> <p>8 A. Yes, sir.</p> <p>9 Q. You seemed to have a pretty clear memory</p> <p>10 about those bounced paychecks, correct?</p> <p>11 A. Yes, sir.</p> <p>12 Q. Is it safe to say your memory about the</p> <p>13 bounced paychecks is better than your memory about the</p> <p>14 circumstances of your execution of the promissory note</p> <p>15 that we've been discussing?</p> <p>16 A. I wouldn't say so.</p> <p>17 Q. I want to go back to the -- strike that.</p> <p>18 You testified regarding your opinion as to</p> <p>19 the -- why an HMO might -- might terminate a contract,</p> <p>20 correct, a contract with a medical provider?</p> <p>21 A. Yes.</p> <p>22 Q. And in your experience and observation, HMOs</p> <p>23 will cancel contracts with providers for reasons other</p> <p>24 than receivership, correct?</p> <p>25 A. Yes.</p>

<p style="text-align: right;">Page 583</p> <p>1 Q. And if medical practices experience or 2 medical plans experience severe financial distress or 3 operational distress, that could cause a termination 4 too, correct? 5 A. Yes. 6 MR. KAYE: No further questions, Your Honor. 7 THE COURT: Recross on those questions? 8 MS. GALL: I don't have any at this time, 9 Your Honor. 10 THE COURT: You can step down. 11 THE WITNESS: Thank you, sir. 12 THE COURT: Your next witness? 13 MR. KAYE: Your Honor, at this point 14 plaintiffs rest their case in chief. 15 THE COURT: Ms. Gall, do you have your first 16 witness here? 17 MS. GALL: Your Honor, I'm going to be making 18 a judgment as a matter of law at this point. 19 THE COURT: Okay. 20 MS. GALL: Your Honor, plaintiffs have moved 21 for receiver -- and let me back up. I'm making a 22 judgment as a matter of law or in the alternative a 23 judgment on partial findings. 24 Plaintiffs have moved for a receiver under 25 three bases, 78.650, 78.630, and 32.010. Let me first</p>	<p style="text-align: right;">Page 585</p> <p>1 that despite the corporation being solvent, it is 2 unable to pay its debts as they mature, I do not 3 believe that plaintiffs have met their burden of 4 showing by a preponderance of the evidence that the 5 corporation is unable to pay its bona fide debts as 6 they mature. 7 Although we have certainly heard discussions 8 about debts that may be unpaid, the corporation is 9 managing those debts at this time. And I do not 10 believe that plaintiffs have met the preponderance of 11 the burden showing that the extraordinary relief of a 12 receiver is warranted at this time. 13 Moreover, I don't think that the plaintiffs 14 have shown that a receiver would actually address the 15 cash constraints that the corporation has admitted that 16 it is facing on a short-term basis. 17 With respect to 78.650(a), that the 18 corporation has willfully violated its charter, I do 19 not believe plaintiffs have presented any evidence, 20 much less a preponderance of the evidence, that the 21 corporation has done anything to violate its charter. 22 I do understand that in their trial 23 statement, they attempt to allege that the corporation 24 has violated its bylaws. The corporation has not 25 violated its bylaws. But in any event, bylaws do not</p>
<p style="text-align: right;">Page 584</p> <p>1 address 32.010. That is a provision that allows for 2 the appointment of a receiver in a matter where there's 3 already a pending claim other than that for the 4 appointment of a receiver in the Court. It is an 5 ancillary remedy to another claim to preserve the 6 status quo during the pendency of that claim. 7 I ask for a judgment as a matter of law on 8 that claim given that we are at the trial of the matter 9 here and, therefore, once this matter concludes, there 10 will be no other claim pending or other assets pending 11 for receiver to maintain the status quo over. 12 With respect to 78.650, I'll address the 13 provisions regarding insolvency and then solvency and 14 then, despite solvency, that the corporation is unable 15 to pay its debts as they mature. 16 With respect to insolvency, I do not believe 17 plaintiffs have presented any evidence, much less met 18 their burden of a preponderance of the evidence, that 19 the corporation is insolvent as that term is understood 20 and employed in the Nevada Revised Statutes, which is 21 simply that the fair market value -- I apologize, 22 Your Honor -- that the liabilities of the corporation 23 exceed the fair market value of the assets of the 24 corporation. 25 With respect to the second monetary provision</p>	<p style="text-align: right;">Page 586</p> <p>1 constitute the corporation's charter. 2 The charter, Your Honor, is the articles of 3 incorporation of the -- the articles of incorporation 4 of the company. And there has been absolutely no 5 evidence here, much less even admission of the articles 6 of incorporation into the record, if I remember 7 correctly, I'm happy to be corrected on that, that the 8 corporation has violated any of the terms of its 9 articles of incorporation. 10 With respect to the next two provisions, B 11 and C, regarding that the trustees or directors have 12 engaged in fraud or gross mismanagement or that the 13 trustees or directors have engaged in malfeasance, 14 misfeasance, or nonfeasance, what we have seen from 15 plaintiffs, Your Honor, is a concentration on the 16 actions, the purported actions, of Mr. Iglesias, 17 Mr. Moffly, and Mr. Savchenko -- I'm sorry, I should 18 take Mr. Savchenko out -- Mr. Iglesias and Mr. Moffly 19 in their capacities as CEO and CFO. There have been no 20 allegations and no evidence presented against them in 21 their capacity as directors of the company. 22 In addition to that, the directors of Hygea 23 are nine in number. There have been no allegations and 24 no evidence presented that the agencies -- that the 25 directors working as a majority, which is how the</p>

<p style="text-align: right;">Page 587</p> <p>1 directors have to act, have engaged in fraud, gross 2 mismanagement, malfeasance, misfeasance, or 3 nonfeasance. 4 And, therefore, I would ask for a judgment as 5 a matter of law under plaintiffs' claims under 78.650. 6 With respect to 78.630, I believe that those claims 7 under 78.630 merely fall within the ambit of 78.650, 8 and, therefore, if Your Honor grants a judgment as a 9 matter of law or a judgment as a matter of partial 10 findings, it should be encompassed under 78.630 as 11 well. 12 For these reasons, Your Honor, we would move 13 for a judgment as a matter of law and seek immediate 14 dismissal of this case, or at the very least judgment 15 on partial findings as to discrete parts of the claim, 16 including, Your Honor, for purposes of efficiency so 17 that we can narrow the remainder of this case and 18 determine what defenses we will put on if this case 19 continues. 20 Thank you, Your Honor. 21 THE COURT: Mr. Kaye? 22 MR. KAYE: Your Honor, thank you. A couple 23 of responses which will, I think by necessity, speak a 24 little bit to our case in total and also respond to 25 counsel's specific arguments.</p>	<p style="text-align: right;">Page 589</p> <p>1 Now, that gets to the misfeasance, 2 malfeasance. We've heard evidence, and I don't think 3 it's a huge part of this case, but we've heard evidence 4 that some of those figures that Mr. Dragelin seemed to 5 conclude were unsupported and, perhaps, exaggerated had 6 been presented to one of the shareholders here, N5HYG's 7 parent, as -- during the period of their investment 8 decision. So that gets to -- that shows some 9 misfeasance or malfeasance. 10 Now let's talk about the board's role in that 11 because that's a point that counsel just raised. It's 12 true that when we talk about those financial metrics, 13 that's primarily a discussion that we've seen on an 14 evidentiary basis relating to the top executives at 15 Hygea. 16 But the board is responsible for the 17 oversight of Hygea. And look -- look at the word in 18 the statute there, nonfeasance. Now, the indication we 19 just heard from counsel is that, well, we haven't shown 20 any fraud on the part of -- of the board. 21 I'm not sure that's true because one of the 22 emails that -- that was provided to Dan Miller, and I 23 don't have the exhibit -- exhibit number offhand, but 24 one of the emails that was passing along some of those 25 financial figures that we contend were exaggerated</p>
<p style="text-align: right;">Page 588</p> <p>1 First of all, I want to talk about the 2 statutory bases here and -- and how they interrelate to 3 one another. I think that there is some measure of 4 interrelation as counsel alluded to starting at 78.630, 5 which speaks to either insolvency or an operation of 6 the corporation at a great loss that's greatly 7 prejudicial to the interests of stockholders. 8 And we have spoken at length about the -- the 9 criteria set forth in 78.650. And I will speak to -- 10 to some further length as to those. We have seen at 11 the outset -- from the outset, excuse me, I think 12 substantial evidence of either misfeasance, 13 malfeasance, or nonfeasance from the leadership of 14 Hygea. 15 We have seen evidence of overstated financial 16 performance and financial indications in the company's 17 books that an outside consultant, Mr. Dragelin, that 18 Hygea hired found to be, I think it's fair to say, 19 unsupported. 20 Now, I think it's very -- it's very 21 interesting when you look at the -- I don't have the 22 exhibit in front of me, I believe it's 28 or 29, that 23 showed the numbers that management was proposing and 24 compared those to the numbers that Mr. Dragelin and his 25 team thought were supportable.</p>	<p style="text-align: right;">Page 590</p> <p>1 indicated that this is what's been approved by the 2 board. 3 But set that aside, set the issue -- set 4 aside the issue of whether or not the board engaged in 5 some sort of affirmative misconduct. I think the 6 record is very clear that the board at the very 7 least -- that the board at the very -- at the very 8 least was -- was, to put a fine point on it, asleep at 9 the switch here. 10 And that's nonfeasance. And under counsel's 11 suggestion that we would need to show affirmative 12 misconduct, I think the nonfeasance part of the statute 13 becomes dead letter. 14 I'm thinking here particularly of the 15 August 2017 board minutes, which the co-chair of the 16 board, Dan McGowan, says, "We live or die by the 17 audits." 18 We heard a lot about the audits. I think the 19 audits are interesting not just in and of themselves 20 that the corporation couldn't -- management couldn't 21 get the audits done, but management was either unable 22 to do them or unwilling to do them and show what 23 they -- show the world what they might say or show the 24 stakeholders what they might say, despite the repeated, 25 repeated promises to get them done and the repeated</p>

<p style="text-align: right;">Page 591</p> <p>1 representations that they were just around the corner. 2 That was August of 2017. And look at 3 everything that's happened since then. And that gets 4 to one of the things we have discussed, which is 5 whether or not the corporation is solvent, the question 6 of whether or not it's able to pay its bills as they 7 come due. 8 There was some discussion here of bona fide 9 debts and so forth. I don't think we need to 10 adjudicate each and every obligation here. We've had 11 Mr. Iglesias admit that Bridging Finance, the primary 12 lender, was unpaid in July -- for July and August of 13 2017. 14 We've also seen indications from doctors 15 that -- that payments weren't made. We heard from 16 Dr. Gaylis that the payments for his medication -- 17 literally the lifeblood of his -- of his practice was 18 unpaid. 19 We've heard about -- we've just heard from 20 Mr. Iglesias about bounced checks to front line 21 employees, bounced paychecks, and we've known for some 22 time about the -- the failure to pay executives, 23 including we saw Mr. Miller, who also testified that he 24 was engaged in the efforts to try to get things paid 25 when vendors were coming to the corporation having</p>	<p style="text-align: right;">Page 593</p> <p>1 very unusual document with relation to a very unusual 2 sort of arrangement that does not seem to be 3 sustainable. If we are down to putting liens on 4 Mr. Iglesias' farm, the end for Hygea looks 5 frighteningly close. 6 And I think that -- though the criteria under 7 78.650 are -- are significant here, not just from the 8 perspective of looking under that statute, and once 9 again, as we've said, we only need to -- we only need 10 to meet one, and we meet several in an interrelated 11 manner. 12 But it also informs the Court's exercise of 13 its inherent authority under -- under NRS 32.010, which 14 provides that, "A receiver may be appointed by the 15 Court in which an action is pending or by the judge 16 thereof; (6) in all other cases where receivers have 17 heretofore been appointed by the usages of the courts 18 of equity." 19 And there is -- the appointment of receivers 20 and circumstances such as this is well founded in 21 equity. I'm reading here from an ALR, 43 ALR 242, 22 originally published in 1926. 23 The rule has now settled that a court of 24 equity has inherent jurisdiction at the instance of 25 stockholders in a proper case to appoint a receiver for</p>
<p style="text-align: right;">Page 592</p> <p>1 significant problems with that. 2 We know about the mounting pile of 3 litigation. That was even referenced in the promissory 4 note that we just -- that we just heard about. And we 5 know that Hygea -- that Mr. Iglesias has admitted that 6 Hygea was failing to pay taxes. 7 So there is overwhelming indicia of a failure 8 to pay bills as they come due. I think that the 9 violation of the bylaws is illustrative and it speaks 10 to the -- it speaks to the interests of -- of corporate 11 governance that the statute seeks to protect. 12 I think the answer as to why it was -- why 13 Mr. Fowler was not provided access was because he had 14 not executed -- executed a power of attorney, well, 15 look, if we're going to argue every -- every -- the 16 dotting of every I and crossing of every T, I suppose 17 we can do that. But it still speaks to whether or not 18 the corporation is -- is engaged in the spirit of -- of 19 the bylaws and the spirit of respecting the rights of 20 its shareholders. 21 This all raises very serious concerns about 22 the corporation's ability to continue as a -- to 23 continue and to survive. What we've seen in the last 24 few hours is that the apparent lifeline that has been 25 thrown to -- by Bridging Finance came in the form of a</p>	<p style="text-align: right;">Page 594</p> <p>1 a solvent corporation on the ground of fraud, gross 2 mismanagement, or dissensions among the shareholders, 3 directors, or officers if there is no other adequate 4 remedy. 5 The case law that defendants have relied on 6 throughout this -- throughout this matter to suggest 7 that there needs to be an ancillary proceeding is I 8 believe unpersuasive. There is not a need for an 9 ancillary proceeding under the statute. 10 And, in fact, this Court does have the 11 authority, the inherent authority, to -- to appoint a 12 receiver under that statute, not under 32.010, and 13 under its inherent equitable authority, which I believe 14 is informed by the criteria of NRS 78.650. 15 MS. GALL: Your Honor, I would say, first of 16 all -- I'll start again. 32.010 has been very clearly 17 held not by -- not only by its own language but also by 18 the language of the Supreme Court. 19 And I find the Nevada Supreme Court's 20 unambiguous language that there needs to be a claim 21 pending, other than that for the appointment of a 22 receiver, incredibly persuasive, despite what Mr. Kaye 23 may argue. It simply does not make sense to have 24 32.010 as a claim pending when we are at the trial of 25 this matter.</p>

<p style="text-align: right;">Page 595</p> <p>1 With respect to 78.630, what I would offer 2 Your Honor is that if the Court looks at 78.630(3), it 3 is not merely a showing of insolvency or suspension of 4 ordinary business or a conduct of the business at a 5 great loss and greatly prejudicial to the interests of 6 the creditors or stockholders, all of which I do not 7 believe plaintiffs have presented evidence; to the 8 extent they have it, does not meet the preponderance of 9 evidence standard. 10 If Your Honor looks at 78.630(3), also says 11 that it has to be that the business cannot be conducted 12 with safety to the public. And there has been no 13 evidence here, and to the extent there has, there 14 certainly hasn't been a preponderance of the evidence, 15 that Hygea's business is being conducted so that 16 without a receiver, it cannot do so without great 17 safety to the public. I know I said that confusingly. 18 With respect to 78.650, again, I'll direct 19 the Court's attention to 78.650(A), the corporation has 20 willfully violated its charter. The charter means the 21 articles of incorporation. The articles of 22 incorporation are Exhibit 46. They haven't even been 23 admitted into the record. There has been no allegation 24 that -- that the corporation has violated the articles 25 of incorporation.</p>	<p style="text-align: right;">Page 597</p> <p>1 mature. 2 Again, no evidence by plaintiffs that the 3 corporation is insolvent. At most we have seen with 4 respect to the other subsection that the corporation is 5 attempting to manage its debts, but no evidence that 6 the corporation hasn't managed its debts. 7 Moreover, more importantly with respect to 8 78.506 generally and the appointment of a receiver, we 9 have not heard from a proposed receiver at all. They 10 have presented absolutely no evidence here, Your Honor, 11 that the receiver that they propose, which is Frank 12 Waid, Esq., is in any way fit to run Hygea Holdings 13 Corp. 14 In addition, Your Honor, a receiver is a 15 claim in equity, and they have not shown how there is 16 no less drastic alternative Hygea. Rather, what they 17 talk about are the audits, which are not relevant 18 today, at least with respect to 78.650. 19 There is a contractual right -- you heard 20 testimony from even Mr. Dragelin who said there is no 21 regulatory obligation to conduct the '14 and '15 22 audits, which we have heard so much about in this 23 litigation. 24 And we have also heard about the bounced 25 checks. Again, that evidence, Your Honor, goes to</p>
<p style="text-align: right;">Page 596</p> <p>1 With respect to the bylaws, yes, to the 2 extent the bylaws might be considered by this Court to 3 be part of the charter, which I would strongly disagree 4 with from a legal -- from a wealth of law standpoint, 5 we would say that if a shareholder makes a books and 6 records demand under the bylaws, if they are putting 7 the corporation to its test to adhere to the bylaws, 8 then, yes, the shareholder too must cross I's and dot 9 its T's when attempting to exercise its right 10 underneath the bylaws. 11 With respect to 78.3506 (B) and (D), again, 12 there has been no evidence that the directors have been 13 guilty of fraud or conclusion or gross mismanagement in 14 the conduct or control of Hygea's affairs. 15 More so, there has been no evidence that the 16 directors acting as a majority have been guilty of 17 misfeasance, malfeasance, or nonfeasance. At most 18 there has been an intimation by Mr. Kaye during 19 argument that the directors apparently were asleep at 20 the switch, but there has been no evidence, and 21 certainly no preponderance of the evidence. 22 I will also speak to subsections H and I, 23 which is that the corporation is insolvent or the 24 corporation, although not insolvent, is not for any 25 cause able to pay its debts or obligations as they</p>	<p style="text-align: right;">Page 598</p> <p>1 showing the corporation is managing its debts. I think 2 Mr. Iglesias provided an explanation as to why those 3 checks bounced and how the corporation immediately 4 covered those checks. 5 But most importantly, Your Honor, I think 6 what we haven't seen any evidence of -- of any of these 7 claims under 78.650 or 630 that are relevant today. 8 The majority of evidence that plaintiffs have put on 9 concern the time period when the lead plaintiff, N5HYG, 10 was looking to become an investor in Hygea and 11 purported misrepresentations that may have been made by 12 Mr. Iglesias and Mr. Moffly during that 2016 time 13 period. 14 In addition, we have heard complaints from 15 plaintiff about the audits, a lot about the audits, 16 which is reflected in a Stock Purchase Agreement 17 between N5HYG and Hygea. But, again, that is a breach 18 of contract claim, not a basis for the appointment of a 19 receivership. 20 Plaintiffs have presented absolutely no 21 evidence or, at best, scant evidence of what is 22 happening today at Hygea. Your Honor, I believe that 23 is the relevant time period for this Court to consider. 24 For these reasons, we move for judgment as a matter of 25 law or, alternatively, judgment on partial findings.</p>

<p style="text-align: right;">Page 599</p> <p>1 Thank you.</p> <p>2 MR. KAYE: Your Honor, if I could respond</p> <p>3 quite briefly? I hope.</p> <p>4 THE COURT: Let me ask you a question first,</p> <p>5 and then I'll let you do that. And Ms. Gall, I'll give</p> <p>6 you another chance.</p> <p>7 Mr. Kaye, is it the plaintiffs' position that</p> <p>8 the business has been conducted at a great loss?</p> <p>9 MR. KAYE: Your Honor, it is the -- it is the</p> <p>10 plaintiffs' position that it has been conducted.</p> <p>11 THE COURT: What evidence has been presented</p> <p>12 that supports that?</p> <p>13 MR. KAYE: I think -- Your Honor, I believe</p> <p>14 we've heard evidence -- we've heard evidence that it</p> <p>15 is -- it is a break-even business last summer; that</p> <p>16 despite the claimed healthy EBITDA, it was roughly</p> <p>17 break even. We have also seen indications that since</p> <p>18 that time, the situation has, if anything,</p> <p>19 deteriorated. We've also heard -- admitted --</p> <p>20 THE COURT: Can you -- I'm sorry to interrupt</p> <p>21 you, and I hate it because I don't want to interrupt</p> <p>22 your line of thought. But what specific evidence shows</p> <p>23 that it's worse now than you said last summer?</p> <p>24 MR. KAYE: Certainly, Your Honor. I think</p> <p>25 that Dr. Gaylis' declaration -- I'm going to reference</p>	<p style="text-align: right;">Page 601</p> <p>1 You look at the document that Mr. Iglesias</p> <p>2 testified about, the promissory note and personal</p> <p>3 guarantee, it's very difficult to fathom how that</p> <p>4 document comes about unless there is a very, very</p> <p>5 serious cash crisis confronting the corporation,</p> <p>6 particularly in light of the testimony that</p> <p>7 Mr. Iglesias offered. If I recall correctly,</p> <p>8 Mr. Iglesias testified that Bridging has a demand note</p> <p>9 and has a security interest in Hygea's assets to begin</p> <p>10 with.</p> <p>11 So the -- the \$3 million note that</p> <p>12 Mr. Iglesias testified was to use for Hygea now is</p> <p>13 reaching into Mr. Iglesias' personal assets. It's very</p> <p>14 difficult to see how that happens unless there's really</p> <p>15 a cash crisis here.</p> <p>16 THE COURT: So help me with the modifier</p> <p>17 "great." A company -- what evidence is it that there</p> <p>18 has been a great loss?</p> <p>19 MR. KAYE: Your Honor, we know that in 2017,</p> <p>20 it is -- it is a -- in the summer of 2017, it appears</p> <p>21 to be at about a break even situation. And we do not</p> <p>22 have -- we do not have the up-to-date financials with</p> <p>23 the caveat that there appears to have been some sort of</p> <p>24 development today, but based on the record before us,</p> <p>25 we don't have the up-to-date financials. But we have a</p>
<p style="text-align: right;">Page 600</p> <p>1 his declaration here because I'm familiar with --</p> <p>2 familiar with the specific comment that he made -- was</p> <p>3 that he was -- the problems seemed to be mounting in</p> <p>4 the end of 2017, beginning of 2018.</p> <p>5 Mr. Miller testified, if I recall correctly,</p> <p>6 that there was perhaps mounting difficulties with</p> <p>7 getting vendors paid, once again, in the fall of 2017.</p> <p>8 And you'll recall that around late 2017, he personally</p> <p>9 began to -- began personally to have problems with --</p> <p>10 with expense reimbursements until it got to around</p> <p>11 New Year's when he became unpaid. They simply stopped</p> <p>12 paying him. We also know that this is around the</p> <p>13 period of time when Dr. Gaylis indicates that the</p> <p>14 CuraScript crisis really catalyzed and became a huge</p> <p>15 issue.</p> <p>16 I think also leading up to -- you know, as we</p> <p>17 sort of continue along that path, the testimony that we</p> <p>18 heard relating to the promissory note is very</p> <p>19 interesting.</p> <p>20 We have heard -- there's this admission --</p> <p>21 there's an admission out there from the defendants that</p> <p>22 there is -- there are cash problems. They've admitted</p> <p>23 to cash problems. And they say, That's why we're not</p> <p>24 paying -- they hadn't been paying the taxes, and that's</p> <p>25 why they hadn't been paying the executives, so forth.</p>	<p style="text-align: right;">Page 602</p> <p>1 lot of circumstantial evidence that the situation has</p> <p>2 deteriorated since then.</p> <p>3 So we go from break even to very --</p> <p>4 indications of substantial deterioration. And I think</p> <p>5 that falls -- that puts it within the -- what the</p> <p>6 statute contemplates for operation at a great loss.</p> <p>7 THE COURT: Was there anything else you</p> <p>8 wanted to cover?</p> <p>9 MR. KAYE: There were a few other points I</p> <p>10 wanted to cover, Your Honor.</p> <p>11 THE COURT: Go ahead.</p> <p>12 MR. KAYE: First of all, there was a</p> <p>13 reference from counsel relating to -- that -- that we</p> <p>14 seem to want to focus on the 2016 allegation of -- the</p> <p>15 allegation of misrepresentations, we think the evidence</p> <p>16 of misrepresentations in 2016.</p> <p>17 I don't think that's a fair characterization</p> <p>18 of our case. That's a part of the case, it's an</p> <p>19 indication, goes to misfeasance, malfeasance,</p> <p>20 nonfeasance, but it's hardly the whole story or even a</p> <p>21 substantial part of the story.</p> <p>22 Now, what that illuminates is the apparent</p> <p>23 overstatement of the corporation's financial</p> <p>24 performance. But we heard testimony yesterday from</p> <p>25 Mr. Dragelin suggesting that that overstatement</p>

<p style="text-align: right;">Page 603</p> <p>1 continued into 2017.</p> <p>2 And there was an ongoing debate between</p> <p>3 himself and the executives, sort of led by Mr. Moffly</p> <p>4 and Mr. Iglesias, saying that, No, no, no, we want to</p> <p>5 put on our books these numbers that -- that we want to</p> <p>6 present to those people that have an interest in the</p> <p>7 corporation.</p> <p>8 That takes it out of 2016, brings it into</p> <p>9 2017. Once again, it's just a piece of the puzzle.</p> <p>10 And in certain respects, you know, it seems as if --</p> <p>11 this gets to the adequate remedy at law issue.</p> <p>12 It seems as if kind of each issue, there's an</p> <p>13 effort on the part of the defendants to isolate each</p> <p>14 issue and suggest, well, you know, this is really a</p> <p>15 breach of contract issue or, well, this is really --</p> <p>16 that's really a securities fraud issue or so on, so</p> <p>17 forth.</p> <p>18 Now, they -- it may be those issues, and we</p> <p>19 do have a different lawsuit for damages. But what this</p> <p>20 inquiry involves is holistically looking at all of</p> <p>21 these situations. You could break them down and slice</p> <p>22 them and dice them and say, well, it ought to be this</p> <p>23 or ought to be that.</p> <p>24 What this is about is operations and</p> <p>25 management and leadership of the corporation much more</p>	<p style="text-align: right;">Page 605</p> <p>1 removal is improper because that's not an argument to</p> <p>2 have here, they removed the damages claim to federal</p> <p>3 court in Las Vegas and then argued that this case</p> <p>4 should be transferred here based on the statutory</p> <p>5 language, although there was a form selection clause in</p> <p>6 the Stock Purchase Agreement that we've seen I believe</p> <p>7 in Exhibit 2.</p> <p>8 In other words, what defendants have done</p> <p>9 here is they have -- they have severed, so to speak,</p> <p>10 the damages claim and the -- and this -- this</p> <p>11 receivership action and now, having severed them,</p> <p>12 argued, well, you can't have a receivership action</p> <p>13 under 32.010 because the other case isn't here.</p> <p>14 Well, the other case is not here because of</p> <p>15 the actions that they've -- that they've taken. I</p> <p>16 think that speaks, again, to the equities of how 32.010</p> <p>17 applies in -- in this case.</p> <p>18 I also want to speak very briefly to the</p> <p>19 issue of Fred Waid. We have all the confidence in the</p> <p>20 world in Mr. Waid, and we continue to support him as a</p> <p>21 receiver. We believe two things: First of all, even</p> <p>22 as I speak, the clock is ticking, and so we want to</p> <p>23 present to the Court the facts and the evidence in this</p> <p>24 case as opposed to bringing in Mr. Waid personally.</p> <p>25 Second of all, at the end of the day,</p>
<p style="text-align: right;">Page 604</p> <p>1 holistically. So I don't think that those arguments --</p> <p>2 that those arguments prevail.</p> <p>3 I also want to -- also want to speak briefly</p> <p>4 to -- to the argument about the ancillary -- the</p> <p>5 ancillary proceeding in two respects. One of them is</p> <p>6 that -- one of the cases that I believe has come up in</p> <p>7 the papers before is the International Life</p> <p>8 Underwriters v. Second Judicial District Court case.</p> <p>9 That's 61 Nev. 42 from 1941.</p> <p>10 And that distinguished the earlier case of</p> <p>11 State v. Ex Rel. Nenzel, 49 Nev. 145, saying that under</p> <p>12 the statute at issue there, we do not think that --</p> <p>13 Nenzel and the other cases suggesting that there needed</p> <p>14 to be a pending action before a receiver can be</p> <p>15 appointed.</p> <p>16 We do not think that has any relevancy to the</p> <p>17 cases brought under the statute that was at issue there</p> <p>18 and, in fact, rejected the argument that there needs to</p> <p>19 be an ancillary proceeding.</p> <p>20 I also want to speak very briefly to the</p> <p>21 equities of the ancillary proceeding argument. Once</p> <p>22 again, this was initially brought in Las Vegas where</p> <p>23 the -- one of the plaintiffs, N5HYG, had also joined in</p> <p>24 a damages claim in Las Vegas.</p> <p>25 Now, defendants removed, and we think that</p>	<p style="text-align: right;">Page 606</p> <p>1 that's -- that is a decision that we respect and defer</p> <p>2 to the Court on. While we support Mr. Waid and will be</p> <p>3 happy to present anything from him that might be</p> <p>4 necessary, we respect the Court's decision as to who it</p> <p>5 ultimately appoints. What is important to us is that</p> <p>6 we act to protect -- that we act to protect Hygea.</p> <p>7 THE COURT: Ms. Gall?</p> <p>8 MS. GALL: Thank you, Your Honor. I'll start</p> <p>9 backwards from what Mr. Kaye argued with respect to</p> <p>10 Mr. Waid and the preservation of time. That is</p> <p>11 plaintiffs' burden. They brought this case. They</p> <p>12 brought it under an emergency basis. They are required</p> <p>13 to demonstrate the appropriateness of a receiver here.</p> <p>14 And I would argue, Your Honor, that includes the</p> <p>15 receiver that they seek to have this Court appointed.</p> <p>16 Secondly, Your Honor, Mr. Kaye argued about</p> <p>17 the litigations that were filed in Las Vegas. Let me</p> <p>18 be very clear about this. They filed a securities</p> <p>19 litigation in Department 25 before Judge Delaney. We</p> <p>20 exercised our rights because we believe that it was</p> <p>21 properly in federal court under the securities act.</p> <p>22 They did not make a claim for receiver in</p> <p>23 that act -- in that complaint. They could have done</p> <p>24 so. They filed that action in October. In January,</p> <p>25 after we filed our motion to dismiss and after the</p>

<p style="text-align: right;">Page 607</p> <p>1 Private Securities Litigation Reform Act kicked into 2 stay discovery, they filed this action on January 26th 3 on an emergency basis before the business courts in the 4 Eighth Judicial District Court. 5 Yes, we did seek a transfer of venue, which 6 Judge Alf granted because the statutes are very clear 7 that this action has to be filed in the district court 8 of the county in which the corporation's registered 9 agent sits. 10 So it is not us that has split a damages 11 claim from the equity claim. That was plaintiffs' 12 decision to first file a claim without a receivership 13 claim in it, or a complaint without a receivership 14 claim, and then months later filed this action. 15 If we're talking about equity, Your Honor, 16 that is the equity state. In addition, Your Honor, I 17 think the equities go to the paucity of evidence, of 18 relevant evidence that plaintiffs have presented here 19 over the last three days. 20 Mr. Kaye stood before this Court, Your Honor, 21 and questioned Mr. Iglesias for hours. And during that 22 time, Mr. Kaye made the statement that they were asking 23 the questions about the bank statements, which he must 24 have spent over an hour on, because they did not have 25 the evidence that they had not conducted discovery.</p>	<p style="text-align: right;">Page 609</p> <p>1 whether this company is being conducted at a great 2 loss, I don't think Mr. Kaye answered that question, 3 including the modifier "great." He admitted at best 4 what they have is a break-even business as of last 5 year. 6 Your Honor, there is simply not -- 7 insufficient evidence in the record, and certainly not 8 a preponderance of the evidence at this point, to grant 9 a receivership. Thank you, Your Honor. 10 THE COURT: Well, on NRS 32.010, the Court 11 agrees with the defense based on the Nenzel case, 12 49 Nev. 145, that the statute -- well, the 13 Supreme Court, the gloss on the statute requires that 14 there be an action pending, something other than just a 15 receivership. So the claims under 32.010 are dismissed 16 as a matter of law. 17 The 78.630, the Court finds that there is not 18 sufficient evidence, that the business has been and is 19 being conducted at a great loss and greatly prejudicial 20 to the interests of its creditors or stockholders, so 21 that portion of the claim is also dismissed as a matter 22 of law. 23 Under NRS 78.650, the Court finds that the 24 corporation has not -- there's not evidence to support 25 a finding that the corporation has willfully violated</p>
<p style="text-align: right;">Page 608</p> <p>1 Well, Your Honor, I would posit plaintiffs 2 brought this case on an emergency basis and asked for a 3 temporary receiver. They must have had some evidence 4 to seek even the appointment of a temporary receiver. 5 And I have not seen that evidence today. 6 And Mr. Kaye spoke about circumstantial 7 evidence. Your Honor, circumstantial evidence does not 8 mean a preponderance of the evidence. I would offer 9 that they have -- they have submitted into the record 10 very little evidence and certainly not a preponderance 11 of the evidence. 12 Even with respect to Mr. Kaye's argument 13 about Mr. Dragelin's testimony and Dr. Gayle's 14 testimony, again, Mr. Dragelin has admitted he has not 15 been at the company since August of 2017, and he has no 16 idea whether Hygea remains a going concern today and 17 what Hygea's financial state is today. 18 With respect to Dr. Gaylis, I believe 19 Dr. Gaylis admitted he is not involved in the company's 20 financials and, indeed, did not even request the 21 financials from the company. Therefore, I don't 22 believe either of those witnesses are credible or can 23 speak to Hygea's financial state today, including 24 insolvency. 25 With respect to what Your Honor asked about</p>	<p style="text-align: right;">Page 610</p> <p>1 its charter. 2 The Court agrees with plaintiffs that there 3 is a reasonable inference that management -- Hygea's 4 management's failure to manage cash flow, to be able to 5 account for it, at least to the degree that an audited 6 statement can be prepared, even though that's not 7 required by the regulators, it's a reasonable inference 8 that the directors have been guilty of gross 9 mismanagement, not of fraud or conclusion. 10 C, the Court finds that there is evidence 11 supporting that the directors have been guilty of 12 misfeasance, malfeasance, or nonfeasance. 13 The corporation -- D is, "The corporation is 14 unable to conduct the business to conserve its assets 15 by reason of the act, neglect, or refusal to function 16 of the any of the directors." There is some evidence 17 to support that part of the statute. 18 "The assets of the corporation are in danger 19 of waste, sacrifice, or loss." There is some evidence 20 to support that part of the statute. 21 F is, "The corporation has abandoned its 22 business." I don't think there's an argument to that 23 effect. The Court finds there's no evidence to support 24 that. 25 "Not diligently winding up its affairs" does</p>

<p style="text-align: right;">Page 611</p> <p>1 not apply.</p> <p>2 "The corporation has become insolvent," there</p> <p>3 is no evidence to support that Hygea is insolvent.</p> <p>4 "The corporation, although not insolvent, is</p> <p>5 for any cause not able to pay its debts or obligations</p> <p>6 as they mature." There is evidence in the record to</p> <p>7 support that.</p> <p>8 The final J, subsection J, "The corporation</p> <p>9 is about to resume its business with safety -- not</p> <p>10 about to resume its business with safety to the</p> <p>11 public," the Court finds there's not sufficient</p> <p>12 evidence of that.</p> <p>13 So it's granted in part and denied in part as</p> <p>14 I've gone through each of those.</p> <p>15 MS. GALL: Thank you, Your Honor.</p> <p>16 THE COURT: We're going to take a -- do you</p> <p>17 have your next -- do you have your witness here?</p> <p>18 MS. GALL: We do, Your Honor.</p> <p>19 THE COURT: Okay. Is 10 minutes enough time</p> <p>20 for a break? Do you need a little longer?</p> <p>21 MS. GALL: I do not need any longer.</p> <p>22 MR. KAYE: Fine with me, Your Honor.</p> <p>23 THE COURT: We'll come in at 4:10.</p> <p>24 (Recess taken at 4:00, resuming at 4:10.)</p> <p>25 THE COURT: Please be seated. 18 OC 71,</p>	<p style="text-align: right;">Page 613</p> <p>1 of the National Republican Lawyers Association. I am</p> <p>2 the National First Vice President of the organization.</p> <p>3 Q. Are there any other community activities that</p> <p>4 you engage in?</p> <p>5 A. I'm involved in human rights organizations</p> <p>6 dealing with Cuba. I'm a native of Cuba, emigrated to</p> <p>7 the United States at the age of 5, and am very</p> <p>8 actively engaged in making sure we bring democracy and</p> <p>9 human rights to Cuba.</p> <p>10 Q. Mr. Iglesias, what is your relationship or</p> <p>11 relationships with Hygea?</p> <p>12 A. I am co-chair of the board. I'm a</p> <p>13 shareholder. I'm a stakeholder in that I personally</p> <p>14 and my family group is owed monies as a debtor,</p> <p>15 creditor of the company. And I am a consultant, not</p> <p>16 paid, helping transition management in -- in Hygea as</p> <p>17 we currently speak.</p> <p>18 Q. Mr. Iglesias, you just mentioned that you</p> <p>19 were a stakeholder. Approximately how much money has</p> <p>20 your family loaned Hygea?</p> <p>21 A. In -- through December 31, '17, about</p> <p>22 \$4 million. This year, approximately another</p> <p>23 \$4 million, 3 of which you saw in the documentation,</p> <p>24 Exhibit 194, and an additional million dollars from</p> <p>25 family trusts.</p>
<p style="text-align: right;">Page 612</p> <p>1 Arellano v. Hygea, all counsel but Mr. Ewing are</p> <p>2 present.</p> <p>3 Ms. Gall, defense first witness?</p> <p>4 MS. GALL: We are recalling Mr. Iglesias to</p> <p>5 the stand.</p> <p>6 THE COURT: Come up, please. You're already</p> <p>7 under oath. You do not need to be sworn again.</p> <p>8 THE WITNESS: Thank you, Your Honor.</p> <p>9 DIRECT EXAMINATION</p> <p>10 BY MS. GALL:</p> <p>11 Q. Could you please state your name for the</p> <p>12 record.</p> <p>13 A. Manuel Ernesto Iglesias.</p> <p>14 Q. Mr. Iglesias, what is your educational</p> <p>15 background?</p> <p>16 A. I have a bachelor's from Georgetown</p> <p>17 University in foreign service. I have a law degree</p> <p>18 and an MBA from the University of Chicago.</p> <p>19 Q. Anything else?</p> <p>20 A. I've studied languages at University of</p> <p>21 Lausanne and in Germany too.</p> <p>22 Q. Mr. Iglesias, do you engage in any community</p> <p>23 activities?</p> <p>24 A. My passion is the political process,</p> <p>25 democracy in America. And I am currently on the board</p>	<p style="text-align: right;">Page 614</p> <p>1 Q. Mr. Iglesias, why are you on Hygea's board of</p> <p>2 directors?</p> <p>3 A. I represent the largest shareholder group in</p> <p>4 Hygea. My father and I were the founders in 2007. My</p> <p>5 father was a surgeon, and I was then a practicing</p> <p>6 attorney specializing in healthcare.</p> <p>7 And we saw tremendous opportunity to improve</p> <p>8 the quality of life for both doctors and outcomes for</p> <p>9 patients. And we created Hygea with the focus of</p> <p>10 preventative medicine, really turning what we call</p> <p>11 current healthcare upside down.</p> <p>12 Q. And could you tell the Court why you resigned</p> <p>13 as CEO?</p> <p>14 A. I think that -- I had been an investment</p> <p>15 banker in the '90s, and I had analyzed multiple</p> <p>16 companies. And there's a -- founders have a lot of</p> <p>17 qualities of getting things started, but oftentimes</p> <p>18 they don't have the -- the expertise or the desire,</p> <p>19 the ability to take the company to the next level.</p> <p>20 I think that on a personal level, I have</p> <p>21 taken Hygea to where it can be and am very proud of the</p> <p>22 fact as we transfer now to new and hopefully improved</p> <p>23 management, I'm turning over a company with last year</p> <p>24 \$35 million in EBITDA and this year, based on our first</p> <p>25 quarter numbers, a company with \$60 million in EBITDA</p>

<p style="text-align: right;">Page 615</p> <p>1 for 2018 as a very substantial company.</p> <p>2 But, quite frankly, I think there are other</p> <p>3 people who can take it to the next level much better</p> <p>4 than I. As a stakeholder, I'm happy to help with that</p> <p>5 transition. I'm delighted with my replacement in</p> <p>6 Dr. Keith Collins.</p> <p>7 Q. Mr. Iglesias, are you aware of accusations</p> <p>8 made against Hygea in this lawsuit regarding the</p> <p>9 non-payment of payroll taxes in 2017?</p> <p>10 A. Yes.</p> <p>11 Q. And what is your reaction to those</p> <p>12 accusations?</p> <p>13 A. We had a cash crunch, and I took the</p> <p>14 responsibility to make sure that, first of all,</p> <p>15 payroll was paid and the necessary other core</p> <p>16 components of the enterprise were paid, like pharmacy,</p> <p>17 drugs.</p> <p>18 We do everything necessary to keep going</p> <p>19 concern going forward. And one of the areas that we on</p> <p>20 a very short-term basis could defer was the payroll</p> <p>21 taxes.</p> <p>22 MS. GALL: Your Honor, I'm about to get the</p> <p>23 exhibits. If I can get the Court's indulgence for a</p> <p>24 minute.</p> <p>25 THE COURT: Which binder is it?</p>	<p style="text-align: right;">Page 617</p> <p>1 A. No. They're all payroll for Hygea, the</p> <p>2 family -- Hygea family are paid for by Hygea Health</p> <p>3 Holdings, Inc.</p> <p>4 Q. And Mr. Iglesias, were these 941s created in</p> <p>5 the ordinary course of Hygea Health Holdings, Inc.'s</p> <p>6 business?</p> <p>7 A. Yes.</p> <p>8 MR. KAYE: Objection; foundation as to the</p> <p>9 witness's knowledge of their creation.</p> <p>10 THE COURT: Sustained.</p> <p>11 Q. (By Ms. Gall) Mr. Iglesias, who at Hygea creates</p> <p>12 these Form 941s?</p> <p>13 A. Our director of human resources in</p> <p>14 conjunction with our chief financial officer or</p> <p>15 finance director at the time.</p> <p>16 Q. Okay. And have you reviewed these Form 941s</p> <p>17 before today?</p> <p>18 A. Yes, I have.</p> <p>19 Q. How did you come to review the Form 941s</p> <p>20 prior to today?</p> <p>21 A. In anticipation for this litigation.</p> <p>22 Q. Did you receive these Form 941s in email from</p> <p>23 anyone at Hygea?</p> <p>24 A. No.</p> <p>25 Q. Mr. Iglesias, did you have any conversations</p>
<p style="text-align: right;">Page 616</p> <p>1 MS. GALL: It is volume 3.</p> <p>2 Q. (By Ms. Gall) Mr. Iglesias, could you please</p> <p>3 turn to Exhibit 77 through 79.</p> <p>4 A. I'm at 77.</p> <p>5 Q. And I apologize, would you please start at</p> <p>6 76, please. 76, 77, 78, and 79. Once you've had an</p> <p>7 opportunity to look at these, could you please identify</p> <p>8 them for the Court.</p> <p>9 A. Exhibit 76 is the 941 for 2017 for the first</p> <p>10 quarter. 77 is the 941 for 2017 for the second</p> <p>11 quarter. 78 is the 941 for 2017 for the third</p> <p>12 quarter. And 79 is the 941 for 2017 for the fourth</p> <p>13 quarter.</p> <p>14 Q. And Mr. Iglesias, do you know what Form 941s</p> <p>15 are?</p> <p>16 A. Yes.</p> <p>17 Q. Could you explain to the Court what your</p> <p>18 understanding of a Form 941 to be?</p> <p>19 A. This is the report to the IRS in terms of</p> <p>20 gross payroll and broken down -- and the payroll taxes</p> <p>21 incurred by employees.</p> <p>22 Q. Thank you. And what is the name reflected on</p> <p>23 these Form 941s?</p> <p>24 A. Hygea Health Holdings, Inc.</p> <p>25 Q. Does Hygea Holdings Corp. file any 941s?</p>	<p style="text-align: right;">Page 618</p> <p>1 with the human resources director that you just</p> <p>2 mentioned regarding these Form 941s?</p> <p>3 A. Yes, I have.</p> <p>4 Q. And what were those conversations?</p> <p>5 MR. KAYE: Object to the extent it's</p> <p>6 eliciting hearsay from the document.</p> <p>7 THE COURT: Ms. Gall?</p> <p>8 MS. GALL: I don't think it's eliciting</p> <p>9 hearsay. I'm trying to lay the foundation how</p> <p>10 Mr. Iglesias knows that these are the 941s of the</p> <p>11 company. As the former CEO, during his time as CEO, he</p> <p>12 had to rely on his employees for the creation of such</p> <p>13 documents as the 941.</p> <p>14 THE COURT: So is that an exception to</p> <p>15 hearsay rule?</p> <p>16 MS. GALL: I believe I'm not admitting it for</p> <p>17 the truth of the matter asserted. I'm trying to merely</p> <p>18 lay the foundation for Mr. Iglesias' knowledge.</p> <p>19 THE COURT: Mr. Kaye?</p> <p>20 MR. KAYE: Your Honor, we don't know what the</p> <p>21 witness is going to say, of course. The reason I</p> <p>22 object is because I believe that the question may be</p> <p>23 soliciting hearsay because we may hear something that</p> <p>24 says, Well, somebody told me that this was the case, or</p> <p>25 somebody told me that that was the case, and that would</p>

<p style="text-align: right;">Page 619</p> <p>1 be hearsay.</p> <p>2 MS. GALL: I merely want Mr. Iglesias to</p> <p>3 answer how he comes to know from the HR manager that</p> <p>4 these are the 941s for the company.</p> <p>5 THE COURT: So -- I'm -- I'm not seeing how</p> <p>6 that's not for the truth of the matter asserted.</p> <p>7 MS. GALL: It's merely to lay foundation,</p> <p>8 Your Honor. But if -- if you don't want to admit --</p> <p>9 admit these for the truth of the matter asserted, it's</p> <p>10 fine. I'll just solicit testimony from Mr. Iglesias if</p> <p>11 you believe foundation hasn't been laid at this point.</p> <p>12 THE COURT: The hearsay objection is</p> <p>13 sustained.</p> <p>14 MS. GALL: Okay.</p> <p>15 MR. KAYE: Thank you, Your Honor.</p> <p>16 Q. (By Ms. Gall) Mr. Iglesias, do these Form 941s</p> <p>17 accurately reflect payroll taxes owed for 2017?</p> <p>18 A. No.</p> <p>19 MR. KAYE: Your Honor, objection; foundation.</p> <p>20 THE COURT: Sustained.</p> <p>21 Q. (By Ms. Gall) Mr. Iglesias, please take a look</p> <p>22 at Form 941 for Q1.</p> <p>23 A. That's 76? Yes.</p> <p>24 Q. How much in taxes does Hygea owe for first</p> <p>25 quarter 2017?</p>	<p style="text-align: right;">Page 621</p> <p>1 THE COURT: So the objection is sustained</p> <p>2 only as to the last portion of his statement, and I</p> <p>3 don't remember how he phrased it, his conclusion or</p> <p>4 opinion. The fact that he met with the CFO, those</p> <p>5 people, is not the -- the objection is overruled.</p> <p>6 MR. KAYE: Thank you, Your Honor.</p> <p>7 Q. (By Ms. Gall) And Mr. Iglesias, what did the CFO</p> <p>8 inform you with respect to the taxes for 2017?</p> <p>9 MR. KAYE: Objection; hearsay. And I don't</p> <p>10 see any possible exception because I believe that the</p> <p>11 CFO is on -- is on the witness list.</p> <p>12 MS. GALL: If they're using party admissions</p> <p>13 for an exception to hearsay with our CFO, then I</p> <p>14 believe I can use the party admission exception with</p> <p>15 respect to our CFO.</p> <p>16 THE COURT: The objection is sustained.</p> <p>17 Q. (By Ms. Gall) Mr. Iglesias, are you aware of</p> <p>18 accusations made against Hygea in this lawsuit by</p> <p>19 Dr. Gaylis regarding the reported improper diversion of</p> <p>20 funds from bank accounts held in the name of his practice?</p> <p>21 A. Yes.</p> <p>22 Q. What is your reaction to those allegations?</p> <p>23 A. Dr. Gaylis doesn't understand the fact that</p> <p>24 he sold his practice, and those funds aren't being</p> <p>25 diverted from his practice. Those are general funds</p>
<p style="text-align: right;">Page 620</p> <p>1 A. Zero.</p> <p>2 MR. KAYE: Objection; foundation, Your Honor.</p> <p>3 THE COURT: Ms. Gall?</p> <p>4 MS. GALL: I think it's within the witness's</p> <p>5 knowledge as to how much in taxes -- he submitted a</p> <p>6 declaration on whether taxes were paid or unpaid. As</p> <p>7 the CEO, he must know whether taxes were unpaid or --</p> <p>8 paid or unpaid for Hygea.</p> <p>9 MR. KAYE: Your Honor, some of that may be,</p> <p>10 but the foundation for that has not been laid.</p> <p>11 THE COURT: The foundation objection is</p> <p>12 sustained.</p> <p>13 Q. (By Ms. Gall) Mr. Iglesias, how do you know</p> <p>14 whether taxes for Hygea have been paid or unpaid?</p> <p>15 A. I have talked to our chief financial</p> <p>16 officer. I've talked to our HR director. I have met</p> <p>17 with our accountants. I have talked to an IRS revenue</p> <p>18 agent. And I have reached an opinion of where we are</p> <p>19 at today.</p> <p>20 MR. KAYE: Your Honor, I'm going to object to</p> <p>21 that answer and move to strike that answer as hearsay.</p> <p>22 The question I took to -- I saw a non -- a non-hearsay</p> <p>23 basis for the question in terms of his general</p> <p>24 knowledge about this sort of thing, but the answer was</p> <p>25 hearsay.</p>	<p style="text-align: right;">Page 622</p> <p>1 owned by Hygea, and Hygea may use those funds as it</p> <p>2 sees fit for the whole, not for the benefit of what</p> <p>3 was previously his practice.</p> <p>4 Q. And Dr. Gaylis has testified that according</p> <p>5 to the management agreement between his practice and</p> <p>6 the company, Hygea must first pay for the expenses of</p> <p>7 his practice before Hygea's permitted to keep any</p> <p>8 surplus. Do you remember that testimony?</p> <p>9 A. I do.</p> <p>10 Q. And what is your reaction to that testimony?</p> <p>11 A. He's incorrect.</p> <p>12 Q. Why do you believe Dr. Gaylis is incorrect?</p> <p>13 A. If you read the contracts -- the acquisition</p> <p>14 agreements, it authorizes the management company and</p> <p>15 AARDS to determine the use of funds. We bought</p> <p>16 100 percent of AARDS and as such can determine where</p> <p>17 the use of monies generated by his practice are -- how</p> <p>18 those funds are utilized.</p> <p>19 Q. Mr. Iglesias, do you know how many shares</p> <p>20 Hygea has issued and outstanding?</p> <p>21 A. Approximately 432 million.</p> <p>22 Q. How do you know that it's 432 million?</p> <p>23 A. That is the latest amount on the VStock</p> <p>24 Transfer list that is both in the record, and I took</p> <p>25 the opportunity yesterday to look into the VStock</p>

<p style="text-align: right;">Page 623</p> <p>1 website for Hygea. And the numbers have not changed</p> <p>2 since the submittal, the January 21 VStock register to</p> <p>3 plaintiffs.</p> <p>4 MR. KAYE: Objection, Your Honor. And I</p> <p>5 would move to strike that answer for a couple of</p> <p>6 reasons. First of all, that's hearsay. Second of all,</p> <p>7 I believe it misstates what's in the record. And third</p> <p>8 of all, best evidence rule.</p> <p>9 THE COURT: Ms. Gall?</p> <p>10 MS. GALL: Your Honor, with respect to the</p> <p>11 objection regarding hearsay, I don't believe it's</p> <p>12 necessarily hearsay. I do believe that Mr. Iglesias</p> <p>13 testified that he logged in to the VStock account to</p> <p>14 confirm the number.</p> <p>15 I do agree that he did misstate that the</p> <p>16 VStock register is in the -- is in the record. It is</p> <p>17 not. With respect to the best evidence rule, I'm not</p> <p>18 sure a document merely memorializing the number of</p> <p>19 shares issued and outstanding falls under the best</p> <p>20 evidence rule versus the knowledge of the plaintiff.</p> <p>21 THE COURT: How is that not an out-of-court</p> <p>22 statement? The information that he looked at</p> <p>23 apparently on the Internet, how is that not an</p> <p>24 out-of-court statement that it seems you're trying to</p> <p>25 offer for the truth of the matter asserted the number</p>	<p style="text-align: right;">Page 625</p> <p>1 THE COURT: Both objections are sustained.</p> <p>2 Q. (By Ms. Gall) Mr. Iglesias, are you familiar</p> <p>3 with the plaintiff, N5HYG, in this litigation?</p> <p>4 A. Yes.</p> <p>5 Q. How are you familiar with the plaintiff</p> <p>6 N5HYG?</p> <p>7 A. Best of my recollection, that is the entity</p> <p>8 created for the investment promoted by RIN Capital on</p> <p>9 behalf of Manoj Bhargav, the owner of RIN Capital and</p> <p>10 the owner, I believe, of N5HYG, the ultimate investor.</p> <p>11 Q. Can you describe your relationship with RIN</p> <p>12 after N5HYG became a stockholder of Hygea?</p> <p>13 A. Initially, delighted. He's the principal,</p> <p>14 is a substantial high net worth individual making</p> <p>15 investments in healthcare. We saw a tremendous</p> <p>16 partnership.</p> <p>17 And as such, after the October 5, 2016,</p> <p>18 investment, we opened our doors and our hearts to he</p> <p>19 and his team, so much so that in early 2017, we brought</p> <p>20 their number 3 executive, as was described to us by</p> <p>21 them, Dan Miller, as our COO.</p> <p>22 And at their suggestion, we contracted with</p> <p>23 FTI Consulting to help us straighten out the internal</p> <p>24 controls of the company. And that has been discussed</p> <p>25 here previously. Tim Dragelin and FTI were brought to</p>
<p style="text-align: right;">Page 624</p> <p>1 of shares?</p> <p>2 MS. GALL: I'm not sure that the number of</p> <p>3 shares as reflected on the VStock register is what I'm</p> <p>4 trying to get in. I'm merely trying to get in</p> <p>5 Mr. Iglesias' knowledge of how many shares are issued</p> <p>6 and outstanding.</p> <p>7 THE COURT: Mr. Kaye?</p> <p>8 MR. KAYE: Your Honor, first of all, I think</p> <p>9 it's very hard to see any sort of difference in that</p> <p>10 distinction. It seems to me to be two sides of the</p> <p>11 same coin.</p> <p>12 At the very least, that's what -- the witness</p> <p>13 I believe led with the number, started talking about</p> <p>14 the numbering and said he saw it when he went on the</p> <p>15 Internet and logged in.</p> <p>16 I do believe it falls within the best</p> <p>17 evidence rule. We've submitted in one of the earlier</p> <p>18 papers in this case, I believe it was in response to</p> <p>19 the motion to dismiss, Stephens v. State case, 127</p> <p>20 Nev. 712, talks about how the knowledge of a price tag</p> <p>21 was excluded under -- under NRS 52.225 because in that</p> <p>22 case, Scott does not appear to have any knowledge of</p> <p>23 value apart from the price tag. His testimony squarely</p> <p>24 implicated best evidence rule. And that's the same</p> <p>25 sort of thing here.</p>	<p style="text-align: right;">Page 626</p> <p>1 Hygea, in spite of their incredibly expensive price</p> <p>2 tag, at the request of Manoj and Chris Fowler from RIN</p> <p>3 Capital.</p> <p>4 Q. And could you describe the current</p> <p>5 relationship with RIN Capital?</p> <p>6 A. The current relationship soured when the</p> <p>7 board of directors decided that instead of going</p> <p>8 public, we were going to attempt to sell the company</p> <p>9 to private equity. What had happened -- and much has</p> <p>10 been said about the financial statements and the</p> <p>11 audited financial statements.</p> <p>12 Today we're in a much better position to</p> <p>13 audit '16 and '17 than we were last year in terms of</p> <p>14 auditing '14 and '15. We had bought a whole series of</p> <p>15 small practices that were, quite frankly, not</p> <p>16 auditable. They had not kept the books and records.</p> <p>17 When you buy any practice and you try to audit, you</p> <p>18 have to go back not only the year you acquired the</p> <p>19 practice, but the three years previous.</p> <p>20 What the auditors found was a lot of data,</p> <p>21 they didn't have the records in a state that could be</p> <p>22 audited. That's why we always thought that we were</p> <p>23 going to finish.</p> <p>24 We knew what the financial numbers were</p> <p>25 and -- pretty close to reality for '14 and '15, but the</p>

<p style="text-align: right;">Page 627</p> <p>1 fact that we knew what the revenue and expenses were 2 from a business standpoint, they were not at a level -- 3 not at our doing, at least from the prior years to 4 before we acquired these entities that were auditable. 5 The doctors historically didn't keep records. 6 They didn't post deposits. They had no cash controls. 7 And so -- and because we were much smaller companies, 8 those numbers were material from an audit standpoint. 9 Today as a \$400 million company, if we bought 10 an "unauditable" primary care position, their numbers 11 would not more than likely be material. When you're a 12 \$15 million company and you buy a \$5 million grossing 13 entity or \$3 million, it is material. If they're not 14 auditable, it really impacts the quality of the audit. 15 So we had a gargantuan problem getting '14 16 and '15 audited at the time, and not for lack of 17 effort. When you take the components that were not 18 auditable, part of the disparity between management 19 numbers and the audit numbers was based on the fact of 20 what was auditable versus what was actually gross. 21 So a doctor would ring in -- we could see the 22 checks coming into his office were X, but the fact is 23 because there was no backup for those checks, even 24 though they came from third party payors, institutional 25 payors, United Healthcare, Hygea, Aetna, CIGNA, but</p>	<p style="text-align: right;">Page 629</p> <p>1 8, 10, 15 percent, can, in fact, control that entity. 2 So what we think happened was that RIN 3 Capital thought they could end up in control of a 4 400 million or bigger company, not by investing, but by 5 having a minority interest in control of the board with 6 a very disbursed shareholder base, which would have 7 happened had we gone public. 8 With a private equity, they get paid the 9 value of their proportionate share at the time of the 10 sale. They didn't like that at all. They became 11 incredibly aggressive. And being advocates of all of 12 these lawsuits, not only this receivership action, but 13 also the federal private equity -- security -- private 14 security lawsuit also pending in federal court here in 15 Nevada. 16 So we're at -- I think at war. We have -- 17 I'd like to digress. Part of the issues that has been 18 raised about the board, we have a national quality 19 board. 20 My co-chairman is Dan McGowan, who was the 21 president of Emblem and HIP and later EmblemHealth. 22 It's a \$8.5 million HMO in New York, the largest -- 23 during his tenure, the largest healthcare provider in 24 New York, New Jersey, Connecticut. 25 Our co-chair is -- that's Dan McGowan -- is</p>
<p style="text-align: right;">Page 628</p> <p>1 because a doctor had not kept a chain of -- a proper 2 chain inside from a control standpoint, some of those 3 payments, a lot of payments, could not be confirmed 4 from an audit standpoint. 5 So it created all kinds of dissonance in 6 terms of completing a financial audit which was a 7 requirement at the time for going public. In the 8 meantime, we kept growing and being successful, and all 9 of a sudden we were no longer the 50 or 75 or 10 \$100 million company, we were the 3 to \$400 million 11 company we are today. 12 In the last few years, private equity has 13 come to parity in terms of value, what they were 14 willing to pay for healthcare companies in the Florida 15 market. And we saw an opportunity. We, the board, saw 16 an opportunity to sell the company on a private equity 17 basis. 18 That really -- when we brought it to the 19 board thinking it was a tremendous opportunity, it was 20 not received well by RIN Capital. And in retrospect, 21 we feel what had happened is since most of the 22 principals of Hygea thought we were going to sell our 23 interest into the market and have a liquidity event, by 24 definition, dilute our interest, but have a liquidity 25 event, in a public company, in an entity that holds 7,</p>	<p style="text-align: right;">Page 630</p> <p>1 Frank Kelly. Frank Kelly was a president of Coke Asia 2 and later the president of Coke Nestle worldwide joint 3 venture. 4 Glenn Marrichi, another board member, was a 5 principal at Leo Burnett, a national marketing firm. 6 Joe Campanella is a nationally certified, 7 well-respected healthcare consultant. Jack Mann was 8 the chairman of the board, until last year, for about 9 eight years of Cornell -- Cornell Presbyterian Queens 10 Teaching Hospital, one of the largest teaching 11 hospitals in New York. 12 Keith Collins, my replacement as CEO, has 13 been the president of two HMOs and multiple healthcare 14 companies. 15 I would -- other members of the board, Martha 16 Castillo, who was previously our COO, has extensive 17 healthcare background. 18 Ted Moffly, our CFO, MBA from the University 19 of Chicago, extensive healthcare and other business 20 experience. I think we have an incredibly qualified 21 board for a company our size, very active in -- in the 22 management of the company, not with their hands off the 23 throttle at all. 24 MR. KAYE: Your Honor, I'm not going to move 25 to strike that, but I am going to ask the Court --</p>

<p style="text-align: right;">Page 631</p> <p>1 because I don't want defendants to have to try to get 2 all that in again, I am going to ask the Court to 3 instruct the witness to answer the questions asked. I 4 think a very small percentage of that answer got to the 5 question. 6 THE COURT: Please do that. 7 THE WITNESS: Yes, Your Honor. 8 Q. (By Ms. Gall) Mr. Iglesias, do you believe the 9 appointment of the -- of a receiver is in the best 10 interests of the company, taking together your positions 11 as a founder, a stakeholder, a shareholder, and a current 12 director of the company? 13 A. No, I do not. 14 Q. Why do you not believe that a receiver is in 15 the best interests of the company? 16 A. The stated interest of all parties, both 17 plaintiffs and defendants, is shareholder value and 18 going concern value. And, unfortunately, based on the 19 reality of the -- primarily Florida, we're -- 20 95 percent or more of our revenue is still in Florida, 21 although we have aspirations to grow, and we're 22 already in Georgia. 23 The HMOs, which represent about 70 percent of 24 our revenue, I think would cancel those contracts. And 25 not only would that impact us as a going concern, the</p>	<p style="text-align: right;">Page 633</p> <p>1 discussed, they provide that the insurer can cancel the 2 contract in the event of a receiver, not that they will 3 cancel, correct? 4 A. That is correct. 5 MR. KAYE: Excuse me, Your Honor, very 6 briefly. I think counsel left her notes. 7 MS. GALL: Oh. Thank you. 8 Q. (By Mr. Kaye) You mentioned that your family 9 group is a significant shareholder of Hygea? 10 A. Yes. 11 Q. What is your family group in terms of 12 shareholding entities? What Hygea shareholders consist 13 of your family group? 14 A. We have a whole series of trusts and LLCs, 15 most of which were created by our asset protection 16 lawyer on behalf of my parents, who were the founders, 17 financial founders. 18 100 percent of the first million, two or 19 three million dollars, that came into the company both 20 in terms of equity and debt were provided by my 21 parents, then alive, no longer now, now deceased. And 22 a whole series of trusts were created for the 23 benefit -- generation skipping, for the benefit of my 24 children, their only grandchildren. 25 Q. Do you know which LLCs that own stock in</p>
<p style="text-align: right;">Page 632</p> <p>1 three contracts that you referenced, one is a Humana 2 contract, one is an Anthem contract, and the third one 3 is a -- I believe it's a Freedom contract. 4 They represent about 90 percent of our 5 Medicare Advantage patients. And those contracts 6 clearly state that one of the reasons they will cancel 7 our provider is because of the -- of -- naming of a 8 receivership. 9 The way the business works, our accounts 10 receivable are tied to the patients. If those 11 patients, based on the cancellation of a contract, are 12 transferred to a third party, that accounts receivable 13 goes with the patients to the third party. 14 So it's not that there's even a possible 15 liquidation, okay. We have 34 million that we can 16 liquidate. We'd lose most of our AR and value of the 17 company. It would be a total disaster. I think there 18 would be zero shareholder equity by the time the 19 process finished. 20 Q. Thank you, Mr. Iglesias. 21 MS. GALL: I don't have any more questions. 22 THE COURT: Cross-exam? 23 CROSS-EXAMINATION 24 BY MR. KAYE: 25 Q. Mr. Iglesias, those contracts that we just</p>	<p style="text-align: right;">Page 634</p> <p>1 Hygea are part of your family group? 2 A. Yes, I do. 3 Q. And what are they? 4 A. There's like seven or eight. Jose Padilla, 5 Shetlander. I'm happy to give you a list. If you 6 give me the VStock shareholder list that we provided 7 to you, I'd be happy to tell you which ones they are. 8 Q. You don't remember what -- which of the 9 family LLCs own stock in Hygea? 10 A. I don't want to misstate, but I can identify 11 them if I see them. 12 Q. Can you name any additional ones beyond what 13 you've named already? 14 A. The Olga Del C. Iglesias Family Trust. I 15 believe that's the name. Jose Prida, Guira Melena 16 Family Trust, possibly Rockford, Millsoborough 17 Investment Trusts. I think that would cover the bulk 18 of the holdings. 19 Q. What do you contend that the EBITDA was for 20 2017? 21 A. I don't contend anything. 22 CliftonLarsonAllen, the ninth largest CPA firm in the 23 country, stated that the EBITDA is approximately 24 35 million. 25 Q. And is that what you contend it was?</p>

<p style="text-align: right;">Page 635</p> <p>1 A. We just provide the data, and they do the 2 underwriting. They do the -- the due diligence. They 3 go and see and put it together. And they come up with 4 a number. 5 Q. What do you contend the EBITDA was for 2016? 6 A. '16? 7 Q. Yes, for 2016. 8 A. I do not know. 9 Q. What do you contend the EBITDA was for 2015? 10 A. I do not know. 11 Q. What do you contend the EBITDA was for 2014? 12 A. I do not know. 13 Q. What do you contend -- do you have any 14 contention as to what the year-to-date -- if you 15 extrapolate forward, 2018 year-to-date, what the EBITDA 16 will be? 17 A. The EBITDA in the first quarter was 18 approximately \$15 million, and we extrapolated that 19 will analyze to approximately \$60 million for 2018. 20 Q. That sounds a lot like the figure that you 21 had earlier estimated EBITDA was going to be in 2016; 22 isn't that right? 23 A. The EBITDA for 2016 was predicated on having 24 completed the audits, going public, and raising \$130 25 million of investment capital, which did not happen.</p>	<p style="text-align: right;">Page 637</p> <p>1 MS. GALL: Your Honor, I'm going to object to 2 this portion of the questioning at this point. The 3 scope of my direct was pretty narrow, and it did not 4 include, nor was there any testimony included regarding 5 EBITDA for 2016 or any years prior. 6 MR. KAYE: Your Honor, it goes to the 7 credibility of the witness's -- of the witness's 8 testimony regarding what he believes the EBITDA is for 9 2017 and 2018, which he did testify to. 10 MS. GALL: Your Honor -- 11 THE COURT: He did testify on direct about 12 the EBITDA. 13 MS. GALL: I agree, Your Honor, but he 14 testified on direct about the EBITDA today or from 15 2017, not for 2016 or any years prior. 16 THE COURT: The objection's overruled. Go 17 ahead. 18 Q. (By Mr. Kaye) You recall that there was some 19 disagreement -- there was testimony relating to 20 disagreement between you and, perhaps, some people aligned 21 with yourself and Mr. Dragelin and people, perhaps, 22 aligned with him relating to the company's EBITDA figures; 23 is that correct? 24 A. Could you be more specific as to a 25 timeframe?</p>
<p style="text-align: right;">Page 636</p> <p>1 This EBITDA that you're seeing now is the -- based on 2 the internal growth that we've had since October of 3 '16. It's taken us a lot longer, but we're getting 4 there. 5 Q. The previous EBITDA? 6 A. Was a projection. The previous EBITDA 7 you've been bantering around was a projection based on 8 an infusion of private capital or equity of 9 \$130 million, and that didn't happen. And since it 10 didn't happen, we didn't achieve the EBITDA that in 11 2016 we thought we would. 12 We have since then, instead of private 13 equity, have received debt to the tune of about 14 \$70 million from Bridging Finance and additional funds 15 from my family group. And we have grown the EBITDA, 16 both internally and through some acquisitions, the 17 acquisitions in 2017 to the numbers that we're now 18 seeing. So we're two years behind, but I think we're 19 getting there. 20 Q. Do you concede now that when you -- well, let 21 me step down and take -- ask another question. 22 You remember Mr. Dragelin's testimony that 23 there was a disagreement between you and some other 24 people aligned with yourself and Mr. Dragelin about the 25 company's EBITDA; is that correct?</p>	<p style="text-align: right;">Page 638</p> <p>1 Q. I would say the summer of 2017 I believe is 2 what he testified to. 3 A. What I remember was a healthy discourse 4 between management, our outside -- and our outside 5 consultant regarding what the numbers could or should 6 be. And at the end, I think Mr. Dragelin said the 7 ultimate arbiter and definer would be the auditors. 8 In that moment when we were still thinking of 9 going public, MMP, since the final arbiter of what the 10 actual EBITDA is. It's not my number or whatever his 11 number is, it's whatever the reality of the numbers 12 that come off based on a work product, top line revenue 13 minus -- minus expenses. 14 At the end of the day, the -- whether it's 15 MMP in Canada or CliftonLarsonAllen in the 16 United States, they are the determinant of what the 17 EBITDA is. I didn't come up with the \$35 million 18 number. 19 Q. Having engaged in those healthy debates or 20 healthy discussions, I forget the exact term you used 21 in 2017, you no longer have an opinion about the 2016 22 or 2015 EBITDA? 23 A. I never had an opinion in terms of -- we had 24 had projections based an investment that never 25 happened. When that investment didn't happen, those</p>

<p style="text-align: right;">Page 639</p> <p>1 numbers were forward-looking projections. 2 Somehow this litigation had taken on like 3 they were firm -- there was a point that hasn't been 4 raised, I'd like to make sure that it's on the record, 5 but it's on all our papers. 6 They were projections based on an investment 7 into the company of \$130 million. That didn't happen. 8 So everything that was going to happen, including that 9 EBITDA as a result of that didn't happen either. 10 Q. But you're very confident from the numbers 11 that you've conveyed here about 2017 and 2018? 12 A. I'm very confident of the integrity of 13 CliftonLarsonAllen. Part of reason that the -- in 14 addition to the fact that CMS reports four months in 15 arrears, it took a little longer than usual. 16 Because of their understanding of this 17 lawsuit, they were made aware of this lawsuit, they 18 were very careful to be very conservative so it 19 couldn't be -- could not be used against them. 20 It had been intimated in allegations I think 21 in the federal lawsuit or in this lawsuit that they had 22 not done as good a job in their last QOE that was used 23 in part by RIN Capital to make the investment in 24 October of 2016. 25 Q. When you testified that the board at some</p>	<p style="text-align: right;">Page 641</p> <p>1 private equity, they got very upset. 2 Q. When did you determine that Hygea was not 3 auditable for 2014 and 2015? 4 A. At the end of the day, it's always 5 auditable. But once we determined that we were going 6 to go private equity, two things had to happen. First 7 thing, the audits we focused on the last year were 8 based on I4's, the international system used by 9 Canada. So for private equity, they want GAAP QOEs. 10 And it was a totally different -- all accounting, but 11 substantially different emphasis. 12 And to finish the -- the audits -- they were, 13 as Mr. Dragelin explained, and I think he was correct, 14 we were close to, but close to it would entail another 15 50 to 100,000 to finish the audits. 16 With our cash flows in the second half of 17 2017, we thought those monies were better used to fund 18 the QOE based on the fact we were going to get a better 19 return on -- with a private equity and the QOE based on 20 GAAP standards. 21 Q. In your direct when you testified that the -- 22 that Hygea was not auditable because of the acquisition 23 or that the acquisitions were not auditable, you 24 misspoke? 25 A. No. No. What happened --</p>
<p style="text-align: right;">Page 640</p> <p>1 point decided not to try to go public and instead 2 decided to try to sell the company to private equity, 3 when did the board make that decision? 4 A. Sometime late summer, I think we started 5 talking about it right at the time of the board 6 meeting in August. We started looking at the 7 alternatives. 8 Q. When did the board make the decision? 9 A. I couldn't tell you exactly when. We've had 10 a series of board meetings and conversations. I 11 couldn't in all fairness tell you at what point it was 12 tipping. It was a conversation, and at one point we 13 were looking at both alternatives on parallel tracks. 14 And at some point it tipped to -- as there 15 was more and more interest from U.S. private equity in 16 terms of the investment, I think what was originally -- 17 we had a consensus of focusing on private equity. 18 Q. And -- but you don't know when consensus 19 merged? 20 A. No, I don't. 21 Q. That's the moment at which the relationship 22 with RIN soured? 23 A. That is my impression. I think it was 24 soured before we had a consensus of going only private 25 equity. The moment they saw that we were looking at</p>	<p style="text-align: right;">Page 642</p> <p>1 Q. You either determined that they were 2 unauditable or you didn't. And I think you've said two 3 different things now. 4 A. No. No. If you understand financial 5 accounting, you can always get an audit. It's -- they 6 write off substantial amounts of income that they 7 can't verify. 8 So we can always get an audit, but it has no 9 value in terms of showing what the real business of the 10 company is. And financial reporting, your side has 11 been focusing on the word "audit." 12 We're the most transparent and financially -- 13 most -- I don't know any other firm that reports more 14 to third parties with third-party validations. We have 15 since 2013 been given three loans by Fifth Third Bank. 16 In each case, it required substantial financial 17 reporting. They gave us three loans. 18 Then Macquarie came in and gave us a 19 \$40 million loan also based on substantial financial 20 reporting, QOEs. They -- they told us, by the way, 21 after we had done the 2013 audit not to do another 22 audit from a service company. They wanted to see 23 EBITDA. And a QOE focuses on EBITDA and revenue as 24 opposed to balance sheet and audit, which is the focus 25 of an audited financial statement.</p>

<p style="text-align: right;">Page 643</p> <p>1 After that, we refinanced Macquarie with 2 Bridging Finance, a substantive financial institution 3 in Canada, again based on the financial reporting we 4 gave them and a QOE. 5 The fact that we did not complete an audit 6 doesn't mean that we don't have good and adequate 7 financial reporting, and that third parties -- by the 8 way, RIN Capital invested \$30 million. And they are -- 9 Mr. Fowler himself, a senior manager before this 10 experience at GE Capital, and his team reviewed us from 11 a financial viability standpoint. I would tell you 12 we're actually very transparent and have good financial 13 reporting. 14 Q. I'm going to move to strike that. It had to 15 do with whether or not the acquisitions were auditable 16 or not auditable. 17 A. I don't think so. Why don't we read your 18 question. 19 THE COURT: Before I rule, can you get back 20 to that question? 21 (The following was read by the reporter: "You 22 either determined that they were unauditable 23 or you didn't. And I think you've said two 24 different things now.") 25 THE COURT: Overruled. Go ahead.</p>	<p style="text-align: right;">Page 645</p> <p>1 without a company because of this action. 2 Q. And if the corporation runs out of cash and 3 is unable to secure more lending, that could put the 4 corporation -- that could kill the corporation as well, 5 correct? 6 A. It is my impression that there's selectively 7 hearing from the plaintiffs' side. We have a 8 financial institution. That is what financial 9 institutions do. 10 When you look at the growth of large 11 companies, oftentimes they are -- they are not cash 12 flow positive. It doesn't make them non-viable. 13 That's why we have a banking system. In this case, we 14 have Bridging Finance, which is a financial institution 15 which is funding our short-term cash -- negative cash 16 flow. 17 Q. Mr. Iglesias -- 18 A. Yes, sir. 19 Q. -- if the company ran out of cash and 20 couldn't get a loan, that could put the company out of 21 business also, correct? 22 MS. GALL: Objection, Your Honor; 23 hypothetical, calls for speculation. 24 THE COURT: Overruled. 25 THE WITNESS: But we have a loan, and we have</p>
<p style="text-align: right;">Page 644</p> <p>1 Q. (By Mr. Kaye) Were the acquisitions subject 2 to being audited? Were they auditable? 3 A. You could get a stamp from a CPA firm that 4 said audit, but they would not have really 5 demonstrated the going concern of the company that we 6 acquired if, in fact -- not because the revenue and 7 expenses weren't incurred, but because those expenses 8 and those revenues could not be audited under GAAP. 9 The final document that would say "financial audit" 10 greatly understated the value of the business that we 11 acquired. 12 A QOE in a service business, and we are a 13 service business, we don't have brick and mortars, so 14 the balance sheet is not as important, is a much more 15 appropriate financial instrument to demonstrate the 16 viability of a company like ours. 17 Q. You understand that the plaintiffs in this 18 case are seeking a non-liquidating receiver, correct? 19 A. The problem is once -- it's like an 20 avalanche. Once you throw the little rock off the 21 top, things happen that you can't control. What we 22 have tried to show you and them privately is the way 23 the contracts with 70 percent of our revenue are 24 drafted and the way they work. There's a large 25 possibility that we -- both them and we will be left</p>	<p style="text-align: right;">Page 646</p> <p>1 a commitment to keep lending because the cash flow 2 analysis done by the bank and by us internally show us 3 about to turn into cash flow positive. And we have 4 strong third-party interests in acquiring us as a going 5 concern. I don't see that as a major issue in terms of 6 where Hygea is today. 7 Q. (By Mr. Kaye) If it happens, that would put the 8 company out of business, correct? 9 A. I don't know. 10 MR. KAYE: No further questions, Your Honor. 11 THE COURT: We're going to -- we needed to 12 stop now. Sorry to not be able to finish with him, if 13 you had questions. Did you have any? 14 MS. GALL: Your Honor, I don't have any 15 redirect. 16 THE COURT: I had one question because I'm 17 not sure if I heard you correctly. 18 Did you say on direct that the percentage of 19 your business that was HMO, the percentage of income? 20 Do you remember? 21 THE WITNESS: About 70 percent is managed 22 care, Your Honor. 23 THE COURT: Okay. That's what I wasn't sure 24 that I heard. 25 Do either of -- I'll let you ask questions on</p>

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1 that if you want.
2 MS. GALL: No, Your Honor. I don't at this
3 time.
4 MR. KAYE: No, Your Honor.
5 THE COURT: Okay. You can step down. We'll
6 adjourn for the day. What's the time?
7 COURT CLERK: Plaintiffs have 1 hour, 52
8 minutes, and 55 seconds. Defendants have 9 hours, 12
9 minutes, and 24 seconds.
10 THE COURT: Okay. We will start up at 9 in
11 the morning.
12 (The proceedings concluded at 5:00.)
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1 C E R T I F I C A T E
2 STATE OF NEVADA)
3 COUNTY OF CLARK)
4 I, Daren S. Bloxham, a Certified Shorthand
Reporter and Registered Professional Reporter, do
5 hereby certify: That I reported the proceedings
commencing on the 16th of May, 2018.
6 That I thereafter transcribed my said
shorthand notes into typewriting; and that the
7 typewritten transcript is a complete, true, and
accurate transcription of my said shorthand notes.
8 I further certify that I am not a relative or
employee of counsel of any of the parties, nor a
9 relative or employee of the parties involved in said
action, nor a person financially interested in the
10 action.
11 Witness my signature at Las Vegas, Nevada, on
this 20th day of May, 2018.
12
13
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15 Daren Bloxham
DAREN S. BLOXHAM
C.C.R. #685
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4 CLAUDIO ARELLANO; CROWN EQUITIES
5 LLC; FIFTH AVENUE 2254 LLC; HALEVI
6 ENTERPRISES LLC; HALEVI SV I LLC,
7 et al,

8 Plaintiffs,

9 -VS-

Case No. 18 OC 00071 1B

10 HYGEA HOLDINGS CORP,

11 Defendant.

12 _____/

13

14 TRIAL TRANSCRIPT

15 BEFORE THE HONORABLE JAMES E. WILSON JR.

16 VOLUME IV

17 PAGES 649 - 893

18

19 DATE: Thursday, May 17, 2018

20 TIME: 9:00 a.m.

21 LOCATION: Carson City District Court

22 885 E. Musser Street

23 Carson City, Nevada

24

25 REPORTER: Daren Bloxham RPR/CSR-685

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FIRST JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
IN AND FOR CARSON CITY

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LLC; FIFTH AVENUE 2254 LLC; HALEVI
ENTERPRISES LLC; HALEVI SV I LLC,
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REPORTER: Daren Bloxham RPR/CSR-685

<p>Page 650</p> <p>1 APPEARANCES: 2 THE MILLER LAW FIRM, PC 3 By: Mr. Christopher D. Kaye 4 Mr. David B. Viar 5 Mr. William Kallas 6 950 West University Drive, Suite 300 7 Rochester, Michigan 48307 8 248.841.2200 9 cdk@millerlawpc.com 10 dbv@millerlawpc.com 11 wk@millerlawpc.com 12 Appearing on behalf of the Plaintiffs 13 OAKLAND LAW GROUP 14 By: Mr. Kevin J. Watts 15 38955 Hills Tech Drive 16 Farmington Hills, Michigan 48331 17 248.536.3282 18 kwatts@oaklandlawgroup.com 19 Appearing on behalf of the Plaintiffs 20 HOLLEY DRIGGS WALCH FINE WRAY PUZEY THOMPSON 21 By: Mr. Clark V. Vellis 22 800 S. Meadows Parkway, Suite 800 23 Reno, Nevada 89521 24 775.851.8700 25 cvellis@nevadafirm.com Appearing on behalf of the Plaintiffs BALLARD SPAHR, LLP By: Mr. Kyle E. Ewing Ms. Maria A. Gall 1980 Festival Plaza Drive, Suite 900 Las Vegas, Nevada 89135 702.471.7000 ewingk@ballardspahr.com gallm@ballardspahr.com Appearing on behalf of the Defendant KAEMPFER CROWELL By: Mr. Severin A. Carlson Ms. Tara Zimmerman 50 West Liberty Street, Suite 700 Reno, Nevada 89501 775.852.3900 scarlson@kcnvlaw.com tzimmerman@kcnvlaw.com Appearing on behalf of the Defendant</p>	<p>Page 652</p> <p>1 P-R-O-C-E-E-D-I-N-G-S 2 --oOo-- 3 THE COURT: Good morning. Please be seated. 4 18 OC 71, Arellano v. Hygea. All the counsel are 5 present. 6 Ms. Gall? 7 MS. GALL: Good morning, Your Honor. I 8 believe Mr. Carlson will be calling the first witness. 9 THE COURT: All right. 10 MR. CARLSON: Good morning, Your Honor. 11 THE COURT: Good morning. 12 MR. CARLSON: Defendants would call Dr. Keith 13 Collins. 14 THE COURT: Please be mindful of those rugs 15 and the cords. 16 THE WITNESS: Thank you. 17 THE COURT: Face the clerk and raise your 18 right hand. 19 --oOo-- 20 KEITH COLLINS, 21 having been first duly sworn to tell the 22 truth, was examined and testified as follows: 23 --oOo-- 24 THE COURT: Go ahead and have a seat. Go 25 ahead.</p>
<p>Page 651</p> <p>1 I N D E X 2 WITNESS: Keith Collins 3 EXAMINATION PAGE 4 Direct By: Mr. Carlson 653 5 Cross By: Mr. Kaye 712 6 Redirect By: Mr. Carlson 722 7 Redirect By: Mr. Carlson 834 8 WITNESS: Jack Mann 9 EXAMINATION PAGE 10 Direct By: Ms. Gall 725 11 Cross By: Mr. Kaye 739 12 Redirect By: Ms. Gall 746 13 Recross By: Mr. Kaye 747 14 WITNESS: Sergey Savchencko 15 EXAMINATION PAGE 16 Direct By: Mr. Ewing 751 17 Cross By: Mr. Kaye 784 18 Redirect By: Mr. Ewing 788 19 WITNESS: Craig Greene 20 EXAMINATION PAGE 21 Direct By: Mr. Ewing 791 22 Cross By: Mr. Viar 813 23 Redirect By: Mr. Ewing 832 24 Redirect By: Mr. Ewing 874 25 WITNESS: Thomas Frazee EXAMINATION PAGE Direct By: Mr. Viar 848 Cross By: Mr. Ewing 869 EXHIBITS RECEIVED PAGE Exhibit 81 764</p>	<p>Page 653</p> <p>1 MR. CARLSON: Thank you, Your Honor. 2 DIRECT EXAMINATION 3 BY MR. CARLSON: 4 Q. Good morning, Dr. Collins. Would you state 5 and spell your name for the record. 6 A. My complete name? 7 Q. Your first name and your last name. 8 A. Okay. My full name is Stanton, 9 S-T-A-N-T-O-N, Keith, K-E-I-T-H, Collins, 10 C-O-L-L-I-N-S. 11 Q. Thank you, Dr. Collins. 12 Dr. Collins, where were you born? 13 A. I was born in Greenville, South Carolina. 14 Q. Were you raised in South Carolina? 15 A. I was. 16 Q. Do you have any post-high school education? 17 A. I do. I went -- first went to MIT thinking 18 I was going to be a scientist for NASA and help people 19 get up on Mars. But after MIT, I decided to go into 20 the medical field. 21 Q. What degree did you obtain from MIT? 22 A. I got a Bachelor of Science in political 23 science and a minor in computer science. 24 Q. And ultimately you said you went on to get a 25 medical degree. Where did you obtain your medical</p>

<p style="text-align: right;">Page 654</p> <p>1 degree?</p> <p>2 A. University of Massachusetts Medical School.</p> <p>3 Q. What year did you obtain your medical degree,</p> <p>4 if you can remember?</p> <p>5 A. 1984.</p> <p>6 Q. Do you hold any other degrees?</p> <p>7 A. I do. I have a master's degree in social</p> <p>8 service from Boston University.</p> <p>9 Q. Dr. Collins, you're a licensed physician?</p> <p>10 A. I am. I'm licensed in two states. I have</p> <p>11 active licenses in Massachusetts and New York.</p> <p>12 Q. Is there a particular type of medicine that</p> <p>13 you practice?</p> <p>14 A. Yes. I'm board certified in internal</p> <p>15 medicine.</p> <p>16 Q. What is internal medicine?</p> <p>17 A. Internal medicine, the simplest way to</p> <p>18 explain it is it's the care of adults, and in</p> <p>19 particular older adults.</p> <p>20 Q. Dr. Collins, are you currently employed?</p> <p>21 A. I am.</p> <p>22 Q. Where are you employed?</p> <p>23 A. At Hygea.</p> <p>24 Q. What's your role at Hygea?</p> <p>25 A. I am the chief executive officer and</p>	<p style="text-align: right;">Page 656</p> <p>1 After you obtained your medical degree, what</p> <p>2 kind of work did you go into?</p> <p>3 A. Well, after my medical degree, of course, I</p> <p>4 had to do my postgraduate training in internal</p> <p>5 medicine. And after completing my full medical</p> <p>6 training, I stayed on at the University of</p> <p>7 Massachusetts on the faculty and also in</p> <p>8 administrative roles, and eventually became the</p> <p>9 associate chief of the medical staff for the</p> <p>10 University of Massachusetts Teaching Hospital and</p> <p>11 faculty group practice.</p> <p>12 Q. How long did you work at the University of</p> <p>13 Massachusetts?</p> <p>14 A. Five years.</p> <p>15 Q. What did you do subsequent?</p> <p>16 A. Subsequent to the University of</p> <p>17 Massachusetts, I left academia, and I joined what was</p> <p>18 then a small but fast-growing HMO in New Hampshire</p> <p>19 called Health Source. I became a chief medical</p> <p>20 officer when we had six small plans in different</p> <p>21 states.</p> <p>22 Over the next five years, it was a very high</p> <p>23 growth organization, became a multibillion dollar New</p> <p>24 York Stock Exchange publicly-traded company with</p> <p>25 operations in about 16 states.</p>
<p style="text-align: right;">Page 655</p> <p>1 president.</p> <p>2 Q. How long have you been the chief executive</p> <p>3 officer?</p> <p>4 A. I was initially named interim CEO on or</p> <p>5 about April 9th of this year, and most recently on</p> <p>6 May 11th, I believe, I was named as the ongoing chief</p> <p>7 executive officer by the board.</p> <p>8 Q. And by "the board," you're referring to the</p> <p>9 board of directors of Hygea?</p> <p>10 A. I am.</p> <p>11 Q. Do you hold other roles with Hygea beyond</p> <p>12 being its CEO and president?</p> <p>13 A. I'm a director. I am currently the</p> <p>14 secretary of Hygea for reasons that made sense at the</p> <p>15 time. We'll be looking for a new secretary. I am,</p> <p>16 let's see, director. I'm an investor. I'm a</p> <p>17 shareholder. I think that's it.</p> <p>18 Q. How long have you been a director of Hygea?</p> <p>19 A. For five years, since March of 2013.</p> <p>20 Q. How long have you held stock in Hygea?</p> <p>21 A. Since that time. I -- I invested and came</p> <p>22 on the board at that time.</p> <p>23 Q. And Dr. Collins, we're going to go back to</p> <p>24 your role at Hygea, but I want to get a little bit more</p> <p>25 of your background in terms of employment.</p>	<p style="text-align: right;">Page 657</p> <p>1 My role changed from being chief medical</p> <p>2 officer to vice president for business development,</p> <p>3 which meant that I was doing acquisitions because we</p> <p>4 were acquiring a lot of smaller HMOs, turnarounds,</p> <p>5 because some of those HMOs that we acquired were</p> <p>6 troubled. That was the reason they were for sale. And</p> <p>7 I also did startups. And I ended up starting up</p> <p>8 several HMOs in multiple states.</p> <p>9 Q. And Dr. Collins, I'm sure most people are</p> <p>10 familiar with the acronym HMO.</p> <p>11 A. Oh.</p> <p>12 Q. But for the record, can you tell us what an</p> <p>13 HMO is?</p> <p>14 A. Yes. HMOs are insurance companies, but</p> <p>15 they're a specialized type of insurance company</p> <p>16 that -- the acronym "HMO" means health maintenance</p> <p>17 organization. And if I lapse into jargon or initials</p> <p>18 or something like that, please bring me back to earth.</p> <p>19 I'll explain it.</p> <p>20 Q. So your time at Health Source, I just want to</p> <p>21 make sure that I'm understanding your testimony</p> <p>22 correctly, that was -- Health Source was an HMO, so</p> <p>23 it's on the insurance side of healthcare?</p> <p>24 A. Absolutely. And -- and, actually, as I say,</p> <p>25 I didn't actually finish, so I went from chief medical</p>

<p style="text-align: right;">Page 658</p> <p>1 officer to the vice president of business development.</p> <p>2 Eventually I was named as the founding CEO for the New</p> <p>3 York City plan, which is called Chubb Health. It was</p> <p>4 a joint venture with Chubb, a huge insurance company.</p> <p>5 And it was the fastest growing HMO in New York City</p> <p>6 for a couple of years. Very proud of that.</p> <p>7 And we -- from that base, we also created</p> <p>8 health plans in Connecticut and New Jersey. And I was</p> <p>9 the senior vice president for Health Source in charge</p> <p>10 of those three states.</p> <p>11 Q. Okay. And so when you were in charge of</p> <p>12 those states, that was with Health Source, or was that</p> <p>13 through Chubb?</p> <p>14 A. Well, it was -- it started out as a joint</p> <p>15 venture between Chubb and Health Source. Eventually</p> <p>16 Health Source took over the entire joint venture. And</p> <p>17 then shortly after that, Health Source itself was sold</p> <p>18 so CIGNA.</p> <p>19 Q. And I didn't hear that last word.</p> <p>20 A. CIGNA. It was a large insurance company.</p> <p>21 Q. How long were you at -- I'll say Health</p> <p>22 Source and then ultimately when it was taken over by</p> <p>23 CIGNA, what time?</p> <p>24 A. Again, about five years.</p> <p>25 Q. About five years?</p>	<p style="text-align: right;">Page 660</p> <p>1 A. Correct.</p> <p>2 Q. -- can you explain that a little bit for us?</p> <p>3 A. Sure. There are actually national standards</p> <p>4 for medical care. One of the major measures of</p> <p>5 healthcare quality is called HEDIS, which used to be</p> <p>6 Health Employer Data and Information Set. I think it</p> <p>7 means something slightly different. But HEDIS is a</p> <p>8 set of measures.</p> <p>9 For example, how many of your women between</p> <p>10 ages 40 and 70 are getting mammograms on a regular</p> <p>11 basis? You know, because that's a very important</p> <p>12 preventative procedure.</p> <p>13 How many of your diabetics who need to have</p> <p>14 their blood sugar measured regularly, how many of them</p> <p>15 are getting that blood sugar measure performed at least</p> <p>16 three times a year?</p> <p>17 The measurement -- you know, you don't want</p> <p>18 the sugars too high because that means that the disease</p> <p>19 is out of control. So there's also a measure for how</p> <p>20 many of your diabetic patients have their blood sugar</p> <p>21 in control versus not controlled. Those are the kinds</p> <p>22 of things that were measured.</p> <p>23 Q. So those measurements allow the HMO to see</p> <p>24 what?</p> <p>25 A. The quality of the care.</p>
<p style="text-align: right;">Page 659</p> <p>1 What year did you leave Health Source/CIGNA?</p> <p>2 A. 1997.</p> <p>3 Q. At that point in time, what did you end up --</p> <p>4 what was your next progression in terms of employment?</p> <p>5 A. Well, luckily with the sale of Health Source</p> <p>6 to CIGNA, my stock options had been worth something,</p> <p>7 so that was good. I ended up moving to Florida to</p> <p>8 start physician networks that could take managed care</p> <p>9 risk, actually organizations very much like Hygea.</p> <p>10 And I founded, developed, and usually eventually sold</p> <p>11 a number of those organizations.</p> <p>12 Q. And so in terms of the change here, you said</p> <p>13 physicians organizations?</p> <p>14 A. Yes. So they're -- they're physician</p> <p>15 networks, primarily primary care physicians, very much</p> <p>16 like the Hygea model. Those physician networks will</p> <p>17 take on certain types of pay-for-performance or</p> <p>18 value-based contracts from the HMOs, whereby giving</p> <p>19 high quality care, which they measure, at contained</p> <p>20 costs, which they also measure. If you meet those</p> <p>21 goals, there are bonuses that flow through to the</p> <p>22 doctors.</p> <p>23 Q. And Dr. Collins, I don't want to get too far</p> <p>24 into the weeds, but when you talk about the measurement</p> <p>25 of patient care and the measurement of cost --</p>	<p style="text-align: right;">Page 661</p> <p>1 Q. What type of relationship and care the</p> <p>2 physicians are providing?</p> <p>3 A. Right. Because if you understand the</p> <p>4 relationship with the HMO, the HMO is the insurer, but</p> <p>5 it also is responsible for the quality of the care for</p> <p>6 the patients. HMOs are quite highly regulated.</p> <p>7 And so one of the things that the federal</p> <p>8 government insists on is that they be able to</p> <p>9 demonstrate that they are giving quality care to their</p> <p>10 insureds, which are called members.</p> <p>11 Q. Okay.</p> <p>12 A. So if I say the word "members," then you</p> <p>13 know what I'm talking about.</p> <p>14 Q. And then Dr. Collins, moving away from the --</p> <p>15 we'll say the performance care measurement?</p> <p>16 A. Yes.</p> <p>17 Q. You also said there was a monetary?</p> <p>18 A. Yeah, cost-effectiveness. So, again, the</p> <p>19 federal government, these -- I'm talking primarily</p> <p>20 about Medicare and Medicaid HMOs, which is the primary</p> <p>21 business in south Florida. There are commercial HMOs,</p> <p>22 but they are a less part of the market in Florida.</p> <p>23 So the federal government will pay for each</p> <p>24 patient a monthly premium. They don't call it that,</p> <p>25 but it's basically a monthly premium. And that money</p>

<p style="text-align: right;">Page 662</p> <p>1 is calculated to be the average that is needed for that</p> <p>2 patient's care.</p> <p>3 It's -- it's a form of capitation in that you</p> <p>4 get paid for everything you do. And so what is kept</p> <p>5 track of is the total cost of care versus the premium,</p> <p>6 which is the expectative cost of care.</p> <p>7 If you meet your quality goals, so you have</p> <p>8 to be giving quality medicine, and you are able to</p> <p>9 manage within that budget and preferable below that</p> <p>10 budget if you want to have a profitable business, then</p> <p>11 some portion of that surplus, some portion of that</p> <p>12 difference between expenses and allocated premium comes</p> <p>13 to the network.</p> <p>14 Q. Okay.</p> <p>15 A. Am I being clear? This is complicated</p> <p>16 stuff, so I'm not sure I'm being clear.</p> <p>17 Q. The plaintiffs will certainly have an</p> <p>18 opportunity.</p> <p>19 A. Plaintiffs will help me. Okay. I get my</p> <p>20 grade later, okay, on cross-exam.</p> <p>21 Q. Dr. Collins, I appreciate some of that</p> <p>22 detail.</p> <p>23 How many years have you been working on</p> <p>24 creating these physician networks that you're talking</p> <p>25 about after you left --</p>	<p style="text-align: right;">Page 664</p> <p>1 That is now Sunshine Health Plan, which is, I</p> <p>2 believe, still the second or maybe the third largest</p> <p>3 HMO in the state of Florida. Also in Florida, I</p> <p>4 created Better Health, which was sold to a healthcare</p> <p>5 entrepreneur named Mike Fernandez, who's legendary in</p> <p>6 south Florida for creating very profitable HMOs.</p> <p>7 And that became the basis for Simply Health</p> <p>8 Plan, which became a billion dollar company and was in</p> <p>9 turn sold to Anthem, which is a multibillion dollar</p> <p>10 company. So those were two very successful exits.</p> <p>11 And the third was in South Carolina, where I</p> <p>12 grew up. And I created something called Five Trust of</p> <p>13 South Carolina. It was a similar concept to a PSN. In</p> <p>14 South Carolina, the law that created it called it a</p> <p>15 primary care medical HMO's network.</p> <p>16 And, again, we were the fastest growing</p> <p>17 managed care organization in the state for -- for quite</p> <p>18 a while. And that was eventually sold to Centene. And</p> <p>19 the name now is Absolute Total Care. It is the second</p> <p>20 largest Medicaid HMO in South Carolina. So</p> <p>21 organizations that I have started have been successful,</p> <p>22 and the most successful ones are now the foundation of</p> <p>23 multibillion dollar companies.</p> <p>24 Q. Thank you, Dr. Collins.</p> <p>25 So let's go back now to your -- your role at</p>
<p style="text-align: right;">Page 663</p> <p>1 A. About.</p> <p>2 Q. -- Health Source?</p> <p>3 A. 20 years. I've created a number of them.</p> <p>4 Q. Could you tell us, if you can highlight a</p> <p>5 couple of them?</p> <p>6 A. Yeah. I think the ones to really</p> <p>7 highlight -- first of all, I'm proud to say that all</p> <p>8 of these networks have been successful at least to</p> <p>9 some extent, some more, some less. But there's never</p> <p>10 been any that failed, none that went bankrupt, none of</p> <p>11 that kind of stuff.</p> <p>12 All of these in -- the more successful ones</p> <p>13 have gone on and typically have been sold to larger</p> <p>14 organizations which can take them to the next level,</p> <p>15 very much like what we're trying to do at Hygea.</p> <p>16 So some of the networks -- I created a</p> <p>17 network which was called Access PSN. Now, actually, I</p> <p>18 was one of the founders of the concept of the</p> <p>19 physician-sponsored network. It's an alternative to</p> <p>20 HMOs where you contract directly with the state.</p> <p>21 You have to perform very much like HMOs, but</p> <p>22 you don't have some of the regulatory overhead that the</p> <p>23 HMOs do. So Access PSN was eventually sold to Centene,</p> <p>24 which is one of the largest publicly traded New York</p> <p>25 stock listed HMO organizations in the country.</p>	<p style="text-align: right;">Page 665</p> <p>1 Hygea. And you indicated that you were recently</p> <p>2 appointed by the board of directors to be the ongoing</p> <p>3 CEO. But I want to kind of step back a little bit on</p> <p>4 how did you end up learning about Hygea, investing in</p> <p>5 Hygea, and becoming one of its directors?</p> <p>6 A. Okay. I was -- you know, I was an</p> <p>7 entrepreneur and CEO of various organizations in south</p> <p>8 Florida. Basically through a friend of a friend, I</p> <p>9 got introduced to Manuel Iglesias and Ted Moffly, who</p> <p>10 at that point had a much smaller organization.</p> <p>11 And they were looking both for investors and</p> <p>12 also for people who had healthcare knowledge,</p> <p>13 particularly south Florida healthcare knowledge. South</p> <p>14 Florida is its own very complex world of healthcare.</p> <p>15 And so we met. I thought that they had a</p> <p>16 very interesting idea. What sold me on it was they</p> <p>17 invited me to lunch with the board, and the board was</p> <p>18 spectacular for such a small company.</p> <p>19 I think Mr. Iglesias has already talked about</p> <p>20 the chair, Dan McGowan, who was the turnaround CEO for</p> <p>21 HIP Health Plan, a multibillion dollar company in</p> <p>22 New York, which then merged with Empire to become</p> <p>23 Emblem, which is a multi-multibillion dollar company.</p> <p>24 He's sort of legendary in New York healthcare circles.</p> <p>25 We have Frank Kelly, who was the president of</p>

<p style="text-align: right;">Page 666</p> <p>1 Coca-Cola Japan and I think Coca-Cola Asia, but I'm not 2 sure, but certainly of Japan. 3 And then Glenn Marrichi, who was associated 4 with a national marketing company who created the 5 "Heartbeat of America," Chevrolet campaign. 6 So I was blown away. Tiny little company, 7 had this fantastic board, and they had a good idea. 8 And so I decided to invest. And they asked me at that 9 time to be the chief medical officer for a while before 10 the company grew to the point where they could employ 11 someone for that. 12 Q. And in your role as chief medical officer, 13 Dr. Collins, what were your responsibilities? 14 A. Chief medical officer for these network has 15 a lot of responsibilities and is hard to do -- hard 16 for one person to do it all well. But first of all, 17 is responsible for all medical policies. Remember 18 that the basic activity of these networks is treating 19 patients. The healthcare of people is really in our 20 hands to -- to some degree. And so we need to make 21 sure that good medical quality is being given to all 22 of these patients. 23 So there's medical policy, medical oversight 24 for quality, medical oversight for cost containment. 25 There's relationship with the physicians. There's data</p>	<p style="text-align: right;">Page 668</p> <p>1 billing and collecting and things like that. 2 These tend to be small either sole 3 proprietorships or small partnerships, and they don't 4 have a lot of resources for these back-of-the-house 5 functions. Hygea, because it amortizes all those costs 6 over large numbers of physician practices, is able to 7 build much more robust systems. 8 Q. Dr. Collins, do you know approximately the 9 number of employees Hygea presently has? 10 A. Currently there are about 500 employees, 11 most of them out in the practices serving patients. 12 Q. Do you have an idea of the number of Hygea's 13 employees that would be classified as "back of the 14 house," using the term as we've been using this 15 morning? 16 A. Of course, that's changed. Let's see. But 17 it's -- it's a hundred or less. 18 Q. What do those back-of-the-house employees do, 19 if you can just briefly let the Court know? 20 A. Okay. Well, the functions that are 21 important to an organization like Hygea, we've already 22 talked about the medical side. I don't think I need 23 to delve into that anymore unless you're fascinated, 24 as I am. 25 Q. We can do that at lunch or --</p>
<p style="text-align: right;">Page 667</p> <p>1 analysis that needs to be done to make sure that you're 2 observing all of the key metrics. There's lots of 3 hands-on stuff as well that you need to do. It's a 4 complex job, and there are many pieces to it. 5 Q. Dr. Collins, is it fair to say -- you've 6 talked about being the chief medical officer. Is it 7 fair to say that Hygea and companies like Hygea kind of 8 have two sides of the business, you have the medical 9 provider side, and then you have the -- kind of a 10 back-of-the-house side, the business side so to speak? 11 A. I haven't been in Nevada long, but I have 12 learned there's a front of the house and back of the 13 house. I think I know what those mean. So, yeah. 14 The front of the house is taking care of the patients. 15 That's what you have to do. And that is our patient, 16 and that is our responsibility. 17 But in today's medicine, it's -- it's 18 increasingly complex from a regulatory and business 19 point of view. And the fragmentation of physicians 20 into one- and two-person practices, these small 21 practices really cannot keep up with the 22 infrastructure, the back-of-the-house functions. 23 That's really required for even basic functions, such 24 as assuring quality and assuring cost containment and 25 things like that, and even very simple things like</p>	<p style="text-align: right;">Page 669</p> <p>1 A. We'll do that over a beer. Okay. 2 So there is, of course, the finance. Money 3 comes in, money comes out. Somebody's got to be 4 keeping track of all of that. And we have a very, very 5 strong financial officer in Sergey Savchenko. We're 6 very fortunate to have him. And he understands all of 7 that. 8 And understand in an organization like Hygea, 9 which was in a growth mode, you're always absorbing 10 other organizations into you. So it's -- it's not -- 11 it's always a moving target what the finance has to do 12 because you have to start absorbing other organizations 13 into what you're doing. And this is a theme that I'll 14 talk about if you -- if you're interested that is a 15 challenge for organizations like Hygea that are growing 16 fast. 17 So there's finance, that's very important, 18 and cash management. These are things that we've heard 19 about. It's complex to do for a company like Hygea 20 that is, first of all, in the medical field where 21 there's lots of regulations, and there's lots of 22 fragmentation. 23 It's also complicated to do that when you're 24 in fast-growth mode, as we have been. The company is 25 now 30 times larger than when I invested, so that's</p>

<p style="text-align: right;">Page 670</p> <p>1 basically doubling every year. So that's very fast 2 growth. 3 The finance cash management is even more 4 complex in an organization like Hygea than it is in 5 lots of other organizations. We've done enormous 6 amounts of work on the cash management, both before and 7 after the cash crunch came. We can talk about that 8 again if you're fascinated with that, but I will -- I 9 will move on to -- 10 Q. I want to compartmentalize a little bit here, 11 Dr. Collins, in terms of the practices that Hygea 12 acquires. 13 A. Yes. 14 Q. What's the value proposition that Hygea 15 presents to those physicians who ultimately, you 16 know -- whether they decide to the join the network or 17 not, what's the value proposition that Hygea is selling 18 to them? 19 A. Excellent question. So -- so there's a 20 value proposition that we say to the doctor, and 21 there's the value proposition for the company as a 22 whole, and I'll talk about those. 23 The value proposition of the doctor, most 24 doctors hate administration and are bad at it. Okay? 25 That's been one of the spurs to my career because if</p>	<p style="text-align: right;">Page 672</p> <p>1 get cash for their practice. 2 So that's the value proposition. We're going 3 to give you money and stock. The stock will be worth 4 something. We stand behind it. We're going to take 5 headaches -- and, in fact, if you do all the things 6 that we suggest both for the fee-for-service side and 7 for the managed care side, then your personal return, 8 your personal yearly income will rise significantly. 9 Q. And how does that happen, Dr. Collins? How 10 do you get that -- the dollars to show up? 11 A. So that's -- that's the -- that is the key 12 question, how are we able to run a doctor's practice 13 better than the doctor does? Well, you know, some of 14 it's relatively simple because, as I say, they tend to 15 be bad managers. 16 But -- but what we also have in addition to 17 having professional billing and collecting and 18 professional oversight of the staff, that we also have 19 another secret sauce, which is the managed care part of 20 things. 21 Most doctors do not understand how to manage 22 the care of their managed care patients in a way in 23 which they can participate in the very large savings of 24 surpluses that I mentioned before. 25 So what we do is they may have 2,000</p>
<p style="text-align: right;">Page 671</p> <p>1 you have a modicum of talent and a lot of interest in 2 this area, you tend to shine as opposed to other 3 doctors. 4 So they don't like administration. They're 5 bad at it. They have underperforming practices. 6 They're not billing and collecting correctly. And most 7 doctors are finding as reimbursements from the insurers 8 keep getting squeezed year after year, they're having 9 to run faster and faster just to stay in the same 10 place. 11 They also are not keeping up with various 12 compliance functions that the HMOs and other insureds 13 require. So they reach a point where they're saying, 14 I'm -- I'm really not able to cope with this. What we 15 say is, We'll take over those headaches for you, we'll 16 do it better, and you'll get a better return for it, 17 etc. 18 The other thing is that we actually buy their 19 practice. We don't just say, We'll give you a job. 20 We're buying their practice. We're giving them a 21 return for their life's work. 22 And that buy -- and again, if we get into 23 this, is partially cash, partially stock. And stock 24 usually has some redemption rights over time to 25 reassure the doctors that they will always be able to</p>	<p style="text-align: right;">Page 673</p> <p>1 patients, of which 500 are managed care. So we try to 2 optimize operations for all. But on the managed care, 3 we actually have things that dramatically increase the 4 returns to the network and to the doctor. 5 One of the things we do is that we go in and 6 we make sure that every patient is accurately 7 diagnosed, and that diagnosis is accurately coded and 8 put into bills to the HMO, which ultimately goes up to 9 Medicare or Medicaid, whatever the program is. 10 Q. Dr. Collins, in terms of this coding for the 11 managed care, it's not necessarily -- I'll use myself 12 as an example -- going to the physician and I have -- 13 A. A cold. 14 Q. -- a cold, the flu? 15 A. Right. 16 Q. And I'm diagnosed with it, and I go home with 17 a prescription and eat chicken soup and drink a lot of 18 water and drink hot tea. 19 The managed care side of it is separate from 20 that. It's more holistic in looking at not just what 21 Sev has on this one given day when he comes to visit 22 me, it's what has Sev had historically, and who is he 23 as a patient from a medical standpoint? 24 A. Exactly right. And this is some of the 25 information that Mr. Dragelin was talking about a</p>

<p style="text-align: right;">Page 674</p> <p>1 couple days ago. So I'll try not to be repetitive, 2 but it probably bears some refreshing. 3 As we mentioned, the federal government will 4 send down a premium every month for a Medicare patient 5 in one of these Medicare HMOs. That premium is 6 actually adjusted to how sick the patient is. 7 Now, how do you measure how sick a patient 8 is? When they say "how sick," how chronically sick, 9 not how sick are you today because you've got the flu. 10 But next week you're not going to have the flu. All 11 right? But if you have diabetes today, you're going to 12 have diabetes next week and next year, ongoing. 13 So the federal government has designed a 14 point system, actually, where every diagnosis is given 15 a certain number of points. And as these diagnoses are 16 aggregated, the point system adds up. And that point 17 system determines how much premium is given for that 18 patient each month. 19 It's adjusted to try to make sure that you 20 are giving the average amount needed per month for 21 patients with that set of diagnoses. Little example. 22 So if a person has diabetes, then you want to code it. 23 However, people with diabetes have complications. 24 It turns out that if a diabetic has the 25 complication of kidney damage, they're more expensive</p>	<p style="text-align: right;">Page 676</p> <p>1 inadvertently disparage any physicians. In terms of 2 the practices that Hygea is acquiring, it's not a 3 matter of necessarily the physicians not treating the 4 patient for the diabetes or the heart disease, but are 5 they doing an adequate job of coding it for purposes of 6 the contracts with -- with the government? 7 A. So there are actually two major things that 8 an organization like Hygea can do to improve care in 9 this sense. Certainly the accurate coding is 10 important because that determines the premium. 11 So you have a financial penalty for 12 inadequate coding that doesn't capture every diagnosis 13 to its most specific level. So if the doctor is just 14 saying diabetes and doesn't say kidney damage, 15 neurological damage, they're not getting the 16 reimbursement that they otherwise would. Okay? 17 On the other hand, if the patient only has 18 diabetes and the doctor puts in, oh, they probably have 19 kidney damage and neurological damage and don't support 20 that with data, well, there are actually very, very 21 stringent penalties for doing that. That's called 22 up-coding, which is actually against the law, and there 23 are criminal penalties for that. 24 So an organization actually has to have a 25 very, very strong infrastructure to code at the right</p>
<p style="text-align: right;">Page 675</p> <p>1 to treat and, therefore, they get more points in the 2 system and, therefore, more premium so that you can 3 treat them adequately within that budget that the 4 federal government has set. 5 If, in addition, they have complications with 6 nerve damage, then that's an additional increment of 7 complication and, thus, additional increment of monthly 8 premium. So you add all of that up. 9 So what the federal government wants us to do 10 is to completely diagnose every patient, not just, 11 okay, you came in for the flu today, but we're not 12 going to pay any attention to your diabetes, heart 13 disease, anything else. 14 They want to make sure that primary care 15 physicians are treating the whole patient at all times 16 and helping to manage these chronic diseases, which are 17 now -- these chronic diseases are now 80 percent of the 18 cost of healthcare in this country. 100 years ago, 19 that wasn't the case. It was more acute care was most. 20 Now we're living longer and people are 21 getting more long-term diseases. Therefore, they want 22 us to manage those patients with high quality within a 23 budget. That's what they're asking. This is one of 24 the mechanisms they do that with. 25 Q. Dr. Collins, I want to be careful not to</p>	<p style="text-align: right;">Page 677</p> <p>1 level, to code accurately but not go above or below. 2 So that's one of the core competencies of Hygea and 3 organizations like that. 4 Q. And as Hygea acquires these practices, 5 Dr. Collins, what's the timeframe that it takes for the 6 Hygea back-of-the-house employees to make sure that the 7 coding is appropriate either, 1, to realize, you know, 8 that the proper premium amount is being paid based on 9 the patient's total health situation and not up-coding 10 as you just referenced? 11 A. Yeah. The short answer is it takes about a 12 year. What we do immediately upon acquisition, 13 actually sometimes before the transaction actually 14 closes, we have our team go in and do assessments of 15 the records for these patients and to look at things 16 where there might be inadequate documentation, less 17 than accurate coding, things like that. 18 We have that team go in, and then it's a 19 process of things that we do in the back shop and 20 things we teach the front shop to do. Because 21 obviously it's much better as -- as the patients come 22 in that the patients are being accurately diagnosed 23 and -- and coded. But there's always some back-shop 24 cleanup and ongoing training where we need to do that. 25 So that takes a while to do. Remember,</p>

<p style="text-align: right;">Page 678</p> <p>1 also -- if I can test your patience just for a little 2 longer because this is complicated. Remember 3 Mr. Dragelin said two years ago that even when you get 4 the person adequately coded, it can be 6, 12, 18, or 24 5 months depending on certain complicated factors of how 6 the federal government runs these programs. There's 7 always a lag before you get the money. 8 So one of the issues for companies like Hygea 9 is you get the expenses right away when you acquire the 10 patients. But the secret sauce that really increases 11 the return to the practice, several fold, it can be as 12 much as five fold as Mr. Iglesias has taught, but it 13 can be several fold return to the -- to the practice, 14 that happens a year or even two years later. So 15 there's a mismatch in expenses versus income. And 16 somehow you need to bridge that gap. 17 Q. Okay. And so Dr. Collins, I believe it's 18 your testimony that it could take up to a year for the 19 back of house -- 20 A. To fully integrate and fully train and fully 21 go through all of the patients. Because one of the 22 things that happens is you can't just look and say, 23 Oh, this patient was miscoded. We're going to just 24 send a note off to the federal government, and they'll 25 say, No, no.</p>	<p style="text-align: right;">Page 680</p> <p>1 MR. CARLSON: I can clean up the question, 2 Your Honor. 3 THE COURT: Go ahead. 4 Q. (By Mr. Carlson) Dr. Collins, since you've been 5 the interim CEO, what changes have you made at Hygea -- 6 A. Okay. 7 Q. -- in your role as CEO? 8 A. Okay. Well, I've been very active with the 9 board. And I think that reforming board governance 10 and making sure that the board is even more effective 11 than it's been in the past has been very important. 12 So I've worked very closely with the board, 13 its leadership, and actually all of the directors on 14 the board for making it a more -- even more effective 15 organization. 16 So we're meeting more frequently. I think we 17 in the last year, we probably averaged around once a 18 month, but not every month. But now recently because 19 things have been changing rapidly, we've been meeting 20 every week to 10 days and having informational calls in 21 between sometimes. So it's a much more active board. 22 We've -- the board has -- and I've been a 23 driver of this, but obviously these are board actions. 24 All of the officers of the board have been changed so 25 that there's a new president, myself. There's a new</p>
<p style="text-align: right;">Page 679</p> <p>1 It has to be done in a face-to-face 2 conversation with their primary physician. You have to 3 bring them in and have a new claim with all of these 4 new diagnoses. 5 Q. So then once that's straightened up, then you 6 still have the lag time -- 7 A. Correct. 8 Q. -- from we'll say the new report, the new 9 diagnosis -- 10 A. Right. 11 Q. -- to then it being processed for the new 12 premium amount? 13 A. Absolutely. Lots of lags built in. 14 Q. So Dr. Collins, let's now focus a little bit 15 on your role as CEO? 16 A. Yep. 17 Q. You've been in the ongoing position, not the 18 interim position, I guess, approaching a week now, but 19 I want to look back at when you became the interim CEO. 20 What changes have you, with the board of 21 directors, implemented at Hygea? 22 A. Okay. So immediately upon -- 23 MR. KAYE: Objection; compound as to what 24 changes are, what he has implemented versus the board 25 of directors.</p>	<p style="text-align: right;">Page 681</p> <p>1 secretary, also myself. That's a historical anomaly 2 that we'll have someone else do later. And treasurer. 3 So we have -- we have that function. 4 And so all of the officers have been changed. 5 We've created a new committee, which is called a 6 governance committee, which is looking at for Hygea, in 7 its now much larger size, what are the governance 8 practices and processes that we should be implementing 9 in order to effectively govern and to do necessary 10 oversight of the functions of the company and the 11 officers that are responsible for that, and acts as 12 checks and balances on the management. 13 Q. And Dr. Collins, when you talk about a new 14 CFO, a new CEO, have -- would you consider those 15 C-suite positions? 16 A. Correct. All C-suite positions are -- 17 sorry. All C-suite positions have changed. There's 18 been a complete turnover there. I'm now the CEO. We 19 have Mr. Savchenko in the CFO slot. We have David 20 Hernandez in the chief operating officer slot. And on 21 the medical side, we have Dr. Gaylis as the EVP of 22 the -- of medical affairs. But -- 23 THE COURT: Of medical what? 24 THE WITNESS: Of medical affairs. I'm sorry. 25 Yes.</p>

<p style="text-align: right;">Page 682</p> <p>1 And because Dr. Gaylis is more of a big 2 picture and relationship -- remember, I talked about 3 all the functions that -- that a medical director has 4 to do? Not everybody is good at all of them. Hardly 5 anybody is good at all of them. So sometimes you have 6 to have multiple. 7 So we hired a chief medical officer. 8 Actually, I was quite involved in that. Get a new 9 chief medical officer, Dr. Darwin Caraballo, very 10 expensive guy. 11 He's the hands-on guy that does daily 12 utilization management, quality management, working 13 with the other medical directors, which we have 14 several, doing sort of daily guidance to those. That 15 whole function has been revamped and strengthened. 16 Q. (By Mr. Carlson) And outside of the C-suite, 17 obviously you have other key employees at Hygea. Have 18 there been changes implemented by you at that level? 19 A. Absolutely, because, you know, C-suite is 20 great, but the work gets done at the lower level. The 21 next level down has about 12 people. Each one of 22 those I have touched and visited, and most of them I 23 have done the following things. 24 I interviewed them. I interviewed everybody 25 that touches them in the organization that is either a</p>	<p style="text-align: right;">Page 684</p> <p>1 Gone through that whole -- that whole level 2 of 12 people, and they all have either -- the good 3 performers have been validated and supported. The okay 4 performers have been evaluated and support given to 5 them to try to do a better job. 6 The poor performers have been sort of 7 counseled to other functions they might be better 8 suited for and other people put in their place. All of 9 those things have happened since I came on board. 10 Q. Okay. Dr. Collins, I want to move over a 11 little bit to your role as secretary for Hygea. 12 What's your understanding of your role as 13 secretary for the corporation? 14 A. I'm responsible for keeping the corporate 15 records of the company, including things like board 16 minutes and other -- other records. 17 Q. And how long have you been secretary for 18 Hygea? 19 A. Oh, jeez. I think on or about April 20th I 20 was named that. 21 Q. What kind of records do you maintain on 22 behalf of Hygea as the secretary? 23 A. So as I said, there's the -- all 24 corporate -- all official corporate records. But the 25 two big ones that I've spent a fair amount of time on</p>
<p style="text-align: right;">Page 683</p> <p>1 supplier or customer. If you can think about that, how 2 organizations interact, and looked at evidence of the 3 quality of their work. 4 So there are happy surprises, like Ms. Leahy 5 Crespo, who's over our coding. As I said, coding is 6 something I'm particularly sensitized to because either 7 under or over has sometimes drastic consequences. 8 I'm happy to report she's terrific at her 9 job. She's doing a terrific job. Have no -- no 10 concerns with that. But I had a lot of concerns before 11 we did the survey and looked at the quality of the work 12 there. 13 There are other things where there are open 14 slots. There was an open slot for our pharmacy. We 15 actually have a pharmacy that we operate. We needed a 16 pharmacist. 17 In fact, the way things were going, we had 18 hired a sort of supervising pharmacist, you know. And 19 because of a cash crunch, he wasn't going to have 20 anybody to supervise. 21 So he is going to have to be a player coach. 22 Can't stay on the sidelines. Got to get in there and 23 dribble the ball or whatever you do to make sure you 24 that this all gets done. Are you up for it? I'm up 25 for it. So we did that.</p>	<p style="text-align: right;">Page 685</p> <p>1 are board minutes, making sure that the decisions and 2 resolutions of the board are accurately kept. 3 And I will say as far as corporate minutes 4 that they are much more focused on the actions of the 5 board. In the past, they were kind of narratives. I 6 think it's much more important that we accurately 7 record exactly what the resolutions of the board are. 8 So those are the minutes. And obviously the stock 9 ledger is one of the major things we do and other 10 corporate records like that. 11 Q. As secretary of the corporation, are you 12 aware of Hygea having a stock transfer agent? 13 A. We do. VStock is the name of our stock 14 transfer agent. 15 Q. Do you interact with VStock? 16 A. I do. 17 Q. Is there a particular account representative 18 or contact that you deal with at VStock? 19 A. Yes. Thank goodness that we have a 20 wonderful account representative, Jevon Nunez, 21 terrific guy. He's very accommodating. Can't say 22 enough about the customer service at VStock. Very 23 good. 24 Q. Dr. Collins, do you know how many shares are 25 issued and outstanding for Hygea as of April 30th?</p>

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1 **A. Okay. I just looked at it this morning.**
2 **It's approximately 432 million.**
3 MR. KAYE: Objection under the -- lacks
4 foundation. But as well, this is something we
5 discussed yesterday under the best evidence rule. The
6 data source for that information would need to be
7 admitted as opposed to the -- as opposed to the
8 witness's recollection of what he saw.
9 THE COURT: Mr. Carlson?
10 MR. CARLSON: Your Honor, he's the secretary
11 of the corporation. He's testified that it's his
12 charge to maintain the books and records of the
13 company, including the shareholder list.
14 So that's within his knowledge. I'm going to
15 ask him a few more questions on how he knows what that
16 number is, but I think certainly it's within his
17 understanding as secretary of the corporation.
18 THE COURT: Go ahead with those foundation
19 questions. I'll reserve the objection on -- well,
20 foundation and hearsay.
21 MR. KAYE: Thank you.
22 THE COURT: Best evidence.
23 Q. (By Mr. Carlson) And Dr. Collins, you've
24 indicated what you believe to be the number of outstanding
25 shares of Hygea as of April 30th.

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1 Has that number changed?
2 **A. Since April 30th?**
3 Q. Since April 30th.
4 **A. It should not have because --**
5 MR. KAYE: I'm going to make the same
6 objection, but also add that this -- that question
7 assumes facts not in evidence. I don't believe that
8 the foundation has been laid for the -- for the
9 previous number that was stated.
10 THE COURT: Sustained.
11 Q. (By Mr. Carlson) Dr. Collins, have you requested
12 a shareholder list or have you -- well, let me rephrase
13 this.
14 Have you given anyone direction to obtain a
15 shareholder list for Hygea as secretary of the
16 corporation?
17 **A. Done it twice.**
18 MR. KAYE: Objection; foundation as to where
19 that list would be.
20 THE COURT: Overruled. I didn't hear what
21 your answer was.
22 **THE WITNESS: Twice.**
23 THE COURT: Oh, twice. Okay.
24 **THE WITNESS: Yeah.**
25 THE COURT: Go ahead.

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1 MR. CARLSON: Thank you.
2 Q. (By Mr. Carlson) What are the two occasions that
3 you've made?
4 **A. Soon after -- soon after I was appointed**
5 **secretary, Ms. Gall, who's our lead counsel in this**
6 **action, informed me that plaintiffs had made some sort**
7 **of petition whereby we were asked to produce the stock**
8 **ledger on which we relied for certain motions that**
9 **Ms. Gall was responsible for. I actually don't**
10 **remember all of the details. But it was in response**
11 **to plaintiffs.**
12 Q. And was there a particular date and time --
13 **A. Yes.**
14 Q. -- that you needed to request?
15 **A. Very specifically the stock ledger that we**
16 **had relied upon in response to the plaintiffs'**
17 **petition was January 29th, 2018.**
18 Q. So that would have been the -- a record date
19 of shareholders?
20 **A. Correct. And so soon after my appointment,**
21 **I worked with Jevon, which is actually when I met him**
22 **telephonically. We went through the authentication**
23 **procedures that VStock requires, and we requested the**
24 **list as of record date, January 29th, 2018. And that**
25 **was produced and I assume was sent to plaintiffs. But**

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1 **it was produced. That's what I can testify to.**
2 Q. So -- so you obtained from VStock a
3 shareholder list of a record date of January 29th,
4 2018?
5 **A. We did.**
6 THE COURT: Say that date again for me.
7 MR. CARLSON: January 29th, 2018.
8 THE COURT: Thank you.
9 Q. (By Mr. Carlson) Dr. Collins, you also testified
10 that you -- you testified that you made two requests for
11 stockholder lists; is that correct?
12 **A. That is correct.**
13 Q. And we just talked about the January 29th
14 record date?
15 **A. Correct.**
16 Q. What's the record date for the second request
17 that you made?
18 **A. April 30th -- April 30th, 2018.**
19 Q. So did you make a request to VStock Transfer?
20 **A. Correct.**
21 Q. For --
22 **A. Yes. We requested VStock to produce that**
23 **list.**
24 Q. Was that through the same gentleman that you
25 had contacted for the January 29th VStock list?

<p style="text-align: right;">Page 690</p> <p>1 A. Yes. It would have to be through him.</p> <p>2 Q. Did you have to go through the same</p> <p>3 verification processes with VStock?</p> <p>4 A. Well, by that point, I had been</p> <p>5 authenticated, and I had actually given -- delegated</p> <p>6 authority to produce these lists to Ms. Gall. So I</p> <p>7 think that's how it happened.</p> <p>8 Q. Dr. Collins, have you seen both the</p> <p>9 January 29th -- well, have you seen the January 29th</p> <p>10 list?</p> <p>11 A. I certainly have.</p> <p>12 Q. Have you seen the April 30th list?</p> <p>13 A. I have.</p> <p>14 MR. CARLSON: Your Honor, if I could trouble</p> <p>15 the clerk for volume 4. Your Honor, if I may approach</p> <p>16 the witness?</p> <p>17 THE COURT: Yes.</p> <p>18 Q. (By Mr. Carlson) Dr. Collins, will you turn to</p> <p>19 what has been marked as Exhibit 174.</p> <p>20 A. 174. Hold on just a second. Okay. Yes. I</p> <p>21 see Exhibit 174.</p> <p>22 Q. Do you recognize this document?</p> <p>23 A. I do.</p> <p>24 Q. What is it?</p> <p>25 A. It is a certified shareholder list</p>	<p style="text-align: right;">Page 692</p> <p>1 A. But the page number is 57?</p> <p>2 Q. Yes. It's the -- also has a 57 in the bottom</p> <p>3 right corner, second to last page of the exhibit.</p> <p>4 A. Yes. I see that.</p> <p>5 Q. Do you see a line towards the bottom of the</p> <p>6 page that indicates the total outstanding shares?</p> <p>7 A. Yes. There's a line that says "total</p> <p>8 outstanding shares."</p> <p>9 Q. What's the number of total of outstanding</p> <p>10 shares as of the date of this list?</p> <p>11 MR. KAYE: Objection; hearsay and best</p> <p>12 evidence rule. This gets to something that we</p> <p>13 discussed yesterday, and I will cite again the Stephens</p> <p>14 case, 127 Nev. 712, where there is a writing that has</p> <p>15 evidence particularly of numerical value such as this</p> <p>16 under NRS 52.225, the writing is the only evidence that</p> <p>17 can be admitted as to that number, that case having to</p> <p>18 do with a price tag.</p> <p>19 THE COURT: So why is the exhibit not a</p> <p>20 writing?</p> <p>21 MR. KAYE: Your Honor, the exhibit has not</p> <p>22 been admitted.</p> <p>23 THE COURT: Okay.</p> <p>24 MR. KAYE: And so what I believe we -- the</p> <p>25 situation we have here is that the exhibit has not been</p>
<p style="text-align: right;">Page 691</p> <p>1 from VStock, our transfer agent. It has an effective</p> <p>2 date of January 29th, 2018.</p> <p>3 Q. And does Exhibit 174 appear to be the same</p> <p>4 copy that you received after making a request to VStock</p> <p>5 Transfer for this list?</p> <p>6 A. Yeah. I'm just taking a quick -- okay. Let</p> <p>7 me go to the end. Yes, it does. Yes. Yes.</p> <p>8 Q. And looking at the first page of Exhibit 174,</p> <p>9 you've mentioned the effective date of 1/29/18. Is</p> <p>10 that at the top of the page, Dr. Collins?</p> <p>11 A. It is.</p> <p>12 Q. And on the bottom left of the page, do you</p> <p>13 see a footer that indicates who the list was generated</p> <p>14 by?</p> <p>15 A. Yes. It was generated by Jeron Nunez on</p> <p>16 April 23rd at 3:19 p.m., Eastern Time.</p> <p>17 Q. And then turning to -- I'm hoping pages are</p> <p>18 Bates stamped -- what looks like Hygea ending at 484.</p> <p>19 I'll represent it's the second to last page of the</p> <p>20 exhibit.</p> <p>21 THE COURT: Mine does not appear to be Bates</p> <p>22 stamped.</p> <p>23 THE WITNESS: I don't even know what Bates</p> <p>24 stamped means, but --</p> <p>25 Q. (By Mr. Carlson) It would be --</p>	<p style="text-align: right;">Page 693</p> <p>1 admitted, and the --</p> <p>2 THE COURT: Oh, okay.</p> <p>3 MR. KAYE: -- the witness has been asked to</p> <p>4 read it.</p> <p>5 THE COURT: I understand now what you're</p> <p>6 saying.</p> <p>7 Mr. Carlson, response?</p> <p>8 MR. CARLSON: As to the hearsay, we're going</p> <p>9 to invoke the business record exception, Your Honor.</p> <p>10 I'm happy to offer this into evidence based on</p> <p>11 Dr. Collins' prior testimony and having identified</p> <p>12 what's been marked as Exhibit 174 as a correct copy of</p> <p>13 what VStock Transfer sent to him upon his making the</p> <p>14 request.</p> <p>15 MR. KAYE: And the plaintiffs object to that,</p> <p>16 Your Honor, as -- I'm happy to talk out the objection</p> <p>17 right now. But the objection is hearsay that it does</p> <p>18 not fall under the business records exception.</p> <p>19 THE COURT: So what about the hearsay</p> <p>20 objection?</p> <p>21 MR. CARLSON: So in terms of -- it's a</p> <p>22 business record, Your Honor. Dr. Collins talks about</p> <p>23 the books and records of Hygea and includes maintaining</p> <p>24 a list of stockholders. He's testified that Hygea has</p> <p>25 a stock transfer agent, VStock Transfer. That's an</p>

<p style="text-align: right;">Page 694</p> <p>1 agent of the company. It's generated in the regular 2 course of the business as a company with shareholders. 3 MR. KAYE: Your Honor, if I may respond? 4 THE COURT: Go ahead. 5 MR. KAYE: One of the things that we 6 confronted several times over the past few days is this 7 issue of business records, and one of the -- one of the 8 objections and one of the contentions that defendants 9 have made on numerous occasions is that a business 10 record created from an outside entity is not a business 11 record of the entity to which it is transmitted. 12 Several of those objections were sustained, Your Honor, 13 as you'll recall. 14 In this situation, I don't believe there's 15 been testimony that this is -- that this is created or 16 maintained by Hygea itself. It seems to be something 17 that was created and maintained by VStock, and in 18 particular was something that's been read into the 19 record is the exchanges between the witness and 20 Mr. Nunez. 21 And we see on the document itself down in the 22 bottom left-hand corner, generated by Jevon Nunez. In 23 that respect, that is not a Hygea business record, it 24 is a VStock business record and, therefore, does not 25 fall -- does not fall within the exception.</p>	<p style="text-align: right;">Page 696</p> <p>1 suddenly that becomes a record of the court reporting 2 firm. This is different. 3 We have testimony that VStock is an agent of 4 Hygea, that Hygea maintains its stockholder records at 5 least in conjunction with VStock Transfer. So we 6 certainly have a difference there from what defendants' 7 objections have been on business records that, yes, 8 they weren't -- neither were created by Hygea, but 9 these have been created at Hygea's request. 10 They're requested in the ordinary course 11 based on Hygea's stock records. So it's a compilation 12 that VStock Transfer prepares as an agent for the 13 corporation. 14 THE COURT: I don't remember there being 15 testimony about how these are prepared. Has there 16 been? Did I miss it? 17 MR. CARLSON: I think there's a general 18 notion that the secretary of the corporation knows of 19 issuance of shares. That's -- and we can get into 20 this, Your Honor, but I would make an offer of proof 21 that the company communicates those changes to VStock 22 Transfer to maintain the list. 23 MR. KAYE: Your Honor, I would once again 24 just mention in response to the notion that this was 25 made at Hygea's request. Again, these were produced at</p>
<p style="text-align: right;">Page 695</p> <p>1 Moreover, Your Honor, the witness has 2 testified that the document was produced and 3 obtained -- obtained by Hygea and presumptively, 4 therefore, produced by VStock for the purposes of this 5 litigation. 6 I think he was very clear about that. So 7 that takes it outside the ordinary course of business 8 and the ordinary course of maintenance of business 9 records itself. 10 THE COURT: That's the problem I've had on 11 both sides when the business record exception has been 12 raised. This doesn't appear to be a Hygea record. And 13 there's not -- because it's not -- if it's not 14 generated by Hygea, is there somebody outside of VStock 15 that can authenticate it? 16 There's another way of doing it. An 17 affidavit does it. But I don't -- there's nothing with 18 Exhibit 174 that I have seen that indicates that 19 somebody has prepared it in the normal course of 20 business with personal knowledge. 21 MR. CARLSON: I understand your concern, 22 Your Honor. I think Mr. Kaye's objection is to other 23 third parties. That's where we've had emails generated 24 by RIN Capital that merely by the sending of an email, 25 as if I were to send the court reporter an email that</p>	<p style="text-align: right;">Page 697</p> <p>1 Hygea's request for the purposes of this -- of this 2 litigation. 3 MR. CARLSON: Your Honor, I want to -- it's a 4 little bit of a tangent. I think there's also an 5 element of -- regardless of what the number of shares 6 are listed in the document -- 7 THE COURT: Let me read you the exception. 8 This is NRS 51.135. "Record of regularly conducted 9 activity. Memorandum, report, record, or compilation 10 of data in any form of acts, events, conditions, 11 opinions, or diagnoses, made or near the time by or 12 from information transmitted by a person with 13 knowledge, all in the course of a regularly conducted 14 activity, as shown by the testimony or affidavit of the 15 custodian or other qualified person is not inadmissible 16 under the hearsay rule, unless the source of 17 information or circumstances of preparation indicate 18 lack of trustworthiness." 19 So if -- it just doesn't -- I don't think the 20 foundation is there. 21 MR. CARLSON: Okay, Your Honor. 22 THE COURT: Yet anyway. 23 MR. CARLSON: Okay. 24 THE COURT: So that -- the foundation and 25 hearsay objections at this point are sustained.</p>

<p style="text-align: right;">Page 698</p> <p>1 MR. CARLSON: Okay.</p> <p>2 MR. KAYE: Thank you, Your Honor.</p> <p>3 Q. (By Mr. Carlson) Dr. Collins, as secretary of</p> <p>4 the corporation, do you have a role with respect to the</p> <p>5 issuance of shares of Hygea?</p> <p>6 A. I do.</p> <p>7 Q. What is that role?</p> <p>8 A. Pursuant to either board resolution or other</p> <p>9 mechanisms as approved by the board, such as contracts</p> <p>10 and things like that, shares may be or will be issued.</p> <p>11 The mechanism that the board has adopted for that is</p> <p>12 for that information to be transmitted to the</p> <p>13 secretary of the board.</p> <p>14 The process that has been established for the</p> <p>15 secretary has been that the secretary will then</p> <p>16 communicate with our transfer agent, which we have a</p> <p>17 contract for, so they are our agent, and that the</p> <p>18 transfer agent will both keep the record and will issue</p> <p>19 the shares. So certificated shares are produced at</p> <p>20 VStock and then sent to the appropriate address for</p> <p>21 distribution to the shareholder.</p> <p>22 Q. Are you aware of any instances where a</p> <p>23 shareholder has not requested their shares to be</p> <p>24 certificated or we'll say -- for a certificate to be</p> <p>25 issued to them?</p>	<p style="text-align: right;">Page 700</p> <p>1 Nunez, and with instructions as to whether to</p> <p>2 certificate or not.</p> <p>3 Q. Does that communication include the name of</p> <p>4 the shareholder?</p> <p>5 A. Yes. They would have to do that. Yes, sir.</p> <p>6 Q. Does it include the number of shares that are</p> <p>7 subject to the transaction?</p> <p>8 A. Yes.</p> <p>9 Q. In looking at what's been marked as</p> <p>10 Exhibit 174, Dr. Collins?</p> <p>11 A. Yes.</p> <p>12 Q. This is a copy of the shareholder list that</p> <p>13 you received from VStock Transfer after making a</p> <p>14 request for the same?</p> <p>15 A. Yes. This is the -- the certified</p> <p>16 shareholder list from VStock effective January 29th,</p> <p>17 2018.</p> <p>18 MR. CARLSON: Your Honor, at this time we'd</p> <p>19 move to admit Exhibit 174.</p> <p>20 MR. KAYE: Your Honor, same objections. And</p> <p>21 I would make an additional point in addition to the</p> <p>22 hearsay exception -- excuse me -- the hearsay</p> <p>23 objection; lack of exception as to business records,</p> <p>24 which is that I believe the witness testified that he</p> <p>25 has only been secretary since April 20th.</p>
<p style="text-align: right;">Page 699</p> <p>1 A. Yes.</p> <p>2 Q. Is that common in your experience?</p> <p>3 A. It's not rare. I mean, there are certainly</p> <p>4 circumstances in which it happens.</p> <p>5 Q. In your time as secretary, has the board</p> <p>6 issued any shares of Hygea?</p> <p>7 A. Yes. The board has by resolution issued</p> <p>8 shares during my watch, yes.</p> <p>9 Q. Have you communicated those issuances to</p> <p>10 Hygea's transfer agent?</p> <p>11 A. Yes.</p> <p>12 Q. And in those communications, have you</p> <p>13 requested your transfer agent to update its shareholder</p> <p>14 list?</p> <p>15 A. Yes. That's -- we use the VStock database</p> <p>16 as our record for these shares. That is its purpose.</p> <p>17 It does other functions for us. It certificates the</p> <p>18 shares, which is helpful. But the core purpose for</p> <p>19 Hygea of VStock is it is our stock ledger. That is</p> <p>20 what we use as our stock ledger.</p> <p>21 Q. What information does Hygea provide to VStock</p> <p>22 when there's been a share transaction?</p> <p>23 A. We have to notify VStock. It's typically</p> <p>24 through email from an authenticated and -- you know, a</p> <p>25 person with authority to VStock, typically to Jevon</p>	<p style="text-align: right;">Page 701</p> <p>1 Now, the effective date of this document</p> <p>2 purports to be January 29th, 2018. So while he may</p> <p>3 have been having exchanges with Mr. Nunez relating to</p> <p>4 the production of the -- the production of this for</p> <p>5 this litigation, he was not involved in any of the --</p> <p>6 presumably he's not testified that he was involved in</p> <p>7 any of the underlying correspondence under the</p> <p>8 procedure that he's set forth.</p> <p>9 That would be the previous secretary. That</p> <p>10 would be his predecessor, unless there's -- I'm</p> <p>11 presuming a little bit that he's not going to testify</p> <p>12 that he was doing that as well. But I'm pretty</p> <p>13 confident, and the chuckling tells me I'm probably</p> <p>14 right about that.</p> <p>15 MR. CARLSON: Your Honor, if I may?</p> <p>16 THE COURT: Go ahead.</p> <p>17 MR. CARLSON: Again, we'll cite to the</p> <p>18 business records exception. We've had testimony of how</p> <p>19 the officer, secretary of Hygea, Mr. Collins at this</p> <p>20 time, communicates information for VStock Transfer to</p> <p>21 compile it and maintain it.</p> <p>22 The record date that plaintiffs' counsel is</p> <p>23 speaking of is, Your Honor, a red herring. If we're</p> <p>24 going to follow that objection to its logical</p> <p>25 conclusion, a corporation may have to bring every</p>

<p style="text-align: right;">Page 702</p> <p>1 secretary that it's ever had to verify a list that's 2 maintained in the ordinary course. The request, as 3 Dr. Collins indicated, was made in April when he was 4 secretary. 5 In securities at any point in time, a record 6 date can be set. And that's direction to the transfer 7 agent to look at the who's a shareholder of record as 8 of a given date. 9 This date, January 29th, 2018, it becomes 10 immaterial who the secretary is. It's what's in the 11 record of the transfer agent that's been transmitted by 12 its -- through the direction of Hygea to its agent. 13 MR. KAYE: Your Honor, if counsel is 14 finished, if I may very briefly -- 15 THE COURT: Go ahead. Were you finished? 16 MR. CARLSON: No, I'm not finished. 17 MR. KAYE: My apologies. I couldn't tell. 18 MR. CARLSON: Your Honor, there's another 19 point to this, that defendants have been accused of not 20 providing information to the plaintiffs, so we have a 21 motion to compel that Your Honor has reserved ruling 22 on. 23 If for no other reason, we're working through 24 this particular exhibit and through this testimony to 25 show that, in fact, the defendants have complied with</p>	<p style="text-align: right;">Page 704</p> <p>1 That case cites the Hearsay Handbook 2 Section 8.05, second edition, 1983. "As a general 3 rule, records that are prepared for purposes of 4 litigation are not encompassed by the business record 5 exception to the hearsay rule." 6 I would also add as to the last point about 7 the contempt motion, that doesn't mean that -- that 8 this gets into evidence. It certainly doesn't mean 9 that it gets into evidence for the -- for the truth of 10 the matter asserted or for the numbers that I do think 11 are really the reason that defendants want to get this 12 in. 13 THE COURT: This is the problem I have. This 14 is the language again from 51.135. So it gives the 15 list of -- of things, "accidents, conditions, opinions, 16 diagnoses made at or near -- made at or near the time 17 by," and then this would seem to apply in this case, 18 "or from information transmitted by a person with 19 knowledge, all in the course of a regularly conducted 20 activity, as shown by the testimony or affidavit of the 21 custodian or other qualified person." 22 I'm stymied why this is such a big issue in 23 this case when all that had to be done with the 24 production of the record was an affidavit of the 25 custodian at VStock saying we get the information from</p>
<p style="text-align: right;">Page 703</p> <p>1 this Court's directive at the status conference to 2 produce the documents that were on plaintiffs' list, 3 which included the shareholder list upon which Hygea's 4 counsel relied in filing a motion before the Eighth 5 Judicial District Court to dispose of this case. 6 So I want to bring that up because it's more 7 than just simply a number on this page. We're 8 discussing this for two reasons. One reason is to 9 address that contempt motion as well. 10 MR. KAYE: Your Honor, a couple of things. 11 First of all, I don't think that the issue about the 12 secretary is in any respect a red herring. The reason 13 I raised the point about Mr. Collins' recent assumption 14 of that role, it seems there's perhaps an effort to 15 bootstrap, use the process of the secretary 16 correspondence to make up for the fact that the person 17 who it seems who would really be able to offer 18 testimony relating to whether or not this is a proper 19 business record is Mr. Nunez, as opposed to somebody at 20 Hygea, because, again, this is a VStock document. 21 I will also -- and the fact that this was -- 22 the witness I believe testified this was created for 23 litigation is quite significant. I'm looking here at 24 ALMN, Inc. v. Rusoff, which is a Supreme Court of 25 Nevada case, 104 Nev. 274, 1988.</p>	<p style="text-align: right;">Page 705</p> <p>1 Hygea, here's a summary of it, I'm a custodian of these 2 records. 3 But I'm not -- I don't think -- I don't think 4 I've heard Dr. Collins say that he transmitted this 5 information, that he can verify that the information 6 contained in here is verified by records that -- that 7 Hygea has sent to them. That's -- that's my problem 8 with the hearsay exception. 9 MR. CARLSON: Your Honor, I would -- I 10 appreciate that. My argument would be how many 11 secretaries do I have to bring in? 12 THE COURT: One affidavit. 13 MR. CARLSON: Okay. 14 THE COURT: I think. I mean, an affidavit 15 from somebody at VStock that says they have received 16 the records from Hygea, they have prepared the summary 17 based upon that, and it's true to the best of their 18 knowledge. 19 MR. CARLSON: Fair enough, Your Honor. 20 THE COURT: So the hearsay objection is 21 sustained. One -- excuse me -- yeah, 147 is not 22 admitted at this point. 23 MR. KAYE: Thank you, Your Honor. 24 Q. (By Mr. Carlson) Dr. Collins, let's move on. 25 You've testified about the -- these are my words, not your</p>

<p style="text-align: right;">Page 706</p> <p>1 words -- the, I guess, growing pains of Hygea in acquiring 2 physicians' practices and the lag times that it takes to 3 properly code patients within those practices, and then 4 the additional lag time for adjusted payments to start 5 coming in the door? 6 A. Yes. 7 Q. Is there a bright point on the horizon with 8 respect to those lag times in your mind? 9 MR. KAYE: I was going to object to 10 foundation. I think that "in your mind" fixed it. 11 THE COURT: You can answer. 12 THE WITNESS: Yes, very much so. And not 13 just in my mind, but in the minds obviously of the 14 people that are financially supporting us, who are very 15 sophisticated financial people, who are not used to 16 wasting their money. 17 So I -- I do believe that we are on the cusp 18 of having these managed care surpluses, which we've 19 worked so hard to earn, will start coming in. I have 20 talked to Mr. Savchenko, and Mr. Savchenko is a very 21 conservative individual. Things are black or white, 22 yes or no, true or false. 23 And he has confidence and I have confidence 24 in him. He has confidence that -- that some of these 25 managed care surpluses will start coming in in July.</p> <p style="text-align: right;">Page 707</p> <p>1 If you remember, Mr. Dragelin a couple days ago said 2 there was a July bump and a September bump. July bump 3 is coming in a couple of months. 4 MR. KAYE: Your Honor, I do move to strike 5 the sentence beginning in "not just in my mind." 6 THE COURT: Remind me what came after that. 7 MR. KAYE: I'm looking for it on here. My 8 apologies. "And not just in my mind, but in the minds 9 obviously of the people that are financially supporting 10 us, who are very sophisticated financial people, who 11 are not used to wasting their money." I'm objecting to 12 lack of personal knowledge and lack of foundation. 13 THE COURT: Sustained. 14 Q. (By Mr. Carlson) Dr. Collins, you've testified 15 about, gosh, I'd say your 20-plus years of experience with 16 HMOs? 17 A. Correct. 18 Q. Did you hear the testimony about the various 19 HMO contracts Hygea has? 20 A. I did. 21 Q. And do you recall those being in the exhibit 22 range of 70 to 75? 23 A. I did. I think it was 70 to 74, something 24 like that. 25 MR. CARLSON: I'm not going to walk him</p>	<p style="text-align: right;">Page 708</p> <p>1 through the provisions, Your Honor. 2 Q. (By Mr. Carlson) Have you reviewed the HMO 3 exhibits that we've discussed with other witnesses in 4 this case? 5 A. I have. 6 Q. Have you reviewed the termination provisions? 7 A. I have. 8 Q. Do you have a belief as to what the HMOs 9 would do with respect to those contracts if there was a 10 receiver appointed? 11 A. Yes. 12 Q. Can you enlighten us? 13 A. I have a very strong opinion that the HMOs 14 would immediately act to terminate the contracts, and 15 that belief is based on my 20 years experience on both 16 sides of the table with HMOs, both as an HMO CEO or -- 17 or -- and as a senior manager and also on the other 18 side as a contractor to HMOs. 19 HMOs are very conservative about certain 20 things. They're a highly regulated industry. They 21 cannot afford anything that even appears to endanger 22 patient care. Providers who are in fiscal distress are 23 not favorably looked on at all. 24 I have personal knowledge of situations like 25 this where providers ended up either in bankruptcy or</p> <p style="text-align: right;">Page 709</p> <p>1 receivership. And in all cases, in all cases, HMOs 2 were -- HMO contracts were speedily terminated. 3 Q. I apologize if you've already told us this. 4 What percentage of Hygea's business is generated 5 through these managed care contracts? 6 A. Approximately 70 percent of our revenues are 7 managed care revenues, and an even higher percent of 8 our profits, as you've already testified, that the fee 9 for service is a less profitable line of business, and 10 the managed care is much more profitable. So the 11 margins are much higher. It's 70 percent of our 12 revenues, much higher percentage of our profits. 13 Q. Dr. Collins, do you have a position on what 14 the ramifications of the appointment of a receiver 15 would be on Hygea? 16 A. I think it would be the death of the 17 company. I -- I think that the managed care contracts 18 would be terminated; that as Mr. Iglesias has 19 previously testified, managed care companies tend to 20 have the surpluses follow the patient. 21 So if the patient is transferred from Hygea 22 to Dr. Jones, the surpluses will not come to us. 23 Those -- those accounts receivable will evaporate, and 24 Dr. Jones will get an unearned surplus from our hard 25 work. So we will be left without money and without</p>
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<p style="text-align: right;">Page 710</p> <p>1 prospects. And I do believe it would be the end of the 2 company. 3 In addition, you asked about Hygea, but, in 4 fact, there are very strong regulations at the federal 5 level about anyone -- anyone who was a director or 6 officer of a company that takes money from Medicare, 7 and I think Medicaid, but I'm sure about Medicare, who 8 has ever been associated with a company who within two 9 years after they leave that company, if a person has 10 been a director or officer of a company that goes 11 bankrupt or under receivership, within two years after 12 them leaving, they are forever tainted, forever tainted 13 and may not be offered or allowed to participate, to 14 become a director or officer with an organization that 15 takes money from Medicare. 16 I have -- I have -- I have labored long and 17 hard on my reputation. It is one of the most important 18 things to me in my business life. This would be 19 devastating to me personally, to every officer and 20 director of this company. 21 We would all be forever tainted and unable, 22 potentially unable, to be an officer or a director of 23 any similar healthcare organization that takes money 24 from Medicare. 25 MR. KAYE: Your Honor, I'm going to move to</p>	<p style="text-align: right;">Page 712</p> <p>1 Q. Mr. Collins -- Dr. Collins, my apologies. 2 I'm used to saying "Mr." when I get up here. 3 Dr. Collins, you testified earlier that you 4 were -- you were familiar with situations involving 5 bankruptcy providers or providers in receivership and 6 how HMOs took action with respect to them. 7 Do you remember that? 8 A. I do. 9 Q. What were the names of those providers? 10 A. I'm not sure I can give you the names. 11 There was -- a few years ago, there were a series of 12 such actions in south Florida, smaller and larger 13 ones. But I -- I really can't recall to mind the 14 exact names of any. 15 Q. And which HMOs were they? 16 A. Humana for one. 17 Q. And were those providers in bankruptcy? 18 A. There were a variety of things, but, yes, 19 some of them would run into financial trouble. And 20 there was either threatened or there was going to be 21 appointed a receiver. 22 And so the HMOs then -- and I particularly 23 remember there were a series of them with Humana. 24 Humana sort of was cleaning up its network, did some 25 terminations. I don't know all the -- I don't know all</p>
<p style="text-align: right;">Page 711</p> <p>1 strike the paragraph -- paragraph shows up on my screen 2 beginning, "In addition, you asked about Hygea, but, in 3 fact, there are very strong regulations at the federal 4 level about anyone." 5 This is the discussion of the regulations. 6 There's a lack of foundation as to the witness's 7 personal knowledge about that. It almost seems to be 8 getting into very, very detailed, almost expert sort of 9 testimony without even lay opinion foundation. 10 MR. CARLSON: Your Honor -- 11 THE COURT: The foundation objection is 12 overruled. Go ahead. 13 MR. CARLSON: Thank you, Your Honor. I have 14 no further questions on direct. 15 THE COURT: We are going to take our morning 16 recess, 15 minutes. We'll come back in at 20 'til by 17 this clock. If you'd step down. 18 THE WITNESS: Thank you, Your Honor. 19 (Recess taken at 10:26, resuming at 10:43.) 20 THE COURT: 18 OC 71, Arellano v. Hygea. All 21 the attorneys are present. 22 Cross-exam? 23 MR. KAYE: Thank you, Your Honor. 24 CROSS-EXAMINATION 25 BY MR. KAYE:</p>	<p style="text-align: right;">Page 713</p> <p>1 of the -- all of the details of each of those. 2 Q. But the ones of which you're aware were 3 within a bankruptcy context? 4 A. They were within a financial -- they were 5 within a financial distress context. 6 Q. And you testified earlier that Hygea has 7 experienced a cash crunch, correct? 8 A. That is correct. 9 Q. And that cash crunch would itself constitute 10 financial distress, correct? 11 MR. CARLSON: Objection to the extent it 12 calls for a legal conclusion, Your Honor. 13 MR. KAYE: I don't believe that's a legal -- 14 particular legal salience. 15 THE COURT: The objection's overruled. You 16 can answer. 17 THE WITNESS: It could. 18 Q. (By Mr. Kaye) The HMO providers for the Hygea 19 medical provider network are an important part of Hygea's 20 business? 21 A. Very important. 22 Q. How many times have you spoken with 23 representatives of the -- any of those HMOs since you 24 became CEO? 25 A. Very few.</p>

<p style="text-align: right;">Page 714</p> <p>1 Q. Why haven't you reached out to them more if 2 they're so important to the business? 3 A. Because they're -- there are people that are 4 already in the organization that already have ongoing 5 relationships with them. Remember, I've only been 6 confirmed since Friday as the ongoing CEO. 7 Had I not been confirmed, it would have been 8 confusing and a detriment to our relationship with 9 them, as I -- here's the CEO de jour, and we're going 10 to have another one later. Since it's only been since 11 Friday, I really haven't had an opportunity to do that. 12 Q. And have you discussed with the people at 13 Hygea who do have these relationships what they've been 14 saying to the people at the HMOs? 15 A. I have. 16 Q. And who are those people at Hygea? 17 A. Well, the person that is most active is 18 Michael Muchnicki, who is a consultant to us. There's 19 also a woman, Denise Diaz, who is very active with 20 provider relations and also with the payors. 21 Q. And did they tell you what they have and have 22 not told the HMOs about Hygea's current situation? 23 A. We have discussed it in a general way. As I 24 say, there are many tasks on my plate since. I've 25 talked to you about what I have done, and there's</p>	<p style="text-align: right;">Page 716</p> <p>1 significant acquisitions; is that correct? 2 A. We're interested when we have the resources. 3 Q. And if you were to secure additional 4 resources, you would become more inquisitive again? 5 A. Absolutely. 6 Q. Despite the problems that the volume of 7 acquisitions posed to the corporation? 8 A. Well, again, these questions are all other 9 things being equal. So to give a more full answer to 10 your question, obviously what is on the top of our 11 list right now is that we need to manage our current 12 cash crunch. 13 We are doing that diligently, working with 14 our primary lender, Bridging Finance. And we have a 15 very close and productive relationship with them. And 16 they are providing the capital that we need. 17 Also, obviously we want to manage all claims 18 against the company and to service all -- all debt. 19 And so one of the things I've done, I didn't talk about 20 this, but another thing I've done is I have tasked 21 certain people, including some outside counsel, to make 22 sure that we have a complete inventory of all claims 23 against us. And we're looking -- Mr. Savchenko is 24 keeping track of all trade debt and things like that. 25 We are in discussions with essentially</p>
<p style="text-align: right;">Page 715</p> <p>1 certainly more that could be done. And had I not 2 spent a week and a half here in Nevada on this action, 3 I would have done more. 4 Q. To your knowledge, do the HMOs know about the 5 missed tax payments? 6 A. I don't know. 7 MR. CARLSON: Objection; foundation. 8 THE COURT: Overruled. 9 Q. (By Mr. Kaye) To your knowledge, do the HMOs 10 know about the failure to pay C-suite executives? 11 MR. CARLSON: Same objection, Your Honor. 12 THE COURT: Overruled. 13 THE WITNESS: I don't know, and I don't think 14 they care about that. 15 Q. (By Mr. Kaye) To your knowledge, do the HMOs 16 know about the issues that Hygea and Dr. Gaylis' practice 17 experienced with CuraScript? 18 A. I -- I don't know. 19 Q. To your knowledge, do the HMOs know about the 20 cash crunch that you discussed? 21 A. I don't know exactly what they know about 22 that. I think that they certainly know that we are 23 undergoing a reorganization and a retrenchment from 24 our prior fast-growth model. 25 Q. So Hygea is no longer interested in making</p>	<p style="text-align: right;">Page 717</p> <p>1 everyone. My approach to situations like this is 2 you've got to talk to people. People will often 3 understand if you think that you have a temporary cash 4 flow. What they don't want to have is you not talk to 5 them and walk away from the debt. 6 We stand behind all our debt. We are 7 servicing all of our debt in one way or another, 8 including CuraScript. We are in conversation with them 9 about how that debt, which we acknowledge, may be 10 serviced to their satisfaction. 11 And to my knowledge, there's no one we're not 12 talking to and no one we don't have at least some 13 interim agreement with about how we are going to 14 service that debt. 15 Q. So, in other words, if Hygea is not in a 16 liquidation posture, do you think that the 17 counterparties to your various contracts will stay with 18 Hygea? 19 A. I think that's one scenario in which they 20 would stay, but I think your use of "liquidation" is 21 a -- is an intentional one. And I would say that it's 22 not just a liquidation receiver, but any receiver that 23 would be devastating to the company. 24 Did I answer your question? 25 Q. Well, I'm not -- I'll ask the questions.</p>

<p style="text-align: right;">Page 718</p> <p>1 A. Okay. Well, I'm trying to figure out if I'm 2 answering or not. 3 Q. We'll put it that way. 4 A. All right. 5 Q. You said that the board has established a 6 governance committee? 7 A. Correct. 8 Q. And that's working on checks and balances? 9 A. Correct. 10 Q. And there's a need for more checks and 11 balances at Hygea, correct? 12 A. There is a need for more robust board 13 processes now that we are a much larger company than 14 we had before. And we are diligently working to 15 identify those and institute them. 16 Q. You discussed coding earlier? 17 A. Yes. 18 Q. You said that it was very important to 19 accurately diagnose patients? 20 A. Correct. 21 Q. For coding purposes? 22 A. For every purpose. 23 Q. Are you suggesting that practices before 24 they've been acquired by Hygea were not accurately 25 diagnosing patients?</p>	<p style="text-align: right;">Page 720</p> <p>1 do, and we are very proud of, is that, first of all, 2 we supplement these functions for the doctors. And, 3 also, we -- we supplement it for the doctors, and we 4 also train their staff, the front line staff, to be 5 better at it. 6 So we're not making any allegations that 7 there was poor care given before, although we think we 8 improve the care also, but that the record keeping and 9 the accurate diagnosis is not as good as our team can 10 do. 11 Q. That's an issue of data analytics? 12 A. It's not analytics. I gave you -- I gave 13 the example before. Doctors are busy. They see a lot 14 of patients. Patient may come in, and they have the 15 flu, but they also have diabetes. Patient may say 16 flu, these are the prescriptions, this is the plan, 17 and that's all. 18 Well, the way it works is if you don't 19 document the diabetes also, you can lose in two ways. 20 One is that diagnosis may fall off of this recurrent 21 process that Mr. Dragelin talked about because they're 22 only looking at a year at a time. If you haven't 23 diagnosed that process, that disease within the year, 24 you lose credit for it because the presumption is that 25 you're not treating it.</p>
<p style="text-align: right;">Page 719</p> <p>1 MR. CARLSON: Objection; misstates prior 2 testimony. 3 MR. KAYE: I'm asking what -- 4 THE COURT: Overruled. Go ahead. 5 THE WITNESS: So most doctors work very hard 6 to be good doctors. It's very important to them, and 7 it's an important role that they fulfill. The actual 8 coding of what they do, the actual recordkeeping, they 9 are not as skilled at. 10 There are no courses in medical school about 11 how to, you know, keep records and code and things like 12 that. So they tend not to be as skilled in those 13 things as they are at actually treating the patients. 14 In this world of ours now, if it's not 15 documented, it's not done. You don't get paid for it. 16 So it's important to have procedures to assist the 17 doctors to completely and accurately keep the records 18 of the diagnoses and the accuracy of the diagnosis down 19 to a pretty fine level. 20 Q. (By Mr. Kaye) So -- 21 A. Okay. I'm sorry. 22 Q. Oh, no. I thought you were done. If you 23 have something more to, you can say it. 24 A. I think the only thing I would say, it's 25 very important. One of the things that we at Hygea</p>	<p style="text-align: right;">Page 721</p> <p>1 Q. When you were a leader, I'll use the term 2 generically, of HMOs? 3 A. Correct, CEO and other high senior 4 management. 5 Q. Did you ever terminate a contract with a 6 provider because it was -- it had been placed under a 7 non-liquidating receiver? 8 A. Well, you know, a non-liquidating receiver? 9 First of all, I'm not as conversant with bankruptcy 10 law and those kinds of things. We certainly -- while 11 I was CEO and senior management, there would be 12 providers that would run into trouble, financial 13 trouble. 14 And I can't remember if they were 15 liquidating, non-liquidating. I can't remember. But 16 we certainly would be very concerned if someone -- and 17 I think in prior testimony, it was established that 18 often in these contracts, they had the page of what I 19 call the 11 deadly sins. Some very smart lawyer years 20 ago created 11 things that if the provider does, it is 21 what we call sudden death. 22 Q. It's safe to say you can't remember such a 23 termination? 24 A. Such a termination? I can't remember 25 specifically whether receivers were liquidating,</p>

<p style="text-align: right;">Page 722</p> <p>1 non-liquidating, whatever. Actually, I didn't even --</p> <p>2 I'm not completely sure what the distinction is. I'm</p> <p>3 not a lawyer.</p> <p>4 Q. You testified that Hygea had a spectacular</p> <p>5 board, correct?</p> <p>6 A. There are spectacular people on the board.</p> <p>7 Q. Would you rate the board's performance over</p> <p>8 the course of 2017 as spectacular?</p> <p>9 A. I think the board in 2017 was dealing with</p> <p>10 multiple issues of becoming a board that had the</p> <p>11 processes and procedures in place to run a large and</p> <p>12 complex organization, which Hygea had become. So</p> <p>13 looking backwards with 20/20 hindsight, there's</p> <p>14 certainly things that we could have done better.</p> <p>15 MR. KAYE: No further questions, Your Honor.</p> <p>16 THE COURT: Redirect?</p> <p>17 MR. CARLSON: Yes. Thank you, Your Honor.</p> <p>18 REDIRECT EXAMINATION</p> <p>19 BY MR. CARLSON:</p> <p>20 Q. Dr. Collins, how are you?</p> <p>21 A. I'm still standing -- actually, I'm still</p> <p>22 sitting.</p> <p>23 Q. Dr. Collins, you indicated that you received</p> <p>24 the ongoing appointment on Friday, May 11th, as the CEO</p> <p>25 of Hygea, correct?</p>	<p style="text-align: right;">Page 724</p> <p>1 HMO, as a CEO of an HMO, you say, We don't need this</p> <p>2 trouble, you know.</p> <p>3 Q. Was bankruptcy a reason for terminating a</p> <p>4 contract?</p> <p>5 A. Absolutely. It's one of the 11 deadly sins.</p> <p>6 Q. Were receiverships a basis for termination?</p> <p>7 A. Yes, absolutely.</p> <p>8 MR. CARLSON: Nothing further, Your Honor.</p> <p>9 THE COURT: Any questions, recross on those</p> <p>10 questions?</p> <p>11 MR. KAYE: No, Your Honor.</p> <p>12 THE COURT: You can step down.</p> <p>13 THE WITNESS: Thank you, Your Honor.</p> <p>14 THE COURT: Defense next witness?</p> <p>15 MS. GALL: We'll call Dr. Jack Mann to the</p> <p>16 stand.</p> <p>17 THE COURT: Come on up, please. Please be</p> <p>18 mindful of these rugs and cords there.</p> <p>19 --oOo--</p> <p>20 JACK MANN,</p> <p>21 having been first duly sworn to tell the</p> <p>22 truth, was examined and testified as follows:</p> <p>23 --oOo--</p> <p>24 THE COURT: Go ahead and have a seat.</p> <p>25 THE WITNESS: Thank you.</p>
<p style="text-align: right;">Page 723</p> <p>1 A. That is correct.</p> <p>2 Q. Where have you spent most of your time over</p> <p>3 the last week?</p> <p>4 A. Right here. Actually, I quite like</p> <p>5 Carson City. I love the weather here, you know. It's</p> <p>6 like Camelot. It rains at night, it's cool in the</p> <p>7 morning. Camelot in the desert here.</p> <p>8 Q. When you were either a CEO or senior official</p> <p>9 at the various HMOs that we discussed earlier this</p> <p>10 morning, do you recall contracts being terminated with</p> <p>11 providers?</p> <p>12 A. Yes, all the time. There's constant shaping</p> <p>13 and reshaping of the networks. I mean, the network is</p> <p>14 a core part of an HMO. Contracted procedures, yes.</p> <p>15 Q. What were the reasons for terminated</p> <p>16 contracts?</p> <p>17 A. There were many reasons obviously. If there</p> <p>18 was any evidence of poor care, if the providers got</p> <p>19 into legal trouble, which casts doubt on their ability</p> <p>20 to either continue to provide care or to provide good</p> <p>21 care, any allegations of abuse of patients. There</p> <p>22 were many, many reasons that we did.</p> <p>23 But one, appropriate to hear, was that if the</p> <p>24 provider was seen to be in financial distress or was</p> <p>25 unable to manage its own operations, as -- as -- as an</p>	<p style="text-align: right;">Page 725</p> <p>1 THE COURT: Go ahead.</p> <p>2 MS. GALL: Thank you, Your Honor.</p> <p>3 DIRECT EXAMINATION</p> <p>4 BY MS. GALL:</p> <p>5 Q. Good morning, Dr. Mann.</p> <p>6 A. Good morning.</p> <p>7 Q. Could you please state and spell your full</p> <p>8 name for the record.</p> <p>9 A. Jack Michael Mann. J-A-C-K, M-I-C-H-A-E-L,</p> <p>10 M-A-N-N.</p> <p>11 Q. Dr. Mann, where are you employed?</p> <p>12 A. I'm employed in a small medical practice in</p> <p>13 Queens, New York.</p> <p>14 Q. Dr. Mann, what is your educational</p> <p>15 background?</p> <p>16 A. Before going to medical school, I got a</p> <p>17 degree in marine biology. I had every thought of</p> <p>18 becoming Jacques Cousteau's physician when I went to</p> <p>19 medical school. Then I got married. And I went to</p> <p>20 medical school in Italy.</p> <p>21 After graduating medical school, I did my</p> <p>22 residency training at a hospital in Queens. Then I did</p> <p>23 my -- that was in internal medicine. Then I did my</p> <p>24 pulmonary training at Downs State Medical Center in</p> <p>25 Brooklyn. Then I went into private practice.</p>

<p style="text-align: right;">Page 726</p> <p>1 Q. Dr. Mann, are you involved in any community 2 activities? 3 A. Very active at the hospital where I admit 4 patients. I am the -- on the medical board there. I 5 used to be -- that's a voluntary position. All my 6 positions in the hospital are voluntary. I used to be 7 on the board of trustees for six years. Then the 8 board of trustees had been dissolved by a leverage 9 buyout. 10 And I also work hard with the medical staff 11 at the hospital. And most recently I'm very proud of 12 having been supportive of the establishing a charter 13 school in one of our local neighborhoods. 14 Q. Dr. Mann, you mentioned a medical board. Can 15 you explain to us what a medical board of a hospital 16 does? 17 A. A medical board at a hospital is composed of 18 physicians. The only people on the medical board are 19 voting physicians. And our duties are to oversee 20 anything that has to do with medical care in the 21 hospital, including, but not limited to, adjudicating 22 what would happen to people who perform poorly. 23 THE COURT: Excuse me for just a minute. 24 (A discussion was had off the record.) 25 THE COURT: The bailiff handed me a note</p>	<p style="text-align: right;">Page 728</p> <p>1 of directors? 2 A. Nine people now. 3 Q. Do you have an understanding of the term 4 "independent director"? 5 A. Yes, ma'am. 6 Q. What is your understanding? 7 A. An independent director is a director who 8 has no -- a member of his family, his or her family 9 have no direct financial ties, other than perhaps 10 stock in the corporation that you're the director for. 11 Q. And would you also understand an independent 12 director to be someone who does not hold an employment 13 relationship with the company? 14 A. Absolutely. 15 Q. And are you an independent director? 16 A. Yes, ma'am. 17 Q. Dr. Mann, does Hygea's board of directors 18 have meetings? 19 A. Yes, ma'am. 20 Q. And do you know how many meetings the board 21 of directors has had since January 2017? 22 A. Approximately eight. 23 Q. And have you attended all the meetings the 24 board of directors has had since January of 2017? 25 A. Yes.</p>
<p style="text-align: right;">Page 727</p> <p>1 about an emergency matter. If Judge Russell is here, I 2 think he can handle it. 3 MS. GALL: No problem. 4 THE COURT: Go ahead. 5 Q. (By Ms. Gall) Dr. Mann, you also mentioned you 6 were on a board of trustees. Can you explain to us what a 7 board of trustees does? 8 A. Board of trustees at the hospital is charged 9 with approving C-suite people. It is also in charge 10 of approving people who would sit on the board in 11 going over in a non-granular fashion all the goings on 12 in a hospital, including the finances, reviewing tax 13 returns, reviewing everything that goes on in the 14 hospital. 15 Q. In your experience, Dr. Mann, is a board of 16 trustees, does it function similarly to a board of 17 directors? 18 A. My experience, yes. 19 Q. And are you a director on Hygea's board of 20 directors? 21 A. Yes, ma'am. 22 Q. And how long have you been on Hygea's board 23 of directors? 24 A. Since the fall of '15. 2015. 25 Q. And how many directors are on Hygea's board</p>	<p style="text-align: right;">Page 729</p> <p>1 Q. In addition to having meetings, do you speak 2 with other members of the board of directors regarding 3 Hygea's business? 4 A. Absolutely. The board of directors -- all 5 of us are telephonically in communication when we need 6 to be. 7 Q. Are you familiar with the plaintiff in this 8 action named N5HYG, LLC? 9 A. Yes ma'am. 10 Q. And how are you familiar with the plaintiff? 11 A. They are shareholders about -- I believe 12 8 percent of the shares of the corporation. 13 Q. And do you know if they hold 8 percent of the 14 shares of the corporation today? 15 A. No. 16 Q. Is it your understanding that they held 17 8 percent -- approximately 8 percent of the shares of 18 the corporation at the time they became a shareholder? 19 MR. KAYE: Objection; foundation. I'm also 20 not sure if his answer to hold 8 percent of the shares 21 of the corporation today was the answer to whether or 22 not he knows or what it was. That's a foundational 23 issue as well. 24 THE COURT: Both are sustained. 25 Q. (By Ms. Gall) And I just want to make sure what</p>

<p style="text-align: right;">Page 730</p> <p>1 I ask is do you know whether he holds -- they hold 2 8 percent of the shares today? 3 MS. GALL: And that is sustained? 4 MR. KAYE: She can ask -- she can ask that, 5 except I would object to the foundation for what his 6 knowledge is. So I mean, I guess the short answer is I 7 do object assuming he answers yes. 8 THE COURT: The foundation objection is 9 sustained. 10 MS. GALL: Okay. 11 Q. (By Ms. Gall) You previously responded that you 12 believe that N5HYG was an 8 percent shareholder, correct? 13 A. Correct. 14 Q. What is that belief based on? 15 A. Based on -- on the amount of money I believe 16 that they invested at the time that they put up 17 \$30 million or something of that nature. 18 Q. And do you remember approximately when they 19 put up the approximately \$30 million or of that nature? 20 A. Towards the end of '16, 2016, or -- I 21 believe. I'm not sure. 22 Q. And since that time, has the board approved 23 resolutions to issue additional shares? 24 A. Yes. 25 Q. And would those have been in connection with</p>	<p style="text-align: right;">Page 732</p> <p>1 financial statement for the years 2014 and 2015? 2 A. Yes. 3 Q. Yes. How are you aware? 4 A. At a board meeting last August, there was a 5 presentation by the principal at our board meeting, 6 and he reiterated that the board better -- I'm 7 paraphrasing -- better give him the answers because it 8 would be bad for all of us if we didn't. 9 Q. And by "the principal," who are you referring 10 to? 11 A. Manoj -- what's his last name? I'm sorry. 12 Q. If I said Bhargava, would that sound familiar 13 to you? 14 A. Yes, ma'am. 15 Q. Who do you understand Mr. Bhargava to be? 16 A. To be the principal in the Nevada 5 17 corporation. 18 Q. N5HYG? 19 A. Yes. 20 Q. Did Mr. -- what did Mr. Bhargava say at that 21 board meeting? 22 MR. KAYE: Objection to the extent it 23 solicits hearsay. I don't know that it's going there. 24 MS. GALL: Your Honor, I'm soliciting 25 hearsay, but I'm soliciting an exception to the hearsay</p>
<p style="text-align: right;">Page 731</p> <p>1 acquisitions of physician practices that Hygea has 2 made? 3 A. Yes. 4 Q. Are you familiar with an entity called RIN 5 Capital, LLC? 6 A. Yes. 7 Q. How are you familiar with RIN Capital? 8 A. They represent the aforementioned 9 organization that owns the shares, and they're -- they 10 have a seat on our board as an observer. 11 Q. Do they still hold that seat on the board as 12 an observer? 13 A. No. 14 Q. Why not? 15 A. Because they're involved in this litigation. 16 Q. Okay. Are you familiar with an individual 17 named Chris Fowler? 18 A. Yes, ma'am. He's the observer. 19 THE COURT: He's what? I didn't hear the 20 last part. 21 THE WITNESS: I'm sorry. He's the observer. 22 THE COURT: Okay. 23 Q. (By Ms. Gall) Are you familiar or are you 24 aware of any requests made by N5HYG, including through 25 RIN Capital, relating to the completion of audited</p>	<p style="text-align: right;">Page 733</p> <p>1 rule. Mr. Bhargava has been identified as the 2 principal of RIN, which is the agent of N5HYG. 3 In addition to that, I can show the witness, 4 but Exhibit -- I believe what's been admitted as 5 Exhibit 2 of the Stock Purchase Agreement is signed by 6 Mr. Bhargava's as N5HYG's manager. Therefore, I would 7 ask for an exception to the hearsay rule. 8 MR. KAYE: Your Honor, I don't believe that 9 an exception to the hearsay rule applies there. 10 However, the objection was perhaps even a little more 11 circumspect. 12 If it's simply going to be what was said in 13 the course of -- in the course of board proceedings 14 along the nature of what the witness testified to 15 already, I don't think that's hearsay. It's more of a 16 preemptive objection in case things start to come in as 17 to the truth of the matter asserted. 18 THE COURT: Objection's overruled. Go ahead. 19 Q. (By Ms. Gall) What did Mr. Bhargava say? 20 A. Mr. Bhargava insinuated that all of the 21 directors were in grave jeopardy, and that he would 22 probably sue us if we didn't acquiesce to his demands. 23 Q. And what was his demand? 24 A. For the aforementioned audits of '14 and '15 25 and to -- to move forward with other matters that</p>

<p style="text-align: right;">Page 734</p> <p>1 he -- he thought were very important. We offered him 2 a seat on the board, and he turned it down. 3 Q. Has the board made a decision regarding the 4 completion of the 2014 and '15 audits? 5 A. Yes, ma'am. 6 Q. And what is that decision? 7 A. We decided that completing those audits 8 would be -- since -- when those audits were actually 9 thought to be important, we were thinking of going 10 public, and they needed to be completed to fulfill a 11 three-year window. Now that we're looking more 12 towards venture capital for funding, we felt that it 13 was an unnecessary expense, and we did not have to 14 endeavor to do that. 15 Also, that the -- the practices that we 16 were -- had acquired at that time were much smaller 17 than the newer practices that we had acquired, much 18 larger patient bases, and that those newer practices 19 should be represented to third parties who were 20 interested in buying or investing in the corporation 21 rather than those -- three years is not ancient, but 22 ancient practices, much smaller practices with 23 little -- less value. 24 Q. Dr. Mann, does the board appoint Hygea's 25 officers?</p>	<p style="text-align: right;">Page 736</p> <p>1 Q. Who was the former CEO of Hygea? 2 A. Ed Moffly. 3 Q. And I apologize if I said CFO. I intended to 4 say CEO. Who is the former CEO of Hygea? 5 A. Mr. Iglesias, Manny. 6 Q. Are you aware -- let me back up. 7 Did the board fire Mr. Iglesias? 8 A. No. 9 Q. Do you know how Mr. Iglesias came to leave 10 the position of CEO? 11 A. He resigned. 12 Q. Are you aware of requests by any of the 13 companies' shareholders that Mr. Iglesias be replaced? 14 A. Yes. 15 Q. Which shareholders? 16 A. N -- 17 Q. N5HYG? 18 A. N5HYG. I have this mental block for that. 19 Q. It's a mouthful. If I say N5? 20 A. That's better. Thank you. 21 Q. Have any other investors -- I'm sorry -- have 22 any other shareholder made requests of the company's 23 board of directors to have Mr. Iglesias replaced? 24 A. Not to my knowledge. 25 Q. When were the requests for Mr. Iglesias to be</p>
<p style="text-align: right;">Page 735</p> <p>1 A. Yes. 2 Q. Who is the current CEO of Hygea? 3 A. Dr. Collins. 4 Q. Did the board appoint Dr. Collins? 5 A. Last week. 6 Q. And prior -- and last week did the board 7 appoint Dr. Collins as the ongoing or -- hate to use 8 the word "permanent" because nothing is perhaps ever 9 permanent, but did they appoint Dr. Collins as the CEO 10 of Hygea? 11 A. Yes. And death is permanent. 12 Q. And prior to his appointment as the permanent 13 CEO, had the board appointed Dr. Collins as the interim 14 CEO? 15 A. Yes. 16 Q. And who is the current CFO of Hygea? 17 A. Sergey. 18 Q. Sergey Savchenko? 19 A. Sergey Savchenko. 20 Q. And did the board appoint Mr. Savchenko as 21 the company's CFO? 22 A. Yes. 23 Q. And just to clarify, did the board appoint 24 him as the acting CFO? 25 A. Yes.</p>	<p style="text-align: right;">Page 737</p> <p>1 replaced made by N5? 2 A. I believe within the last year. I can't 3 give you a specific date. 4 Q. Did N5 communicate to the board and to you 5 the basis for their request? 6 A. No. 7 Q. And how did the board respond to that 8 request? 9 A. We did not act on the request in that we did 10 not fire Mr. Iglesias. And we would have probably 11 acted on something had we gotten some solid 12 information or inferences about what was wrong with 13 Mr. Iglesias that we could look into. 14 Q. You stated earlier that Mr. Iglesias 15 resigned. Did the board accept Mr. Iglesias' 16 resignation? 17 A. Yes. 18 Q. Why? 19 A. The company had grown, as you heard 20 Dr. Collins testify to just shortly before, greatly. 21 And that was all through the effort of Mr. Iglesias. 22 But as the company grew, we realized that managing the 23 behemoth that was -- I think Dr. Collins said was 30 24 times bigger became onerous. 25 And we felt that we could put somebody else</p>

<p style="text-align: right;">Page 738</p> <p>1 to substitute Mr. Iglesias who had the qualifications</p> <p>2 that our current CEO has to help guide the company at</p> <p>3 their next step.</p> <p>4 Q. Dr. Mann, are you aware that in this lawsuit,</p> <p>5 plaintiffs seek the appointment of a receiver over</p> <p>6 Hygea?</p> <p>7 A. Yes.</p> <p>8 Q. Do you have an opinion as to whether a</p> <p>9 receiver is in the best interests of Hygea?</p> <p>10 A. Yes.</p> <p>11 Q. Could you share your opinion with the Court?</p> <p>12 A. I think that the -- yes, I can.</p> <p>13 Q. Will you share your opinion with the Court.</p> <p>14 Please state your opinion.</p> <p>15 A. Okay. I think that as Dr. Collins has</p> <p>16 earlier mentioned, receivership is something that</p> <p>17 would be frowned upon by most of the third-party</p> <p>18 payors, and that the current CEO is quite capable of</p> <p>19 turning around anything that we need to have turned</p> <p>20 around.</p> <p>21 And that I think that his qualifications</p> <p>22 probably couldn't even be matched by somebody that the</p> <p>23 Court would appoint, not to negate that the Court</p> <p>24 doesn't have the ability to appoint somebody. But with</p> <p>25 the depth of knowledge of HMOs and managed care that</p>	<p style="text-align: right;">Page 740</p> <p>1 believe it is not important to complete audited</p> <p>2 financials?</p> <p>3 A. I said it was not important to complete the</p> <p>4 '14 and '15 audited financials.</p> <p>5 Q. And so you don't think it's that significant</p> <p>6 an issue that the audited financials for those years</p> <p>7 didn't get done?</p> <p>8 A. I think in the interest of the corporation,</p> <p>9 which wants to move forward, which wants to garner</p> <p>10 capital, I think that spending capital on those two</p> <p>11 years, which are minuscule in the number of covered</p> <p>12 lives, and as Dr. Collins testified, covered lives is</p> <p>13 70 percent of our revenue and a large portion of our</p> <p>14 profit, to spend that money that will not enhance the</p> <p>15 value of the company to third-party people at this</p> <p>16 moment in time, to venture capital or anybody else</p> <p>17 looking to buy the company, I think it's money that</p> <p>18 would not be well spent.</p> <p>19 Q. I'm going to go back to the -- let me ask you</p> <p>20 this: Can you please turn to Exhibit 41.</p> <p>21 MR. KAYE: Does the witness have the binder?</p> <p>22 I can provide it. May I approach?</p> <p>23 THE COURT: Yes.</p> <p>24 MR. KAYE: May I approach the witness?</p> <p>25 THE COURT: Yes.</p>
<p style="text-align: right;">Page 739</p> <p>1 Dr. Collins has, I'm -- and all of the board members</p> <p>2 are confident that Dr. Collins can do an excellent job</p> <p>3 in helping right whatever is perceived as wrong.</p> <p>4 MS. GALL: Thank you. I have no further</p> <p>5 questions.</p> <p>6 THE COURT: Cross-exam?</p> <p>7 CROSS-EXAMINATION</p> <p>8 BY MR. KAYE:</p> <p>9 Q. Dr. Mann, if I can clear something up. You</p> <p>10 testified something, I don't remember the exact</p> <p>11 language, that RIN Capital/N5 no longer had an observer</p> <p>12 position with relation to the board; is that correct?</p> <p>13 A. At one of the most recent board meetings,</p> <p>14 Chris Fowler was asked to be off of the call.</p> <p>15 Q. Who -- who asked him to be off of the call?</p> <p>16 A. I believe it was Mr. Iglesias.</p> <p>17 Q. And did you think that that was appropriate?</p> <p>18 A. Yes.</p> <p>19 Q. And did you think that it was appropriate to</p> <p>20 take away RIN's observer status?</p> <p>21 A. Yes.</p> <p>22 Q. And you admit that was the board's decision,</p> <p>23 not RIN's decision, correct?</p> <p>24 A. To take away the observer status, yes.</p> <p>25 Q. If you could -- let me ask you this: You</p>	<p style="text-align: right;">Page 741</p> <p>1 THE WITNESS: Thank you. Excuse me. What</p> <p>2 number did you say, please?</p> <p>3 Q. (By Mr. Kaye) 41. And if you could turn to</p> <p>4 Bates page 1751.</p> <p>5 A. Page numbers are -- I don't have -- is it</p> <p>6 41-A or B? I have a 41-B. 41 only goes up to 1748.</p> <p>7 Q. Oh, I believe it's probably marked as 41-B in</p> <p>8 that binder. My apologies.</p> <p>9 A. I got it. I thought I was going blind.</p> <p>10 Q. And looking at page 1751 --</p> <p>11 A. Yes, sir.</p> <p>12 Q. -- there's a paragraph in the middle of these</p> <p>13 draft meeting minutes that states, "Mr. Dragelin</p> <p>14 further advised that various deficiencies," etc.</p> <p>15 Do you see that paragraph?</p> <p>16 A. Yes, sir.</p> <p>17 Q. Do you remember this conversation?</p> <p>18 A. Please allow me a minute to read it before I</p> <p>19 opine. This is from which board meeting, please?</p> <p>20 Q. I believe it's going to be uncontroversial to</p> <p>21 state that this is the draft minutes of the August 2017</p> <p>22 board.</p> <p>23 A. So back in August of 2017, we were still</p> <p>24 contemplating going public. And so in the context of</p> <p>25 going public, this would be an important statement.</p>

<p style="text-align: right;">Page 742</p> <p>1 But in the context of looking, as I said, for venture 2 capital, I don't think that what's stated here -- 3 because you're taking it out of context. 4 This -- the context here is we were thinking 5 of going public, and I mentioned in my testimony that I 6 thought that if we were going public, we needed to do 7 this, so this was taken at that time. 8 Q. And to be clear, what you read there in that 9 paragraph discusses the importance of finishing those 10 audits, correct? 11 MS. GALL: Objection; the record speaks for 12 itself. 13 THE COURT: Overruled. You can answer. 14 Q. (By Mr. Kaye) And, in fact -- you can go. 15 A. Go ahead. 16 Q. In fact, within that paragraph, it indicates 17 something that Mr. McGowan said. He was the co-chair 18 of the board at that time, correct? 19 A. Yes, sir. 20 Q. And he said, according to this, "Mr. McGowan 21 opined that the company can live or die on the audits," 22 correct? 23 A. Correct. 24 Q. Why did the board make changes to the 25 C-suite?</p>	<p style="text-align: right;">Page 744</p> <p>1 Q. You've made decisions, though, since the 2 lawsuit was initiated, correct? 3 A. Yes, sir. 4 Q. When the board has approved issuance of 5 additional shares, has it provided notification of that 6 to N5HYG or RIN? 7 A. I'm not sure. I suspect that they would be 8 notified at a shareholders meeting. 9 Q. When was the last shareholders meeting that 10 you attended? 11 A. I have not been to one. 12 Q. Have you received copies of any of the other 13 lawsuits that have been filed against Hygea? 14 A. Probably. 15 Q. And had you reviewed them? 16 A. In the past, yes. 17 Q. And have you investigated the allegations set 18 forth in those other lawsuits? 19 A. To the best of my medical ability, yes. 20 Q. But beyond your medical ability, you have not 21 investigated those -- 22 A. No. 23 Q. -- those allegations? 24 A. I've talked to counsel about them. 25 Q. You said that you agreed with the termination</p>
<p style="text-align: right;">Page 743</p> <p>1 A. We made changes in the suite -- the C-suite, 2 same problem. We made changes in the C-suite because 3 we felt that the company was growing rapidly, and that 4 we needed guidance from above to manage the company 5 now that it had grown to a size that was no longer a 6 mom and pop organization; that Mr. Iglesias had gotten 7 the company to a certain point; and that his forte was 8 growing the company; and that we needed to have 9 somebody managing the company that he had created. 10 And so we started looking for some people to 11 replace Mr. Iglesias. Several people were looked at, 12 and we finally decided Dr. Collins was an excellent 13 match for our corporation. 14 Q. So indeed, the request to replace 15 Mr. Iglesias was well-founded. Wasn't that your 16 ultimate conclusion? 17 A. As the company grew, yes. 18 Q. Now, you indicated, I believe, that you never 19 received any explanation of what N5HYG believed 20 Mr. Iglesias had done wrong; is that correct? 21 A. I don't believe I saw anything in writing. 22 Q. You have reviewed the complaint in this 23 lawsuit, correct? 24 A. Yes, sir. At this moment in time, yes. But 25 not as a board member when we were making decisions.</p>	<p style="text-align: right;">Page 745</p> <p>1 of N5HYG's observer status. Did you review any 2 documents in advance of doing that? 3 A. Just the lawsuit. 4 Q. Did you review any document that you believe 5 gave you or the board the authority to terminate that 6 observer status? 7 A. No. 8 Q. Did you ever receive any correspondence on 9 behalf of RIN or N5HYG suggesting that such termination 10 was improper? 11 A. I never read any such correspondence. 12 Q. Could you please turn to Exhibit 36. Do you 13 recognize this document? 14 A. I don't recall ever having seen it. 15 Q. And the document was addressed to 16 Mr. Iglesias, correct? 17 A. Yes, sir. 18 Q. And it's an exhibit in this case. Just to 19 sort of clarify on the record, this is a letter from 20 Chris Fowler, correct? 21 A. Yes, sir. 22 Q. And this is -- this is dated October 26, 23 2017, correct? 24 A. Yes, sir. 25 Q. And it was copied to Mr. McGowan, correct?</p>

<p style="text-align: right;">Page 746</p> <p>1 A. Yes, sir.</p> <p>2 Q. And it complains about the exclusion of -- I</p> <p>3 think it's fair to say that this complains about the</p> <p>4 exclusion of -- of N5HYG or RIN from the observation</p> <p>5 process, correct?</p> <p>6 A. Yes, sir.</p> <p>7 Q. And you've never seen it before?</p> <p>8 A. I may have seen it. I said I don't recall</p> <p>9 seeing it.</p> <p>10 MR. KAYE: I don't have any further</p> <p>11 questions.</p> <p>12 THE COURT: Redirect?</p> <p>13 REDIRECT EXAMINATION</p> <p>14 BY MS. GALL:</p> <p>15 Q. Dr. Mann, do you recall the board meeting</p> <p>16 during which RIN's observer status was terminated?</p> <p>17 A. Yes.</p> <p>18 Q. Do you know an individual named Kendall</p> <p>19 Coffey?</p> <p>20 A. They're lawyers for our corporation.</p> <p>21 Q. Was Kendall Coffey on the call?</p> <p>22 A. Yes, ma'am.</p> <p>23 Q. Okay. And did Kendall Coffey provide advice</p> <p>24 on terminating the observer status?</p> <p>25 A. Kendall Coffey advised that it be</p>	<p style="text-align: right;">Page 748</p> <p>1 proper governance of the corporation and the proper</p> <p>2 governance of the board in particular. And that is, I</p> <p>3 believe, relevant. It's not a huge part of the case</p> <p>4 perhaps, but it's relevant for two reasons.</p> <p>5 One is that we've heard a lot of testimony</p> <p>6 this morning, particularly from Dr. Collins, about</p> <p>7 improvements in board governance and the -- the --</p> <p>8 supposed improvements in board governance.</p> <p>9 So that's certainly part of the defense here.</p> <p>10 And I think it's appropriate to look back a few months</p> <p>11 and see, okay, what was going on at this board meeting,</p> <p>12 particularly this board meeting where I think the</p> <p>13 foundation's been laid to say this, the RIN observer</p> <p>14 rights are in particular terminated.</p> <p>15 I also think it's relevant the very fact of</p> <p>16 that termination of the observer rights because, once</p> <p>17 again, that -- that gets to sort of an affirmative</p> <p>18 showing of misgovernance. We believe that that</p> <p>19 termination was improper.</p> <p>20 THE COURT: Is there a dispute about whether</p> <p>21 or not the attorney advised them?</p> <p>22 MR. KAYE: Your Honor, I don't believe that</p> <p>23 there was -- I don't believe that the testimony -- that</p> <p>24 there's anything in the record suggesting that RIN was</p> <p>25 on the call or that Mr. Fowler was on the call when</p>
<p style="text-align: right;">Page 747</p> <p>1 terminated.</p> <p>2 Q. Did the board follow his advice?</p> <p>3 A. He's our legal counsel. Yes, we did.</p> <p>4 Q. Do you believe that the board is entitled to</p> <p>5 follow the advice of your legal counsel?</p> <p>6 A. Yes, ma'am.</p> <p>7 MS. GALL: I have no further questions.</p> <p>8 Thank you, Your Honor.</p> <p>9 THE COURT: Recross on those questions?</p> <p>10 RECROSS-EXAMINATION</p> <p>11 BY MR. KAYE:</p> <p>12 Q. What else did Kendall Coffey say during that</p> <p>13 meeting?</p> <p>14 A. Just that -- I don't recall.</p> <p>15 MS. GALL: Your Honor, I would object to the</p> <p>16 extent I know where Mr. Kaye is going with this. He</p> <p>17 thinks it's a subject matter waiver. If it's a subject</p> <p>18 matter waiver, it would be limited to the advice that</p> <p>19 Kendall Coffey provided indeed while RIN was on the</p> <p>20 phone about terminating their observer status.</p> <p>21 THE COURT: Before we get to that, how is</p> <p>22 this going to help me resolve the issues that I need to</p> <p>23 resolve?</p> <p>24 MR. KAYE: Your Honor, it's a single</p> <p>25 question, but it relates to -- this relates to the</p>	<p style="text-align: right;">Page 749</p> <p>1 Mr. Coffey gave that -- gave that advice.</p> <p>2 THE COURT: Ms. Gall?</p> <p>3 MS. GALL: I disagree, Your Honor. And if I</p> <p>4 can have a few moments to find that record, I believe I</p> <p>5 can actually produce something that demonstrates</p> <p>6 Mr. Coffey and Mr. Fowler was on the call when he was</p> <p>7 asked.</p> <p>8 In fact, I think we may have had testimony or</p> <p>9 something in the record, I apologize now that it's been</p> <p>10 a few days, where they said that Mr. -- despite his</p> <p>11 protestations, he was kicked out of the call. It might</p> <p>12 actually be in this letter itself. I would have to</p> <p>13 look.</p> <p>14 In addition to that, I don't believe he --</p> <p>15 counsel can generally inquire into all the advice that</p> <p>16 Mr. Coffey may have provided to the company during that</p> <p>17 board call.</p> <p>18 THE COURT: You say he can or cannot?</p> <p>19 MS. GALL: Cannot inquire into all the</p> <p>20 advice.</p> <p>21 THE COURT: So I guess I don't see a point in</p> <p>22 spending very much time on this, if you've got a few</p> <p>23 more questions regarding that. You did ask what</p> <p>24 counsel had advised the board. So I'm going to</p> <p>25 overrule the objection and wait for the next one. Go</p>

<p style="text-align: right;">Page 750</p> <p>1 ahead.</p> <p>2 MR. KAYE: Can you repeat the question? I</p> <p>3 think it was what else did Mr. Kendall advise the</p> <p>4 board, but I don't remember. I don't want to have</p> <p>5 to --</p> <p>6 (The following was read by the reporter:</p> <p>7 "What else did Kendall Coffey say during that</p> <p>8 meeting?")</p> <p>9 THE WITNESS: Frankly, I don't remember.</p> <p>10 MR. KAYE: No further questions.</p> <p>11 THE COURT: You can step down.</p> <p>12 THE WITNESS: Thank you.</p> <p>13 THE COURT: The defense next witness?</p> <p>14 MR. EWING: Thank you, Your Honor. The</p> <p>15 defendants call Mr. Sergey Savchenko.</p> <p>16 COURT CLERK: Come up, please. Please watch</p> <p>17 the cables and the carpet.</p> <p>18 --oOo--</p> <p>19 SERGEY SAVCHENKO,</p> <p>20 having been first duly sworn to tell the</p> <p>21 truth, was examined and testified as follows:</p> <p>22 --oOo--</p> <p>23 THE COURT: Go ahead and have a seat.</p> <p>24 MR. EWING: With the Court's indulgence, may</p> <p>25 I place volume 3 of the exhibits in front of the</p>	<p style="text-align: right;">Page 752</p> <p>1 but then we moved with my family to Canada. And I</p> <p>2 started working in a small accounting office until I</p> <p>3 became a CPA/CA, where I went to work for</p> <p>4 PricewaterhouseCoopers, which is one of the largest</p> <p>5 accounting firms in the world.</p> <p>6 THE COURT: Would you have him say his name</p> <p>7 and have him spell the last name.</p> <p>8 THE WITNESS: Savchenko, S-A-V-C-H-E-N-K-O.</p> <p>9 COURT CLERK: First name?</p> <p>10 THE WITNESS: Sergey, S-E-R-G-E-Y.</p> <p>11 COURT CLERK: Thank you.</p> <p>12 Q. (By Mr. Ewing) When you started at</p> <p>13 PricewaterhouseCoopers, what position did you hold?</p> <p>14 A. I started as a senior accountant.</p> <p>15 Q. And how long did you work at Pricewaterhouse?</p> <p>16 A. Two years.</p> <p>17 Q. Were you a senior accountant that entire</p> <p>18 time?</p> <p>19 A. Yes, I was.</p> <p>20 Q. Where did you work after that?</p> <p>21 A. Then after I finished -- after I worked at</p> <p>22 PricewaterhouseCoopers, I moved to work in the</p> <p>23 industry, and I worked with a company called Medical</p> <p>24 Facilities Corporation.</p> <p>25 Q. And what was your position there?</p>
<p style="text-align: right;">Page 751</p> <p>1 witness?</p> <p>2 THE COURT: Yes.</p> <p>3 MR. EWING: Thanks, Your Honor.</p> <p>4 DIRECT EXAMINATION</p> <p>5 BY MR. EWING:</p> <p>6 Q. Good afternoon, Mr. Savchenko. Are you</p> <p>7 currently employed?</p> <p>8 A. I am.</p> <p>9 Q. Where are you currently employed?</p> <p>10 A. I'm employed by Hygea.</p> <p>11 Q. Okay. Do you hold a degree in accounting?</p> <p>12 A. I do.</p> <p>13 Q. Could you tell me about your educational</p> <p>14 background?</p> <p>15 A. Again, so I have two undergraduate degrees</p> <p>16 from my home country, one in electrical engineering,</p> <p>17 one in international relations. I did my MBA in -- at</p> <p>18 the University of Rochester in upstate New York, where</p> <p>19 I concentrated in public accounting and corporate</p> <p>20 finance. And I wrote my CPA exam when I was studying</p> <p>21 there. I became a CPA in 2002 and a Canadian charter</p> <p>22 accountant in 2003.</p> <p>23 Q. Okay. And after you graduated with your MBA,</p> <p>24 where did you work?</p> <p>25 A. I started -- I went to school in the U.S.,</p>	<p style="text-align: right;">Page 753</p> <p>1 A. Controller.</p> <p>2 Q. And how long were you employed there?</p> <p>3 A. Ten years.</p> <p>4 Q. And after that, where did you work?</p> <p>5 A. I worked for about two years with a company</p> <p>6 called Aramark in Toronto, and then I was hired by</p> <p>7 Hygea.</p> <p>8 Q. What was your position at Aramark?</p> <p>9 A. Director of accounting.</p> <p>10 Q. And what business is Aramark in?</p> <p>11 A. Aramark is a conglomerate company that</p> <p>12 operates in a variety of businesses, including</p> <p>13 facilities services, healthcare, sports entertainment,</p> <p>14 business catering, among others.</p> <p>15 Q. And after that, you came to work at Hygea?</p> <p>16 A. Correct.</p> <p>17 Q. And when did you begin working for Hygea?</p> <p>18 A. May 1st, 2017.</p> <p>19 THE COURT: 2000?</p> <p>20 THE WITNESS: '17.</p> <p>21 THE COURT: '7 or '17?</p> <p>22 THE WITNESS: '17.</p> <p>23 THE COURT: '17.</p> <p>24 Q. (By Mr. Ewing) And what was your title when you</p> <p>25 started at Hygea last May?</p>

<p style="text-align: right;">Page 754</p> <p>1 A. Director of finance.</p> <p>2 Q. What responsibilities did the position of</p> <p>3 director of finance encompass?</p> <p>4 A. I was -- elaborate a little bit on what I</p> <p>5 was doing initially. I was hired by Hygea in their</p> <p>6 provision of going public on Toronto Stock Exchange.</p> <p>7 And my background in Canadian accounting, compliance</p> <p>8 and exchange rules, they hired me to help them to go</p> <p>9 public in Canada. And I -- when I came on board, I</p> <p>10 was almost exclusively concentrating on helping them</p> <p>11 to finish 2015, '14 audits for several months.</p> <p>12 Q. Did your role as director of finance evolve</p> <p>13 at some point after that?</p> <p>14 A. Yes.</p> <p>15 Q. How so?</p> <p>16 A. When it became obvious that going public in</p> <p>17 Canada is not an option, I was concentrating more on</p> <p>18 business finance, setting up accounting reporting,</p> <p>19 helping establish various departments related to</p> <p>20 finance that will help support business with the</p> <p>21 financial reporting analysis and prepare reporting on</p> <p>22 a monthly basis.</p> <p>23 Q. All right. When did those efforts begin?</p> <p>24 A. Somewhere towards the fall, in the fall.</p> <p>25 Q. Of last year?</p>	<p style="text-align: right;">Page 756</p> <p>1 A. It is.</p> <p>2 Q. And have you reviewed all of the financial</p> <p>3 records that you do know you have access to?</p> <p>4 A. I do, and continue doing on a continuing</p> <p>5 basis.</p> <p>6 Q. So, for instance, are you familiar with</p> <p>7 Hygea's day-to-day cash flows now?</p> <p>8 A. I am very well familiar with.</p> <p>9 Q. How so?</p> <p>10 A. Because it's one of my primary</p> <p>11 responsibilities, to manage our cash position on a</p> <p>12 daily basis.</p> <p>13 Q. And what types of activities does managing</p> <p>14 Hygea's cash position on a day-to-day basis entail?</p> <p>15 A. Basically monitoring our revenue, seeing</p> <p>16 what cash is coming in, not only what's coming in</p> <p>17 right now, but also what's on the horizon, where are</p> <p>18 we getting cash from, whether it's coming or not, why</p> <p>19 it's not coming, working with people to go and make</p> <p>20 sure that we get this revenue, and managing all the</p> <p>21 payables that we have to pay, making sure that the</p> <p>22 back [sic] that we give out stretches out.</p> <p>23 Q. Okay. So then are you also familiar with</p> <p>24 Hygea's debts and obligations?</p> <p>25 A. I'm very well familiar with it.</p>
<p style="text-align: right;">Page 755</p> <p>1 A. Of 2017.</p> <p>2 Q. Do you hold any other titles at Hygea today?</p> <p>3 A. I'm -- right now I'm an acting chief</p> <p>4 financial officer.</p> <p>5 Q. And for how long have you had that role?</p> <p>6 A. Since April 20th.</p> <p>7 Q. And what new responsibilities does the</p> <p>8 position of acting CFO add to what you were already</p> <p>9 responsible for as director of finance?</p> <p>10 A. There's a clear distinction. As director of</p> <p>11 finance, I'm more the hands-on guy doing a lot of work</p> <p>12 myself. Now as the CFO, I'm more responsible for</p> <p>13 management of finance function at the company.</p> <p>14 Q. Okay. So in the roles that you've held as</p> <p>15 acting CFO and director of finance, did you become</p> <p>16 familiar with Hygea's financial records?</p> <p>17 A. Yes, I did.</p> <p>18 Q. Do you have access to all of Hygea's</p> <p>19 financial records?</p> <p>20 A. I believe so.</p> <p>21 MR. KAYE: Objection; foundation as to</p> <p>22 whether he knows that.</p> <p>23 THE COURT: Sustained.</p> <p>24 Q. (By Mr. Ewing) Is it your understanding that you</p> <p>25 have access to all of Hygea's financial records?</p>	<p style="text-align: right;">Page 757</p> <p>1 Q. How so?</p> <p>2 A. Because I'm ultimately responsible for</p> <p>3 serving those obligations.</p> <p>4 Q. So is it fair to say that between your</p> <p>5 understanding of the cash flowing in and out of the</p> <p>6 Hygea and your understanding of the debts and</p> <p>7 obligations that Hygea is responsible for, that you</p> <p>8 have an intimate understanding of Hygea's management of</p> <p>9 its debts?</p> <p>10 A. I do.</p> <p>11 Q. Is managing the payments of those debts and</p> <p>12 obligations one of your responsibilities as Hygea's CFO</p> <p>13 and director of finance?</p> <p>14 A. It is.</p> <p>15 Q. Has Hygea always been able to pay all of its</p> <p>16 debts as they initially become due?</p> <p>17 A. No.</p> <p>18 Q. Is the same true for its obligations?</p> <p>19 A. To a large extent, yes.</p> <p>20 Q. Do you have an understanding of why that is?</p> <p>21 A. Yes. There's a variety of reasons that I</p> <p>22 will kind -- some of them are pretty obvious, some of</p> <p>23 them are not. And if we're talking about larger debts</p> <p>24 that became due, we're talking millions of dollars,</p> <p>25 you might be aware that historically it was always</p>

<p style="text-align: right;">Page 758</p> <p>1 said that Hygea would go public. And a large</p> <p>2 proportion of these debts were supposed to be</p> <p>3 refinanced or replaced by equity when the equity raise</p> <p>4 happened.</p> <p>5 So because it didn't happen, we had to</p> <p>6 renegotiate them. But managing current obligations is</p> <p>7 largely a problem because lots of projections, lots of</p> <p>8 expected actions didn't happen. So the company did not</p> <p>9 receive the cash that it was expecting to receive.</p> <p>10 Q. And are you aware of any instance in which</p> <p>11 Hygea has used its cash for anything other than</p> <p>12 maintaining the business of Hygea?</p> <p>13 A. I'm not.</p> <p>14 Q. Okay. So I'd like to ask you a little bit</p> <p>15 more about how you manage the debts and obligations of</p> <p>16 Hygea.</p> <p>17 Does Hygea prioritize payment of certain key</p> <p>18 obligations?</p> <p>19 A. It does.</p> <p>20 Q. And which obligations does Hygea prioritize</p> <p>21 paying?</p> <p>22 A. So on a daily basis or a monthly basis, we</p> <p>23 have certain liabilities that we have to satisfy to</p> <p>24 maintain the company in its functioning business mode.</p> <p>25 It is primarily payroll, rents. Company doesn't own</p>	<p style="text-align: right;">Page 760</p> <p>1 and also find alternatives to help the company to find</p> <p>2 additional investors or to find alternatives for</p> <p>3 debt -- debt that can replace high-interest Bridging</p> <p>4 debt.</p> <p>5 Because in principle, the name itself,</p> <p>6 Bridging, implies that they provide short-term</p> <p>7 high-interest financing, and it's never implied to be</p> <p>8 like forever. And it's not sustainable, and it has to</p> <p>9 be replaced by manageable debt or equity.</p> <p>10 Q. Okay. Let me -- let me back up a second.</p> <p>11 Were you just describing a firm called 4Front?</p> <p>12 A. Its relationship to Bridging and -- and</p> <p>13 Hygea and their efforts and the scope of their</p> <p>14 efforts.</p> <p>15 Q. Okay. And let me back up a little. What's</p> <p>16 the relationship between -- I think you've answered</p> <p>17 this question a little -- the relationship between</p> <p>18 Bridging and Hygea, not 4Front and Hygea?</p> <p>19 A. Bridging is a lender. Bridging is actually</p> <p>20 a syndicate of several lenders.</p> <p>21 Q. And is Hygea making interest payments on the</p> <p>22 debt that it has to Bridging today?</p> <p>23 A. It is not.</p> <p>24 Q. And is that because Hygea has -- well, let me</p> <p>25 ask a different question.</p>
<p style="text-align: right;">Page 759</p> <p>1 any real estate. We rent our premises.</p> <p>2 Our insurance, various types of insurance,</p> <p>3 health supplies, drugs that we need to dispense to our</p> <p>4 patients. These are like core expenses that we have to</p> <p>5 meet to -- to go on.</p> <p>6 Q. And why does Hygea prioritize those</p> <p>7 obligations over longer-term debts like capital</p> <p>8 financing?</p> <p>9 A. Because if you don't make -- if you don't</p> <p>10 meet these expenses, don't meet these obligations,</p> <p>11 there will be no Hygea.</p> <p>12 Q. Are you familiar with a firm called Bridging</p> <p>13 Finance?</p> <p>14 A. I am.</p> <p>15 Q. How?</p> <p>16 A. I'm intimately involved with working with</p> <p>17 them.</p> <p>18 Q. And do they have a relationship with Hygea?</p> <p>19 A. They do.</p> <p>20 Q. What is that relationship?</p> <p>21 A. They were engaged initially to help Hygea to</p> <p>22 go public in Canada. They -- they were the advisors</p> <p>23 or brokers who put Hygea in contact with Bridging, who</p> <p>24 provided financing. And they continuously are</p> <p>25 involved to help managing relationships with Bridging</p>	<p style="text-align: right;">Page 761</p> <p>1 Why not?</p> <p>2 A. Okay. As I said, Bridging debt was supposed</p> <p>3 to be for very short term, and it was expected that</p> <p>4 Hygea will have enough cash flows to service this debt</p> <p>5 until it goes public. It didn't happen. And the</p> <p>6 burden of interest became significant.</p> <p>7 And in negotiations with the lender, it was</p> <p>8 agreed that this interest will be capitalized until the</p> <p>9 company either goes public or taken out by private</p> <p>10 equity investors.</p> <p>11 Q. So to be clear, there's an agreement that</p> <p>12 Bridging will capitalize the interest payments that</p> <p>13 Hygea would otherwise pay cash and add them to the</p> <p>14 principal?</p> <p>15 A. It is correct.</p> <p>16 Q. Is Bridging currently assisting Hygea to meet</p> <p>17 its short-term obligations?</p> <p>18 A. It is.</p> <p>19 Q. So is it correct to state, please correct me</p> <p>20 if I misstate your testimony, that Bridging is</p> <p>21 assisting Hygea to pay its critical obligations until</p> <p>22 such time as Hygea's cash flow from operations exceeds</p> <p>23 its cash expenses or alternative financing?</p> <p>24 A. That is correct.</p> <p>25 MR. KAYE: Objection; leading, Your Honor.</p>

<p style="text-align: right;">Page 762</p> <p>1 THE COURT: Overruled. He's already 2 answered. Go ahead. 3 MR. EWING: Thank you, Your Honor. 4 THE COURT: That's not the reason the 5 objection was overruled. I'm just saying -- 6 MR. EWING: Okay. 7 Q. (By Mr. Ewing) Mr. Savchenko, could you please 8 turn to the tab marked 81. That's Exhibit 81 in the 9 binder in front of you. 10 A. Yes. I'm there. 11 Q. Are you familiar with this document? 12 A. I am. 13 Q. Did you prepare this document? 14 A. I did. 15 Q. And what is it? 16 A. It's operating cash flow projection for -- 17 for the year 2018, showing what our expected cash 18 collections are over that period and our expected 19 expenses to maintain operations of the company. 20 Q. And you provided this document to me so that 21 Hygea could disclose and produce it to the plaintiffs 22 in this case, right? 23 A. I did. 24 Q. And as of what date was this version of the 25 cash flow analysis prepared?</p>	<p style="text-align: right;">Page 764</p> <p>1 to admit Exhibit 81. 2 THE COURT: Mr. Kaye? 3 MR. KAYE: No objection, Your Honor. 4 THE COURT: 81 is admitted. 5 Q. (By Mr. Ewing) So turning to the exhibit itself, 6 I'd like to walk through with you some of the items in 7 this spreadsheet and ask you about the entries. 8 The top line of the spreadsheet is labeled 9 "Estimated Cash Collections"; is that right? 10 A. It is correct. 11 Q. And there appears to be a figure for each 12 month of 2018 and then a total for the year; is that 13 right? 14 A. It is correct. 15 Q. Can you explain to me how you estimated the 16 figures in that row? 17 A. Talking about revenue? 18 Q. The estimated cash collections, yes. 19 A. So cash collections represents cash that we 20 expected to collect from various sources of our 21 operations. As you probably heard, our revenues is 22 derived from various sources of revenue. We have fee 23 for service, we have managed care contracts. 24 And one of the examples of other sources of 25 cash, we have discounted medical plan whereby we</p>
<p style="text-align: right;">Page 763</p> <p>1 A. This version, I believe April 1. 2 Q. Of this year? 3 A. Of this year, 2018. 4 Q. Is preparing cash flow analyses one of your 5 regular business duties at Hygea? 6 A. It is. 7 Q. And when you prepare update cash flow 8 analyses, are you doing so based on events that change 9 your assumptions or input near the time that those 10 events occur? 11 A. Yes. With the caveat material events. 12 Q. Could you explain to me what you mean by 13 "material event"? 14 A. Yeah. If I -- there's one -- like there's a 15 one line employee who is terminated and gets paid a 16 lower amount of money, I'm not going to update it. 17 But if there's a big event, like huge expected outlay, 18 tens of thousands of dollars, I will update it. 19 Q. And you would do so near or at the time of 20 the event that caused that outlay to occur? 21 A. Correct. 22 Q. Do you update your cash flow projections 23 regularly? 24 A. I do. 25 MR. EWING: At this time, Your Honor, I move</p>	<p style="text-align: right;">Page 765</p> <p>1 provide certain services to low income communities, and 2 they pay monthly fees. 3 Then we own a company that sells various 4 insurance policies, primarily related to Obamacare in 5 the local exchange markets. And we receive commission 6 from sale of these policies. 7 So all these various sources characterize one 8 number, and it's -- in terms of mechanics of how it is 9 calculated, it's based on prior year actual numbers 10 adjusted for what we expect to happen in 2018. 11 Q. What types of adjustments might you make? 12 A. Say, for example, we know that we had source 13 of cash previously, but we don't have it. One of the 14 sources of income is capitation, primary care 15 physician capitation that we received from our main 16 contract. And it's based on patient population that 17 we have with any given point in time. 18 For example, we lost couple of sizeable 19 panels of these patients, so I know that we're not 20 going to receive this capitation. Even though it was 21 recorded in '17, I cannot record it in '18 because 22 there's no -- we're not going to get this money, or I 23 think you all are becoming very well familiar with our 24 MA side of business. 25 As we undertook huge effort on turning these</p>

<p style="text-align: right;">Page 766</p> <p>1 plans around, we expect to start receiving surpluses</p> <p>2 from these plans throughout this year. So that's why I</p> <p>3 put numbers, expected numbers, for these types of</p> <p>4 receipts.</p> <p>5 Q. Okay. And do those surplus amounts from the</p> <p>6 HMO plans and the managed Medicare Advantage side of</p> <p>7 that, are any of those estimates adjusted based on</p> <p>8 expected or presumptive renegotiation of contracts with</p> <p>9 the HMOs?</p> <p>10 A. I'm not sure of all the question.</p> <p>11 Q. Do any of your projections relate to possible</p> <p>12 renegotiations of the terms of the HMO contracts?</p> <p>13 A. I'm not aware of any renegotiations at that</p> <p>14 point, so I cannot comment.</p> <p>15 Q. Other than the broad categories of the</p> <p>16 different types of revenue that comprise your estimated</p> <p>17 cash collection numbers, are there any one-time</p> <p>18 payments that are irregular or anything like that that</p> <p>19 would factor into --</p> <p>20 A. Yes. Yes. Dr. Collins mentioned</p> <p>21 specifically certain quality of care measures that we</p> <p>22 have to track that entitle us to receive irregular</p> <p>23 one-time bonus payments. I project -- say, for</p> <p>24 example, for 2018, I project receipt of two payments</p> <p>25 of 500,000 in July and towards the end of the year.</p>	<p style="text-align: right;">Page 768</p> <p>1 unemployment insurance, Medicare contributions, and</p> <p>2 stuff like that.</p> <p>3 Q. So the wages and salaries row then, is gross</p> <p>4 pay including that?</p> <p>5 A. Exactly.</p> <p>6 Q. Thank you.</p> <p>7 A. Then drugs and supplies we talked about</p> <p>8 because we have to provide drugs and supplies to our</p> <p>9 patients. Property rents, as I mentioned, the company</p> <p>10 doesn't own any real estate. We lease our premises,</p> <p>11 both practices and head office.</p> <p>12 Insurances are all other insurances that are</p> <p>13 not covered in benefits in top, which includes</p> <p>14 liability, medical liability, property and insurance,</p> <p>15 professional liability, and directors' and officers'</p> <p>16 insurance.</p> <p>17 Downstream, affiliate capitation, one of the</p> <p>18 facets of our relationship with the doctors that -- we</p> <p>19 own majority of our doctors, but there are some of the</p> <p>20 doctors that we don't own, but they're affiliated to us</p> <p>21 through the MSO contracts that they're participating</p> <p>22 in. So we are obligated to pass to them all the</p> <p>23 capitation that we receive from the plans. That</p> <p>24 represents that expense.</p> <p>25 Payment to CarePlus is -- as you heard from</p>
<p style="text-align: right;">Page 767</p> <p>1 Q. Okay. Now, if you could run through some of</p> <p>2 the other lines as you go down the rows in this</p> <p>3 document and explain for us what some of those</p> <p>4 different expense estimates are comprised of and how</p> <p>5 you calculated those numbers?</p> <p>6 A. Absolutely. So the structure of this --</p> <p>7 this expense basically ties to our discussions</p> <p>8 previously of the major categories of the expenses we</p> <p>9 have to maintain to make this business going on.</p> <p>10 So major category is payroll. That is based</p> <p>11 on our estimates of what the cash outlays will be,</p> <p>12 including various benefits, like healthcare or</p> <p>13 workman's comp protection, insurance. The next line is</p> <p>14 withholding taxes that we have to pay to the government</p> <p>15 for the previous -- previous periods.</p> <p>16 Q. What do you mean by "previous periods"?</p> <p>17 A. Like withholding taxes related to our</p> <p>18 liability for 2017.</p> <p>19 Q. Okay. And with respect to the rest of the</p> <p>20 year, it appears that that row is blank; is that</p> <p>21 correct? Is that right?</p> <p>22 A. It is correct. Because all the -- the</p> <p>23 payroll expense, wages and salaries include the</p> <p>24 withholding taxes. It includes withholding taxes or</p> <p>25 any other liabilities we owe to the government, like</p>	<p style="text-align: right;">Page 769</p> <p>1 Mr. Dragelin and Dr. Collins' testimony, the contracts</p> <p>2 that we have, the contracts are at-risk contracts. So</p> <p>3 if we're managing the contracts properly, we get the</p> <p>4 surplus. But because it's full risk contracts, we were</p> <p>5 obligated to cover any deficit.</p> <p>6 So we are obligated -- we made an agreement</p> <p>7 with the CarePlus contract, CarePlus MSO, that we will</p> <p>8 cover the deficits until we become cash flowing. And</p> <p>9 May is the last payment we made to them. And we are</p> <p>10 turning the counter around and becoming cash flow</p> <p>11 positive.</p> <p>12 So the next item is commissions. As I</p> <p>13 mentioned, one of the lines of business we have is the</p> <p>14 selling of marketplace insurance, Obamacare insurance.</p> <p>15 We get commissions from the carriers, but we have to</p> <p>16 give commission to other brokers.</p> <p>17 So that line represents commission to the</p> <p>18 brokers. Professional fees is our estimates of legal</p> <p>19 fees or accounting fees. Next item is general admin,</p> <p>20 which is kind of catchall for all items that are not</p> <p>21 separately disclosed here, like, you know, documents,</p> <p>22 supplies, and materials.</p> <p>23 And the last item is absorbed losses from</p> <p>24 First Harbor. First Harbor is the name for three</p> <p>25 entities that we acquired initially in 2017, and we</p>

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1 completed acquisition of full interest in February 18.
2 And it's entities located in western Florida in the
3 Tampa area. And they have similar structure to -- to
4 Hygea.
5 They have fee-for-service business, and they
6 have MSO contracts. And they have trouble with cash
7 flows, so we are helping them to cover the cash flow
8 deficits until they turn cash flow positive. That's in
9 actuality what it is.
10 Q. All right. Thank you.
11 Now, if we could focus on the bottom line
12 spreadsheet, which is "Net Cash Contributions From
13 Operations for Each Month." Again, with a total in the
14 far right column.
15 It appears that the numbers are negative for
16 the first few months of this year; is that correct?
17 **A. It is correct.**
18 Q. And what does a negative cash contribution
19 from operations projection represent?
20 **A. Well, mechanically it's a difference of what**
21 **we expect to receive in terms of our cash revenue and**
22 **expenses, operating expenses that we have to make each**
23 **month. So it's basically the difference between our**
24 **collections and our outlays.**
25 Q. So in lay terms, would it be fair to say that

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1 you're spending more cash than you're bringing in?
2 **A. That is correct.**
3 Q. But this analysis also indicates positive
4 cash flow beginning the month of July; is that right?
5 **A. It is correct.**
6 Q. And that trend holds true through December of
7 this year, correct?
8 **A. Correct.**
9 Q. And what would a positive cash contribution
10 from operations projection represent?
11 **A. It means that we -- we will ultimately**
12 **receive more cash than we will pay out in terms of**
13 **operating expenses.**
14 MR. EWING: Your Honor, I'm at a good
15 breaking point, if you'd like to take a lunch break.
16 THE COURT: We will take our lunch recess.
17 We will come back at 1:05. You can go ahead and step
18 down.
19 (Recess taken at 12:04, resuming at 1:05.)
20 THE COURT: Please be seated. 18 OC 71,
21 Arellano v. Hygea. All counsel are present.
22 Mr. Ewing?
23 MR. EWING: Thanks, Your Honor. May I
24 approach the witness with the exhibit binder?
25 THE COURT: Yes.

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1 MR. KAYE: Your Honor, may I speak for the
2 record for a moment? I don't know if we have a time
3 keeper right now, do we?
4 THE COURT: You know, I didn't see her on the
5 way in. We don't.
6 COURT CLERK: She told somebody an hour and
7 45 or something before we left.
8 THE COURT: But we need to start running it
9 now.
10 MR. KAYE: That was the reason for my
11 statement.
12 THE COURT: Can you just -- we'll go ahead.
13 MR. EWING: Is it all right if I wait here?
14 THE COURT: Yes.
15 (A discussion was had off the record.)
16 Q. (By Mr. Ewing) Mr. Savchenko, I just have a
17 few more questions about Exhibit 81, the cash flow
18 balances we were looking at.
19 Does that cash flow analysis include as
20 expenses interest payments to Bridging Finance?
21 **A. No, it doesn't.**
22 Q. Why not?
23 **A. Because it's operating cash flows, so it's**
24 **only cash flows related to operations.**
25 Q. Okay. And did the various categories of

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1 expenses that we discussed that relate to Hygea's
2 individual medical practices, do those include expenses
3 for all of Hygea's medical practices?
4 **A. No. We specifically -- if you look at month**
5 **by month, we specifically -- between February and**
6 **March, we specifically excluded Dr. Gaylis' practice**
7 **and Dr. Cohen's practice.**
8 Q. And why is that?
9 **A. Because we don't have access to their bank**
10 **accounts. We don't receive their revenue. And we**
11 **don't -- we're not paying their expenses.**
12 Q. In the estimated cash collections, the
13 revenue figure from this, the revenue row from this
14 analysis, are you including revenue from those
15 practices?
16 **A. No. No.**
17 Q. So there's neither revenue nor expenses?
18 **A. Neither revenue nor expenses.**
19 Q. Because you're not collecting or paying those
20 at the moment?
21 **A. Correct. Correct.**
22 Q. You were in court for the direct examination
23 of Mr. Tim Dragelin on Tuesday; is that right?
24 **A. Correct.**
25 Q. And did you hear Mr. Dragelin testify about

<p style="text-align: right;">Page 774</p> <p>1 operational improvements that in his opinion would be 2 necessary to ensure that Hygea remained a going 3 concern? 4 A. Yes. 5 Q. And do you remember Mr. Dragelin making those 6 recommendations to you while he was working at Hygea? 7 A. I do remember. 8 Q. And were some of the improvements or any of 9 the improvements that he advised within your purview as 10 director of finance at the time? 11 A. Quite a few were within my scope. 12 Q. And are they now in your purview as chief 13 financial officer? 14 A. Yes. 15 Q. And have you been involved in any efforts to 16 implement those changes? 17 A. Yes, I was. 18 Q. Can you tell the Court about those efforts 19 and whether they've been successful? 20 A. My first comment is that a list of proposed 21 improvements was very long, including like all areas 22 of operations of the company and finance was one of 23 them. And we implemented quite a few of 24 his recommendations regarding finance. 25 THE COURT: I'm sorry to interrupt you.</p>	<p style="text-align: right;">Page 776</p> <p>1 We specifically hired a person who is responsible for 2 maintaining the healthcare contracts database that we 3 use to record our revenues and expenses for our many 4 contracts. These are like just a few examples of what 5 we implemented from his list. His list was several 6 pages long. 7 Q. Did -- were you involved in any efforts to 8 reduce the expenses that Hygea pays? 9 A. Yes. 10 Q. Could you explain that? 11 A. Yes. So as you see on the -- our -- reading 12 cash flow projections, by far the largest item on the 13 expense is the payroll. And the company undertook 14 significant effort to reduce the headcount in a 15 rational manner without hurting operations. 16 And we basically reduced it on an annual 17 basis from about 25 to 16. Obviously this excludes the 18 Dr. Gaylis and Cohn practice. But only same store, 19 same practice basis, the reduction was about 5 million. 20 This is a primary example. 21 We also undertook a review of all our rental 22 agreements for the properties. We looked at what 23 excess properties we have that we can either lease out 24 or close them. And this is kind of a couple of 25 examples.</p>
<p style="text-align: right;">Page 775</p> <p>1 THE BAILIFF: I'm sorry too. 2 (A discussion was had off the record.) 3 THE COURT: Sorry. Go ahead. 4 Q. (By Mr. Ewing) Go ahead, Mr. Savchenko. 5 A. I will comment on some of the matters we 6 implemented related to finance. For example, he 7 strongly recommended implementation of monthly report 8 process, which we largely complete. And we were 9 producing monthly reporting for the practices to -- as 10 a tool for the management to see -- to evaluate the 11 performance of individual practices. 12 We implemented various controls related to 13 treasury that Mr. Dragelin recommended and other areas 14 directly related to finance, some of them were 15 mentioned by Dr. Collins. We beefed up our department 16 that deals specifically with MSO contracts. 17 There are people dedicated to usage in 18 management so that they control the costs. And there 19 are people who are specifically concerned with MRA 20 score management and making sure that all the 21 conditions as Dr. Collins describes are in the patient 22 records, which will allow us to collect revenue that 23 we're entitled to for the patients that we have. 24 There were other areas, like he strongly 25 recommended to beef up our data analytics department.</p>	<p style="text-align: right;">Page 777</p> <p>1 Q. Okay. And turning back to the cash flow 2 analysis for a moment, this analysis begins in January 3 of 2018, right? 4 A. Correct. 5 Q. And this was prepared prospectively prior to 6 that day? 7 A. Yes, it was. 8 Q. Now that we're sitting here in May, have you 9 been able to observe whether these projections have 10 been met by Hygea? 11 A. Yes. It's one of the areas of my constant 12 attention. I can comment and say, for example, for 13 April, which is a closed month, we collected -- we 14 projected to collect about 2.2, 2.5. We actually 15 collected 2.4 million, so we are ahead of the game. 16 The month of May so far is coming very 17 strong, so we will exceed these amounts we will 18 project, which gives us comfort that we will meet these 19 projections and ultimately become cash flow positive in 20 the summer. 21 Q. Now, did you provide me yesterday with a 2017 22 quality of earnings report from CliftonLarsonAllen? 23 A. I did. 24 Q. And when did you receive the finalized 25 version of that quality of earnings --</p>

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1 MR. KAYE: I'm going to object, Your Honor,
2 to this line of questioning for a couple of bases. I
3 can state that we did receive a copy during the course
4 of the session yesterday of -- of the CliftonAllen --
5 the latest iteration of the CliftonLarsonAllen report,
6 which I do believe is an executed version.
7 This is an issue that was at play in our
8 previous -- in the previous motion for -- for contempt
9 for violation of the court order in that there was --
10 there were earlier -- what apparently are positioned as
11 earlier iterations of the document that were -- that
12 were provided, one of which was provided after the
13 April 23rd date. And certainly anything that was
14 provided yesterday was -- was provided after the
15 April 23rd date.
16 So I don't know if -- if the intention is to
17 introduce that into evidence, but we would object to
18 that. We would also object to any questions that rely
19 upon the statements set forth in that given our earlier
20 motion.
21 THE COURT: Mr. Ewing?
22 MR. EWING: Your Honor, Mr. Kaye's objection
23 is well taken. I don't plan to ask any questions about
24 the substance or contents of the report itself. My
25 questions are actually geared towards the motion for

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1 contempt. And I think that those are relevant so that
2 Your Honor can consider them since that motion is still
3 pending.
4 MR. KAYE: With that, I would have no
5 objection to those sorts of questions, Your Honor.
6 THE COURT: Okay. Go ahead.
7 MR. EWING: Thank you, Your Honor.
8 Q. (By Mr. Ewing) I believe you didn't answer my
9 last question, which was when did you receive the
10 finalized version of that quality of earnings report?
11 A. Yesterday. Yesterday.
12 Q. And were you involved in the process of
13 engaging CLA to perform the 2017 quality of earnings
14 report?
15 A. I was not.
16 Q. And why not?
17 A. Because the nature -- the relationship with
18 CLA goes back several years. And previously
19 Ted Moffly was involved in working with them, so he
20 was the person who engaged them for that particular
21 engagement.
22 Q. Do you mean Mr. Edward Moffly?
23 A. Yeah. Sorry.
24 Q. Do you know when -- excuse me -- do you know
25 when CLA was engaged to begin working on the 2017

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1 quality of earnings report?
2 A. I can't say when the engagement letter was
3 signed, but I think it was November/December '17.
4 Q. When did work begin in earnest producing the
5 report?
6 A. Their work began after we finished our core
7 work. I think sometime towards mid-February.
8 Q. And when did you expect to have the report
9 completed at that time?
10 A. The initial date of completion was to be
11 mid-March.
12 Q. Okay. And how were you involved in
13 facilitating CLA's preparation of the report?
14 A. I basically was the focal point of all the
15 contact, so all the information that was flowing from
16 Hygea to CLA was going through me. I was reviewing
17 it, presenting it to them and answering their
18 questions, helping them understand business so that
19 they can do their work properly.
20 Q. Okay. And are you aware of an order from
21 this Court which was dated April 23rd, 2018, which
22 requires Hygea to produce a finalized version of that
23 report by April 30th of this year?
24 A. I was.
25 MR. KAYE: Objection. I believe that

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1 misstates the content of the order. I believe that the
2 due date for production was April 23rd, which is a
3 little odd because the order is dated April 23rd. But
4 the Court had ordered from the bench previously, and
5 the order was finalized on the 23rd.
6 MR. EWING: I believe Mr. Kaye is right, and
7 I misspoke. In any event, the order speaks for itself.
8 MR. KAYE: Thank you.
9 THE WITNESS: Yes, I was aware of this order.
10 Q. (By Mr. Ewing) Once you became aware of this
11 order, did you seek to impress on CLA the importance of
12 finalizing the quality of earnings report on that date?
13 A. Yes, we did. We undertook extra measures to
14 make sure that it's happening. For example, we
15 instituted daily conference calls in Des Moines to see
16 where we are, what items are outstanding, how to move
17 the engagement to completion.
18 Q. And in your opinion, why was it not completed
19 by that date?
20 A. They're like -- series of problems that we
21 encountered. Some of them are on our side, some of
22 them on CLA's side. For example, problems we were
23 getting on our side, we were late in getting quality
24 data from the plans for the expense side because
25 reality is that we -- the plans close their reporting

<p style="text-align: right;">Page 782</p> <p>1 for any particular month three months down -- down the 2 road. So to get quality numbers for December, we, in 3 essence, had to wait three months. This is when we 4 got the information, and we were working on giving it 5 to CLA. 6 On CLA's, CLA was aware of the litigations 7 that Hygea is involved in, and they undertook extra 8 effort to make sure that the work they're doing is to 9 appropriate auditing standards, which took more time 10 for them to complete. 11 Q. Okay. Now, were there efforts at Hygea to 12 conduct the 2014 and 2015 financial statement audits? 13 A. There were. 14 Q. And were you personally involved in those 15 efforts? 16 A. I was. 17 Q. Who else was involved in the efforts to 18 conduct those audits? 19 A. It was a big undertaking for the company, so 20 there was lots of kind of streams of work that were 21 undertaken. Primarily the accounting department was 22 beefed up so they can produce the data so it can be 23 audited. 24 There were some consultants involved to help 25 us to put the data together. For example, our</p>	<p style="text-align: right;">Page 784</p> <p>1 better document to present to the potential investors. 2 Therefore, the audit project was put aside. 3 Q. And was that a decision that you made? 4 A. No. 5 Q. Who made it? 6 A. Previous management, senior management. 7 Q. And do you know whether that management made 8 those stipulations after consulting with the board? 9 A. I was not involved in these discussions, so 10 I cannot say. 11 Q. Okay. And in your opinion, could the 2014 12 and 2015 financial audits be completed today? 13 A. Yes, they could. They could be completed. 14 MR. EWING: Thank you. Your Honor, I have no 15 further direct questions. 16 THE COURT: Before you start your cross, so 17 we started at 1:05 for timekeeping. 18 Mr. Kaye, cross? 19 MR. KAYE: Thank you, Your Honor. 20 CROSS-EXAMINATION 21 BY MR. KAYE: 22 Q. Mr. Savchenko, I believe you testified that 23 at some point the company became unable to pay its 24 obligations because projections had not panned out as 25 projected; isn't that correct?</p>
<p style="text-align: right;">Page 783</p> <p>1 accountants were actively involved. Tim Dragelin 2 obviously was involved significantly and the auditors. 3 Q. Now, I think you testified earlier, and 4 correct me if I'm wrong, please, that you have access 5 to all of Hygea's financial records that you're aware 6 of? 7 A. That's true. 8 Q. And would that include all of the information 9 that would support financial -- excuse me -- support 10 Hygea's financial records? 11 A. Yes. 12 Q. And was there an effort to make sure that the 13 auditors got all of that information? 14 A. Yes. There was an effort. 15 Q. Have the 2014 and 2015 financial statement 16 audits been completed in fact? 17 A. No. 18 Q. In your opinion, why -- why were the 2014 and 19 2015 audits not completed? 20 A. As members of the board mentioned before, 21 the priorities changed. So the -- the amount of 22 resources that we have at our disposal at Hygea is 23 fairly limited. So -- and when the decision was made 24 to go -- look for the private investors, the decision 25 was made that the quality of earnings report will be a</p>	<p style="text-align: right;">Page 785</p> <p>1 A. It is correct. 2 Q. What's the current balance on the Bridging 3 loan? 4 A. In U.S. dollars, it's about 70-72 dollars. 5 The loan is denominated in Canadian dollars. Canadian 6 dollar is weakening, the obligation is reduced. 7 Q. And to be clear, when you say "70 to 72," you 8 mean 70 to 72 million dollars? 9 A. Million. Millions of dollars. 10 Q. Thank you. It would be a different 11 situation, perhaps, if that wasn't the case. 12 What's the interest rate on that loan? 13 A. Currently it's about 14 percent. 14 Q. How much accrues to the principal as you 15 testified earlier each month? 16 A. Around a million, million and one hundred 17 thousand. 18 Q. The company is currently operating at a loss, 19 correct? 20 A. It is correct. 21 Q. You project that it will be cash flow 22 positive starting sometime around July, correct? 23 A. Yes. 24 Q. But that assumes that Hygea does not start 25 paying -- does not resume payments to Bridging,</p>

<p style="text-align: right;">Page 786</p> <p>1 correct?</p> <p>2 A. It is correct. Interest is not part of this</p> <p>3 exercise.</p> <p>4 Q. You testified about -- I think you used the</p> <p>5 number \$500,000 and one or, perhaps, two forthcoming</p> <p>6 \$500,000 payments; is that correct?</p> <p>7 A. It is correct.</p> <p>8 Q. And I believe you characterized those as some</p> <p>9 sort of risk adjustment payment?</p> <p>10 A. No. It's not risk adjustment payments.</p> <p>11 These are quality of care-based payments.</p> <p>12 Q. And these quality of care-based payments,</p> <p>13 these are the ones that we've been hearing about as --</p> <p>14 for example, in the context of Medicare Advantage?</p> <p>15 A. Yes. But they're not directly related to</p> <p>16 discussion of MRAs and increased revenue because of</p> <p>17 MRA. These are separate items.</p> <p>18 Q. Would these show up on the -- on the</p> <p>19 company's balance sheets as -- as accounts receivable</p> <p>20 risk settlement?</p> <p>21 A. Yes.</p> <p>22 Q. And can you please turn to Exhibit --</p> <p>23 Exhibit 82.</p> <p>24 A. I'm there.</p> <p>25 Q. And can you please turn to the page Hygea</p>	<p style="text-align: right;">Page 788</p> <p>1 prospective purchaser for a business like Hygea would</p> <p>2 need to see financial statements, correct?</p> <p>3 A. Yes.</p> <p>4 MR. KAYE: No further questions, Your Honor.</p> <p>5 THE COURT: Redirect?</p> <p>6 MR. EWING: Can I just have a moment,</p> <p>7 Your Honor?</p> <p>8 REDIRECT EXAMINATION</p> <p>9 BY MR. EWING:</p> <p>10 Q. Mr. Savchenko, Mr. Kaye just asked you about</p> <p>11 the accounts receivable for risk settlement, correct?</p> <p>12 A. Correct.</p> <p>13 Q. And were any amount of revenue that Hygea</p> <p>14 would receive from that included in your cash flow</p> <p>15 analysis that you and I discussed?</p> <p>16 A. Not an exceeding large portion, but they</p> <p>17 were included in the form of services that we project</p> <p>18 to start receiving this year.</p> <p>19 Q. Okay. If Hygea were to receive a payment on</p> <p>20 the risk adjustment, would that be larger than the</p> <p>21 revenues that you've included in your cash flow</p> <p>22 statement?</p> <p>23 A. I'm not following the question.</p> <p>24 Q. Were Hygea to receive a reimbursement on risk</p> <p>25 adjustment from the Centers for Medicaid and Medicare</p>
<p style="text-align: right;">Page 787</p> <p>1 326.</p> <p>2 A. Sorry, how does it work? How do I figure</p> <p>3 out the page?</p> <p>4 Q. I think the Bates numbers should be along the</p> <p>5 side of the page, but that is -- it's the passage</p> <p>6 stating "Consolidated Financial Statements Adjusted."</p> <p>7 A. Correct. I'm there.</p> <p>8 Q. And I guess before I ask you this, are you</p> <p>9 familiar with this document?</p> <p>10 A. I'm very well familiar with it.</p> <p>11 Q. And this indicates that the AR risk</p> <p>12 settlement net has a -- is \$38,740,000; isn't that</p> <p>13 correct?</p> <p>14 A. Correct.</p> <p>15 Q. Which is significantly larger than</p> <p>16 \$1 million, correct?</p> <p>17 A. Yes, it is.</p> <p>18 Q. You have not implemented all of</p> <p>19 Mr. Dragelin's recommendations, correct?</p> <p>20 A. No.</p> <p>21 Q. And if -- you have some experience relating</p> <p>22 to the sale and acquisition of -- of corporations,</p> <p>23 correct?</p> <p>24 A. Yes.</p> <p>25 Q. And it would be within your experience that a</p>	<p style="text-align: right;">Page 789</p> <p>1 Services, would that be larger than the revenue items</p> <p>2 that you have for that?</p> <p>3 A. Absolutely.</p> <p>4 Q. In your cash flow statement?</p> <p>5 A. Absolutely.</p> <p>6 Q. So that -- excuse me. I didn't mean to speak</p> <p>7 over you.</p> <p>8 That would be in addition to any of the</p> <p>9 revenues that are included in the cash flow?</p> <p>10 A. Correct. Correct.</p> <p>11 Q. And does Hygea expect to receive such a</p> <p>12 payment in the coming future?</p> <p>13 A. Not immediately. As Dr. Collins mentioned,</p> <p>14 the timeframe for receiving these payments is like --</p> <p>15 between like 18 to 36 months.</p> <p>16 Q. I believe Mr. Kaye asked you about whether a</p> <p>17 potential investor would want to see financial</p> <p>18 statements; is that right?</p> <p>19 A. Yes.</p> <p>20 Q. And I believe you testified that they would;</p> <p>21 is that correct?</p> <p>22 A. Yes.</p> <p>23 Q. In your experience, would a private investor</p> <p>24 require audited financial statements?</p> <p>25 A. I have -- I have experienced situations both</p>

<p style="text-align: right;">Page 790</p> <p>1 ways. And, for example, I can cite the examples of</p> <p>2 Hygea when investments were made based on the quality</p> <p>3 of earnings reports.</p> <p>4 Q. But not an audited financial statement?</p> <p>5 A. Not audited financial statements. And in my</p> <p>6 experience dealing with other healthcare entities,</p> <p>7 that's fairly common.</p> <p>8 Q. That the investor would want a quality of</p> <p>9 earnings report?</p> <p>10 A. Would concentrate on reports that evaluate</p> <p>11 earning capacity of the company, not necessarily</p> <p>12 audited financial statements.</p> <p>13 Q. All right. And in your understanding and</p> <p>14 your experience, is there any regulatory or other legal</p> <p>15 requirement that a private company audit its financial</p> <p>16 statements?</p> <p>17 A. No.</p> <p>18 MR. EWING: No further questions, Your Honor.</p> <p>19 THE COURT: Recross on those questions?</p> <p>20 MR. KAYE: No, Your Honor. Thank you.</p> <p>21 THE COURT: You can step down.</p> <p>22 THE WITNESS: Thank you.</p> <p>23 THE COURT: Defense, next witness?</p> <p>24 MR. EWING: Yes. Defendants would call</p> <p>25 Mr. Greene, our expert. But he's outside. May I go</p>	<p style="text-align: right;">Page 792</p> <p>1 that you've done since you finished your bachelor's</p> <p>2 degree in accounting?</p> <p>3 A. Wow. It expands a fairly long period of</p> <p>4 time. But since -- over the past 40 years, I worked</p> <p>5 as a traditional CPA providing audit accounting and</p> <p>6 tax services both to large publicly traded companies,</p> <p>7 as well as privately held companies.</p> <p>8 I practiced on my own and with other firms</p> <p>9 doing attestation work. I began doing a more</p> <p>10 forensic-type work in the mid-'80s. Done a lot of</p> <p>11 internal investigations, corporate litigation,</p> <p>12 shareholder disputes, financial investigations, those</p> <p>13 sort of things.</p> <p>14 And currently I'm a partner in McGovern &</p> <p>15 Greene. We're a forensic accounting firm with offices</p> <p>16 in Henderson, Nevada and Chicago, Illinois.</p> <p>17 Q. And how long have you been with McGovern &</p> <p>18 Greene?</p> <p>19 A. 15 years. I've been in business since 2003.</p> <p>20 Q. Can you tell us what some of your typical</p> <p>21 engagements at McGovern & Greene are?</p> <p>22 A. It's kind of a wide array of things. We're</p> <p>23 often brought in -- my practice group is brought in to</p> <p>24 do forensic accounting, which is looking at accounting</p> <p>25 records, analyses of accounting records, looking for</p>
<p style="text-align: right;">Page 791</p> <p>1 grab him?</p> <p>2 THE COURT: Yes.</p> <p>3 (A discussion was had off the record.)</p> <p>4 THE COURT: Please be mindful of the rugs and</p> <p>5 the cords there on the floor. If you'd face the clerk</p> <p>6 here, please raise your right hand.</p> <p>7 --oOo--</p> <p>8 CRAIG GREENE,</p> <p>9 having been first duly sworn to tell the</p> <p>10 truth, was examined and testified as follows:</p> <p>11 --oOo--</p> <p>12 THE COURT: Go ahead and have a seat. Go</p> <p>13 ahead.</p> <p>14 DIRECT EXAMINATION</p> <p>15 BY MR. EWING:</p> <p>16 Q. Good afternoon, Mr. Greene. Could you please</p> <p>17 state your name for the record and spell your last</p> <p>18 name.</p> <p>19 A. Craig Greene, G-R-E-E-N-E.</p> <p>20 Q. Could you please start by telling us about</p> <p>21 your higher education?</p> <p>22 A. Yes. I have an undergraduate degree in</p> <p>23 accounting from Aurora University. I have a master's</p> <p>24 degree in criminal justice from Boston University.</p> <p>25 Q. And can you please tell us about the work</p>	<p style="text-align: right;">Page 793</p> <p>1 different types of fraud is one of our specialties.</p> <p>2 We look for financial statement fraud. We do</p> <p>3 a lot of work in embezzlement. We do a lot of cases</p> <p>4 involving shareholder disputes where there's disputes</p> <p>5 among partners or business owners where one might be</p> <p>6 accusing the other of doing -- breach of fiduciary</p> <p>7 duty, for example, doing things they shouldn't do.</p> <p>8 So we do a lot of that type of work. We also</p> <p>9 do a lot of CPA malpractice cases, work in that area,</p> <p>10 do some insurance defense work, and also get involved</p> <p>11 from time to time doing white collar criminal defense</p> <p>12 as well.</p> <p>13 Q. Do you have any experience peer reviewing</p> <p>14 other CPA firms?</p> <p>15 A. Yes. For several years, I was appointed by</p> <p>16 the American Institute of Certified Public Accountants</p> <p>17 as a peer reviewer. They go inside the CPA firm and</p> <p>18 assess the procedures, the quality, adherence to</p> <p>19 professional standards that are being done by that</p> <p>20 that when they're actually doing attestation work or</p> <p>21 typical accounting work.</p> <p>22 Q. I think you testified a moment ago that</p> <p>23 you've worked on fraud cases before; is that right?</p> <p>24 A. That's correct. I've done quite a few.</p> <p>25 Q. Approximately how many would you say?</p>

<p style="text-align: right;">Page 794</p> <p>1 A. Oh, God. Hundreds, if not more. 2 Q. Have you ever had any engagements for state 3 investigative agencies? 4 A. Yes. I've done a lot of work, mostly with 5 the State of Michigan. I was retained as an employee 6 with the -- as a contract employee with the Attorney 7 General's Office where I worked on a number of 8 financial crimes cases, including a lot of drug cases. 9 I've been retained by the State of Illinois 10 to do likewise, been involved with looking at money 11 laundering cases. I've worked for the State of 12 Nebraska for their lottery and doing some due diligence 13 of potential lottery vendors. I've done investigations 14 of employee misconduct for the Illinois Lottery, 15 Georgia Lottery. Those are the ones that come to mind. 16 Q. Do you teach any classes on accounting? 17 A. In the past I've taught accounting at a 18 college level, but I've also done a lot of courses in 19 the area of forensic accounting. 20 Q. What types of courses? 21 A. For many years I worked as an instructor for 22 the Association of Certified Fraud Examiners. And 23 that's an association based in Austin, Texas for 24 accountants that do primarily -- for accountants and 25 others that investigate fraud cases.</p>	<p style="text-align: right;">Page 796</p> <p>1 been updated. 2 Q. Can you please tell the Court what licenses 3 and certifications you possess? 4 A. I was originally licensed as a certified 5 public accountant back in the '70s in Illinois. Ten 6 years ago, I was licensed as a CPA here in Nevada. I 7 also hold a designation as certified in financial 8 forensics by the American Institute of CPAs. 9 I'm a certified fraud examiner through the 10 Association of Certified Fraud Examiners. I also have 11 a designation as a master analyst in financial 12 forensics by the National Association of Certified 13 Valuators and Analysts. 14 Q. And are you a member of any professional 15 associations? 16 A. Quite a few. 17 Q. Could you name a couple of them? 18 A. Sure. I belong to the American Institute of 19 Certified Public Accountants, the Illinois CPA 20 Society, the Nevada CPA Society. I belong to the 21 Institute of Internal Auditors. 22 I belong to NACVA, the National Association 23 of Certified Valuators and Analysts. I'm a -- what do 24 they call it, associate member of the American Bar 25 Association. And there may be a few others I haven't</p>
<p style="text-align: right;">Page 795</p> <p>1 And during my time there, I taught fraud 2 examination principles and procedures, I taught 3 financial statement fraud, internal investigations, 4 cybercrime classes. Auditing for internal fraud was 5 another one. Quite a few different fraud-related 6 courses in forensics as well. 7 In addition to teaching courses for the 8 Association of Certified Fraud Examiners, I've done 9 instruction for the Institute of Internal Auditors on 10 similar sorts of things, auditors looking for fraud. 11 I've been retained to teach here in Nevada up 12 in Reno. I do a lot of classes for IMA, Institute of 13 Management Accountants, which are the CFOs, if you 14 will, or the accountants that work for companies making 15 sure that they have good controls in place to prohibit 16 fraud and the like. 17 Q. And have you authored any publications on 18 financial statement fraud? 19 A. Yes. One of the publications that was used 20 by the Association of Certified Fraud Examiners for 21 training other accountants in looking for financial 22 statement frauds, I wrote that particular course book 23 back in the mid-2000s. 24 Q. Is that still used today? 25 A. Probably portions of it are. I'm sure it's</p>	<p style="text-align: right;">Page 797</p> <p>1 thought of. 2 Q. How long have you been focusing on accounting 3 and forensic accounting matters? 4 A. Well, I actually had my first forensic 5 accounting assignment when I was back at Coopers & 6 Lybrand back in the '70s. That was one of the first 7 jobs I did where I uncovered some fraud going on in 8 the company. Focusing primarily on forensic 9 accounting, I was originally designated as an expert 10 back in 1986 I think it was back in Illinois. 11 Q. Before I was around. 12 And how many times would you say you've 13 provided an expert opinion on a company's accounting? 14 A. Well, being retained as an expert in 15 accounting matters in company disputes, well in excess 16 of 50 or 100 times probably. 17 Q. In which courts have you provided testimony? 18 A. Well, to start with, I'm originally from 19 Chicago, so I did a lot of work in Cook County, DuPage 20 County, Lake County. These are all the collar 21 counties around Chicago. 22 I've testified in court in the state of 23 Indiana. I've testified in court here in Las Vegas, 24 and I've testified in Washoe County as well. I've 25 testified in Minnesota, testified in Kansas, federal</p>

<p style="text-align: right;">Page 798</p> <p>1 court in southern Illinois, as well as northern 2 Illinois. Those are what I can think of. 3 Q. And have you worked specifically with any 4 healthcare companies in these engagements? 5 A. Well, when I first started my career when I 6 was back with Coopers & Lybrand, I actually was part 7 of the healthcare group. And there was a group of 8 auditors and accountants that worked for the firm 9 there in Chicago that actually worked on 10 healthcare-related clients. I was part of that group. 11 I was the supervising auditor on one of their 12 largest medical accounts at the time. It was a company 13 called Cinco Healthcare. They own seven hospitals, 14 including one in Las Vegas at the time, a number of 15 nursing homes and other types of medical facilities. 16 After that, I worked more as a traditional 17 accountant, kind of like a chief accounting officer for 18 a large medical group that provided emergency 19 physicians to a number of hospitals that were around 20 the Chicago, Illinois area, central Illinois area. 21 Iowa, I know we had contracts there as well. 22 Did a couple free-standing physician clinics. They had 23 an ambulance company. So I worked as -- more or less 24 as their chief accounting officer. 25 In terms of forensics, I've been retained in</p> <p style="text-align: right;">Page 799</p> <p>1 several cases, some of which involved medical 2 embezzlement. One of my larger cases, the fellow was 3 their director of operations embezzled millions of 4 dollars from a large oncological group in Chicago. 5 I worked on some other embezzlement cases 6 involving a large orthopedic practice in Chicago. 7 We've had some disputes among physicians. We've worked 8 on those cases as well. 9 MR. EWING: At this point, Your Honor, I'd 10 move to qualify Mr. Greene as an expert. 11 THE COURT: The Court doesn't do that. You 12 just ask your next question. And if there's an 13 objection, I'll entertain it. 14 MR. EWING: Excuse me. 15 THE COURT: That's all right. 16 Q. (By Mr. Ewing) So I'd like to ask you now about 17 your work on this case, Mr. Greene. 18 Have you reviewed any literature related to 19 solvency authored by someone other than you in 20 connection with your opinion in this case? 21 A. Yes. As cited in my report, I teach a 22 class -- I forgot about that. I taught a webinar 23 class in fraud and bankruptcy matters. That course is 24 based on a textbook that discusses bankruptcy 25 accounting, so forth. That's one of the treatises</p>	<p style="text-align: right;">Page 800</p> <p>1 that I looked at while preparing this particular 2 report, which I cite to in the report itself. 3 Q. And did you look at anything else in that 4 nature? 5 A. Not -- well, I did look at some background 6 information about these risk -- risk settlement 7 contracts, CMA-type billing procedures, and things of 8 that nature. 9 Q. All right. Have you had the opportunity to 10 review Hygea documents related to your opinion in this 11 matter? 12 A. Yes, I have. 13 Q. What types of documents did you review? 14 A. Well, we received a substantial number of 15 accounting documents obviously from the company's CFO. 16 Those consisted of -- first of all, the accounting 17 system used by the various entities that fall under 18 the Hygea umbrella is an accounting system called 19 QuickBooks. And QuickBooks is a very popular 20 accounting system that's used amongst small and 21 mid-sized businesses throughout the United States. 22 So we obtained copies of QuickBooks records 23 from the CFO, backup copies. I have a person that has 24 expertise in QuickBooks, and we're able to do different 25 types of analyses by using the QuickBooks.</p> <p style="text-align: right;">Page 801</p> <p>1 We also received an extensive number of 2 analyses that were prepared by the CFO that would take 3 these QuickBooks records and then consolidate them into 4 a financial statement that would show the earlier 5 results of Hygea. 6 So we received these consolidating worksheets 7 both for the period of December 2017, as well as 8 March 31, 2018. In addition to that, we asked for 9 certain supporting documentation. 10 We looked at bank statements as I recall, 11 bank reconciliations that were prepared by the company. 12 I looked at some long-term debt obligation notes that 13 we obtained from the company. I looked at statements 14 that were being received from its largest lender. 15 We looked at certain accounts payable 16 invoices that comprised accounts payable. We looked at 17 certain purchase agreements that memorialize the 18 purchase of medical practices by Hygea. Those are the 19 things that I can think of off the top of my head. 20 Q. And when you referred to the company's CFO, 21 were you referring to Mr. Sergey Savchenko? 22 A. That's correct. Yes. 23 Q. Had you met Mr. Savchenko prior to traveling 24 here for today's testimony? 25 A. No. I've never met the man before.</p>
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<p style="text-align: right;">Page 802</p> <p>1 Q. But did you speak on the phone with him 2 instead? 3 A. Yes, I did. 4 Q. And how did you choose which information 5 provided by Mr. Savchenko to review? 6 A. Well, I've been a CPA for 40 years. I 7 understood what the assignment was. We went through 8 and kind of took a look at the books and records and 9 assessed what we thought would be important to be able 10 to give us a basis to render our professional opinion 11 in this matter. 12 So based upon that, we requested certain 13 documents that would be able to support those items 14 that we thought were important to take a look at, as 15 well as the other documents that would support pretty 16 much all the account balances that are shown on the 17 balance sheet. 18 Q. And was Mr. Savchenko able to provide the 19 support that you requested? 20 A. Yes. I never had a problem with him not. 21 Rather quick method. 22 Q. Did you perform any tests on the data that 23 you got from Mr. Savchenko to check its reliability? 24 A. Yes. We did an extensive amount of testing 25 of the documentation itself, a lot of which -- first</p>	<p style="text-align: right;">Page 804</p> <p>1 I'd like to use it as a demonstrative, if that's okay? 2 THE COURT: Yes. 3 MR. EWING: May I approach the bench with a 4 copy? 5 THE COURT: Sure. 6 Q. (By Mr. Ewing) All right. Is the document I 7 just handed you a true and correct copy of the balance 8 sheet that your team put together? 9 A. Yes, it is. 10 Q. Okay. And could you run me -- run the Court, 11 for that matter, down line by line on the different 12 accounts that you analyzed and just give a brief 13 description of the types of tests that you ran in order 14 to verify those numbers. 15 A. Sure. As we mentioned -- as I mentioned 16 before, on the cash and cash equivalents, we had 17 obtained bank reconciliations that the company had 18 performed. We also had bank statements themselves, so 19 we verified the reconciliations against the bank 20 statements, and then we compared these bank 21 reconciliations to the underlying books and records. 22 We found that there was some nominal errors, 23 and we did not make any adjustments for them because 24 they were relatively insignificant when you looked at 25 the overall financial statement that was presented</p>
<p style="text-align: right;">Page 803</p> <p>1 of all, we wanted to make sure that the spreadsheets 2 and the analyses we received actually reconciled to 3 the underlying books and records of the company. 4 So we did comparisons between the general 5 ledgers that I referred to in QuickBooks, along with 6 these various types of analyses that were done. We did 7 some analytical review where we went back and 8 recalculated a lot of his information, especially in 9 the areas of property and equipment. 10 We literally would take his spreadsheets, put 11 them in our own spreadsheets, put it in the formulas, 12 and check his math or the company's math. I shouldn't 13 say "he," but the accounting department's math. 14 We did that as well with goodwill and 15 intangible assets and did find that there were errors 16 in some of that information, which we then corrected 17 for purposes of providing our report. 18 As I mentioned before, we looked at some 19 underlying documents, such as purchase agreements, 20 invoices, items of that nature. 21 Q. And did you create your own balance sheet in 22 connection with those tests? 23 A. Yes, we did. 24 MR. EWING: Your Honor, I have a copy of that 25 balance sheet. I don't intend to seek to admit it, but</p>	<p style="text-align: right;">Page 805</p> <p>1 here. 2 In terms of the accounts receivable patients, 3 those particular billings are more on the 4 fee-for-service basis. Typically when you go to a 5 doctor, they provide certain medical procedures to you 6 using those CPT codes and things like that. Then the 7 physicians' offices will bill insurance companies 8 usually or third-party payors. 9 And we were provided with detailed analyses 10 by practice, as I recall, of the charges, of the 11 receipts, of the payments on here. And we did find 12 that there was an error that was in the -- in the -- in 13 their records with how they were recording the accounts 14 receivable patients, and we made an adjustment to 15 correct that error. 16 Accounts receivable risk settlement, this is 17 a different type of receivable. This is almost akin to 18 like a membership fee. So when you go into a 19 physician's office, in this case CMA, so it's going to 20 be the Medicare Advantage programs, those are more 21 where the physician receives a monthly payment that's 22 like a health maintenance organization. So they 23 receive a monthly payment. They're able to provide 24 services to that patient. 25 That monthly payment's going to consist of an</p>

<p style="text-align: right;">Page 806</p> <p>1 amount that's a basic monthly charge. On that there's 2 an adjustment for whether or not the person has -- RMA 3 I believe is what it's called. 4 There's a risk medical adjustment based upon 5 the health of an individual, so that payment may be a 6 little bit larger. There may be other adjustments. 7 There's a stop gap adjustment. There might be a 8 coordination of benefits where payments are coming from 9 a workman's comp plan, for example, or something of 10 that nature. 11 So it's a fairly detailed method of 12 calculating revenue as well as the receivable. And we 13 went through, we understood the assumptions and the -- 14 and where the information was flowing from. We tested 15 how the company was accounting for it and found that 16 they were following the procedures correctly as we 17 understood it to be. 18 Prepaid and other current assets is kind of 19 an insignificant amount. We took a look at the 20 analyses, and what we found is what's called related 21 party transactions. And related party transactions are 22 those that might be between the company and the 23 shareholders or the company and its officers or some 24 other individual that may have an ownership interest in 25 the company itself.</p>	<p style="text-align: right;">Page 808</p> <p>1 able to locate, we then corrected. 2 We went back and traced some of these items 3 to very detailed valuations that were done by the 4 company. They're called practice -- PPVs, valuations. 5 And that's where the company had calculated out these 6 various intangible assets when they were purchasing 7 medical practices. 8 So they would pull out different intangible 9 assets and using either cash flow methodology or 10 perhaps an income methodology or some other 11 methodology, they were able to determine what portion 12 of that practice they could assign values to. So we 13 traced it to those. 14 We had some purchase documents themselves 15 that we used as part of our examination of common stock 16 to be issued. And we used -- we also referred to 17 those, looked back at the intangible assets to make 18 sure they're recorded on those particular spreadsheets. 19 And we spent, as I said, a fairly extensive amount of 20 time on this and ultimately adjusted it for what 21 corrections were needed. 22 Other assets, again, was a nominal amount. 23 We talked with the CFO. We looked at his analysis. As 24 I recall, there was a letter of credit where there was 25 a deposit that had been made by the company on a letter</p>
<p style="text-align: right;">Page 807</p> <p>1 So what I did was I did find a number of 2 those that were classified under "prepaid and other 3 current assets," and I ended up moving those down into 4 one line. You'll see under "long-term liabilities," we 5 have one line called "due to related parties." 6 Property and equipment, again, we obtained 7 spreadsheets from the company. We tested the math. We 8 looked at the appropriateness of the depreciation 9 methods that we were using, their typical methods used 10 by companies under generally accepted accounting 11 principles to account for depreciation. We retested 12 the math. I think in the beginning, we may have had a 13 couple of errors in that which we did correct on this 14 particular report. 15 The goodwill and intangible assets, kind of a 16 similar thing, although we spent a lot of time in this 17 area because it's a significant asset on the balance 18 sheet. And, again, we obtained a detailed analysis 19 that was prepared by the accounting staff. We went 20 back, we reconciled that back to the general ledgers. 21 We did find errors in it, and we made corrections to 22 these particular numbers to properly state them. 23 We went back, we recalculated the math, the 24 amortization methods and so forth, and found that they 25 were doing those -- you know, any errors that we were</p>	<p style="text-align: right;">Page 809</p> <p>1 of credit, which we obtained documentation for. And 2 there was also -- it might have been -- I think it was 3 an advance to a law firm as well. 4 In the area of accounts payable, using the 5 QuickBooks records, we went back, made sure that we 6 typed that, looked at the accounts payable aging 7 schedule to see whether or not those totals supported 8 the numbers that are shown here. We pulled certain 9 large accounts payable amounts and looked at underlying 10 statements on a sample basis to make sure the numbers 11 were correct. 12 In the area of accrued interest, went through 13 that fairly extensively, found that -- I went back and 14 obtained statements from the biggest lender of their 15 debt, which we traced through their books and records 16 and found that not all the interest that should have 17 been accrued was accrued. So went back, made 18 corrections for that, and added the amount into an 19 accrued interest line. 20 Likewise, in notes payable, the biggest 21 portion of this notes payable is one lender. I 22 obtained statements of those, agreed the amounts with 23 the statements from the lender itself. I looked at the 24 underlying note documentation and so forth. 25 Due to related parties, that is amounts that</p>

<p style="text-align: right;">Page 810</p> <p>1 again are owed back and forth between the company, its 2 shareholders and/or officers. We had been provided a 3 schedule that there were certain items that we did on a 4 test basis, looked at the underlying documentation. 5 But ultimately we kind of netted this whole amount down 6 into one line item. 7 The last item mentioned here is this common 8 stock to be issued. And the common stock to be issued, 9 what that is, that's really the amount that is still 10 owing to the practitioners where Hygea has purchased 11 their practices. So, in other words, these are amounts 12 the company still owes based upon contracts to purchase 13 these practices. 14 And they represent primarily stock that Hygea 15 would have to issue to them. Some of that stock has 16 not been issued as a result of timing issues. Some of 17 that stock hasn't been issued. I think there might 18 have been some disputes about it. 19 But in any event, there's also an obligation 20 typically on most of these purchase contracts, if Hygea 21 doesn't issue the stock, they have to pay an X amount 22 of dollar amount, which is like a dollar a share, 23 dollar and a quarter a share, if I recall. Each 24 agreement was slightly different. By in large, that's 25 how we went through and did the work.</p>	<p style="text-align: right;">Page 812</p> <p>1 particular entities as I recall. And we looked at the 2 underlying documentation for that or work papers that 3 he had prepared. 4 Most of the expenses, as I recall, were based 5 upon what their historical amounts had been in past 6 years. So we went through this and looked at the 7 methodology that he employed and found that in our 8 opinion that he used the proper methodology to come up 9 with these figures. 10 Q. All right. And in all of your review of the 11 documentation that Mr. Savchenko provided you with and 12 your discussions with Mr. Savchenko, did you find any 13 reason to doubt that the accounting methodology being 14 utilized was reliable? 15 A. No. I felt that Mr. Savchenko had actually 16 done quite a good job, that he was trying to adhere to 17 generally accepted accounting principles. And what we 18 were looking at, it would appear at least in our 19 opinion that he was very conservative in what he was 20 doing, wasn't over -- you know, he wasn't 21 overforecasting, he wasn't overgrasping if you will. 22 Q. All right. 23 MR. EWING: No further direct questions, 24 Your Honor. 25 THE COURT: All right. We're going to take a</p>
<p style="text-align: right;">Page 811</p> <p>1 Q. After doing the work, were you able to form 2 an opinion as to whether or not Hygea is solvent? 3 A. Well, as shown on this particular schedule 4 here, December 31, '17, the total assets were 5 146 million, total liabilities were 141 million. So 6 there was \$4.6 million excess of assets over 7 liabilities. When looking at the '18 information, we 8 found that actually that improved to about \$6 million 9 of excess assets over liabilities. 10 Q. Were you also provided with a cash flow 11 projection analysis for 2018? 12 A. Yes, I was. 13 Q. And were you able to test the reliability of 14 those projections? 15 A. We did spend some time going over it with 16 the CFO, this particular cash flow projection, and 17 understood how -- where the numbers were coming from, 18 how he put the numbers together, and whether or not it 19 appeared based upon our opinion that he had done it 20 accurately to reflect what the net cash contribution 21 was from operations, which is what he was calculating. 22 We looked at his underlying revenue 23 projections, the methodology he used. There was a 24 couple of entities that he had removed from the 25 forecast because there were disputes with those</p>	<p style="text-align: right;">Page 813</p> <p>1 10-minute recess. We'll come in about 5 after by this 2 clock. You're free to step down. 3 (Recess taken at 1:58, resuming at 2:11.) 4 THE COURT: Please be seated. 18 CO 71, 5 Arellano v. Hygea. All counsel are present. 6 Go ahead. Cross-exam? 7 MR. VIAR: Thank you, Your Honor. 8 CROSS-EXAMINATION 9 BY MR. VIAR: 10 Q. Good afternoon, Mr. Greene. 11 A. Good afternoon, sir. 12 Q. My name is David Viar. I represent N5HYG in 13 this matter. 14 You drafted a 15-page written report which 15 contains the scope of your engagement and your opinions 16 in this case; is that correct? 17 A. Well, the 15 pages of the report itself. 18 There were also some attachments and exhibits to it. 19 Q. Did you draft that report yourself, or did 20 you have some help with that? 21 A. It was a combination of myself, as well as 22 staff that work for me directly. 23 Q. In terms of the drafting though, is the 24 entire 15 pages your work product from your hand? 25 A. Pretty much, yes.</p>

<p style="text-align: right;">Page 814</p> <p>1 Q. As I understand it, you were engaged to 2 render opinions on Hygea Holdings Corp.'s solvency and 3 cash flow; is that correct? 4 A. Well, what I was hired to do was, number 1, 5 render an opinion as to solvency of Hygea. I was also 6 asked to review the cash flow projections that were 7 prepared by its CFO. 8 Q. You were not engaged to perform an 9 independent audit of Hygea's financial books and 10 records; is that correct? 11 A. That's correct, I was not. 12 Q. You were asked to perform your work and 13 prepare your report in a relatively short period of 14 time, would you agree? 15 A. Yes. 16 Q. In fact, your report reflects that the 17 monthly balance statements relied upon for your opinion 18 were not provided to you until 6:45 on May 9, 2018; is 19 that correct? 20 A. That I don't recall. If you can direct me 21 it to it, I'll certainly look at it. 22 Q. Footnote 17 of your report. 23 A. Yeah, there's a schedule that was dated 24 May 7th of '18. I'm sorry. If that's what you asked 25 me, that's correct.</p>	<p style="text-align: right;">Page 816</p> <p>1 the verbal statements and written records provided to 2 you by Hygea management; is that correct? 3 A. Well, it's based on -- not just written 4 records and statements by them, but also, you know, we 5 obtained from them third-party statements. 6 Now, those documents did come to us from 7 Hygea specifically, but they were, you know, statements 8 from the loan company, for example, a third party, 9 statements from credit card companies that were third 10 party, invoices and things of that nature which were 11 third party. 12 Q. You mentioned conversations with the CFO, 13 correct? 14 A. That was part of the process. 15 Q. And that you relied on those assertions made 16 in those conversations for the basis of your opinion in 17 part? 18 A. In part, yeah. 19 Q. But you're not attesting to the accuracy of 20 management assertions that can be relied upon for the 21 formation of your opinions in this case; is that 22 correct? 23 A. May I have that question back? 24 Q. You're not attesting to the accuracy of the 25 assertions that you received from Hygea management with</p>
<p style="text-align: right;">Page 815</p> <p>1 Q. And, actually, that's the same day that you 2 finished the report and conveyed the report to the 3 Hygea attorneys; is that correct? 4 A. No. No. It's -- first of all, this thing 5 here is dated May 7th. 17, which is the footnote 6 you're referring to -- the report itself is dated 7 May 9th. 17 is referring to, if I might -- yeah, it's 8 looking at property, plant, and equipment 9 specifically. 10 Q. All right. But if you turn to page 7 of your 11 report and look at footnote number 9. Maybe I 12 misspoke. Do you see that? 13 A. Yes. 14 Q. That references a balance statement being 15 provided on 6:45 on May 9, 2018? 16 A. We did receive that on May 9th, 2018. It 17 was probably 6:45 Eastern Time, which would have been 18 3:45 Vegas time. 19 Q. Okay. I understand, but that's the same day 20 that you actually finished and conveyed the report; is 21 that correct? 22 A. Yeah. We looked at the last quarter and the 23 last day that we conveyed our report. That is 24 correct. 25 Q. Your testimony and your opinions are based on</p>	<p style="text-align: right;">Page 817</p> <p>1 respect to the financial condition of the company, are 2 you? 3 A. Well, I'm rendering the opinions that are 4 shown in my report. That being said, there may have 5 been statements he made where he says, Well, this 6 document says this. And I looked at the document and, 7 yes, that's what it says. But, you know, I mean, the 8 opinions are contained within the report itself. 9 Q. I understand. But you're not attesting to 10 the truth of the statements that were provided by 11 management from Hygea, correct? 12 A. Well, again, as I stated before, during our 13 discussions, there were certain comments he would make 14 to me, and then I obtained third-party documents to 15 confirm what he was saying. 16 Q. Well, you did not state in your report or 17 during your testimony that the balance sheets relied on 18 for your opinions complied with GAAP; is that correct? 19 A. No, I did not make that statement. 20 Q. And you did not determine that Hygea's 21 balance sheet is free of material misstatements; is 22 that correct? You didn't make that determination? 23 A. Well, no, I did not make a determination as 24 stated. As a fraud examiner, nothing came to my 25 attention that would lead me to conclude that was</p>

<p style="text-align: right;">Page 818</p> <p>1 occurring.</p> <p>2 Q. And part of the reason why you cannot offer</p> <p>3 that opinion is because you did not perform a formal</p> <p>4 audit of Hygea's books and records; is that correct?</p> <p>5 A. Yeah. Well, the audit -- the whole purpose</p> <p>6 of doing an audit is different than the purpose of</p> <p>7 doing this particular assignment.</p> <p>8 Q. Right. And you're not attesting to the</p> <p>9 accuracy of the assertions related to Hygea's cash flow</p> <p>10 from the CFO; is that correct?</p> <p>11 A. Well, what I'm asserting is that we reviewed</p> <p>12 the methodology that he used, and we looked at some of</p> <p>13 his underlying assumptions and felt that they were</p> <p>14 appropriate for a person of his -- as a CPA or as an</p> <p>15 accountant that he is to have prepared it that way.</p> <p>16 Q. You opined that Hygea is solvent, but only to</p> <p>17 a reasonable degree of accounting certainty?</p> <p>18 A. Yes.</p> <p>19 Q. Is that correct?</p> <p>20 A. Correct.</p> <p>21 Q. You also opined in your report that Hygea's</p> <p>22 cash flow projections have been prepared and based</p> <p>23 upon, again, reasonable degree of accounting certainty;</p> <p>24 is that correct?</p> <p>25 A. That is correct.</p>	<p style="text-align: right;">Page 820</p> <p>1 not, you know.</p> <p>2 Q. How does accounting certainty differ from</p> <p>3 non-accounting certainty?</p> <p>4 A. I'm talking about accounting certainty.</p> <p>5 What I'm looking at is myself as an accountant with</p> <p>6 expertise in accounting, when I look at a set of books</p> <p>7 or if I look at certain assertions that this man has</p> <p>8 made, do I feel that they are reasonable?</p> <p>9 It's more likely than not that these</p> <p>10 particular numbers are representative of the financial</p> <p>11 condition of this company at this point in time based</p> <p>12 upon my own set of procedures that I employed as part</p> <p>13 of my expert witness assignment.</p> <p>14 Q. More likely than not, is that the definition?</p> <p>15 A. That's one of the terms that comes to mind.</p> <p>16 Q. 51 percent?</p> <p>17 A. Could be more, could be 75 percent.</p> <p>18 Q. You would agree that the solvency analysis</p> <p>19 involves not just whether the market value of assets</p> <p>20 exceeds liabilities, but must also consider the</p> <p>21 company's ability to pay its financial obligations as</p> <p>22 they come due, correct?</p> <p>23 A. I'm not an attorney, so I'm not going to</p> <p>24 render that opinion. I don't know.</p> <p>25 Q. Well, with respect to --</p>
<p style="text-align: right;">Page 819</p> <p>1 Q. Is this phrase "reasonable degree of</p> <p>2 accounting certainty" a term that is defined by</p> <p>3 relevant academic literature?</p> <p>4 A. It is certainly a term that I've used quite</p> <p>5 extensively in my career, one that often -- I think it</p> <p>6 really derives from the State of Illinois when they're</p> <p>7 talking about medical opinions many years ago.</p> <p>8 So it's not unusual for me in litigation</p> <p>9 matters to opine to a reasonable degree of what's</p> <p>10 called accounting certainty, and that's what I did in</p> <p>11 this particular case.</p> <p>12 Q. Right. My question was --</p> <p>13 A. That's typically what I'm requested to do.</p> <p>14 Q. My question was is this phrase "reasonable</p> <p>15 degree of accounting certainty" a term that is defined</p> <p>16 by relevant academic literature?</p> <p>17 A. It may be. I honestly don't know as I sit</p> <p>18 here. I know I've read -- I've read that there's</p> <p>19 statements, there's been court cases that have</p> <p>20 addressed it as well, reasonable degree of certainty.</p> <p>21 Q. You said medical certainty?</p> <p>22 A. Correct. But it still is a professional --</p> <p>23 you know, it's the same sort of -- as an expert</p> <p>24 witness, it's basically the same concepts, did they</p> <p>25 use the proper methodology, is it more reasonable than</p>	<p style="text-align: right;">Page 821</p> <p>1 A. It's my understanding that the definition</p> <p>2 I've quoted in my report is one where it was the</p> <p>3 excess of assets over liabilities.</p> <p>4 Q. Right. But in your report, you referenced a</p> <p>5 legal definition, is that correct, following the</p> <p>6 bankruptcy code?</p> <p>7 A. What I reference is from the accounting book</p> <p>8 that we talked about, Bankruptcy and Solvency</p> <p>9 Accounting. I referenced there what they say comes</p> <p>10 out of the U.S. bankruptcy code. That's what I used</p> <p>11 for the purposes of my report here.</p> <p>12 Q. Right. In the demonstrative, you used this</p> <p>13 balance sheet, right; is that correct?</p> <p>14 A. That's not --</p> <p>15 Q. You used this document, right?</p> <p>16 A. Correct. Yes, sir.</p> <p>17 Q. To demonstrate that the assets exceeded the</p> <p>18 liabilities, correct?</p> <p>19 A. Correct, sir.</p> <p>20 Q. And I'm just asking you, there's more to the</p> <p>21 analysis than that, correct?</p> <p>22 A. Such as?</p> <p>23 Q. Well, such as the company's ability to pay</p> <p>24 its financial obligations as they become due.</p> <p>25 A. Well, again, I put out here what my</p>

<p style="text-align: right;">Page 822</p> <p>1 definition and my understanding was, you know --</p> <p>2 within the State of Nevada was the one where the</p> <p>3 assets were greater than the liabilities.</p> <p>4 Q. Well, solvency requires some consideration</p> <p>5 whether the company has sufficient cash flow to conduct</p> <p>6 its business, wouldn't you agree?</p> <p>7 A. Yeah. I haven't made an analysis, but that</p> <p>8 would seem something that would -- you should do.</p> <p>9 Q. Okay. And to determine solvency, you had to</p> <p>10 either perform a valuation of Hygea's claimed assets</p> <p>11 yourself or accept the valuation placed on those assets</p> <p>12 by Hygea, correct?</p> <p>13 A. Correct.</p> <p>14 Q. So which is it that you used for your report,</p> <p>15 did you -- did you do an independent analysis yourself</p> <p>16 on the assets, or did you accept the valuation that was</p> <p>17 placed on the assets by Hygea?</p> <p>18 A. Well, first of all, we did due diligence</p> <p>19 procedures to determine whether or not they were</p> <p>20 proper valued, for example, cash.</p> <p>21 Q. I understand. We've heard that testimony. I</p> <p>22 apologize for interrupting you, but I just had a</p> <p>23 very -- very simple question and direct question.</p> <p>24 Did you rely on Hygea's analysis for the</p> <p>25 value?</p>	<p style="text-align: right;">Page 824</p> <p>1 Q. Did you help determine if any of the</p> <p>2 businesses that were acquired by Hygea referenced in</p> <p>3 your report lost any managed care contracts after they</p> <p>4 were acquired?</p> <p>5 THE COURT: After they were what?</p> <p>6 MR. VIAR: Acquired.</p> <p>7 THE WITNESS: No, I did not do that.</p> <p>8 Q. (By Mr. Viar) So you essentially took the</p> <p>9 price they paid for the asset included in your report,</p> <p>10 correct?</p> <p>11 A. Nope.</p> <p>12 Q. What did you do? I mean, how did you --</p> <p>13 A. As I discussed earlier in my direct</p> <p>14 testimony, we went through the intangible assets. We</p> <p>15 obtained the analysis from the company.</p> <p>16 We tested that analysis mathematically. We</p> <p>17 found errors in their calculations. We reconciled it</p> <p>18 to their books. We looked at their underlying</p> <p>19 valuations done as part of their purchase price</p> <p>20 valuation methodology.</p> <p>21 I already looked at some documents that</p> <p>22 represented on a sample basis the purchases of the</p> <p>23 practice themselves and traced those amounts back to</p> <p>24 these particular documents. I didn't just accept what</p> <p>25 they said at all.</p>
<p style="text-align: right;">Page 823</p> <p>1 A. No.</p> <p>2 Q. Did you perform your own independent</p> <p>3 valuation of the assets?</p> <p>4 A. On certain assets, yes.</p> <p>5 Q. On the intangible assets, you looked at</p> <p>6 those; is that correct?</p> <p>7 A. Correct.</p> <p>8 Q. And you accepted Hygea's valuation for the</p> <p>9 intangible assets, correct?</p> <p>10 A. No, I did not. I actually adjusted them</p> <p>11 down to your client's benefit.</p> <p>12 Q. Did you perform any impairment testing on the</p> <p>13 intangible assets?</p> <p>14 A. We didn't. We examined the intangible</p> <p>15 assets. We looked at the amortization period. As you</p> <p>16 can tell from the sheet itself, they're writing these</p> <p>17 things off at a rate of 30 percent that's already been</p> <p>18 written off in two years. The value has been going</p> <p>19 down.</p> <p>20 The other thing you have to keep in mind is</p> <p>21 on the other side of it, you have this common stock to</p> <p>22 be issued, which is the liability. So if you actually</p> <p>23 net those two numbers together, there's about a</p> <p>24 valuation of \$60 million for the goodwill and</p> <p>25 intangible assets.</p>	<p style="text-align: right;">Page 825</p> <p>1 Q. I understand that, but there were</p> <p>2 purchase price valuations contained in the paperwork</p> <p>3 that you were provided, correct?</p> <p>4 A. That is correct.</p> <p>5 Q. Okay. Do you remember a specific company or</p> <p>6 acquisition that you downgraded and how much?</p> <p>7 A. No, but I do remember that when we tried to</p> <p>8 reconcile out the numbers that it was over \$5 million</p> <p>9 or more overstated, and we wrote the figure down.</p> <p>10 Q. So you accepted 100 million of their</p> <p>11 valuation out of -- out of the -- 100 million of the</p> <p>12 105 that they recommended you use; is that correct?</p> <p>13 A. No. I did my only special due diligence,</p> <p>14 looked at the stuff, and came up with what I thought</p> <p>15 was a reasonable amount based on our examination and</p> <p>16 looking at the books and records, the procedures we</p> <p>17 employed as part of this litigation assignment.</p> <p>18 Q. I understand. The purchase price valuation</p> <p>19 for the intangible assets provided to you was</p> <p>20 105 million. You adjusted that 105 million presented</p> <p>21 by Hygea down to 100 million and four dollars, correct?</p> <p>22 A. I can't remember the exact number. It was</p> <p>23 over \$5 million I remember we had correction for after</p> <p>24 we went through and did our due diligence and</p> <p>25 discovered that there was errors. That's what I</p>

<p style="text-align: right;">Page 826</p> <p>1 recall.</p> <p>2 Q. But those errors only reduced the purchase</p> <p>3 price valuation by approximately \$5 million, correct?</p> <p>4 A. Best of my recollection.</p> <p>5 Q. Your cash flow analysis at Exhibit 4 of your</p> <p>6 report --</p> <p>7 A. Uh-huh (affirmative).</p> <p>8 Q. -- reflects a negative \$1.8 million --</p> <p>9 A. Correct.</p> <p>10 Q. -- over the last nine months of the year; is</p> <p>11 that correct?</p> <p>12 A. Correct.</p> <p>13 Q. And in order to -- that analysis is the</p> <p>14 analysis that was prepared or close to the one that was</p> <p>15 prepared by Hygea; is that correct?</p> <p>16 A. This is an analysis that was prepared by</p> <p>17 Hygea.</p> <p>18 Q. All right. Which you accepted in total; is</p> <p>19 that correct?</p> <p>20 A. After doing due diligence procedures on it</p> <p>21 to make sure that it had some basis in reality when he</p> <p>22 prepared it, and that he was using a methodology that</p> <p>23 would typically had been used to forecast this out,</p> <p>24 yes.</p> <p>25 Q. Your work papers reflected a credit card bill</p>	<p style="text-align: right;">Page 828</p> <p>1 A. No. What I'm simply stating is you asked me</p> <p>2 whether or not I knew what the payment amount is. I'm</p> <p>3 simply stating I saw the statement, so I probably knew</p> <p>4 at one point, but I don't know as I sit here.</p> <p>5 Q. You can't say for sure whether it's included</p> <p>6 in Hygea's cash flow analysis; is that correct?</p> <p>7 A. I would assume that it is, but I don't know</p> <p>8 as I sit here.</p> <p>9 Q. Okay. That would just be an assumption by</p> <p>10 you; is that correct?</p> <p>11 A. Well, typically when you put these things</p> <p>12 together, you're also considering extinguishing the</p> <p>13 previous debts.</p> <p>14 Q. You're also aware of the \$70 million that's</p> <p>15 owed to Bridging Finance?</p> <p>16 A. Yes, I am.</p> <p>17 Q. And interest rate on that, do you know what</p> <p>18 the interest rate on that obligation is?</p> <p>19 A. Not off the top of my head. It's what, 13</p> <p>20 or 15 percent.</p> <p>21 Q. 15 percent?</p> <p>22 A. Something like that.</p> <p>23 Q. Yields about a million dollars a month in</p> <p>24 interest? Sound about right?</p> <p>25 A. Well, we can look at my accrued interest.</p>
<p style="text-align: right;">Page 827</p> <p>1 to American Express in excess of \$8 million. Do you</p> <p>2 remember that in your work papers?</p> <p>3 A. Yes, I do.</p> <p>4 Q. How is the interest on the \$8 million credit</p> <p>5 card debt owed to American Express expressed in your</p> <p>6 cash flow analysis?</p> <p>7 A. I would assume that -- I don't know as I sit</p> <p>8 here, but I would assume it would be paid through the</p> <p>9 general administrative expenses.</p> <p>10 Q. Do you have any recollection of the interest</p> <p>11 rate associated with the \$8 million debt?</p> <p>12 A. No, I do not.</p> <p>13 Q. Do you have any understanding or did you do</p> <p>14 any research at all in terms of what the monthly</p> <p>15 payment on that \$8 million would be and how it was</p> <p>16 characterized by Hygea?</p> <p>17 A. Yeah. In fairness, sir, we looked at a lot</p> <p>18 of documents. At the time I saw it. I don't recall</p> <p>19 it as I sit here. But I'm sure the payment amount was</p> <p>20 shown on the statement.</p> <p>21 Q. You're sure it's in there?</p> <p>22 A. I'm sure on the statement itself, it would</p> <p>23 have shown how much the payment amount was.</p> <p>24 Q. You don't believe that the payment amount is</p> <p>25 reflected in that schedule?</p>	<p style="text-align: right;">Page 829</p> <p>1 Approximately.</p> <p>2 Q. And that -- the interest on the -- on the</p> <p>3 70 million, that's reflected in the cash flow analysis?</p> <p>4 A. It is not because it's my understanding that</p> <p>5 Bridging -- we mentioned in our report that Bridging</p> <p>6 right now is deferring on collecting that amount of</p> <p>7 money. The purpose of this cash flow was to make a</p> <p>8 cash flow contribution analysis from operations, and</p> <p>9 it was not put in here.</p> <p>10 Q. Not put in?</p> <p>11 A. Correct.</p> <p>12 Q. And there's also a \$2.3 million debt owed to</p> <p>13 a Dr. Gaylis in Florida. Are you familiar with that</p> <p>14 obligation?</p> <p>15 A. I understand that that's in dispute.</p> <p>16 Q. You understand what?</p> <p>17 A. That there's a dispute over that amount.</p> <p>18 And I do know that his operations are not included in</p> <p>19 this cash flow as a result.</p> <p>20 Q. And that 2.3 million owed to Dr. Gaylis is</p> <p>21 not part of your cash flow analysis; is that correct?</p> <p>22 A. To my knowledge, it has been excluded from</p> <p>23 there.</p> <p>24 Q. There is an additional \$2.5 million that is</p> <p>25 owed to Dr. Gaylis' pharmacy, CuraScript. Are you</p>

<p style="text-align: right;">Page 830</p> <p>1 aware of that?</p> <p>2 A. Again, I'm aware that there's a dispute with</p> <p>3 Dr. Gaylis. I may not -- I don't know the specific</p> <p>4 amounts, but it is my understanding that that has not</p> <p>5 been reflected in these cash flow projections as they</p> <p>6 do not have access to his books and records.</p> <p>7 Q. Do you understand that Hygea is denying that</p> <p>8 it owes that money?</p> <p>9 A. Do I understand that? No.</p> <p>10 Q. No one told you that Hygea denies that it</p> <p>11 owes Dr. Gaylis \$2.3 million; is that correct?</p> <p>12 MR. EWING: Objection, Your Honor. That</p> <p>13 assumes facts not in evidence.</p> <p>14 THE COURT: Overruled.</p> <p>15 THE WITNESS: I don't know about it. I'm not</p> <p>16 aware of it.</p> <p>17 Q. (By Mr. Viar) Hypothetically speaking, what --</p> <p>18 what would the \$2.3 million owed to Dr. Gaylis, the</p> <p>19 2.5 million owed to his pharmacy, the interest on the</p> <p>20 credit card, let's just say at 15 percent or 12 percent on</p> <p>21 that 8 million, if those items were included in your -- in</p> <p>22 your cash flow analysis or your analysis of Hygea's</p> <p>23 projection, how would it affect it?</p> <p>24 A. I don't know that it is or isn't, so I'm not</p> <p>25 really in the position to opine whether it is or</p>	<p style="text-align: right;">Page 832</p> <p>1 MR. VIAR: That's all I have. Thank you.</p> <p>2 THE COURT: Redirect?</p> <p>3 REDIRECT EXAMINATION</p> <p>4 BY MR. EWING:</p> <p>5 Q. Mr. Greene, are you aware whether the cash</p> <p>6 flow analysis provided by Mr. Savchenko and analyzed by</p> <p>7 you was an operational cash flow analysis?</p> <p>8 A. That was my understanding, and that's how</p> <p>9 it's titled.</p> <p>10 Q. Would an operational cash flow analysis</p> <p>11 typically include interest and other finances costs</p> <p>12 like that?</p> <p>13 A. Not for this purpose, not for the purpose</p> <p>14 that he was doing it. Again, it's my understanding</p> <p>15 that the major lender was no longer requiring payment</p> <p>16 of it. They were deferring the ultimate payment of</p> <p>17 the interest.</p> <p>18 MR. EWING: No further questions, Your Honor.</p> <p>19 THE COURT: Recross on those questions?</p> <p>20 MR. VIAR: No, Your Honor.</p> <p>21 THE COURT: You can step down.</p> <p>22 THE WITNESS: Thank you.</p> <p>23 THE COURT: Defense, next witness?</p> <p>24 MS. GALL: Your Honor, the defense is done.</p> <p>25 THE COURT: Any rebuttal?</p>
<p style="text-align: right;">Page 831</p> <p>1 isn't. The amounts have been excluded. Then</p> <p>2 theoretically the 4.8 million would be subtracted from</p> <p>3 this money.</p> <p>4 Q. Do you remember having specific discussions</p> <p>5 with representatives of Hygea about the credit card and</p> <p>6 whether it should be included or not?</p> <p>7 A. Well, the credit card was included in our</p> <p>8 accounts payable, so it is a number in here along with</p> <p>9 the interest it's owing is sitting in the accounts</p> <p>10 payable figure that's in my statement on page 5 of my</p> <p>11 report. That I do know.</p> <p>12 Q. I just asked if you had a conversation with</p> <p>13 the folks at Hygea about that.</p> <p>14 A. I believe one of my staff had a conversation</p> <p>15 regarding it.</p> <p>16 Q. And with respect to the 2.3 million that's</p> <p>17 owed to Dr. Gaylis, did you have a conversation with</p> <p>18 anyone at Hygea that you can recall about that?</p> <p>19 A. I don't remember specifics of the case. I</p> <p>20 was simply told that there was a dispute that was</p> <p>21 between Dr. Gaylis and the company. And as a result,</p> <p>22 his activities have been excluded from this. I think</p> <p>23 there's -- Hygea may be taking the position they don't</p> <p>24 owe that money. And that's one that they will have to</p> <p>25 see how it comes out, I guess.</p>	<p style="text-align: right;">Page 833</p> <p>1 MR. VIAR: Your Honor, yes. We'd like to</p> <p>2 call Mr. Frazee.</p> <p>3 MS. GALL: Oh, Your Honor, I may have spoken</p> <p>4 too soon, if that's okay. We'd like the opportunity to</p> <p>5 recall Dr. Keith Collins for the purpose -- earlier</p> <p>6 about the stock ledger. We do have a declaration from</p> <p>7 the VStock Transfer agent laying the foundation and</p> <p>8 authentication for the VStock Transfer list.</p> <p>9 THE COURT: Mr. Kaye?</p> <p>10 MR. KAYE: Is the request to recall</p> <p>11 Dr. Collins at this time?</p> <p>12 MS. GALL: It is.</p> <p>13 MR. KAYE: I just wanted to be clear on that</p> <p>14 as to what we're talking about. Your Honor, the</p> <p>15 plaintiffs object to that. Dr. Collins has already</p> <p>16 testified, and it's an unusual circumstance to have him</p> <p>17 step down and then return to the stand. And plaintiffs</p> <p>18 object to that.</p> <p>19 Frankly, even with -- with some sort of</p> <p>20 forthcoming declaration, I still think there would be</p> <p>21 some additional evidentiary issues. So there's an</p> <p>22 issue of -- it's almost like amending a complaint, a</p> <p>23 futility argument as well.</p> <p>24 But in particular, we think that that would</p> <p>25 be unusual and, in addition -- and, of course, this was</p>

<p style="text-align: right;">Page 834</p> <p>1 a very short turnaround, but the defense did indicate 2 that it had closed its case. 3 THE COURT: The objection's overruled. You 4 can come on up. So you have shared that with them? 5 They've seen what you have? 6 MS. GALL: We just received it. I'll share 7 it with them right now. 8 THE COURT: You are still under oath, so we 9 don't need to repeat that. Go ahead and have a seat. 10 Go ahead. Which binder do you have? 11 MR. CARLSON: We're in volume 4, Your Honor. 12 THE COURT: Even though he's testified 13 before, I'm going to have -- ask you please to have him 14 state his name again. 15 MR. CARLSON: Yes, certainly. 16 REDIRECT EXAMINATION 17 BY MR. CARLSON: 18 Q. Dr. Collins, could you state your name for 19 the record, please. 20 A. Keith Collins, M.D. 21 Q. Dr. Collins, since you testified this 22 morning, has Hygea been in contact with its transfer 23 agent? 24 A. Yes, indeed. 25 Q. Did Hygea make a request to its transfer</p>	<p style="text-align: right;">Page 836</p> <p>1 affidavit was needed and to try to figure out what 2 their procedures were for getting that done. 3 Q. Is it your understanding that VStock Transfer 4 ultimately responded to Hygea's request? 5 A. That is my understanding. 6 Q. Dr. Collins, when shared transactions take 7 place, and I believe your testimony this morning was 8 that the company reports to the transfer agent the name 9 and the number of shares that are the subject of that 10 stock transaction? 11 A. That is correct. 12 Q. Do you know if there's any other information 13 that the company shares with the transfer agent when 14 there's a share transaction? 15 A. There's -- there's the name. There's the 16 number of shares. There is an address to where the 17 shares are to be sent if they're to be certificated. 18 Q. Do you know if price per share is included in 19 that information? 20 A. The -- yes. There has to be a cost basis 21 for each share. That's regulatorily required. 22 Q. Does -- do you know if VStock -- let me back 23 up. 24 Is there any -- any basis by which VStock 25 would have this information outside of a communication</p>
<p style="text-align: right;">Page 835</p> <p>1 agent this morning? 2 A. We did. 3 Q. What was the nature of that request? 4 A. Pursuant to -- 5 MR. KAYE: I'm going to object to foundation 6 because it's not clear to me whether this witness was 7 involved in this request. 8 THE COURT: Can you clear that up, please? 9 MR. CARLSON: Sure. 10 Q. (By Mr. Carlson) Dr. Collins, who at Hygea -- do 11 you know who at Hygea made a request to VStock Transfer 12 this morning? 13 A. I don't know specifically because I was 14 involved in other matters. I talked to several people 15 and said this was an important thing to get done, and 16 I know that a number of phone calls were -- were made 17 and conversations were had. And I authorized as 18 secretary that there be such a declaration. 19 Q. And by "declaration," what are you referring 20 to, Dr. Collins? 21 A. Well, the -- I'm referring to the fact that 22 I believe we were told that there had to be some sort 23 of affidavit -- that was the word from the transfer 24 agent -- so that we needed to get in touch with the 25 transfer agent and let them know that such an</p>	<p style="text-align: right;">Page 837</p> <p>1 from Hygea? 2 A. There should not be. 3 Q. So Hygea is the sole source of information 4 upon which VStock generates the stockholder list? 5 A. That is my -- that is my understanding. And 6 I would be quite surprised and unhappy should there be 7 any exceptions to that. 8 MR. CARLSON: Your Honor, if I may approach 9 the witness? 10 THE COURT: Yes. Is that 195? 11 COURT CLERK: Yes. 12 Q. (By Mr. Carlson) Dr. Collins, I'm handing you 13 what's been marked for identification as Exhibit No. 195. 14 A. I see that. 15 Q. Do you have an understanding of what this 16 document is? 17 A. It says that it's a Business Records 18 Declaration. 19 Q. And is this the declaration that Hygea 20 requested VStock Transfer provide to the company this 21 morning? 22 A. Yes, it is. And I'm delighted to see names 23 I know on here. So, yes, this -- this looks exactly 24 like what we requested. 25 Q. And in looking at the declaration, it</p>

<p style="text-align: right;">Page 838</p> <p>1 identifies a Yung D. Kim. Do you recognize that name, 2 Dr. Collins? 3 A. I do. 4 Q. How do you recognize that name? 5 A. Mr. Kim is the actual custodian. And I have 6 to say I don't completely understand all of the ways 7 that VStock is organized, but they are -- I will tell 8 you they are very meticulous about making sure that 9 the information is securely transmitted and 10 authenticated. And so I think that he is one of the 11 ones that is responsible for making sure that that 12 happens. 13 MR. CARLSON: Your Honor, I would move to 14 admit what's been marked as Exhibit 195. 15 THE COURT: Mr. Kaye? 16 MR. KAYE: Your Honor, I have a couple of 17 objections. And some of these objections will, 18 perhaps, get a little bit to the underlying document 19 that I think is coming, but I think it's appropriate to 20 make these ones at this time. 21 First of all, we object that has just been 22 provided to us. That was an issue that came up on the 23 other side of things the other day. That obviously has 24 not been on the witness list -- excuse me -- the 25 exhibit list and, of course, it just came this morning.</p>	<p style="text-align: right;">Page 840</p> <p>1 paragraph 4, "A party intending to offer an 2 affidavit pursuant to this section must serve on the 3 other parties a notice of the intent and make available 4 for inspection the copying of the records of the 5 regularly conducted activity at least 10 days before 6 the records are to be introduced at hearing, unless the 7 court shortens the time for good cause shown." 8 There was no indication that there was ever 9 any intention to introduce an affidavit for this 10 purpose until this morning. And, in fact -- in fact, 11 we've heard a good amount of -- we've heard a good 12 amount of testimony that -- that this was -- that this 13 happened all this morning and came together this 14 morning, which was obviously within -- obviously within 15 10 days. So there was -- there was no notice given to 16 us of any plan to provide such an affidavit until -- 17 until today, frankly, until just now. 18 THE COURT: Mr. Carlson? 19 MR. CARLSON: Your Honor, our response would 20 start with the subject matter of the declaration has 21 certainly been disclosed for quite some time now. It's 22 at least in part been disclosed as a result of 23 plaintiffs' request and this Court's order. In terms 24 of the declaration versus affidavit, I'd refer the 25 Court to NRS 53.045. This allows for declarations in</p>
<p style="text-align: right;">Page 839</p> <p>1 But even beyond that as a general point, 2 there's a very specific issue I believe with this 3 declaration here, and that falls under NRS 52.260, 4 which is the -- which governs affidavits made for 5 purposes of -- purposes of the business record 6 exception. 7 And that provides that, "The contents of a 8 record made in the course of a regularly fully 9 conducted activity in accordance with NRS 51.135, 10 otherwise admissible, may be proved -- may be proved by 11 the original, a copy of the record" -- I'm going to 12 skip some of the verbiage here. I know everyone has 13 access to this. 14 "The custodian of the record or other 15 qualified person must verify in the affidavit if the 16 affidavit is used that the record was made at or near 17 the time of the act of any condition, opinion, or 18 diagnosis concerning if the information was made or 19 recorded, by or from information transmitted by a 20 person with knowledge of the act or event, and in the 21 course of the regularly conducted activity." 22 There is a form for the affidavit, which 23 includes notarization. This is a declaration and is 24 not a notarized affidavit as required by the statute. 25 And, significantly, and this goes to my first point,</p>	<p style="text-align: right;">Page 841</p> <p>1 lieu of affidavit. 2 We've also heard again from Dr. Collins about 3 the regular communication from the corporation to its 4 agent of transmitting information, stockholder names, 5 addresses, number of shares, value for the shares paid. 6 So really we're looking at VStock Transfer as 7 a secretarial function in a lot of respects. If I 8 transcribe a letter, Your Honor, to my secretary, tell 9 her what I want written, she gives it back to me. I 10 review it for accuracy, and I sign off on it. 11 Here, Hygea regularly communicates with 12 VStock Transfer. We don't have third parties 13 communicating with VStock Transfer as to what shares 14 are being issued back, whatever that transaction may 15 be. VStock is serving as that secretarial agent for 16 the company. 17 Ultimately, this Court has to make a 18 threshold decision. Does it have jurisdiction, subject 19 matter jurisdiction, do the plaintiffs hold 10 percent? 20 We think that outweighs whatever burden the plaintiffs 21 may suffer from the declaration arriving this afternoon 22 when, in fact, the exhibits the declaration is talking 23 about have been considered joint exhibits offered by 24 both parties for purposes of this trial. 25 THE COURT: Mr. Kaye?</p>

<p style="text-align: right;">Page 842</p> <p>1 Were you done, Mr. Carlson?</p> <p>2 MR. CARLSON: Yes. Thank you, Your Honor.</p> <p>3 MR. KAYE: Your Honor, the only thing I would</p> <p>4 add, this is, once again, the affidavit -- it's not an</p> <p>5 affidavit. It's a non-notarized declaration that does</p> <p>6 not comply with the very clear statutory provisions in</p> <p>7 a number of respects.</p> <p>8 But beyond that, I do want to address the</p> <p>9 suggestion that what happens at VStock here is</p> <p>10 merely -- is the equivalent of transcribing what is</p> <p>11 provided -- what is provided because there are -- there</p> <p>12 are, I think, significant issues about that</p> <p>13 communication, whether or not -- whether or not there</p> <p>14 is completeness, thoroughness, and accuracy in that</p> <p>15 sort of communication. We can speak to that, although</p> <p>16 I don't think that we're there yet, but I'm happy to</p> <p>17 address it at the Court's request.</p> <p>18 THE COURT: All right. First, regarding the</p> <p>19 late disclosure, this is an ongoing problem again</p> <p>20 because of the effort to try and get this through this</p> <p>21 court as quickly as possible. So I'm going to overrule</p> <p>22 that objection.</p> <p>23 The second is that it's not an affidavit. I</p> <p>24 don't recall the statute number, 53 -- what is it?</p> <p>25 MR. CARLSON: 53.045.</p>	<p style="text-align: right;">Page 844</p> <p>1 get another list if this Court were so inclined to</p> <p>2 appoint a receiver because under the receivership</p> <p>3 statute, it's -- the question of percentage of</p> <p>4 ownership is at the time of appointment.</p> <p>5 So from a -- from a moving standpoint, the</p> <p>6 requesting the record date, that's where VStock goes in</p> <p>7 and says, Who's a shareholder of record as of 1/29/18?</p> <p>8 You may have some shareholders who are still</p> <p>9 shareholders of record on April 30th, but you may not</p> <p>10 have the same -- same folks.</p> <p>11 So that's -- that's the point that we have to</p> <p>12 keep in mind that it's a record that's already there.</p> <p>13 We're asking for VStock to generate a list for a</p> <p>14 particular point in time based on prior consistent</p> <p>15 reporting from the company that generate -- that</p> <p>16 ultimately creates the list that VStock houses. And</p> <p>17 then they're essentially taking that function, looking</p> <p>18 at who's a shareholder of record on any given date</p> <p>19 looking back.</p> <p>20 MR. KAYE: Your Honor, we just heard a lot of</p> <p>21 argument that I think is what substantively is missing</p> <p>22 from the declaration. And even if it didn't follow</p> <p>23 the -- even if it didn't follow the statutory form,</p> <p>24 substantively the declaration could say what we just</p> <p>25 heard from -- what we just heard from Mr. Carlson, who</p>
<p style="text-align: right;">Page 843</p> <p>1 THE COURT: .045 does allow for a declaration</p> <p>2 where an affidavit could be used. So that objection is</p> <p>3 overruled.</p> <p>4 Did you respond, Mr. Carlson, at or near --</p> <p>5 that the form certificate of custodian of records</p> <p>6 includes in subsection 5 that the original of the</p> <p>7 record was made at or near the time of the act?</p> <p>8 MR. CARLSON: So at or near the time of the</p> <p>9 act, Your Honor, I think we have to look at the request</p> <p>10 was made for a list for two particular record dates.</p> <p>11 And so you could ask for a record date ten years ago in</p> <p>12 theory, Your Honor. But the point is that the company</p> <p>13 regularly communicates with VStock to update the list.</p> <p>14 And then at any point in time, you could ask for a</p> <p>15 particular record date.</p> <p>16 In this instance, we're dealing with</p> <p>17 January 29th because of a specific request from the</p> <p>18 plaintiffs for what shareholder list did Hygea rely</p> <p>19 upon in filing its motion to dismiss, challenging the</p> <p>20 petition for a receiver. That motion to dismiss was</p> <p>21 filed in that timeframe. So that -- that is the</p> <p>22 shareholder list upon which Hygea relied.</p> <p>23 Moving forward to the April 30th list, we</p> <p>24 believe that's imperative for the Court's</p> <p>25 consideration. And, in fact, we would probably need to</p>	<p style="text-align: right;">Page 845</p> <p>1 I cannot cross-examine here.</p> <p>2 And I don't think that the witness has</p> <p>3 personal knowledge as to how VStock operates internally</p> <p>4 or how it -- how it collects or collates the -- the</p> <p>5 information that it has -- that it receives from Hygea.</p> <p>6 To use the example that counsel used about</p> <p>7 dictating a piece of correspondence to his legal</p> <p>8 assistant, we're not asking here -- we're not looking</p> <p>9 at what did -- what did counsel dictate to his legal</p> <p>10 assistant, we're looking at what did counsel -- what</p> <p>11 was -- what did the -- what did this piece of</p> <p>12 correspondence or what did this brief look like when --</p> <p>13 when counsel dictated it several weeks ago.</p> <p>14 And then what was the one a few weeks before</p> <p>15 that I think we've just heard a suggestion that we</p> <p>16 might be -- that there might be an effort to introduce</p> <p>17 an even more recent one than that.</p> <p>18 If that's the case, I think you need</p> <p>19 something more than what we have here in this</p> <p>20 declaration from the -- to continue the analogy from a</p> <p>21 legal assistant.</p> <p>22 THE COURT: Maybe I misunderstood the</p> <p>23 objection. I understood that you were objecting that</p> <p>24 the -- that this technician did not include the "at or</p> <p>25 near the time."</p>

<p style="text-align: right;">Page 846</p> <p>1 MR. KAYE: Correct, Your Honor. And that's I 2 think substantively why that's significant. As I 3 mentioned earlier, perhaps that objection bleeds 4 into -- it bleeds into our argument about the 5 presumably forthcoming documents. 6 THE COURT: The last portion, it looks to me 7 like this is -- that there's only two sentences in that 8 first paragraph. The two lines at the very end of it 9 are that the record was electronically generated at or 10 near the time or reasonably soon thereafter at the 11 offices of VStock. So they do have the "at or near" 12 magic words. 13 MR. KAYE: Your Honor, I see that and I 14 appreciate that. Candidly, some of that is a function 15 of I'm reading this as I make the argument under these 16 circumstances. 17 Having said that, I still do think that that 18 is a substantive shortcoming for all the reasons I 19 explained. We had a very long explanation from counsel 20 as to how he thinks VStock internally performs -- 21 generates these sort of documents and maintains this 22 sort of information. 23 And I think that that sort of information 24 would be -- would be appropriate in a declaration such 25 as this were it to be used for purposes of establishing</p>	<p style="text-align: right;">Page 848</p> <p>1 you. 2 THE COURT: Did you have any more questions? 3 MR. CARLSON: No more questions for the 4 witness, Your Honor. 5 THE COURT: Did you have any cross for him 6 based on where we are? 7 MR. KAYE: No, Your Honor. 8 THE COURT: You can step down again. Your 9 next witness? 10 MS. GALL: We do indeed rest. 11 THE COURT: The plaintiffs' first rebuttal? 12 MR. VIAR: Yes, Your Honor. Plaintiffs call 13 Tom Frazee on rebuttal. 14 THE COURT: Face the clerk here and raise 15 your right hand. 16 --oOo-- 17 THOMAS FRAZEE, 18 having been first duly sworn to tell the 19 truth, was examined and testified as follows: 20 DIRECT EXAMINATION 21 BY MR. VIAR: 22 Q. Good afternoon, Mr. Frazee. 23 A. Good afternoon. 24 Q. Would you please state your full name for the 25 record.</p>
<p style="text-align: right;">Page 847</p> <p>1 a business record. 2 MR. CARLSON: Your Honor, if I -- 3 THE COURT: I'm going to overrule that 4 objection as well. The form -- the declaration is in 5 substantially the form set out in 52.260. The last 6 objection I believe is the 10-day notice required in 7 subsection 4 of 52.260. Again, that is in part a 8 function of the shortness of the trial. 9 However, it's also that this didn't get 10 generated until today. So I haven't asked in some 11 time, does either party want a continuance? I'll go 12 with the plaintiff first. 13 MR. KAYE: Your Honor, I would ask for a 14 brief recess so that we can discuss that request. 15 THE COURT: We'll take a 10-minute recess. 16 Is that enough time? 17 MR. KAYE: Yes, Your Honor. 18 THE COURT: We'll come back in about 5 after. 19 (Recess taken at 2:55, resuming at 3:02.) 20 MR. CARLSON: Your Honor, I might save you 21 some time. We'll withdraw our motion to admit 17. 22 THE COURT: We're back on 18 OC 71, Arellano 23 v. Hygea. All counsel are present. 24 You want to withdraw your offer of 195. 25 MR. CARLSON: Correct, Your Honor. Thank</p>	<p style="text-align: right;">Page 849</p> <p>1 A. Thomas Anthony Frazee. F-R-A-Z-E-E. 2 Q. Mr. Frazee, where are you employed? 3 A. I am the managing member or managing 4 director of Frazee Valuation and Forensic Consulting, 5 LLC. 6 Q. Tell us about your work for Frazee Valuation 7 and Forensic Accounting. 8 A. My -- my practice and my focus is on 9 consulting with business owners, attorneys, advisors 10 on issues that relate to valuation questions that 11 relate to damage claims and issues in litigation, to 12 assist them with understanding the financial aspects, 13 whether they relate to accounting or finance consents, 14 and to advise on either, like I said, valuation 15 questions or issues that relate to accounting and 16 damages claims. 17 I also have parts of my practice which deal 18 with other sort of complex financial problems, due 19 diligence for folks who are buying or selling a 20 company, complex insurance claims where there's -- 21 there's no litigation yet, but there may be if some 22 things don't get resolved. Those are the things I do. 23 Q. Can you tell us about your educational and 24 employment background prior to your association with 25 Frazee Valuation?</p>

<p style="text-align: right;">Page 850</p> <p>1 A. Sure. I graduated from Oakland University 2 in 1996. 3 Q. Tell the Court where Oakland University is. 4 A. Rochester, Michigan, suburb of Detroit. 5 Graduated with a Bachelor's of Science with majors in 6 accounting and in finance. Upon graduation, I began 7 working for a consulting firm that had offices at that 8 point in -- I think in Detroit and a couple of other 9 cities. 10 In any event, worked there for eight years 11 with responsibilities that started out with business 12 valuation and then involved a number of engagements 13 where business valuation and expert witness roles were 14 required. 15 Also involved in that time period with a 16 variety of projects involving real estate valuation and 17 some turnaround restructuring work as well. Was there 18 for about eight years. 19 I left as a principal, which was essentially 20 the step below partner, joined a firm that was a -- 21 primarily an accounting firm but had a relatively large 22 consulting business, top 20 in terms of size within the 23 United States. It was a firm by the name of UHY 24 Advisors, offices across the U.S., but a number of them 25 in Michigan and Chicago, East Coast, New York, that</p>	<p style="text-align: right;">Page 852</p> <p>1 membership group as well. 2 Q. How many business valuations have you 3 performed during your career? 4 A. I would -- this is an estimate, but I would 5 estimate more than a thousand. 6 Q. Have issues of cash flow and solvency come up 7 as part of your valuation work? 8 A. Essentially every valuation, with maybe half 9 a percent being the exception, with almost every 10 valuation, the process involves an analysis of the 11 accounting records of the target or of the entity 12 being valued and then an analysis typically of cash 13 flow forecasts of some type that will relate to what 14 the -- what a buyer essentially would look at when 15 considering value and setting value. 16 So in almost every engagement for valuation 17 purposes, that's relevant. And it's, frankly, relevant 18 for most of the matters where I'm involved. It's to 19 analyze financial and accounting records to make an 20 opinion. 21 Q. Prior to today, have you been qualified as an 22 expert in accounting and business valuation issues? 23 A. I have. I have been qualified in a number 24 of different courts, sometimes in valuation issues, 25 sometimes accounting issues, sometimes damages issues,</p>
<p style="text-align: right;">Page 851</p> <p>1 kind of thing. 2 And was there for about -- I think it was 3 about eight more years, left in 2013 as a managing 4 director heading up the group in Detroit that -- in 5 Michigan that handled all the forensic 6 accounting litigation, valuation services being 7 provided by the firm. At that point I formed my own 8 firm and have been doing that since then. 9 Q. In addition to your employment, do you hold 10 any relevant licenses and certifications? 11 A. I do. I'm licensed as a CPA in Michigan and 12 in Illinois. I hold a designation that's referred as 13 ABV, shorthand for accredited in business valuation. 14 That's a designation from the American Institute of 15 CPAs. 16 I also hold the CFA designation, which stands 17 for chartered financial analyst. And that is a 18 designation focused on essentially competency in the 19 areas of valuation, economic research, valuation of 20 securities, portfolio management, and bottom line lots 21 of numbers. 22 Q. Are you a member of any professional 23 associations? 24 A. I am. I mean, all those -- all those 25 designations are associated with an association or</p>	<p style="text-align: right;">Page 853</p> <p>1 all of those kinds of things. 2 Q. Can you tell the Court or share with us some 3 of the courts where you've been qualified? 4 A. I've been qualified in Delaware Court of 5 Chancery on valuation issues, qualified in courts in 6 Chicago. And I can't remember exactly which county it 7 was, but Chicago, number of federal and state courts 8 in Michigan. I've been qualified in federal court in 9 Texas, I believe also in Missouri. That's what I'm 10 remembering as I sit here. 11 Q. Did you prepare a written report in this 12 case? 13 A. I did. 14 Q. What did you review in connection with your 15 report? 16 A. I received a copy of a report prepared by 17 Mr. Greene, which was the starting point. I also 18 received a number -- call it a hundred-plus documents 19 that were produced I think the same day that 20 Mr. Greene's report was produced. 21 There were a number of documents produced, 22 nearly 10,000 pages, roughly 120 of those or so I 23 reviewed. Those were the files that were the 24 substantive ones. 25 And they dealt primarily with spreadsheets</p>

<p style="text-align: right;">Page 854</p> <p>1 that contain various analyses that would be relevant to</p> <p>2 either the issues in Mr. Greene's report or some of the</p> <p>3 forecasts and things that have been discussed today.</p> <p>4 Q. Do you believe that your testimony will be</p> <p>5 helpful assisting the Court in understanding the facts</p> <p>6 of this case?</p> <p>7 A. I hope -- I hope so, yes. I believe so.</p> <p>8 Q. Have you reviewed the solvency analysis</p> <p>9 contained in Mr. Greene's report?</p> <p>10 A. Yes.</p> <p>11 Q. You were here also today to hear his</p> <p>12 testimony?</p> <p>13 A. Yes.</p> <p>14 Q. What is your opinion of Mr. Greene's</p> <p>15 insolvency analysis?</p> <p>16 A. Well, the solvency analysis is a very basic</p> <p>17 one. It is a -- it is a test which essentially</p> <p>18 focuses on the difference between the market value of</p> <p>19 the assets and market value of the liabilities.</p> <p>20 That's -- that's what the report states.</p> <p>21 The reality is that a solvency analysis is</p> <p>22 typically one which includes consideration of three</p> <p>23 different tests. One is the test that is referred to</p> <p>24 in Mr. Greene's report.</p> <p>25 The second is a test that focuses on the</p>	<p style="text-align: right;">Page 856</p> <p>1 a GAAP-basis financial statement. It reflects all of</p> <p>2 the accounting principles that we've historically</p> <p>3 followed. And here's what that balance sheet says.</p> <p>4 They look at you have assets greater than liabilities.</p> <p>5 Therefore, you pass the test.</p> <p>6 That's not the test. The test is that you're</p> <p>7 focusing on the value of those assets. And so that's</p> <p>8 not the same as what an accountant records them at two</p> <p>9 years ago or last year or 20 minutes ago or three</p> <p>10 minutes from now. It's market value.</p> <p>11 Q. With respect to the valuation of assets, do</p> <p>12 you have an opinion on -- on Mr. Greene's report in</p> <p>13 that regard?</p> <p>14 A. The simple answer is that the single --</p> <p>15 there are two material assets that are relevant to</p> <p>16 your question. The first is the value of the</p> <p>17 intangible assets, which represent 100 million out of</p> <p>18 the 150 million in total assets. 100 million of it</p> <p>19 falls into the bucket of intangible assets.</p> <p>20 There is no valuation analysis for those</p> <p>21 intangible assets anywhere in the report. And there</p> <p>22 are no valuations of those assets in any of the work</p> <p>23 papers that were provided to Mr. Greene by Hygea as of</p> <p>24 the valuation dates that are presented.</p> <p>25 The report says as of March 2018, here's what</p>
<p style="text-align: right;">Page 855</p> <p>1 ability of the entity to pay its debts and its</p> <p>2 responsibilities as they become due, in other words,</p> <p>3 its ability to generate cash flow, to pay things as</p> <p>4 they become due.</p> <p>5 The third element or the third test in a</p> <p>6 typical solvency analysis is one that focuses on</p> <p>7 whether the entity has sufficient capital to conduct</p> <p>8 its business on an ongoing basis.</p> <p>9 Q. Of those three tests you mention, how many</p> <p>10 were reflected in Mr. Greene's report?</p> <p>11 A. Mr. Greene's report focused on the first</p> <p>12 test, do assets exceed liabilities? I don't believe</p> <p>13 that was conducted properly, but that's, nonetheless,</p> <p>14 one test that is run.</p> <p>15 Q. So can you share with the Court your opinion</p> <p>16 of Mr. Greene's analysis?</p> <p>17 A. I can. In a nutshell, the question of a</p> <p>18 solvency, the first solvency test which focuses on the</p> <p>19 value of the assets and value of the liabilities is</p> <p>20 typically absolutely critical to make sure that when</p> <p>21 you are examining the assets and the liabilities that</p> <p>22 you're focusing on their market values and not some</p> <p>23 other measure.</p> <p>24 So, for example, this happens a lot. Someone</p> <p>25 will present a balance sheet, and they will say this is</p>	<p style="text-align: right;">Page 857</p> <p>1 the value was. As of December 20 -- December 31, 2017,</p> <p>2 here's what the value is. There's nothing in the work</p> <p>3 papers and there's nothing in the report that says, in</p> <p>4 fact, here's what the market value is of those assets.</p> <p>5 The report and the supporting work papers</p> <p>6 focus on a very different concept, which is what are</p> <p>7 the recorded numbers that might comply with GAAP?</p> <p>8 There's not even quite that finding, but these are the</p> <p>9 things that would have been used for GAAP purposes,</p> <p>10 generally accepted accounting principles, which for</p> <p>11 intangible assets is not the right way to go, and it</p> <p>12 simply wasn't done. That's the first item.</p> <p>13 The second largest asset was just roughly</p> <p>14 40 million out of the 150 million relates to the</p> <p>15 at-risk accounts receivable. And I have reviewed a lot</p> <p>16 of information on that specifically, the spreadsheets</p> <p>17 that were provided by Hygea to Mr. Greene. And I do</p> <p>18 not believe those reflect fair market value either, but</p> <p>19 for very different reasons.</p> <p>20 Q. By the way, did you have any help with the</p> <p>21 report, or did you do all the review and writing</p> <p>22 yourself?</p> <p>23 A. I did it all in a, frankly, very compressed</p> <p>24 timeframe.</p> <p>25 Q. So now the third element, did you want to</p>

<p style="text-align: right;">Page 858</p> <p>1 talk about that?</p> <p>2 A. So just -- I just want to finish the point</p> <p>3 with intangibles. This is something that I do on a</p> <p>4 regular basis. The bottom line process with</p> <p>5 intangible assets is that when a business acquires --</p> <p>6 let's say a target, there's a set of accounting</p> <p>7 entries that are made.</p> <p>8 The first accounting entry reflects the value</p> <p>9 of the money and other -- consideration is given to the</p> <p>10 seller. So if you write them a check for a dollar,</p> <p>11 it's really easy to figure you paid them a dollar.</p> <p>12 If you give them your own stock, there needs</p> <p>13 to be a valuation placed on that stock. That is not an</p> <p>14 area that's usually easy to figure out. You've got to</p> <p>15 do some work. It's got to be analyzed. Whatever</p> <p>16 happens, you make an initial entry on your books that</p> <p>17 say I paid X dollars for that target.</p> <p>18 There's a secondary step which occurs which</p> <p>19 is then that price that you claim to have paid is</p> <p>20 allocated among various types of assets. The easier</p> <p>21 ones are things like cash or receivables or prepaid</p> <p>22 assets or equipment.</p> <p>23 Frankly, all that stuff is listed on these</p> <p>24 balance sheets, but it's a proverbial drop in the</p> <p>25 bucket. It's almost immaterial. It's not immaterial,</p>	<p style="text-align: right;">Page 860</p> <p>1 the fact that it is not producing at the level it</p> <p>2 should have.</p> <p>3 And that impairment testing is a part of</p> <p>4 GAAP, but it's also something that I would do in a --</p> <p>5 any solvency analysis or any valuation process where</p> <p>6 someone said to me, Figure out the value of the</p> <p>7 intangible assets, bottom line.</p> <p>8 Q. Was that done here?</p> <p>9 A. That was not performed. That was not</p> <p>10 performed.</p> <p>11 Q. It was not performed by Mr. Greene?</p> <p>12 A. It was not. There were versions of that</p> <p>13 analysis that were done when the practice was</p> <p>14 purchased. There might have even been one done a year</p> <p>15 later. That's not relevant to the question of what's</p> <p>16 the value today or at the end of 2017.</p> <p>17 Q. Do you believe that the opinion produced by</p> <p>18 Mr. Greene relative to solvency is a reliable one?</p> <p>19 A. It's not reliable because fundamentally it</p> <p>20 doesn't measure what it's supposed to measure, which</p> <p>21 is fair market value. What it does is it goes through</p> <p>22 a process of saying, there's an accounting record that</p> <p>23 I looked at. It's mathematically accurate, or it's</p> <p>24 maybe supported by another document, but it's -- it's</p> <p>25 not a valuation.</p>
<p style="text-align: right;">Page 859</p> <p>1 but it's almost immaterial.</p> <p>2 90-plus percent of the valuations that were</p> <p>3 done back when these practices were acquired, 90</p> <p>4 percent of that value or more is being allocated to</p> <p>5 what are called intangible assets. These are things</p> <p>6 like patient lists, non-compete with one of the</p> <p>7 physicians, some medical records that are acquired.</p> <p>8 And then there's another category, which is</p> <p>9 sort of a catchall, which is referred to as goodwill.</p> <p>10 It's where you put everything else that you didn't have</p> <p>11 allocated already.</p> <p>12 The long story short is that these types of</p> <p>13 assets to be valued properly in a solvency analysis or</p> <p>14 even been -- by an accountant looking to put together</p> <p>15 the financial statement, they're required to do</p> <p>16 something called impairment testing.</p> <p>17 Impairment testing is not let's see what I</p> <p>18 paid for it last year, let's see if I depreciated it by</p> <p>19 a certain percentage or certain number of dollars. It</p> <p>20 is a process which requires one to look at, hey, is the</p> <p>21 business performing as it's supposed to? Is it</p> <p>22 producing the profits I expected it to produce?</p> <p>23 And if the answer to that is no, then there</p> <p>24 is a decision that's made to do something called an</p> <p>25 impairment charge, writing the asset down to reflect</p>	<p style="text-align: right;">Page 861</p> <p>1 And so when one says, Okay, I'm going to</p> <p>2 value the cash in my bank account, that's a pretty</p> <p>3 straightforward question. You don't need to do too</p> <p>4 much. You don't need a guy like me to tell you what</p> <p>5 the cash is worth.</p> <p>6 As you get into more complicated assets,</p> <p>7 intangibles being very complicated on the spectrum, if</p> <p>8 you don't do a valuation analysis of those intangibles,</p> <p>9 you cannot conclude on the fair market value in a</p> <p>10 reliable fashion.</p> <p>11 Q. What is your opinion of Mr. Greene's cash</p> <p>12 flow analysis?</p> <p>13 A. Well, to be clear and to be fair to</p> <p>14 Mr. Greene, it's not his cash flow analysis. I</p> <p>15 believe it was the company's. I think that the scope</p> <p>16 of the work that was done to determine if that cash</p> <p>17 flow analysis was supported by anything was pretty</p> <p>18 minimal.</p> <p>19 I've looked at all the content of the file</p> <p>20 that was used to prepare that cash flow statement.</p> <p>21 There is very limited information. There's nothing,</p> <p>22 for example, that breaks down revenue by practice. So</p> <p>23 you can't tell if this relates to Dr. Jones or</p> <p>24 Dr. Smith or Dr. -- doesn't -- doesn't provide that</p> <p>25 level of detail.</p>

<p style="text-align: right;">Page 862</p> <p>1 It doesn't really give much insight at all in 2 much of this question that's been discussed today about 3 the managed -- the managed -- the at-risk receivables 4 for the managed care contracts. There's a very, very 5 basic, very basic -- and I've seen a lot of projections 6 in my time, but this is a very basic analysis of 7 revenue and cost. And it's not particularly detailed. 8 And at the end of the day, what it reflects 9 is that they've got negative cash flow. One of the 10 other things it reflects is the only reasons that 11 they're moving from a monthly negative cash flow into a 12 positive monthly cash flow is because of some 13 expectations about improvements in the business that 14 haven't yet manifested. 15 There were three of them that come to mind. 16 One is an expectation that there's going to be, round 17 numbers, about two \$500,000 bonus payments for quality 18 goals. There's another one based on the assumption 19 they're able to renegotiate certain contracts and get 20 10 percent price increases. 21 There's another assumption there that 22 indicates that they're expecting certain practices to 23 grow by roughly 25 percent because they hope to provide 24 more services to those -- to those patients. 25 There's some provisions within the revenue</p>	<p style="text-align: right;">Page 864</p> <p>1 A. No. No. 2 MR. EWING: Objection, Your Honor. I think 3 counsel stated an interest rate of 13.5 percent. I 4 don't think that that interest rate on American Express 5 is in evidence. 6 THE COURT: I think the testimony from 7 somebody was 13 to 15 percent. 8 MR. EWING: That was on the Bridging loan. 9 MR. VIAR: I think it was the Bridging loan. 10 I asked him to assume that rate as a hypothetical, 11 Your Honor. 12 THE COURT: All right. As a hypothetical, 13 the objection is overruled. 14 Q. (By Mr. Viar) Any other flaws in the cash 15 balance or cash flow analysis? 16 A. Again, very simply, it's a very simplistic 17 process. I heard the CFO's testimony this morning 18 regarding the payroll taxes, that they were sort of 19 incorporated or included within the line that says 20 "payroll." 21 I did not see evidence of that in the 22 document I had reviewed prior to today. I'm not saying 23 he's wrong, but I didn't see any evidence that that was 24 accurate testimony. 25 The -- one of the pieces of testimony that</p>
<p style="text-align: right;">Page 863</p> <p>1 forecast that are not supported by documents that were 2 in these records produced to Mr. Greene or that I 3 reviewed. 4 Q. Is it clear to you if all of the interest 5 expense and other expenses associated with the place of 6 the practices or the business have been even listed in 7 the cash flow analysis? 8 A. So I'm fairly certain, and I believe this 9 was confirmed today, that the cash flow forecast omits 10 the -- all of the interest expense that relates to the 11 Bridging Finance loan, which is around a million 12 dollars a month. 13 I do not believe the cash flow forecast 14 considers any necessary working capital adjustments 15 that need to be taken care of. So, for example, how do 16 you pay off the American Express card that was an 17 \$8 million number, how does that get paid off over 18 time? That's not reflected, nor is the interest. 19 Q. Well, at 13-percent interest, \$8 million, 20 what sort of monthly interest charge does that yield? 21 A. So that's, round numbers, 80-90,000 a month 22 for interest on that without touching the balance, 23 right? 24 Q. Could you find anywhere in the cash flow 25 analysis of an accounting for that interest?</p>	<p style="text-align: right;">Page 865</p> <p>1 came out this morning as well is that forecast excludes 2 any of the cash flows that are either owed to 3 Dr. Gaylis or any of the cash flows from his practice. 4 There's a second practice, which is 5 relatively sizeable in terms of its expense structure, 6 that also was omitted from that. I didn't, quite 7 frankly, understand the testimony as to exactly why on 8 that one, but that's omitted as far as I could tell 9 from -- from the forecast as well. 10 So those are -- those are some observations. 11 At the end of the day, to me the takeaway from the cash 12 flow forecast is that there is, A, a near term problem. 13 There's -- there's not any cash in the bank as of 14 March 31st. It was a negative balance. 15 There's a forecasted sort of cash drain for 16 several months. There's some improvement that's 17 forecasted in the last half of the year, but a lot of 18 that improvement and the migration from being negative 19 to positive is driven by factors that I would 20 characterize more as birds in the bush as opposed to 21 birds in the hand. 22 And so that introduces its own separate 23 risks. But even if you accept all of that as being 24 true, at the end of the day there's a negative cash 25 flow forecast, and there's already no cash present as</p>

<p style="text-align: right;">Page 866</p> <p>1 of March 31st.</p> <p>2 That's without servicing debt. That's</p> <p>3 without servicing AMEX, if that's viewed as something</p> <p>4 other than debt. And that's without really looking at</p> <p>5 the possibilities, and I think the very clear</p> <p>6 probability, that there's -- there's not -- there's a</p> <p>7 need to keep investing in working capital that's just</p> <p>8 simply not reflected in that forecast yet.</p> <p>9 Q. Do you have an opinion based on Hygea's cash</p> <p>10 flow analysis whether or not Hygea is capable of paying</p> <p>11 its debts and obligations as they mature?</p> <p>12 A. That forecast by itself, forgetting what</p> <p>13 every other document that I've seen would indicate, it</p> <p>14 does not have that for at least the balance of this</p> <p>15 year.</p> <p>16 MR. VIAR: That's all I have. Thank you.</p> <p>17 MS. GALL: Your Honor, we would move to eject</p> <p>18 the last portion of that testimony from the record.</p> <p>19 The expert -- rebuttal expert just rendered his own</p> <p>20 opinion about the cash flow. Plaintiffs did not</p> <p>21 disclose an expert in this matter.</p> <p>22 He has only been offered for purposes of</p> <p>23 rebutting Mr. Greene's testimony, not offering his own</p> <p>24 ultimate conclusion.</p> <p>25 MR. VIAR: Your Honor, half of Mr. Greene's</p>	<p style="text-align: right;">Page 868</p> <p>1 objectionable again.</p> <p>2 MS. GALL: The question was, "Do you have an</p> <p>3 opinion based on Hygea's cash flow analysis whether or</p> <p>4 not Hygea is capable of paying its debts and</p> <p>5 obligations as they mature?</p> <p>6 "Answer: That forecast by itself, forgetting</p> <p>7 what every other document that I've seen, would</p> <p>8 indicate it does not have that for at least the balance</p> <p>9 of this year."</p> <p>10 THE COURT: I'm going to strike that one</p> <p>11 sentence. The objection is sustained as to that one</p> <p>12 sentence.</p> <p>13 Cross-exam?</p> <p>14 MS. GALL: Your Honor, may we take a break?</p> <p>15 And we're happy to have that count -- the time run for</p> <p>16 our break because if the Court is willing to indulge</p> <p>17 us, we'd like a longer break than usual.</p> <p>18 THE COURT: Do you have any other rebuttal</p> <p>19 witnesses?</p> <p>20 MR. KAYE: No, Your Honor.</p> <p>21 THE COURT: What are you anticipating? Not</p> <p>22 knowing what he's going to say on cross. What are you</p> <p>23 anticipating for surrebuttal, if any?</p> <p>24 MS. GALL: We haven't made that decision yet,</p> <p>25 Your Honor.</p>
<p style="text-align: right;">Page 867</p> <p>1 report, much of his testimony was on that very topic.</p> <p>2 They opened that door, and he gave his rebuttal</p> <p>3 opinion.</p> <p>4 MS. GALL: Your Honor, up until the last few</p> <p>5 minutes, and I can get the Court, if you will indulge</p> <p>6 me, the exact paragraphs we are not objecting to. But</p> <p>7 I am objecting to the last question and the last</p> <p>8 response.</p> <p>9 THE COURT: Read the last response for me.</p> <p>10 MS. GALL: "Do you have an opinion based on</p> <p>11 Hygea's cash flow analysis whether or not Hygea is</p> <p>12 capable of paying its debts and obligations as they</p> <p>13 mature?</p> <p>14 "Answer: That forecast by itself, forgetting</p> <p>15 what every other document that I've seen, would</p> <p>16 indicate it does not have that for at least the balance</p> <p>17 of this year."</p> <p>18 THE COURT: Did it go on? The notes that I</p> <p>19 took included that there was no case as of March 31,</p> <p>20 there was a negative cash flow projected, and that</p> <p>21 doesn't include accounting for interest payments. Was</p> <p>22 that -- is that a different paragraph?</p> <p>23 MS. GALL: There might be more, but there is</p> <p>24 "... in what I have.</p> <p>25 THE COURT: So read the part you think is</p>	<p style="text-align: right;">Page 869</p> <p>1 THE COURT: What would the worst case</p> <p>2 scenario timewise be?</p> <p>3 MS. GALL: We would certainly be done by 5:00</p> <p>4 today.</p> <p>5 THE COURT: With the case -- done with all</p> <p>6 evidence presented?</p> <p>7 MS. GALL: Yes, Your Honor.</p> <p>8 THE COURT: Okay. How much of a break did</p> <p>9 you want?</p> <p>10 MS. GALL: 20 minutes, Your Honor.</p> <p>11 THE COURT: 20 minutes is fine. We'll come</p> <p>12 back in at 3:50. You can step down.</p> <p>13 (Recess taken at 3:29, resuming at 3:54.)</p> <p>14 THE COURT: Please be seated back on 18 OC</p> <p>15 71, Arellano v. Hygea. All counsel are present.</p> <p>16 Cross-exam?</p> <p>17 CROSS-EXAMINATION</p> <p>18 BY MR. EWING:</p> <p>19 Q. Mr. Frazee, did the plaintiffs provide you</p> <p>20 with a set of documents produced by Hygea in connection</p> <p>21 with Mr. Greene's expert report?</p> <p>22 A. Yes, there was a set. I don't know that it</p> <p>23 was the complete set because I only asked for certain</p> <p>24 types of documents.</p> <p>25 Q. You testified, I believe, that you reviewed</p>

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1 100 or 120 documents. Is that the set you're referring
2 to?
3 **A. Yeah, around there.**
4 Q. And what types of documents did you request?
5 **A. Basically I had essentially, as I understand**
6 **it, all of the Excel files, all the spreadsheets that**
7 **were prepared. I got QuickBooks files. And I got**
8 **probably I'd say a dozen PDF files that would contain**
9 **things like the loan agreement with Bridging Finance,**
10 **some -- a report from CliftonLarson, some things like**
11 **that. Maybe a dozen of those.**
12 Q. Do you have any idea how many documents there
13 were in the production in total?
14 **A. I believe a thousand. Most of them as I**
15 **understand it were basically bank statements and**
16 **reconciliations.**
17 Q. Did counsel for the plaintiffs direct you to
18 review any particular documents?
19 **A. No. I asked them for what I asked them for,**
20 **and they gave them to me.**
21 Q. Were you able to perform any independent
22 tests or analyses of the work described in Mr. Greene's
23 report?
24 **A. Yes. In the sense that I looked at the same**
25 **documents I understand he looked at, and I went**

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1 through those, as I understand, the same way or in
2 similar fashion to what he had done. And I did my own
3 work as to what I thought those documents say.
4 Q. Were you able to test the reliability of the
5 analysis of any of Mr. Savchenko's purchase price
6 allegations?
7 **A. The reliability in the sense of like**
8 **mathematical or something else? Because there were**
9 **probably a dozen files that were labeled as "purchase**
10 **price allocations."**
11 **I looked at each one of them. Each one of**
12 **them contained a variety of analyses. And one of those**
13 **analyses would have been some sort of a forecast for**
14 **2015 or prepared back in 2016, and I did look at those.**
15 Q. Okay. Setting aside the math, I believe you
16 testified that a fair market valuation should be done.
17 Did you do any independent fair market
18 valuation of any of the independent -- excuse me --
19 intangible assets?
20 **A. No, I did not.**
21 Q. And so were you able to identify any
22 particular intangible assets from which you could
23 identify any basis that the fair market value would be
24 different than Mr. Greene's figures?
25 **A. Mr. Greene did not calculate fair market**

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1 **value, so there was no -- there was no calculation of**
2 **it, nor was there a testing of assumptions that would**
3 **derive a fair market value. That was -- that was the**
4 **point I was making earlier.**
5 Q. Right. But did you derive any fair market
6 value independently that differed from his numbers?
7 **A. I did not prepare a valuation of the**
8 **intangibles. But based on the cash flow projections**
9 **that are present right now, there's no support for a**
10 **number around \$100 million.**
11 Q. Okay. Are you familiar with Nevada's test
12 for insolvency, including under NRS Chapter 112?
13 **A. I'm not sure the chapter number you cited to**
14 **me. I have had some experience with solvency**
15 **questions under Nevada law.**
16 Q. Do you have any understanding what Nevada's
17 test for insolvency is?
18 **A. I can't speak to like the legal language of**
19 **it, but I understand typically the tests that are used**
20 **for solvency.**
21 Q. You didn't undertake any independent analysis
22 to determine whether Mr. Savchenko's 2018 cash flow
23 projections were reliable, did you?
24 **A. I did. I looked at a number of documents**
25 **which purported to support that forecast, so I think**

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1 the forecast we're talking about is essentially a
2 one-page document. It was supported by five or six
3 other what are called tabs within the spreadsheet.
4 **I looked at all of those. And I also looked**
5 **at whether there was consistency between some of those**
6 **assumptions and those supporting tabs in other files**
7 **that had been produced in the case.**
8 Q. I think -- I'm reading between the lines here
9 a little bit, but you testified there were 900
10 documents we provided to plaintiffs that you did not
11 review.
12 So do you know whether those documents
13 contain support for any of Mr. Savchenko's numbers?
14 **A. I'm fairly certain they don't. I looked**
15 **through the list that Mr. Greene had attached to his**
16 **report, which described the thousand documents. The**
17 **majority of the entries on that exhibit, which listed**
18 **out all these different things that Mr. Greene relied**
19 **upon, I got those and I did review them. The ones**
20 **that I didn't were primarily focused on, like I said,**
21 **bank reconciliations that, frankly, aren't really that**
22 **important at all.**
23 Q. Do you have any knowledge as to whether any
24 of the other spreadsheets you were provided might have
25 provided additional support to Mr. Savchenko's 2018

<p style="text-align: right;">Page 874</p> <p>1 cash flow projections?</p> <p>2 A. It is certainly possible that spreadsheets</p> <p>3 could support his work other than the one that</p> <p>4 actually created the projection. But like I said, I</p> <p>5 did review every spreadsheet.</p> <p>6 Q. Do you know whether Hygea's currently</p> <p>7 collecting cash and revenue from the medical practice</p> <p>8 of Dr. Norman Gaylis today?</p> <p>9 A. I don't have firsthand knowledge of it. I</p> <p>10 did hear some testimony earlier that there was -- that</p> <p>11 that was not occurring, but I don't know the answer.</p> <p>12 Q. Similarly, do you know whether Hygea is</p> <p>13 incurring expenses associated with the medical practice</p> <p>14 of Dr. Gaylis today?</p> <p>15 A. I don't know.</p> <p>16 Q. Do you know whether American Express is</p> <p>17 currently charging interest to Hygea?</p> <p>18 A. I don't know currently. I think I saw some</p> <p>19 documentation on the size of that balance, but I don't</p> <p>20 know what the answer is currently.</p> <p>21 Q. Do you know whether Bridging Finance is</p> <p>22 capitalizing its interest payments from Hygea?</p> <p>23 A. I heard the testimony that that was, in</p> <p>24 fact, the case. I've also observed loan -- loan --</p> <p>25 sorry -- loan statements, basically just like you'd</p>	<p style="text-align: right;">Page 876</p> <p>1 simply this: The calculations that I did in my</p> <p>2 opinion proximate fair market value. And the biggest</p> <p>3 one involved is this whole issue of the intangible</p> <p>4 assets.</p> <p>5 Q. Why do you think fair market value</p> <p>6 approximates the figures you used for the intangible</p> <p>7 assets?</p> <p>8 A. Well, they kind of go back -- when we look</p> <p>9 at all the assets, you talk about fair market value,</p> <p>10 usually when you have fair market value issues, the</p> <p>11 concerns are how much has this asset either gone up or</p> <p>12 decreased from what you originally paid for it.</p> <p>13 Assets such as real estate, marketable</p> <p>14 securities, those are ones that you often have to peg</p> <p>15 to fair market value. A lot of assets shown here, even</p> <p>16 though they may be from the books and records, their</p> <p>17 value approximates what fair market value would be at</p> <p>18 this particular date.</p> <p>19 What's important about the goodwill and</p> <p>20 intangibles that I don't want to have overlooked is</p> <p>21 even though this particular document I prepared on</p> <p>22 page 5 shows it at \$100 million, there is an offset to</p> <p>23 that. And that offset is under the line "Common Stock</p> <p>24 to be Issued."</p> <p>25 And ultimately in determining solvency and</p>
<p style="text-align: right;">Page 875</p> <p>1 see in a credit card statement, loan statement that</p> <p>2 accrues interest. It appears to me that month after</p> <p>3 month, interest that is being charged is being added</p> <p>4 to the balance to the tune of about a million a month.</p> <p>5 MR. EWING: No further questions, Your Honor.</p> <p>6 THE COURT: Redirect?</p> <p>7 MR. VIAR: Nothing, Your Honor.</p> <p>8 THE COURT: You can step down.</p> <p>9 THE WITNESS: Thank you.</p> <p>10 THE COURT: Your next witness? Mr. Kaye,</p> <p>11 Mr. --</p> <p>12 MR. KAYE: My apologies, Your Honor. We have</p> <p>13 no further witnesses.</p> <p>14 THE COURT: Ms. Gall?</p> <p>15 MS. GALL: Yes. We have one brief</p> <p>16 surrebuttal witness. We'd like to recall Mr. Craig</p> <p>17 Greene to the stand.</p> <p>18 THE COURT: Okay. He is already under oath.</p> <p>19 REDIRECT EXAMINATION</p> <p>20 BY MR. EWING:</p> <p>21 Q. Mr. Green, the expert report that you wrote</p> <p>22 for this matter includes an opinion that the figures</p> <p>23 that you used for the intangible assets proximate fair</p> <p>24 market value; is that correct?</p> <p>25 A. Well, what -- what I say in my report is</p>	<p style="text-align: right;">Page 877</p> <p>1 where I'm looking at the difference between assets and</p> <p>2 liabilities, I'm taking those assets, and I'm</p> <p>3 subtracting those liabilities.</p> <p>4 If we take the assets of \$100 million, which</p> <p>5 is the intangibles, then match them against this common</p> <p>6 stock to be issued, what I want everybody to understand</p> <p>7 is that the common stock to be issued represents a</p> <p>8 value that was stated at fair market value at the date</p> <p>9 of purchase.</p> <p>10 Many of these agreements say it's either</p> <p>11 going to be in the form of stock or actual cash money.</p> <p>12 So I think in order to look at the intangibles, the 100</p> <p>13 million should be reduced by the 42 million, thus</p> <p>14 leaving a balance of 58 million.</p> <p>15 Now, if you look over in the other portion,</p> <p>16 you'll find that over time, the total amount of</p> <p>17 intangible assets acquired to put on the books was</p> <p>18 \$153 million.</p> <p>19 What I'm simply stating now, if you take the</p> <p>20 100 minus the 42, you're at 58, you've in essence</p> <p>21 written down those intangible assets to \$60 million, a</p> <p>22 third of what they once were. I personally think, in</p> <p>23 fact, this may be representative of fair market value.</p> <p>24 MR. EWING: Thank you. No further questions,</p> <p>25 Your Honor.</p>

<p style="text-align: right;">Page 878</p> <p>1 THE COURT: Cross?</p> <p>2 MR. VIAR: Nothing further, Your Honor.</p> <p>3 THE COURT: You can step down. Your next</p> <p>4 witness?</p> <p>5 MS. GALL: We do not have any more witnesses,</p> <p>6 Your Honor.</p> <p>7 THE COURT: Do you want to do closing</p> <p>8 arguments today?</p> <p>9 MS. GALL: I would prefer overnight to be</p> <p>10 able to prepare my closing, Your Honor.</p> <p>11 MR. KAYE: I'm prepared to go, Your Honor,</p> <p>12 but I believe I'd leave it at the Court's discretion.</p> <p>13 THE COURT: Do you have an objection to his</p> <p>14 doing his opening -- closing, and we'll take up yours</p> <p>15 at -- are we starting at 1:00 tomorrow? I don't</p> <p>16 remember.</p> <p>17 MS. GALL: Whenever Your Honor wants. I have</p> <p>18 no objection to Mr. Kaye's going.</p> <p>19 MR. KAYE: With the Court's indulgence,</p> <p>20 Your Honor, I would prefer if defense is going</p> <p>21 tomorrow, we would prefer tomorrow as well.</p> <p>22 THE COURT: All right. Then we'll adjourn</p> <p>23 here shortly. But so what is the -- the evidence that</p> <p>24 I have on the number of shares that plaintiffs own?</p> <p>25 MR. KAYE: Your Honor, the evidence that you</p>	<p style="text-align: right;">Page 880</p> <p>1 Mr. Fowler testified that he was the</p> <p>2 representative of N5HYG with respect to Hygea, and that</p> <p>3 he never received any such notice. Therefore, Hygea is</p> <p>4 estopped from arguing that additional shares have been</p> <p>5 issued so as to dilute N5HYG from its 8.57 percent.</p> <p>6 Moreover, even with -- in the absence of</p> <p>7 estoppel, that presents evidence, prima facie evidence,</p> <p>8 not just that N5HYG owns those shares and has that</p> <p>9 percentage, but that that percentage has remained</p> <p>10 because they never received a dilution notice.</p> <p>11 And there is no additional -- there is no</p> <p>12 evidence that's been put into the record that would</p> <p>13 rebut the presumption. At the very least, the</p> <p>14 presumption, we think it's conclusive and that estoppel</p> <p>15 bars any argument to the contrary, but at very least</p> <p>16 the presumption that that percentage has remained fixed</p> <p>17 in the absence of any dilution notice.</p> <p>18 When you take the -- this is the -- one of</p> <p>19 the images that I presented during the opening, but if</p> <p>20 you take the -- if you take the figure for N5HYG, the</p> <p>21 number of shares, and then you take the percentage and</p> <p>22 you do the arithmetic, you say, Okay, that means there</p> <p>23 had to have been this many shares.</p> <p>24 And then you take -- you take the aggregate</p> <p>25 number of shares held by all of the plaintiffs. That</p>
<p style="text-align: right;">Page 879</p> <p>1 have on that is the Stock Purchase Agreement, and</p> <p>2 that -- the -- that sets forth the number of shares</p> <p>3 that N5HYG owns. And that also sets forth the</p> <p>4 percentage of the outstanding shares that N5HYG owns.</p> <p>5 That figure with N5HYG is I believe</p> <p>6 recapitulated in the stipulation that has been</p> <p>7 submitted that sets forth the numbers of all the other</p> <p>8 shareholders -- the other shareholder plaintiffs.</p> <p>9 So the number of shares owned by the</p> <p>10 plaintiffs in the aggregate and plaintiff by plaintiff</p> <p>11 is set forth in that stipulation, as well as in the</p> <p>12 declarations.</p> <p>13 For N5HYG, they're initially in the Stock</p> <p>14 Purchase Agreement, and that provides the percentage.</p> <p>15 And that's, speaking from memory, 8.57 percent of the</p> <p>16 outstanding shares.</p> <p>17 Also within the Stock Purchase Agreement is</p> <p>18 the provision -- it's somewhere in Article 6, and I</p> <p>19 want to say Section 6.6 or 6.4, it's one we've</p> <p>20 discussed and looked at a non-dilution provision.</p> <p>21 That provides that in the event that</p> <p>22 additional shares are issued, that N5HYG would receive</p> <p>23 notice of the issuance of those shares and would have</p> <p>24 the opportunity to buy additional shares to remain at</p> <p>25 par.</p>	<p style="text-align: right;">Page 881</p> <p>1 constitutes something I believe just north of</p> <p>2 10.7 percent of the denominator of shares, the number</p> <p>3 of shares that is -- that is the mathematical product</p> <p>4 of the warranty and representation in the N5HYG Stock</p> <p>5 Purchase Agreement.</p> <p>6 THE COURT: You mentioned a declaration.</p> <p>7 Whose declaration are you referring to?</p> <p>8 MR. KAYE: Your Honor, I'm referring to a</p> <p>9 number of the declarations that were presented from all</p> <p>10 of the plaintiffs at the outset of the case setting</p> <p>11 forth -- setting forth their share ownership. And</p> <p>12 there are a number of -- and I believe that they're in</p> <p>13 the -- the 90 range of the exhibits, though that's</p> <p>14 speaking from memory.</p> <p>15 There is in addition then a stipulation as to</p> <p>16 the ownership of the plaintiffs' shares. And so I</p> <p>17 think that the number of shares held by the plaintiffs</p> <p>18 has -- is well situated within -- within the record.</p> <p>19 I believe that the declarations begin at</p> <p>20 Exhibit No. 84. Not all of them have -- pertain to --</p> <p>21 pertain to share ownership, but several of them do</p> <p>22 pertain to share ownership. And that begins at Exhibit</p> <p>23 No. 84, and it looks as if the final -- the final one</p> <p>24 is 98 of the declarations.</p> <p>25 THE COURT: I would like to review those --</p>

<p style="text-align: right;">Page 882</p> <p>1 the ones that have anything to do with the 10 percent. 2 Can you tell me which do and which do not? 3 MR. KAYE: Your Honor, I can. And once 4 again, that -- that goes to the issue of -- this goes 5 to, again, the issue of the shares owned by the 6 plaintiffs. 7 And I would remind the Court again that there 8 is a declaration -- excuse me -- not a declaration, a 9 stipulation that has been submitted as well as to the 10 number of shares. It looks as if 85 is a declaration 11 as to Plaintiff Arellano's shares. 12 THE COURT: 86 is another declaration? 13 MR. KAYE: Yes. 14 THE COURT: So 86 also? 15 MR. KAYE: I believe 86 as well. 87 -- and I 16 think that those are substantively the same there, with 17 the addition of the -- there was an addition of some 18 language to that. I'm looking at 84, if Mr. Fowler 19 swears to his -- swears to the N5HYG ones in that. But 20 I don't believe he does. 21 87 is Mr. Moffly's, and that doesn't have to 22 do with shares. 88's is Mr. -- Dr. Leistner's. That 23 doesn't have to do with shares. 89 is Dr. Cohen's. 24 That doesn't have to do with shares. 90 is 25 Mr. Iglesias', and that doesn't have to do with shares.</p>	<p style="text-align: right;">Page 884</p> <p>1 believe that that's been filed. That's certainly 2 something that could be -- that could be filed. 3 THE COURT: It was filed. It was filed on 4 May 15th. 5 Ms. Gall, is there anything else you think 6 has been admitted? 7 MS. GALL: There is. There is a lot. 8 THE COURT: Okay. 9 MS. GALL: First, I'd like to say in order 10 for the Court to be able to calculate the percentage of 11 share ownership that plaintiffs have -- I see the 12 Court, but really, this is plaintiffs' burden to bear 13 to demonstrate their standing. 14 In order for the Court to make that 15 assessment, as Mr. Kaye alluded, there needs to be a 16 numerator and denominator. There is no disagreement 17 for purposes of this case as to the numerator. He is 18 correct, we have stipulated for purposes of this case 19 as to the numerator number, the total number of shares 20 that plaintiffs currently hold. 21 What is at dispute here is the denominator. 22 And plaintiffs have entered absolutely no evidence into 23 the record as to the denominator number. Rather, what 24 they would have this Court accept is simply that they 25 hold 8.57 percent of the shares issued and outstanding.</p>
<p style="text-align: right;">Page 883</p> <p>1 91 sets forth share ownership. 92 does not. 93 does 2 not. 94 I do not believe does. 95 does. 3 THE COURT: 96 was not admitted. 4 MR. KAYE: Right. That doesn't have to do 5 with it either. 6 THE COURT: 97? 7 MR. KAYE: Does not appear that 97 does. And 8 it does not appear that 98 does. So it would be the 9 ones that I've mentioned there, in addition to the 10 stipulation. 11 And I think the stipulation -- the 12 stipulation essentially recapitulates the -- the 13 substance of the share ownership allocation -- the 14 share ownership averments set forth in the 15 declarations. 16 THE COURT: What exhibit number is the 17 stipulation? 18 MR. KAYE: Your Honor, I don't believe that 19 the stipulation has been entered as an exhibit. 20 THE COURT: Did we just file that? 21 COURT CLERK: Which one? 22 THE COURT: It's a stipulation. 23 COURT CLERK: I don't have a stipulation. 24 MR. KAYE: Procedurally, that's been 25 submitted to the Court. I do not know -- I don't</p>	<p style="text-align: right;">Page 885</p> <p>1 And they're trying to bootstrap in that 2 8.57 percent based on a representation that was made in 3 October of 2016, almost -- I'll say fairly a year and a 4 half ago, to have this Court calculate the 10 percent 5 shareholding. 6 And they base this on, Your Honor, an 7 antidilution provision of the Stock Purchase Agreement. 8 However, they have not provided any authority 9 whatsoever that merely because a private ordering, a 10 contract between Hygea and N5HYG, contains an 11 antidilution provision, that plaintiff is automatically 12 conferred 8.57 percent stock ownership and, thereby, 13 all plaintiffs collectively 10 percent stock ownership. 14 Even if Hygea has violated the antidilution 15 provision, which we do not admit that we have done 16 because that is a claim based in contract, and there is 17 a breach of contract action that N5HYG has brought 18 against us in another Court, it doesn't matter because 19 NRS 78.650 provides very -- I'm going to read here, 20 "Unambiguously provides any holder or holders of 21 one-tenth of the issued and outstanding stock may apply 22 to the district court for an order dissolving the 23 corporation and appointing a receiver to wind up its 24 affairs." 25 78.650 says nothing about dilution, whether</p>

<p style="text-align: right;">Page 886</p> <p>1 that dilution is permissible or impermissible. By 2 arguing otherwise, what plaintiffs are asking this 3 Court to do is read additional language into this 4 statute, something akin to any -- any holder or holders 5 of less than one-tenth of issued and outstanding stock 6 who would hold more than one-tenth of the issued and 7 outstanding stock but for the issuance or issuances 8 violating antidilution provision between that holder or 9 holders of the corporation. No such language exists. 10 This Court should not -- this Court should not accept 11 plaintiffs' invitation to legislate by adjudication. 12 In addition, Your Honor, what plaintiffs 13 failed to do is that they failed to square the 14 antidilution provision with both the warranty that 15 N5HYG would possess 8.57 percent of the stock issued 16 and outstanding following performance of that stock 17 transaction with an additional provision in the SPA 18 that explicitly acknowledges the existence of warrants 19 already issued, the exercise of which would inevitably 20 dilute N5HYG's and the other plaintiffs' stock 21 holdings. 22 We heard testimony from Mr. Fowler that he 23 knew that the 8.57 percent warranty was on a non-fully 24 diluted basis. We heard testimony from Dan Miller, 25 testimony put on by plaintiffs, that he -- that while</p>	<p style="text-align: right;">Page 888</p> <p>1 review overnight to be up on that issue. 2 MR. KAYE: Can I make a few points in 3 response? 4 THE COURT: Go ahead. 5 MR. KAYE: Thank you, Your Honor. First of 6 all, I, perhaps, did misspeak in suggesting that -- 7 that all -- all the evidence of this is, perhaps, set 8 forth within the text of the Stock Purchase Agreement 9 because there was also section 4.5.1 of the Stock 10 Purchase Agreement which did set forth the names of the 11 shareholders and the roster of shareholder. And that's 12 contained within Exhibit 2. 13 A couple of other points that I wanted to 14 respond to. First of all, the suggestion in the 15 declaration, the paragraphs cited -- cited by counsel, 16 once again, that although the declaration is a piece of 17 evidence, that particular -- those particular 18 statements are either barred or exceedingly minimized 19 in their probative weight by the best evidence rule and 20 by the principles underlying that and by the hearsay 21 rule and the principles underlying that and all the 22 things that we've discussed -- that we've discussed 23 here throughout -- throughout today and yesterday. 24 So the idea that Mr. Moffly can present a 25 declaration saying that, Oh, well, everything we swore</p>
<p style="text-align: right;">Page 887</p> <p>1 he was at RIN, he knew that the company had issued 2 additional shares for acquisitions. 3 So I don't think it's in dispute that 4 additional shares have been issued here. But what 5 plaintiffs have prevented us from doing is introducing 6 evidence of our stock transfer list in order to 7 demonstrate, as they put it, the best evidence of how 8 many shares are issued and outstanding. 9 So since -- since they're preventing us from 10 issuing that evidence, I will direct the Court to -- 11 Mr. Kaye misspoke. 12 THE COURT: To what? 13 MS. GALL: To something that Mr. Kaye 14 misspoke about. Exhibit 87, which is a declaration 15 from Mr. Moffly, which has been admitted into the 16 evidence at paragraph 44 through 47, sets forth that 17 there are 401,014,603 shares issued and outstanding as 18 of January 29, 2018. That is a declaration that's 19 admitted into the record, Your Honor. 20 And using that figure, and we've set this 21 forth in our motions to dismiss, plaintiffs 22 collectively do not hold 10 percent of the shares 23 issued and outstanding. Thank you, Your Honor. 24 THE COURT: And I'm not pushing you into your 25 closing arguments. I just want to know what I need to</p>	<p style="text-align: right;">Page 889</p> <p>1 to or that we -- what we warranted in the initial Stock 2 Purchase Agreement is now incorrect based on my 3 personal knowledge, I don't think that that comes 4 anywhere near to -- once again, even if there is not an 5 estoppel issue here, that doesn't come anywhere near to 6 overcoming the burden, even if it is subject to any 7 sort of consideration at all. We would suggest that 8 the hearsay principles and the best evidence rule apply 9 to any reading of the declarations as well -- as well. 10 Even beyond that, I would just have a few -- 11 a few additional points. First of all, when Mr. Fowler 12 testified that the percentage was on a non-diluted 13 basis, Mr. Fowler also testified that he was not made 14 aware by any sort of notice of any dilution. That's 15 the first thing. 16 The other thing that I would speak to is 17 Mr. Miller's testimony about the issuance of shares. 18 Mr. Fowler testified that -- that his understanding was 19 that any shares that were issued in the context of 20 acquisitions were treasury -- any shares that were used 21 as currency, as I believe the term that Mr. Miller 22 used, that any such shares were treasury shares, not 23 new issuance shares. That is shares that were already 24 held by the corporation. So -- which would -- which 25 would not have a dilutive -- a dilutive effect.</p>

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STATE OF NEVADA)

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1 COUNTY OF CLARK)

2 I, Daren S. Bloxham, a Certified Shorthand
Reporter and Registered Professional Reporter, do
3 hereby certify: That I reported the proceedings
commencing on the 17th of May, 2018.

4 That I thereafter transcribed my said
shorthand notes into typewriting; and that the
5 typewritten transcript is a complete, true, and
accurate transcription of my said shorthand notes.

6 I further certify that I am not a relative or
employee of counsel of any of the parties, nor a
7 relative or employee of the parties involved in said
action, nor a person financially interested in the
8 action.

Witness my signature at Las Vegas, Nevada, on
9 this 20th day of May, 2018.

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DAREN S. BLOXHAM
C.C.R. #685

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