IN THE SUPREME COURT OF THE STATE OF NEVADA

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

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*.

KORY L. KAPLAN, ESQ.
Nevada Bar No. 13164
Kaplan Cottner
850 E. Bonneville Ave.
Las Vegas, Nevada 89101
(702) 381-8888
kory@kaplancottner.com
Attorney for Petitioners

PROOF OF SERVICE

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

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

/s/ Sunny Southworth
An employee of Kaplan Cottner

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“Exhibit 11”

“Exhibit 11”

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

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

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

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

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

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

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

8. **MISCELLANEOUS**.

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

If to Seller or either Seller Principal:

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

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

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

If to Buyer:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

8.11. Jurisdiction; Venue; Service of Process.

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

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

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

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

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

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

BUYER:

N5HYG LLC,
a Michigan limited liability company

By: _____
Name: Manoj Bhargava
Title: Manager

SELLER:

HYGEA HOLDINGS CORP.,
a Nevada corporation

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

SELLER PRINCIPALS:

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

_____
Manuel Iglesias, individually

_____
Edward Moffly, individually

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

BUYER:

N5HYG LLC,
a Michigan limited liability company

By: _____
Name: Manoj Bhargava
Title: Manager

SELLER:

HYGEA HOLDINGS CORP.,
a Nevada corporation

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

SELLER PRINCIPALS:

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

_____
Manuel Iglesias, individually

_____
Edward Moffly, individually

EXHIBIT A

List of Subsidiaries

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

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

Exhibit B

Pro Rata Share of Seller Principals

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

EXHIBIT “5”

MCOV
Joel E. Tasca, Esq.
Nevada Bar No. 14124
Maria A. Gall, Esq.
Nevada Bar No. 14200
Kyle E. Ewing, Esq.
Nevada Bar No. 14051
BALLARD SPAHR LLP
1980 Festival Plaza Drive, Suite 900
Las Vegas, Nevada 89135
Telephone: (702) 471-7000
Facsimile: (702) 471-7070
tasca@ballardspahr.com
gallm@ballardspahr.com
ewingk@ballardspahr.com

Attorneys for Defendant

EIGHTH JUDICIAL DISTRICT COURT

CLARK COUNTY, NEVADA

CLAUDIO ARELLANO; CROWN EQUITY'S LLC; FIFTH AVENUE 2254 LLC; HALEVI ENTERPRISES LLC; HALEVI SV 1 LLC; HALEVI SV 2 LLC; HILLCREST ACQUISITIONS LLC; HILLCREST CENTER SV I LLC; IBH CAPITAL LLC; LEONITE CAPITAL LLC; N5HYG LLC; and RYMSSG GROUP, LLC, Plaintiffs, v. HYGEA HOLDINGS CORP., Defendant.	Case No. A-18-768510-B Dept No. XXVII

MOTION FOR CHANGE OF VENUE

Defendant Hygea Holdings Corp. ("Hygea"), by and through its counsel of record, Ballard Spahr LLP, submits this Motion for Change of Venue (the "Motion"). Hygea makes this Motion in the alternative to its Motion to Dismiss for Lack of Jurisdiction Pursuant to N.R.C.P. 8(a)(1), 12(b)(1), and 12(h)(3), or, Alternatively, for Summary Judgment Pursuant to N.R.C.P. 56(b). This Motion to Change is based on NRS 13.050, NRS 78.650, and NRS 78.630; the pleadings and papers on file; and any

oral argument presented at the hearing to be set for this Motion.

Dated: February 16, 2018

BALLARD SPAHR LLP

By: /s/ Maria A. Gall
Joel E. Tasca, Esq.
Nevada Bar No. 14124
Maria A. Gall, Esq.
Nevada Bar No. 14200
Kyle E. Ewing, Esq.
Nevada Bar No. 14051
1980 Festival Plaza Drive, Suite 900
Las Vegas, Nevada 89135

Attorneys for Defendant

NOTICE OF MOTION

PLEASE TAKE NOTICE that the undersigned will bring the above and foregoing Motion for hearing before the Court on the 21 day of March, 2018 at the hour of 9:30 A.m., in Department XXVII of the above-entitled Court.

Dated: February 16, 2018

BALLARD SPAHR LLP

By: /s/ Maria A. Gall
Joel E. Tasca, Esq.
Nevada Bar No. 14124
Maria A. Gall, Esq.
Nevada Bar No. 14200
Kyle E. Ewing, Esq.
Nevada Bar No. 14051
1980 Festival Plaza Drive, Suite 900
Las Vegas, Nevada 89135

Attorneys for Defendant

MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

The Complaint is limited to a request for the appointment of a receiver, which Plaintiffs seek pursuant to three statutory bases: NRS 78.650, 78.630, and 32.010. However, under the plain language of NRS 78.650 and 78.630, this action had to be filed in the district court in the county in which Hygea's registered office is located—that being the First Judicial District Court—because Hygea's principal place of business is in Florida. As set forth in the Motion to Dismiss, Hygea submits that the foregoing requirement is a jurisdictional requirement because, as held by the Nevada Supreme Court, "the appointment of receivers is controlled by statute," *State ex rel. Nenzel v. Second Judicial Dist. Court in & for Washoe Cty.*, 49 Nev. 145, 241 P. 317, 320 (1925), and "[w]here the statute provides for the appointment of receivers, the statutory requirements must be met or the appointment is void and in excess of jurisdiction." *Shelton v. Second Judicial Dist. Court in & for Washoe Cty.*, 64 Nev. 487, 494, 185 P.2d 320, 323 (1947) (emphasis added). If, however, the Court construes the requirements of NRS 78.650 and 78.630 to mean venue rather than jurisdiction, then by this Motion, Hygea requests as a matter of right that the Court transfer this action to the First Judicial District Court in Carson City, Nevada.

II. PROCEDURAL HISTORY

On January 26, 2018, Plaintiffs Claudio Arellano, Crown Equity's LLC, Fifth Avenue 2254 LLC, Halevi Enterprises LLC, Halevi SV 1 LLC, Halevi SV 2 LLC, Hillcrest Acquisitions LLC, Hillcrest Center SV I LLC, IBH Capital LLC, Leonite Capital LLC, N5HYG LLC, and RYMSSG Group LLC concurrently filed their Complaint for Emergency Appointment of Receiver and their Emergency Petition for Appointment of Receiver. On January 30, 2018, Plaintiffs served Hygea with the Complaint and Emergency Petition but not the Summons. On January 31, 2018, Plaintiffs re-served the Complaint, along with the Summons. On February 7, 2018, Hygea filed its Motion to Dismiss for Lack of Jurisdiction Pursuant to N.R.C.P.

8(a)(1), 12(b)(1), and 12(h)(3), or, Alternatively, for Summary Judgment Pursuant to N.R.C.P. 56(b) (the "Motion to Dismiss"). On February 16, 2018, Hygea filed its Demand for Change of Venue in the alternative to its Motion to Dismiss.

II. LEGAL STANDARD

A defendant is entitled as a matter of right to a transfer of venue "[i]f the county designated for that purpose in the complaint be not the proper county." NRS 13.050(1). *See Stocks v. Stocks*, 64 Nev. 431, 183 P.2d 617 (1947) (concluding that a transfer of venue was required under the mandatory provisions of the predecessor to NRS 13.050(1)). The written demand and a motion to change venue may be filed concurrently. *O'Banion v. O'Banion*, 87 Nev. 88, 89, 482 P.2d 313, 314 (1971). Moreover, a motion for change of venue deprives the court of all jurisdiction except to decide the defendant's residence and to transfer the case. *See Williams v. Keller*, 6 Nev. 141 (1870) (when the movant is clearly entitled to a change venue, any subsequent proceedings should be had in the transferee court). The plaintiff has the burden of proving that the county in which the action was filed is the proper venue. *Washoe Cty. v. Wildeveld*, 103 Nev. 380, 382, 741 P.2d 810, 811 (1987) (citing *Ash Springs Dev. Corp. v. Crunk*, 95 Nev. 73, 589 P.2d 1023 (1979)).

III. LEGAL ARGUMENT

Plaintiffs' first and primary basis for the appointment of a receiver is NRS 78.650(1). *See* Compl. at ¶ 52. NRS 78.650(1) provides in relevant part:

> Any holder or holders of one-tenth of the issued and outstanding stock *may apply to the district court in the county in which the corporation has its principal place of business or*, if the principal place of business is not located in this State, *to the district court in the county in which the corporation's registered office is located*, for an order dissolving the corporation and appointing a receiver . . . .

NRS 78.650(1) (emphasis added). Plaintiffs' second basis for the appointment of a receiver is NRS 78.630. *See* Compl. at ¶ 53. NRS 78.630(1) provides in relevant part:

> Whenever any corporation becomes insolvent or suspends its ordinary business for want of money to carry on the

> business, or if its business has been and is being conducted at a great loss and greatly prejudicial to the interest of its creditors or stockholders, any creditors holding 10 percent of the outstanding indebtedness, or stockholders owning 10 percent of the outstanding stock entitled to vote, may, by petition setting forth the facts and circumstances of the case, *apply to the district court of the county in which the principal office of the corporation is located or*, if the principal office is not located in this State, *to the district court in the county in which the corporation's registered office is located* for a writ of injunction and the appointment of a receiver or receivers or trustee or trustees.

NRS 78.630(1) (emphasis added).

By these statutes' plain terms, an application for an appointment of a receiver under the statutes must be made to a district court either (i) in the county in which the corporation has its principal place of business or (ii) in the county in which it maintains its registered office. *See id.* Hygea's principal place of business is in Doral, Florida. Therefore, this action had to be filed in the First Judicial District Court in Carson City, Nevada, where Hygea maintains its Nevada registered office. *See* Motion to Dismiss, Ex. A, Decl. of Kyle A. Ewing at ¶¶ 4–7; Ex. A-1, Nevada Secretary of State printout identifying Carson City as the location of Hygea's registered office; Ex. A-2, Florida Secretary of State printout identifying Doral, Florida as the location of Hygea's principal place of business.

Plaintiffs argue in their opposition to Hygea's Motion to Dismiss that venue is proper in Clark County because the word "may" in NRS 78.650(1) and 78.630(1) makes the requirement to file in the county of the corporation's registered office permissive, rather than mandatory. Plaintiffs are wrong. The use of the word "may" in NRS 78.650(1) and 78.630(1) can only be logically construed to mean that under circumstances described in those statutes, a shareholder is *permitted* to file an action for a receiver. In other words, it provides the basis for a cause of action and/or remedy. No other interpretation makes sense.

Indeed, Plaintiffs' interpretation would render the provision's requirement to file in the county of the registered office meaningless. If the statutory authority of NRS 78.650(1) and 78.630(1) is permissive, then Plaintiffs could have filed this action

anywhere in Nevada. If that is what the Legislature had intended, then there would have been no reason for the Legislature to have included locality within the statutes' requirements. The Court cannot read such an absurd result into what are otherwise plainly worded statutes.

Plaintiffs also argue in their opposition to Hygea's Motion to Dismiss that Hygea agreed with Plaintiff N5HYG LLC to litigate any disputes arising *in connection with* the parties' Stock Purchase Agreement (the "SPA") in Clark County, Nevada. This is yet another baseless argument. This action does not arise *in connection with* the parties' SPA. Indeed, even though Plaintiffs make the bald assertion that the SPA controls the forum of this action, Plaintiffs provide no explanation whatsoever as to *how* this action *for the appointment of a receiver* arises *in connection with* the Agreement. Nor can they because it plainly does not.

Moreover, even if this action could be construed to arise in connection with the SPA, there is no authority for Plaintiffs' proposition that an agreement with one plaintiff can bind Hygea to litigate with the remaining plaintiffs in Clark County, Nevada. The case cited by Plaintiffs for this proposition—*Holland Am. Line Inc. v. Wartsila N. Am., Inc.*—is inapposite. That case concerned the binding of all *defendants* where the alleged conduct of those defendants not party to the agreement related closely to the contractual relationship. 485 F.3d 450, 456 (9th Cir. 2007). Here, there are no other defendants to bind to the SPA.

Finally, Plaintiffs argue in their opposition to Hygea's Motion to Dismiss that Hygea has waived its ability to challenge venue because it has not made the statutorily required demand. A demand for mandatory change of venue is only waived if not filed within the defendant's time to answer the complaint. *See Hood v. Kirby*, 99 Nev. 386, 387, 663 P.2d 348, 349 (1983). Even the filing of an answer to the merits of a complaint does not waive the right to make a timely demand and motion for change of venue. *Byers v. Graton*, 82 Nev. 92, 94, 411 P.2d 480, 481 (1966). Here, Hygea is well within the time to answer because its time to answer has

been suspended by the filing of its Motion to Dismiss. Even if the Court disregarded the filing of the Motion to Dismiss, Hygea's Demand was still timely because it would have had until February 20, 2018, to answer the Complaint, and Hygea filed its demand on February 16.

IV. CONCLUSION

For the foregoing reasons, to the extent the Court construes NRS 78.650(1) and 78.630(1) to mean venue and not jurisdiction, Hygea requests that the Court transfer this action to the First Judicial District Court in Carson City, Nevada.

Dated: February 16, 2018

BALLARD SPAHR LLP

By: /s/ Maria A. Gall
Joel E. Tasca, Esq.
Nevada Bar No. 14124
Maria A. Gall, Esq.
Nevada Bar No. 14200
Kyle E. Ewing, Esq.
Nevada Bar No. 14051
1980 Festival Plaza Drive, Suite 900
Las Vegas, Nevada 89135

Attorneys for Defendant

CERTIFICATE OF SERVICE

Pursuant to N.R.C.P. 5, I hereby certify that on February 16, 2018, an electronic copy of the foregoing **MOTION FOR CHANGE OF VENUE** was filed and served on the following via the Court's electronic service system:

G. Mark Albright, Esq.
D. Chris Albright, Esq.
ALBRIGHT, STODDARD, WARNICK & ALBRIGHT
801 South Rancho Drive, Suite D-4
Las Vegas, Nevada 89106

Ogonna M. Brown, Esq.
HOLLY DRIGGS, WALCH FINE WRAY PUZEY THOMPSON
400 South Fourth Street
Las Vegas, Nevada 89101

Attorneys for Plaintiffs

/s/ Maria A. Gall
An employee of BALLARD SPAHR LLP

EXHIBIT “6”

ORD
Joel E. Tasca, Esq.
Nevada Bar No. 14124
Maria A. Gall, Esq.
Nevada Bar No. 14200
Kyle E. Ewing, Esq.
Nevada Bar No. 14051
BALLARD SPAHR LLP
1980 Festival Plaza Drive, Suite 900
Las Vegas, Nevada 89135
Telephone: (702) 471-7000
Facsimile: (702) 471-7070
tasca@ballardspahr.com
gallm@ballardspahr.com
ewingk@ballardspahr.com

Attorneys for Defendant

EIGHTH JUDICIAL DISTRICT COURT

CLARK COUNTY, NEVADA

CLAUDIO ARELLANO; CROWN EQUITY'S LLC; FIFTH AVENUE 2254 LLC; HALEVI ENTERPRISES LLC; HALEVI SV 1 LLC; HALEVI SV 2 LLC; HILLCREST ACQUISITIONS LLC; HILLCREST CENTER SV I LLC; IBH CAPITAL LLC; LEONITE CAPITAL LLC; N5HYG LLC; and RYMSSG GROUP, LLC Plaintiffs, v. HYGEA HOLDINGS CORP., Defendant.	Case No. A-18-768510-B Dept No. XXVII Hearing Date: March 7, 2018 Hearing Time: 10:30 a.m.

Ballard Spahr LLP
1980 Festival Plaza Drive, Suite 900
Las Vegas, Nevada 89135

ORDER GRANTING DEFENDANTS' MOTION FOR CHANGE OF VENUE

The Motion for Change of Venue (the "Motion") brought by Defendant Hygea Holdings Corp. ("Hygea") came before this Court for hearing on Order Shortening Time on March 7, 2018. Maria A. Gall, Esq. and Kyle A. Ewing, Esq. of the law firm Ballard Spahr LLP appeared on behalf of Hygea. Christopher D. Kaye, Esq. of The Miller Law Firm; Ogonna M. Brown, Esq., of Holley Driggs Walch Fine Wray Puzey Thompson; and G. Mark Albright, Esq. of Albright, Stoddard, Warnick & Albright appeared on behalf of Plaintiffs.

The Court, having considered the Motion and the briefing related thereto, all pleadings and papers already on file in this matter, and having heard from the parties, is persuaded by the Motion and hereby finds that, pursuant to NRS 78.650(1) and NRS 78.630(1) and for the reasons stated on the record, venue for this lawsuit properly lies with the First Judicial District Court in Carson City, Nevada, and therefore,

IT IS HEREBY ORDERED that the Motion is GRANTED;

IT IS FURTHER ORDERED, including by stipulation and agreement of the parties as stated on the record at the hearing, that Hygea's Notice of Withdrawal of Demand for Change of Venue and Motion for Change of Venue filed on March 6, 2018, is hereby withdrawn and/or stricken; and

IT IS FURTHER ORDERED that this lawsuit, including all pleadings, papers, files and record of the proceedings in this Court, is transferred to the First Judicial District Court.

Dated this 8 day of March, 2018.

Nancy L. Allf

THE HONORABLE NANCY L. ALLF
DISTRICT COURT JUDGE

NE

Ballard Spahr LLP
1980 Festival Plaza Drive, Suite 900
Las Vegas, Nevada 89135

Submitted by:

BALLARD SPAHR LLP

By: _____
Joel E. Tasca, Esq.
Nevada Bar No. 14124
Maria A. Gall, Esq.
Nevada Bar No. 14200
Kyle E. Ewing, Esq.
Nevada Bar No. 14051
1980 Festival Plaza Drive, Suite 900
Las Vegas, Nevada 89135

Attorneys for Defendant

Approved as to form but not content:

ALBRIGHT, STODDARD, WARNICK & ALBRIGHT

By: _____
G. Mark Albright, Esq.
Nevada Bar No. 001394
D. Chris Albright, Esq.
Nevada Bar No. 004904
801 South Rancho Drive, Suite D-4
Las Vegas, Nevada 89106

Ogonna M. Brown, Esq.
Nevada Bar No. 7589
HOLLEY DRIGGS, WALCH FINE WRAY PUZEY THOMPSON
400 South Fourth Street, Third Floor
Las Vegas, Nevada 89101

E. Powell Christopher, Esq.
Christopher D. Kaye, Esq.
THE MILLER LAW FIRM, P.C.
950 W. University Drive, Suite 300
Rochester, Michigan 48307

Attorneys for Plaintiffs

EXHIBIT “7”

Electronically Filed
2/22/2018 1:24 PM
Steven D. Grierson
CLERK OF THE COURT

RTRAN

DISTRICT COURT

CLARK COUNTY, NEVADA

CLAUDIO ARELLANO, et al., Plaintiff(s), vs. HYGEA HOLDINGS CORP., Defendant(s).	Case No. A-18-768510-B DEPT. XXVII

BEFORE THE HONORABLE NANCY ALLF, DISTRICT COURT JUDGE

WEDNESDAY, FEBRUARY 21, 2018

TRANSCRIPT OF PROCEEDINGS RE:
ALL PENDING REQUESTS FOR ORDERS SHORTENING TIME AND ALL PENDING MOTIONS

APPEARANCES:

For the Plaintiff(s): CHRISTOPHER D. KAYE, ESQ.
GEORGE M. ALBRIGHT, ESQ.
OGONNA M. BROWN, ESQ.
KEVIN WATTS, ESQ.

For the Defendant(s): MARIA A. GALL, ESQ.
KYLE A. EWING, ESQ.

RECORDED BY: BRYNN GRIFFITHS, COURT RECORDER

LAS VEGAS, NEVADA, WEDNESDAY, FEBRUARY 21, 2018

[Case called at 9:38 a.m.]

THE COURT: ***Arellano vs. Hygea***. And let me just ask first how long you think this argument is going to take. 10-15 minutes or longer?

MR. KAYE: I suspect that to cover both motions it will take longer, Your Honor.

THE COURT: I -- I have a shorter motion that's right ahead of you on the calendar that I -- I believe it's more appropriate so that I can get them in and out and I don't have to worry about them waiting a long time.

MR. KAYE: I would have no objection to that, Your Honor.

THE COURT: Thank you.

[Court recessed at 9:38 a.m. until 9:57 a.m.]

THE COURT: Now I believe that takes us to ***Arellano vs. Hygea***. And we'll take appearances from one side of the room to the other with the hope that I can refer to everyone by name. So please start on this end.

MR. ALBRIGHT: Good morning, Your Honor. Mark Albright, local counsel for Plaintiffs.

THE COURT: Thank you.

MS. BROWN: Good morning, Your Honor. Ogonna Brown, local counsel for Plaintiffs. I have present with me today in the courtroom Chris Kaye and Kevin Watts, counsel for the plaintiffs. And

Chris Kaye, who's been admitted pro hac vice, will be making the presentation today.

MR. KAYE: And I represent --

THE COURT: Very good.

MR. KAYE: -- N5HYG LLC, which is one of the plaintiff petitioners, but we'll make the presentation on behalf --

THE COURT: All right.

MR. KAYE: -- of all of them.

THE COURT: And so you are Mr. Watts?

MS. BROWN: Mr. Kaye.

MR. KAYE: I'm Mr. Kaye.

THE COURT: Mr. Kaye.

MR. WATTS: I'm Mr. Watts, Your Honor.

THE COURT: And you are Mr. Watts? Okay.

MR. WATTS: And I also represent Plaintiff N5HYG.

THE COURT: Thank you.

MS. GALL: Hi. Good morning, Your Honor. Maria Gall of Ballard Spahr representing the defendant, Hygea Holdings Corp. And with me is my colleague Kyle Ewing from the same law firm. I'd like the record to note that with us today in the courtroom is the CEO of Hygea, Mr. Manuel Iglesias. And one of the directors and former CFO of Hygea, Mr. Edward Moffly.

THE COURT: Do you want them to sit with you at counsel table?

MS. GALL: It is up to -- it is up to them. But I'm -- I'm

hearing no.

THE COURT: Okay. Very good. Thank you all.

All right. So Mr. Kaye.

MR. KAYE: Your --

MS. GALL: Do you mind if I say --

THE COURT: Go ahead.

MS. GALL: -- Your Honor, we -- there's two motions on --

THE COURT: There --

MS. GALL: -- on today.

THE COURT: There are three things to take up. Let me -- let me --

MS. GALL: Okay.

THE COURT: -- direct --

MS. GALL: That's fine.

THE COURT: -- your attention to the way I'd like to have it argued. And if you believe that there's a better way, give you a chance to respond.

I wanted to deal first with the issue of request for judicial notice, second, with the defendant's Motion to Dismiss, and third, the emergency petition.

MR. KAYE: Certainly, Your Honor.

THE COURT: Any objection to that order?

MS. GALL: No -- no, Your Honor.

THE COURT: Very good. Let's take that request for judicial notice first.

MR. KAYE: Your Honor, plaintiff petitioner submitted on Friday a request for judicial notice relating to certain additional actions that are pending relating to Hygea. And there's really two reasons for that. One of them, Your Honor, is to point out that there are several actions. And that shows and illustrates again the situation in which Hygea finds itself.

Now there is extensive documentation and extensive evidence above and beyond that. So we're not saying that that is in itself a reason for the court to appoint a receiver. But it does further illustrate the situation in which they find themselves and which there are a lot of people who are claiming that they have either mismanaged the corporation or owe them money or both.

Another reason for the request for judicial notice was to show that there are other cases in which there has been indicia of delay and obstruction of the proceedings. We talk about in our papers one of them is a case in which the N5HYG is also involved in which there has been -- there has been what we contend very strongly is an improper removal to federal court.

Another recent case is the ***CEA Atlantic Advisors*** case. That's the -- the entity, the investment bank -- bank-type entity that underwrote the issuance that -- or that handled the issuance. There's some dispute about that from -- from which N5HYG acquired its shares. And there was orders entered in that case against Hygea relating to delays and obstruction of the discovery process.

Now, once again, that is not -- that is not the reason why

venue should not be changed. But it is -- it further buttresses the contention that Plaintiffs make, which is that the motion for -- previously styled as jurisdiction, apparently this morning there was a new motion filed relating to venue. But these are efforts to -- to avoid the reckoning that we believe is inevitable as relates to Hygea. And that reckoning is either going to be the company's collapse at a total loss to the shareholders, or the -- the entry of an order providing for some effective judicial oversight to preserve the corporation, stabilize the corporation, and ensure its survival.

Another point that was made I believe in the opposition to the request for judicial notice, and candidly, Your Honor, there was a flurry of papers that we received yesterday and voluminous, voluminous papers received at literally the 11th hour, a point that we might return to later.

But I believe that another point that Defendants raise or that Defendant raises in relation to that is that there's something wrong with the -- wrong with the fact that supplemental declarations were provided this past Friday.

THE COURT: But -- but you provided declarations long after you filed your motion.

MR. KAYE: Your Honor, we did. And there's a couple of reasons for that. The primary reason is that after the filing of the motion, additional people came forward saying yes, what is happening in this motion is the experience that I've had, and provided declarations.

Another thing is that some of what those declarations relate

to has occurred since the time of the -- of the filing of the motion. For example, much of what's --

THE COURT: You know, I think we're getting a little further -- further afield than just the issue of judicial notice. I'm going to ask you to confine your argument to that at this point.

MR. KAYE: Certainly, Your Honor. And honestly, I -- I raised it because I didn't know if those had been conflated in the defendant's arguments. But I think -- I think you've heard what we have to say on the issue of judicial notice. It's -- those dockets, it's not the -- the other cases. Not the biggest issue in the case. But worthwhile to put on the balancing of the scales, Your Honor.

THE COURT: Thank you.

Ms. Gall.

MS. GALL: Thank you, Your Honor.

May I use the lectern?

THE COURT: Wherever you're more -- more comfortable.

MS. GALL: Thank you, Your Honor.

I heard a lot from I think it's Mr. Kaye. I am going to try to confine my opposition to the issue of judicial notice, because I think we have a few more motions before Your Honor.

THE COURT: You're all going to get a chance to argue everything.

MS. GALL: I'm sure. Your Honor, the -- the plaintiffs have asked this court to take judicial notice of 17 cases -- I believe I have that number correct -- that they identify by name and venue and the docket

number. They provide nothing else to this court.

As a general matter, the Nevada Supreme Court has already stated that a court will not take judicial notice of records in another case, even though the cases are connected. And to determine if the cases are connected, the court has to make an examination of the records of the other case.

The plaintiffs here have provided this court nothing but the index. So there really is nothing to support their request other than their assertion that those lawsuits largely -- and that's their words -- stem from the disputes with Hygea shareholders and creditors who allege that they've been harmed by Hygea's alleged mismanagement.

Plaintiffs do not explain the claims in those lawsuits, they do not provide any factual underpinnings for the unnamed claims, and they do not submit any pleadings from which the foregoing could even be gleaned.

So we would submit that the plaintiffs' conclusory -- conclusory assertion of closeness are insufficient for this court to make an exception to the general rule.

Finally, if it is true, that all the lawsuits plaintiffs identify are sufficiently close to the allegations made in this action, a matter which hasn't yet been established, then we would submit as -- as we have and -- that Plaintiffs should seek the appointment of a receive in those other lawsuits and not before this court.

Therefore, we would ask this court at this time, at least, to deny the request for judicial notice. Thank you.

THE COURT: Thank you.

And the reply, please.

MR. KAYE: Just very briefly, Your Honor.

The request for judicial notice does not relate to the substance of papers filed in the -- in the other cases. So it's not like we have one case arguing one thing and we're saying, oh, look, in this other case the same thing happened here.

What it's showing is a general pattern of lots of people suing Hygea and Hygea being involved in a lot of litigation. And them trying to -- trying to, basically, stay one step ahead of the people that they owe money to.

That is a -- it -- for that limited purpose, judicial notice is appropriate and it does go on the balancing of the scales along with the other information that we've presented with our papers and that we'll discuss further today.

THE COURT: Thank you.

With regard to the request for judicial notice relating to the plaintiffs' Petition for Appointment of a Receiver, et cetera, the court will take judicial notice, but on a limited basis. I only take judicial notice that other matters are pending in other courts or have been filed. Nothing is taken -- by taking judicial notice, it's not for any truth of any allegation that's been made in any other lawsuit. And there's no determination here of whether or not any of those allegations are even connected to this lawsuit. So the petition's granted with those limitations.

Now, let's take up the defendant's Motion to Dismiss for lack

of jurisdiction, or alternatively for summary judgment.

MS. GALL: Thank you, Your Honor. I'd like to begin by saying that this case is really nothing more than a strike suit intended to terrorize a solvent company and its management. And in particular its CEO and CFO.

Whereby the ultimate beneficial owner of one of the plaintiffs, N5HYG, seeks to arrogate to himself the company. Plaintiffs' accusations are based on nothing but speculation, innuendo, and hearsay.

These accusations and claims should never have been brought. But perhaps more importantly, Your Honor, for purposes of this motion, they have -- they should never have been brought before this court. Because this court is without authority to hear the application, whether because of jurisdiction or whether because of venue.

The Nevada Supreme Court has long held that in Nevada the appointment of receivers is controlled by statute and that the -- and that those statutory requirements must be met or the appointment is void and in excess of jurisdiction. Those are not my words, those are Nevada Supreme Court's words.

Plaintiffs here seek the appointment of a receiver pursuant to three statutory bases, NRS 78.650, NRS 78.630, and NRS 32.010.

78.650 and 630 unambiguously state that a shareholder seeking the appointment of a receiver must bring her application in the district court of the county of the corporation's principle place of business. And if that principle place of business is outside Nevada, then

in the county of the corporation's registered office.

I do not think it's in dispute here the Hygea's registered office is in Carson City. Therefore, Plaintiffs had to apply for receiver in the First Judicial District Court in Carson City. They did not. They applied in this court.

Now, Plaintiffs argue that the locality language of 650 and 630 were first the venue. We disagree. In ***Shelton v. Second Judicial District Court,*** the Nevada Supreme Court has said that the statutes requirements are jurisdictional. And ***Shelton*** is not an outlier case, meaning there have been other cases in which the Nevada Supreme Court held that the locality language of Nevada statutes to mean jurisdiction, not venue.

In fact, in ***Liberty Mutual vs. Thomasson,*** the Nevada Supreme Court did just this with NRS 233B.130(2)(b). But even if the court accepted that NRS 78.650 and 630 were first the venue, it would at least require the court to transfer this case to Carson City, because the venue -- if it is a venue, then the venue transfer would be mandatory.

Plaintiffs' attempt to argue that the use of the word may, that an agreed shareholder may file a Petition for a Receiver in the district court of the county of the corporation's registered office, they argue that that word may within those provisions, mean that -- means that venue is permissive.

However, their interpretation would lead to really an absurd result. It would mean that Plaintiffs could have filed this action anywhere in Nevada rendering the legislature's locality requirements meaningless.

In any event, if the court accepts that NRS 78.650 and 630 refer to venue, then Hygea has made a timely demand and Motion for -- Motion for Change of Venue in the alternative to its Motion to Dismiss. Whether jurisdiction or venue, this case has to be and should be heard by the First Judicial District Court.

Meanwhile, I just want to briefly address their third basis for an appointment or -- of a receiver, NRS 32.010. That statute unambiguously requires there to be an action pending in the court in which the application for the appointment of a receiver is made. There is no action pending other than this action, which only seeks the appointment of the receiver. And the Nevada Supreme Court in ***State ex rel. Nenzel*** explained that courts have no jurisdiction under 32.010 to appoint a receiver in a proceeding merely for the appointment of a receiver.

Finally, there is -- because this was not addressed in a Motion to Dismiss, but because it does have to do with jurisdiction, I do want to raise this with the court. There is one other reason this court is without jurisdiction. Plaintiffs do not own 10 percent of the company's issued and outstanding stock.

THE COURT: The complaint indicates that they own more than 10 percent, that --

MS. GALL: They have pled it, Your Honor. But Nevada case law says that at the time that they apply for the appointment of receiver and the court considers the appointment of receiver, they have to demonstrate that they own 10 percent, and they do not own 10

percent of the issued and outstanding stock. They got the number of issued and outstanding stock incorrect.

Thus, we would offer, Your Honor, that the court is entirely without basis to hear Plaintiff's application and we ask the court to decide these threshold issues before it proceeds further into the merits of the receivership application.

Thank you, Your Honor.

THE COURT: Thank you.

Mr. Kaye.

MR. KAYE: Thank you, Your Honor.

I will address, briefly, the substance of this. Because it bleeds into the issue of -- the issue of the forum and so-called jurisdiction claim and venue motion.

Before talking about that, we need just take a step back and talk about the business that Hygea is, which is, as set forth in the papers on both side's papers -- I don't think there's any disagreement about this -- it is a business that acquires and manages --

THE COURT: Right.

MR. KAYE: -- medical practices.

THE COURT: Medical practices.

MR. KAYE: If those medical practices shut down and those doctors leave the practices because they're not getting paid, or because the operations simply collapse, the business is destroyed. It's not like it's a business that has -- that has salvage value, that has equipment or real estate or something that can be salvaged for shareholder value.

What's more, we've shown substantial -- and we'll get to this as we discuss the substance -- but substantial indicia that the company is collapsing. One of the things that's --

THE COURT: That doesn't address the jurisdictional argument at all.

MR. KAYE: Your Honor, I --

THE COURT: And -- and I'm aware that you're not a creditor. It's equity coming in, minority interest.

MR. KAYE: Your Honor, I appreciate that. I raise that issue because we are very concerned that the jurisdictional and venue arguments that are being raised are an effort to delay these proceedings and put off the inevitable.

As to the -- the specifics of the jurisdictional issue, the statute -- the statutory provision at issue, and the primary one is the 650 statute, and there's analogous language in the other chapter 78 statute. The statutory language relates to venue. Venue is an administrative procedural nonjurisdictional concept as opposed to the jurisdictional concept of what authority the court has. That's the general rule in all -- in states -- or courts in states throughout the United States, as we discuss in our papers, have found that where statutes say that there's a specific -- a specific county in which an action should be taken, that generally pertains to venue and not jurisdiction. It doesn't impair the court's authority -- the authority of courts elsewhere in that state. Nevada's jurisprudence is entirely consistent with that.

Now, there is the ***Liberty Mutual*** case in which the statute

says "must" and has a very mandatory provision as to what county proceeding must be initiated in. That's distinct from the ***State Engineer*** case in which the statute has both "may" and "must." And is somewhat more flexible than the ***Liberty Mutual*** case, and in -- and while the Nevada Supreme Court did find a jurisdictional issue raised in Liberty Mutual, it also found that ***State Engineer*** was a purely venue -- venue-related statute.

The statutes at issue here don't have the word "must" in them at all. It's "may." The aggrieved shareholder may bring -- or the aggrieved shareholders may bring an action in the identified county.

So you go from ***Liberty Mutual***, which is "must" and does raise a jurisdictional issue, to ***State Engineer***, which has "may" and "must," and that raises a venue issue, and we're all the way on the other side of the continuum where it simply says may.

Now, that means that this is really a motion for -- or the -- the request really goes to venue and not jurisdiction. There's not a --

THE COURT: And there's a --

MR. KAYE: -- jurisdictional impairment.

THE COURT: There's a separate motion for change of venue, though, but it's not set for today.

MR. KAYE: That --

THE COURT: It's not set until March.

MR. KAYE: That's correct, Your Honor. At about, oh, I think about maybe quarter to 9:00 this morning we saw that that had been -- that came through and -- and was filed.

To the extent that there's any effort to make an oral motion here or sort of recharacterize the motion on jurisdiction as to venue today, I'm happy to address the -- the venue issues, as well.

Put simply --

THE COURT: No, I -- I'm really not prepared to deal with that. Because I haven't had a chance to read it. You guys haven't fully briefed it.

MR. KAYE: Certainly, Your Honor. I'm happy to address any of the venue-related questions. Put simply, there is a form selection clause that provides for Clark County and general venue principles adhere. This is a business court, it's a sophisticated court that's designed for cases such as this, and we think that this is the appropriate place to hear the court -- to hear the case.

But in any event, there is not a jurisdictional question raised.

THE COURT: You know, you indicated in your brief, I think, that that stock purchase agreement had a form selection clause.

MR. KAYE: That's correct.

THE COURT: But it wasn't attached.

MR. KAYE: Your Honor, my apologies. If --

THE COURT: I know that you guys did a lot of briefing in a short amount of time.

MR. KAYE: The -- the stock purchase agreement was attached to the motion for -- or to the complaint, which was filed in association with the Petition for Appointment of a Receiver.

So when we filed the response to the Motion to Dismiss --

I'm trying to get all the briefs --

THE COURT: I know.

MR. KAYE: -- here correct in my head -- I won't --

THE COURT: I'm just pulling it up. Can you direct me to that provision in the stock purchase agreement?

MR. KAYE: Sure. It's --

MR. ALBRIGHT: Exhibit B.

MR. KAYE: Yeah, it's --

THE COURT: It have it up. I just need a paragraph.

MR. KAYE: -- Section 8.11 1, from memory. And I'm going to look at that to confirm that I got that correct. And that does provide for a submission --

MR. ALBRIGHT: It's page -- it's page 42 of the stock purchase agreement, Your Honor.

THE COURT: Thank you.

MR. KAYE: And that does provide both for submission of jurisdiction in this county and disavows a Motion for Change of Venue.

THE COURT: All right. Thank you.

MR. KAYE: Thank you, Your Honor.

THE COURT: And the reply, please.

MS. GALL: Thank you, Your Honor.

First, I want to address the Motion for Venue. We did file it not today, we filed it on Friday. Due to some -- I think a technical error, it was not served upon -- I think still has not been served through the WIZnet system. But I -- when I realized that this morning, when it was

brought to my attention by my docketing clerk, I did send it to Defendants' counsel.

In any event, the -- the problem with a demand in Motion for Change of Venue, we do not think this is a venue issue, Your Honor. We think it's a jurisdictional issue. But if Your Honor's inclined to believe it might be a venue issue, the Nevada Supreme Court has said that a Motion for Change of Venue deprives the court of all jurisdiction except to decide the Motion for Change of Venue.

So we're still left with an issue of having to decide the venue issue before we can proceed to the merits.

But we're -- with respect to jurisdiction, Your Honor, the use of the word "must" versus "may," I would like to address that. First of all, the statutes at issue in ***Liberty Mutual*** and in ***State Engineer*** both use the word "must." In fact, ***Liberty*** -- the Nevada Supreme Court in Liberty Mutual actually mentions ***State Engineer*** in its decision saying yes -- and I'm paraphrasing here -- yes, we know that the statute at issue in ***State Engineer*** used the word "must," used similar language to the statute at issue in ***Liberty Mutual***.

However, statute at issue in ***Liberty Mutual*** is jurisdictional and we're going to rely on our prior precedent in ***Otto*** [phonetic] where we said that this statutory scheme is jurisdictional. Similarly, in ***Shelton***, the Nevada Supreme Court has said that the receivership statutes are jurisdictional. And if you do not need the statutory requirements, then the court -- then the appointment would be void, because the court is in excess of jurisdiction.

I would like also to point out that if we replace the word "must" in 78.650 and 630 -- I'm sorry, if we replace the word "may" with "must" in those statutory provisions, then it essentially reads like a command to an agree shareholder. A shareholder must file for an appointment of a receiver. That's not what the statutory scheme was meant to say. The statutory scheme was merely meant to provide a basis to an aggrieved shareholder or creditor to apply for a receivership as a remedy if they met certain statutory criteria, which we offer does not exist here, Your Honor.

With respect to the stock purchase agreement, that stock purchase agreement was entered into between Hygea and one of the -- I haven't even counted up all the plaintiffs, I think it's over a dozen plaintiffs.

THE COURT: I think there are 14. I did.

MS. GALL: One of those plaintiffs -- and so, one, even if the stock purchase agreement applied here, which we offer it does not, it cannot bind Hygea to litigate in Clark County with the remainder of the plaintiffs.

Secondly, to the extent the statute is subject matter jurisdiction and not venue, you can't contract around subject matter jurisdiction.

Finally, we would offer that -- that provision in the stock purchase agreement does not apply at all here, because it applies to personal jurisdiction and venue requirements when an action rises in connection with that stock purchase agreement. This action does not

arise in connection with a stock purchase agreement. There has been no breach of contract or fraud based on the agreement. There have been no claims brought based on the agreement. And the agreement clearly states that its requirements apply or the personal jurisdiction and venue requirements apply when a dispute arises in connection with the agreement.

Therefore, Your Honor, we would submit that the statutes are jurisdictional, we would ask this court to dismiss this case based on lack of subject matter jurisdiction. If this court is inclined to believe that the statutes apply to venue, we would ask this court that -- we would submit that this court cannot proceed further until it decides the venue issue.

Thank you very much.

THE COURT: Thank you.

This is the defendant's Motion to Dismiss the complaint for lack of jurisdiction. Without ruling now on any issue with regard to venue, the motion is denied. The -- the complaint itself references the stock purchase agreement, so I find that it's relevant in determining the issue of whether or not this court has jurisdiction. It does under 8.111, as well as I find also under NRS 78.650 and 630 that venue -- without determining venue, that jurisdiction at least is appropriate at this point.

So before we argue the receiver motion, I have other matters at 10:00. I'd like to recess this hearing, give you a chance to -- to regroup just a minute so that you can come in and argue the issues with regard to the receivership request. There are three matters, I think

they'll take about 15-20 minutes.

So we'll recess until --

MR. ALBRIGHT: Thank you, Your Honor.

THE COURT: -- I recall your case.

MR. KAYE: Certainly, Your Honor. Thank you.

[Court recessed at 10:25 a.m., until 11:15 a.m.]

THE COURT: And court notes the appearance of counsel, that all appearances have been previously made for the record.

So this now the plaintiffs' emergency motion -- or emergency Petition for Appointment of a Receiver on Order Shortening Time.

Mr. Kaye.

MR. KAYE: Thank you, Your Honor.

Your Honor, as I mentioned earlier, Hygea faces an existential crisis that will result in a reckoning of either the corporation's collapse, or the total loss to the shareholders, or else judicial oversight.

THE COURT: Right. But in -- in any statutory scheme if there is a dissolution to the business, creditors are entitled to be paid in full before equity gets a return on their interest. And this is being brought by equity holders.

MR. KAYE: Certainly, Your Honor. That's certainly the case. But that gets, again, to the purpose of the statute, that does allow the shareholders to act to protect the corporation. And to be sure, we believe that this would serve the interests of creditors, as well, though we come to the court as shareholders under the statute.

And the statutory scheme is that if 10 percent of the

shareholders petition the court, then there is a -- then there are several bases for appointment of a receiver.

To be clear, and I'll talk about those in a moment, but to be clear, the sort of receivership that we envision is a -- a temporary receivership to oversee the company and ensure transparency, which has been sorely lacking, and also ensure the corporation stability and survival. Particularly, as we face this ongoing crisis that has been illustrated by, amongst other things, the fact that just in the past week or so we received an unsolicited e-mail from the general counsel of the corporation, who was the third in command, expressing support for the petition and expressing alarm that the company was on the verge of collapse.

This is the number three person at Hygea. And when you see the people in the -- at the top of the crew jumping of the ship, there's a pretty good chance that the ship is, in fact, going down. And that's the crisis that we need to address.

And every single day at this point -- at this point poses further risk of collapse. That's illustrated by the fact that since we filed our petition, we've seen more developments, including the departure of the general counsel, including some of the -- some of the things that are noted in the declaration, such as the declaration of Dr. Cohen.

I first of all want to address the issue of the 10 percent threshold. And in doing so, I do want to address some of the issues that were raised in the response brief that was filed apparently yesterday or perhaps this morning.

In doing so, I want to address briefly the issue of the response in and of itself. That response was about 10 days late, and in its core text exceeded the page limit by about 10 pages, and then there was an additional about 40 or 50 pages of declarations that reiterated and recapitulated many of the same arguments set forth in the brief itself.

Moreover, this was done at -- after the close of business in the Eastern time zone, where some of us were flying out from. And, in fact, it was presented, perhaps strategically, as something that we found as we deplaned from the airplane last evening.

THE COURT: Well, I -- I'm not -- I don't think it goes -- doesn't do well in this court to start accusing your opposing counsel of being unprofessional.

MR. KAYE: Your Honor --

THE COURT: This is all -- this is -- you filed declarations after your motion. There's a lot being done here at the last minute. So I refuse to allow you to proceed with that type of argument.

MR. KAYE: Certainly, Your Honor. If I could make one small point. We've been accused in their papers of attempting litigation by ambush.

THE COURT: Right.

MR. KAYE: And we say that in response to that --

THE COURT: I don't listen to that --

MR. KAYE: -- accusation.

THE COURT: -- from anybody --

MR. KAYE: Thank you, Your Honor.

THE COURT: -- on any -- on any day.

MR. KAYE: Appreciate that, Your Honor.

THE COURT: So.

MR. KAYE: The petition and the complaint set forth how the plaintiff petitioners here exceed the 10 percent threshold. And the Rosetta Stone for that analysis is the N5HYG stock purchase agreement that was executed in October of 2016 that sets forth how many shares N5HYG has and what percentage of the outstanding shares that constitutes.

Now, Defendants aver in their response that the number of outstanding shares in the -- in the stock purchase agreement is inaccurate.

First of all, tellingly, they do this without attaching the claimed capital -- capital analysis that they claim that this comes from. So they say that they have this -- this document and do not provide it to the court.

In any event, their new figure of outstanding shares cannot control for purposes of the 10 percent analysis. And there's a couple of reasons for that. But all of the reasons stem from the terms of the stock purchase agreement. And in particular Section 6.4A, which is an antidilution protection that says that N5HYG is not going to be diluted. And if there is going to be any dilution, there's a procedure that has to be followed. We've never seen that procedure, we've never had our preemptive rights triggered, we've never received that sort of notice.

So that means that the only way that Hygea's management can claim that their new number of outstanding shares ought to control is to admit that they breached the stock purchase agreement.

Now, they can't do that. First of all, that in and of itself is more indicia of misconduct that could, even on itself, justify the appointment of a receiver. There's a case that addressed a somewhat similar issue under the old -- and the reason I say it's somewhat similar is that it was under the old antidilution statute that has since been repealed, and that's the ***Peri-Gil v. Sutton*** case, 84 Nev. 406 from 1988. And in that case, the very fact of an improper dilution was found to justify appointment of a receiver.

So that's exactly what they say they've done here in order to avoid, they say, appointment of a receiver. That cannot avoid their appointment -- the appointment of a receiver, even going beyond the ***Peri-Gil*** analogy.

If that argument can prevail, if management can dilute shareholders to below 10 percent in violation of governing documents such as a stock purchase agreement, then management such as Hygea's here will have found a loophole in the statutory system that would eviscerate the statutory system. As soon as you get a petition for appointment of a receiver, you can just issue new shares and drive the petitioners to beneath 10 percent.

And, in fact, if you are growing nervous that the petitioner -- that there's potential petitioners out there because you're mismanaging the company, that would give a further incentive and allow management

to inappropriately dilute shareholders in order to avoid the 10 percent.

So you can't look at a purported dilution in order to analyze the 10 percent threshold. You have to look at what is the actual interest based on the governing documents.

Here, the stock purchase agreement from October of 2016 is definitive. We, you know, run through the calculations. I won't belabor them. But that puts the petitioner plaintiffs above 10 percent.

And that means that the plaintiff petitioners can petition under NRS 78.650 for appointment of a receiver. And I --

THE COURT: I really focused on 630 and 650 in my analysis. So thank you.

MR. KAYE: And -- and I think that's appropriate, Your Honor. And, in fact, one thing that I would say for the defense is -- that's -- that we agree with is that they stated that that was the primary analysis here. And I think that's absolutely correct.

Going through the -- the criteria there, and we just need to meet one of these criteria in order to justify appointment of a receiver, we think we meet multiple of them and meet multiple of the criteria in interlocking and interacting ways. Because the -- the conduct here has caused the distress and has put the company's survival at risk.

First of all, under subsection B, the corporation's trustees or directors have been guilty of fraud or collusion or gross mismanagement in the conduct or control of the corporation's affairs.

Subsection C, its trustees or directors have been guilty of misfeasance, malfeasance, or nonfeasance.

First of all, there are serious questions about what is happening in terms of the corporation's management simply from the fact that the corporation is conceptually sound and should be making lots of money. That's something that, frankly, Hygea's management suggests in its papers; it's something that the Leistner declaration talks about, one of the corporation's former consultants who said this is a good concept; why isn't it making money?

This is also shown by more recent consultants for the corporation. And we see in the Fowler declaration that Hygea's own consultants admitted to Mr. Fowler that information provided by Hygea's management to its shareholders was fabricated, that Hygea's performance was negatively impacted by severe operational deficiencies, and that Mr. Iglesias, the CEO, had cooked the books to avoid problems with a previous lender.

Now, one of the questions that Hygea's management raises or one of the issues it raises is, well, why are we hearing about these party admissions instead of hearing directly from the consultants themselves? I would suggest that if that is a concern of Hygea's management, that they should release the consultants from their confidentiality obligations and from their nondisclosure agreements, and do the same with the top executives who are in the process of leaving the company or who remain unpaid, and we'll get to that in a moment.

That's an issue where Hygea's management seems to want to have things both ways to both threaten people with enforcement of such -- such provisions and agreements, at the same time that it is --

that it is wondering, well, why aren't we hearing from these people.

The nonpayment of executives is part of a very serious pattern of bills not being paid. You talked about creditors earlier. This is an issue where once again we come in -- we come as equity under the statute and we are shareholders. But there's serious issues here for creditors as well. And when I talk about the collapse of the company, that's something that obviously would impact creditors as well.

But let's talk about what's happening with creditors.

Subsection D: The corporation is unable to conduct the business or conserve its assets by reasons -- by reason of the act, neglect, or refusal to function of any of the directors or trustees.

And E: The assets of the corporation are in danger of waste, sacrifice, or loss through attachment, foreclosure, or litigation, or otherwise.

H: The corporation has become insolvent.

Or I: The corporation, although not insolvent, is for any course -- for any cause not able to pay its debts or other obligations as they mature.

So that -- so just by showing that obligations are not being paid as they mature, we can show -- make the showing required for appointment of a receiver. That has been shown and then some.

First of all, going through the list here, monthly installment payments for the purchase price of a medical practice, it was due on December 1st, wasn't paid until February 14th, after numerous demands for payment. That's from the Cohen declaration.

There have also been issues with the payroll at Dr. Cohen's practice. Now, there's a -- an innocent explanation that is proffered that has something to do with a glitch with FedEx and a new process put in place. But the fact is that at least one check has bounced at that practice.

Failing to issue complete 2007 W-2s and the nonpayment of payroll taxes. Now, not paying -- first of all, not making payroll is -- that's about the most serious sign of distress that you can see. Not paying payroll or taxes. And both of those aren't being met, because there are paychecks that are not being paid and there are -- and there's payroll taxes that are not being paid.

The Arellano declaration reports multiple nonpayment notices for rent.

Delinquency to one or more large lenders. This gets to the survival of the company. And that we can recapitulate subsections D and E, that the assets of the corporation are in danger of loss through attachment, foreclosure, litigation, or otherwise the corporation is unable to conduct the business.

And here I think it is terribly telling that once again the general counsel No. 3 in command of the corporation has basically admitted that this risk is salient. He reports that he hasn't been paid in quite a while and that he thinks the providers are leaving. That is critical. Once again, there isn't equipment here, this isn't a capital-intensive corporation.

The corporation's asset is its network of medical providers.

And if those providers leave, if those practices shut down or if the doctors aren't getting paid and they walk away, or if their employees aren't getting paid and the system collapses, the corporation is over. Talked about how that would harm creditors and equity. That would eviscerate the shareholder wealth, it would make the claims of creditors largely worthless as well.

In fact, Mr. Williams reports that he doubts the survival of the company at this point.

The money's running out. He reports that Mr. Iglesias is isolated as management, as management has collapsed, money should be coming in, but the money is not showing up.

Now, in response, defendants have submitted a substantial amount of paperwork that does not address the core reality that is facing Hygea. They make several, though, several important admissions. And I want to talk about some of those right now.

On page 18, lines 6 and 7 of their response brief, they all but admit that the payment to Dr. Cohen, the installment payment for the purchase of her practice was indeed late. Payment not made when obligation comes due.

Page 20 and 21, and I'm beginning at line 27 of their response brief:

> Hygea acknowledges that it continues to owe back -- back payroll taxes for the fourth quarter of 2017 and is incurring payroll tax liabilities for 2018. This will result in a penalty that will require Hygea to pay additional funds on its payroll taxes for the fourth

quarter of 2017 and any 2018 taxes that are not timely remitted to the IRS.

It doesn't just mean that they're going to incur penalties. It means that they're not making payments as they come due.

They admit on page 23 that Hygea has experienced negative cash flow. That's page 23, line 23.

They also admit that as they describe them, C Suite executives have not been paid. And I'm looking here at Mr. Iglesias's declaration, page 9, paragraph 46 and 47, in which they claim that they have made payroll to nonexecutive -- to nonexecutive employees recently, but admit that they have not paid the so-called C Suite executives. Once again, payments not made as obligations come due.

They also, in addition to these important concessions and admissions, they make a couple of what I would characterize at their core responses to the plaintiff petitioners' petition. These responses do not -- they certainly don't dissuage [sic] our concerns, and they should not assuage the court's concerns.

First of all, they claim pervasively that there are good financials that they cannot present to the court and that aren't quite done yet, but that should be done soon. Well, we've been hearing about good financials that were just about to come around the corner for months, and it's going on years for several people.

They also claim, without any support at all, as simple conjecture, that this is part of a strategy on the part of N5HYG to take control of the company as part of some sort of untoward scheme.

Well, first of all, why would N5HYG do that in the context of roughly a dozen other plaintiffs? Second of all -- second of all, why would N5HYG do that in the context of seeking court oversight? Once again, we are looking for court oversight. We are looking for transparency. We are looking for a -- frankly, a relatively modest receivership, temporary receivership to ensure the corporation's survival and to ensure its stability.

THE COURT: Well, how -- how does having a receiver ensure the success of the company? That --

MR. KAYE: Your -- Your Honor, that's -- that's an excellent question. And the reason is because the company's core business concept is sound.

THE COURT: Right. And it could be that decisions were made, the expansion of the business, the acquisition of more practices, that it was too cash intensive. It could be that. I -- you know, you -- you guys have 10 percent, maybe less. I don't know.

MR. KAYE: Your Honor, there's multiple indicia here. And I've talked about some of them, I'll talk about some more of them, that there is -- that the problems here go beyond business decisions. But even beyond that, even beyond that, if this is a situation in which the company is going to run a loss during a growth period -- first of all, the company's 10 years old. So this idea that it's just ramping things up is a little -- a little ill-founded. But if that it the strategy, if the idea is let's -- let's run a big loss while we build ourselves for the future, that's not a reason to not pay your taxes. That's not a reason to not pay your

executives. That's not a reason to not make payments to your primary lender.

What -- what businesses do in that situation is you get financing and find investors with the understanding that that's going to happen. Here, instead, and -- and this isn't part of this case in its essence, but here the representation to investors has been no, that we're -- we're making a lot of money, things are going great. And --

THE COURT: Well, is there a change in dividends? Has there been a change in the dividend policy?

MR. KAYE: Your Honor, I don't think there's been any dividends paid.

THE COURT: No dividends?

MR. KAYE: No. There's no dividends at all.

THE COURT: After 10 years?

MR. KAYE: Your Honor, I can't speak to throughout the history of the company. I can say that there -- I -- actually, I remember now that there were some limited dividends that I'm aware of that were paid probably in the early 2017 period, and that despite contractual obligation to pay them, they stopped. And that's another one of the payments that stopped.

And once again, there may have been -- I mean, there may have been bad business decisions. But at this point it's a triage situation to stabilize the corporation's finances. And to -- and to ensure stability to -- to the best extent that it can be stabilized.

THE COURT: I have a number of questions. I'm going to

interrupt you.

MR. KAYE: Certainly, Your Honor.

THE COURT: What is the immediacy of the issue?

MR. KAYE: Your Honor, the immediacy of the issue is that there seems to be an acceleration of the failures. Acceleration of failures to make payments --

THE COURT: When did it start?

MR. KAYE: Your Honor, we -- well, those dividends that I was -- that I'm aware of, I think that that would have been around the middle of 2017.

I am also aware, Your Honor, and this gets to the Bridging Finance issue, and if I can take a step back to provide some context for what I'm about to discuss.

THE COURT: I --

MR. KAYE: I'll --

THE COURT: Let me kind of indicate to you guys that I'm going to need an evidentiary hearing --

MR. KAYE: Certainly, Your Honor.

THE COURT: -- to determine everything. So I hate to cut you off. There is one more matter that's pending. And it's not that we're lazy. I have one more matter to hear and I made them wait.

MR. KAYE: Certainly, Your Honor.

THE COURT: All right. Go ahead.

MR. KAYE: Would you like me to take a break right now? Step away?

THE COURT: Well --

MR. KAYE: Or would you just like me to -- to --

THE COURT: No. Go ahead.

MR. KAYE: -- continue as best I can?

THE COURT: No, because I have a number of questions and I already know I'm going to have to bring you back for evidence.

MR. KAYE: Yeah.

THE COURT: So --

MR. KAYE: But I can tell you one of the pieces of evidence will be that -- and I have a copy here, but I'm happy to wait until an evidentiary hearing, will be that Bridging Finance was not being paid over the summer. And now apparently they submitted a declaration yesterday saying that there hasn't been a default or an -- an occasion for default or a default of obligations since the end of December, since December 31, 2017.

So what that looks like is that there is a, you know, robbing Peter to pay Paul dynamic going on here, that perhaps they've come -- perhaps they've come current, perhaps they've worked something out --

THE COURT: But the thing is you don't really know, do you?

MR. KAYE: Your Honor, we don't -- we -- there was a lot that we do know, there's a lot that we don't know. And that's one of the reasons why we need a receiver in order to have that kind of transparency.

THE COURT: If you owned 15 percent, you'd be entitled --

you'd have rights under -- under the statute.

MR. KAYE: Your Honor, we're concerned that simple review will be insufficient. And one of the reasons for the -- one of the reasons for the receivership request, in and of itself, was to -- was because of these concerns.

I mean, look, since we filed, we've -- we've had Mr. Williams' departure and his report that the end -- that Mr. Iglesias is isolated and that the end could well be near.

Now, one of the options would be to have a -- have a receivership -- you know, an interim receiver to look at the books, to look at what's going on, find out what's happening, almost a hybrid of the receivership and -- and the -- the record access process. And then to report back to the court. We're very concerned with what that would find and we're concerned that that -- we're concerned that any delay could be the end of the company. I mean, basically, every two weeks there's payroll. We know that they're not paying payroll taxes, we know that they're not paying their executives, we know that at least one nonexecutive check has bounced. Every two weeks, you know, we're on pins and needles that the -- that the corporation's going to collapse.

But I appreciate what the -- you know, the court's -- the court's perspective, that there is a bevy of -- of factual issues here. And that might be one option to address that. Because we've gotten nowhere with trying to get that information.

THE COURT: All right. I -- let me outline for you guys some of the issues that I'm concerned about for both of you.

MR. KAYE: Uh-huh.

THE COURT: We -- we'll recess the hearing right after I do that, so -- and we'll just work through lunch so that you guys can conclude your arguments today.

Let -- let me tell you some of the issues I'm concerned I want both sides to address.

I need to know what the scope of a receivership might be if I appoint a receiver, even on an interim basis. You know, under -- under the statute, if you own 15 percent, you'd be entitled to inspect the records. But who's -- who's going to pay for a receivership? If we have a distressed business, I am not going to further detriment creditors. I need to know immediacy, the -- there's one cause of action here only, that's for a receivership, for nothing else.

I need to know if there's any proof of -- that a dilution has occurred since the -- these shareholders have asserted their rights.

I need to know on -- from just a balance sheet test what the -- the current assets and debts are.

And I need to know what the aged payables are, if, in fact, there's a problem paying payroll taxes. That's concerning to me.

But most importantly for the plaintiff, I need to know if you are seeking receivership because you're willing to fund the company in -- in the interim. Because if you are, that's a different story. If you're not, then, you know, then you are a minority shareholder. You are a group of 10 percent or under with very little statutory rights in the state of Nevada.

So that -- that's where I am going. I need to know more about the operations. And I already know I'm going to need evidence. Because the -- reading affidavits is very sterile to me. I -- it's -- I have a hard time putting it all together to determine who's right or wrong just from reading the affidavits.

MR. KAYE: Certainly.

MS. GALL: Your Honor, may I just speak very briefly.

THE COURT: Of course.

MS. GALL: On two points. One point is --

THE COURT: What I intended to do is give you guys a chance to regroup and bring you back. But --

MS. GALL: Sure.

THE COURT: Yeah. Go ahead.

MS. GALL: But before the regrouping, if Your Honor -- and -- and maybe I misunderstand Your Honor -- if Your Honor is going to require an evidentiary hearing before she appoints even a temporary receiver, is there really a point today to come back and finish argument merely to come back again --

THE COURT: Well --

MS. GALL: -- and rehash the same argument with witnesses?

THE COURT: That --

MS. GALL: That's just --

THE COURT: That's up to you.

MS. GALL: So that's -- that's one -- one question.

The second question I have --

THE COURT: I think I want to hear more from everybody.

MS. GALL: Okay. And that's fine.

And then the second question I have is Your Honor indicated that one of the things she would like when we return is information related to the assets and debts and financial information. We would consider that confidential and proprietary information, Your Honor. There's not a protective order in this -- in place.

The hearing is -- well, I don't see anybody else in here, but this I not a sealed hearing. We would want that information kept under -- for use in this litigation only, because there is a plaintiff involved in another litigation with us. And so we would want some type of protection in place --

THE COURT: Sure.

MS. GALL: -- before we reveal that information.

THE COURT: I understand that. Of course.

MS. GALL: Okay.

THE COURT: All right. So what -- what I'd like to do, is -- the last thing to tell you before we break right now is that any time you have a matter of this importance that -- set on a motion calendar, please coordinate with my office so that we can give you an afternoon, so that I don't have to do this dance where we stop and start. And I worried about what other people are appearing legal, please. I've got a pro per out there with a restrictive covenant on an employment agreement who probably can't afford a lawyer.

MS. GALL: I understand, Your Honor. We expected to be done much earlier. In fact --

THE COURT: No, it's --

MS. GALL: -- Mr. Iglesias has a -- has a plane he's going to miss.

THE COURT: Oh. I'm so sorry, you guys.

MS. GALL: Yeah.

THE COURT: Next time coordinate this with my office. We're -- we're so professional about, on the business court cases, respecting your -- your schedules.

So -- all right. So having said all of that, caucus, let me know when you're going to be available in the next 30 days to do evidence. We have rules in place for remote testimony through the court. And anyone can testify remotely as necessary.

And I still do want to hear the responses to everything before we conclude today's hearing.

MR. KAYE: Yeah.

MS. GALL: Understood, Your Honor.

THE COURT: Thank you.

So I think you can stay and -- leave your things there and just ask that last case to come in.

MS. GALL: Okay.

THE COURT: Thank you all.

[Court recessed at 11:48 a.m., until 12:02 p.m.]

THE COURT: Recalling the case of ***Arellano vs. Hygea***,

noting the presence of counsel and those present in the courtroom.

Is everyone here who we expect to come back?

MS. BROWN: Yes, Your Honor.

MR. ALBRIGHT: Yes.

MR. KAYE: Yes, Your Honor.

THE COURT: Good enough.

So Mr. Kaye, I'm going to consider that you've made your opening argument. I'll now listen to the opposition and give you a chance to reply.

MR. KAYE: Thank you, Your Honor.

THE COURT: Ms. Gall.

MS. GALL: Yes, Your Honor. Just give me one moment.

Your Honor, we're before you today on essentially a request for a temporary injunction and a receivership. That means that it is Plaintiff's burden to meet the standards of a preliminary injunction, essentially.

They must show that they will have a likelihood of success on the merits; they must show that legal remedy -- not only that legal remedies are inadequate, but there are no alternative less invasive remedies; the court must weigh the equities; and the court must require a bond.

In addition, here, if the court is inclined to appoint a receiver, the -- under the statutes, the directors are preferred in the receivership.

I want to address each of those points in turn as briefly as I can, Your Honor, because I know we've already been here for a while.

First, Plaintiff's application is based on declarations that are inadmissible. Although they did file two -- two corrective declarations this morning for Mr. Fowler and Mr. Watts, all the remaining declarations were not made under penalty of perjury as required by 53.045. I consider that telling and maybe it'll be corrected and maybe it won't. But as of today it is not corrected.

In addition, Your Honor, the declarations, if you look at them, they are not based on personal knowledge. They contain hearsay. They reveal information obtained by Hygea's former general counsel in the course of his representing Hygea, which I will get to in a moment. And they offer information that is just simply irrelevant to this court's consideration of the case.

For this reason, Your Honor, we are asking that the court strike the declaration -- the declarations. And with respect to the e-mail that was proffered from Hygea's former general counsel, we would ask, and if the court would like us to submit a written motion, we will, we will ask the court either remove it for the record or at least place it under seal.

On the point of Hygea's former general counsel, I could say a lot about that, because the general counsel is who retained me. And when he retained me, his tune was different. And so now that he's changed his tune, I don't really know what to say. And I'm actually unsure at this point what I can and can't reveal without engaging in a subject matter waiver of privilege.

As for the merits, even if the court ignored the admissibility

issues inherent in Plaintiff's declarations, the court still has no basis to appoint a receiver.

I want to address the 10 percent issue first. It's -- it's very clear, and I even have the case with me, I'm going to read directly from it.

In ***Searchlight Development vs. Martello,*** 84 Nev. 201, still good law in Nevada, the court -- the Nevada Supreme Court was reviewing the appointment of a receivership. And there the court said:

> Here, as of the moment, when the court is determining whether or not a temporary receiver should be appointed with due regard to the relevant statutes, less than the required statutory percentage of the stock is now demanding such appointment.

This is the controlling time, rather than the moment when the complaint and application were originally drafted or signed or even filed in the court. So it's when the court is considering the application of a temporary receiver that the court has to make a determination as to whether the plaintiffs collectively own more than 10 percent of the issued and outstanding stock.

Now, I know there's been an issue raised as to dilution. There has been no dilution of the type that Plaintiffs infer. There was no stock dump yesterday. They did not purposefully, you know, dump another, you know, 100,000,000 shares onto the market to cause Plaintiffs' collective percentage to be diluted. Rather, the new issuances that occur since October of 2016, when the -- when the SPA was entered into, were for already issued warrants that were exercised.

Is the -- the warrants were already entered into. The Hygea had a contractual obligation to issue the shares under those warrants. It is not the type of dilution that would cause this court inequity to ignore the 10 percent threshold.

In addition, Your Honor, beyond the 10 percent issue, Plaintiffs' complaint is essentially that Hygea is imminently expected to receive a large Medicare reimbursement and that a receive is required to oversee Hygea to ensure that the funds from the reimbursement are properly used and not diverted by Hygea's management.

First, Plaintiffs' suggestion, that Hygea's management would divert funds is entirely speculative. And it's based on hearsay or conclusory assertions. Plaintiffs have provided no evidence other than these conclusory assertions and hearsay that Hygea's management has ever diverted funds.

Rather, they have these really amorphous declarations, which themselves are still not admissible, that speak to Hygea's sweeping funds from the accounts of the practices. Well, Hygea sweeps the accounts from its medical practices so it can -- so that it can administer the practice's finances. That's the whole business model of Hygea. But it has never swept funds from the accounts of its medical practices other than for the maintenance of the practices.

The declaration submitted by Plaintiffs suggest that the sweeping is somehow nefarious. But, in fact, it is part of good financial governance to ensure that the funds are not diverted by Hygea, including its share -- shareholders and stakeholders.

They also submit and rely upon the Fowler declaration, which the entire Fowler declaration is based on hearsay. In fact, it's based on hearsay within hearsay within hearsay. He talks about what FTI concluded. He doesn't even say that he spoke to somebody from FTI. So he spoke to somebody else that maybe spoke to somebody else that maybe spoke to somebody else. We don't even know how far down this goes.

And apparently whoever down the line or whoever up the line told Mr. Dragelin that Mr. Iglesias cooked the books. Mr. Iglesias never said that, never ever ever said that.

Second, I want to talk about the accusation of Hygea's mountain -- supposed mountain of unpaid bills, including payroll. And I'm not sure if they're suggesting or not suggesting that the reason for that being can only be diversion of funds. But it's just not true. Hygea is a young growth-stage company. They say that Hygea has been around for 10 years. But for the last four years, Hygea has grown from approximately 12 million to approximately 400 million. It's been in a period of rapid growth where it's been acquiring a lot of medical practices, which has caused a mismatch in maturities from when Hygea gets Medicare reimbursements to when its more recent maturities mature, such as payroll or payroll taxes.

Now, let me talk about payroll, because I don't want to suggest in any way that Hygea has not paid its W-2 employees. It has. Hygea has paid all its W-2 employees, including physicians and administrative staff.

The balance check, we address that in our papers. The money left Hygea. If it bounced on the employees' end and if that's all they're pointing to, one bounced check out of over 600 physicians and administrative staff, well, I think the likely explanation is, is that it's because the funds weren't readily available in that employee's bank account.

There have been a handful of C Suite employees, including Mr. Iglesias and Mr. Moffly, who are here with us today, who agree to voluntarily forego timely payment. I can tell you, despite what Plaintiffs' counsel apparently has been told by the former general counsel, the former general counsel informed me that he also voluntarily forewent payment. So we have a -- now a he said/she said situation.

As for the W-2s, again, Hygea switched payroll processors in the middle of last year. That has caused a delay in the issuance of the latter half of the year's W-2s.

As far as rent, none of Hygea's practices have been evicted due to nonpayment of rent.

And I also want to address the largest lender. We have submitted a declaration from Hygea's really only and largest lender, Bridging, which has said that Hygea is not in default. I'm not sure how much more clearly to address that other than to say they're not in default.

As far as payroll taxes, Plaintiffs seem to make a big deal of Hygea's failure to remit payroll taxes to the IRS. But Hygea's still within the time to deposit those funds with the IRS.

THE COURT: So you're not -- you're impounding, you're paying quarterly?

MS. GALL: I'm not sure. I'm not that much of an expert, Your Honor. And I -- I apologize for my ignorance. They do owe back payroll taxes, but they have not received any correspondence from the IRS yet. They did choose, as we've said in our papers, to voluntarily forego paying taxes during a temporary period of tight cash flows. And they will incur a penalty for that. And that is a decision that management has made --

THE COURT: All right.

MS. GALL: -- in their --

THE COURT: Did they file --

MS. GALL: -- business judgment.

THE COURT: Did they file their quarterly reports timely, though? Even showing the deficit?

MS. GALL: I would have to ask -- I would have to ask management that question.

THE COURT: That's all right. Go -- go ahead.

MS. GALL: And I think, Your Honor, the fact that management has been -- has made those admissions, it's actually very telling about what this management is like. They are being transparent, contrary to what Plaintiffs are asserting. They didn't have to make the admission about the payroll taxes. They didn't have to say anything. But they are trying to be transparent with everyone and they are trying to be transparent with this court.

Now, I know we're going to have an evidentiary hearing, so I'm not sure how much more -- because Plaintiffs' counsel made so many accusations, some of which weren't even in his moving papers. I'm not certain what to address. I -- I do know I have in my notes here that he talked about breach of the -- the SPA. Well, they have a litigation against Hygea for that. It's pending before Judge Mahan. There's not a claim for breach of the SPA here. And in any event a breach -- a breach of contract isn't even a basis for a receivership.

I just want to make sure, Your Honor, I address everything. And I think where that brings us, Your Honor, is -- is that it would be an unprecedented and really extraordinary remedy for this court to appoint a receiver. Even a temporary receiver or an interim receiver on the mere basis of owed back taxes.

In fact, the weighing of the equities that this court will be required to do prior to issuing a receivership shows that there is no basis to appoint a receiver. In fact, if a receiver is appointed, Hygea will be rendered insolvent nearly immediately, and the value of Hygea's shareholders will be destroyed by a loss of the HMO plan contracts. Under those contracts, once a receivership is put into place, the contracts can be cancelled.

Indeed, the only individual standing to benefit from the appointment of a receiver are Plaintiff N5HYG and its beneficial owners, Ren and Mr. Bhagvala, who we believe are trying to devalue the company and purchase it for pennies on the dollar.

Now, that is not speculation. If you look at Mr. Williams'

e-mail, he makes the suggestion that Mr. Bhagvala should be in management of the company.

Plaintiff and Ren are trying to achieve by this litigation what they cannot in the securities lawsuit they have against Hygea and pending in federal court, or by proxy challenge. In fact, when Plaintiffs' counsel was arguing and asked for an interim receiver, he asked for an interim receiver to open up the books of Hygea. It's very telling, Your Honor, that what they're trying to do here is they're trying to get information that they're otherwise not entitled to, either because the securities lawsuit is current -- discovery in the securities lawsuit is currently stayed, because there were claims brought under the PSLRA, or because, as Your Honor pointed out, they don't meet the 15 percent threshold under the NRS to get certain accounting records. And so they are trying to achieve by a receivership what they cannot otherwise get.

One point, because I would like -- Your Honor did ask for information related to the financials of the corporation, before I make that point, we do have evidence with us of the issued and outstanding shares. We have the VStock transfer list. We did not file it with the court, because again, it contains confidential information and there's no protective order in place.

And so, Your Honor, before -- if Your Honor would like to see it, I'm happy to show it to you in camera --

THE COURT: Not today.

MS. GALL: -- but before I turn it over, I -- I would like to ask my colleague, Mr. Ewing, to talk about the financial information Your

Honor requested. Before I do so, I would like to get on the record what type of sealing or protective order we have in place here.

We would ask for a protective order that limits this information to the court and to attorneys' eyes only. Or in this instance, attorneys' ears only.

THE COURT: For -- if you can come to that type of arrangement in the case, that would be great.

So you wanted Mr. Ewing to have a minute to address the court before I turn it back over to Mr. Kaye?

MS. GALL: Yes, Your Honor. But before he reveals financial information --

THE COURT: I -- I'm not sure that's necessary today. I --

MS. GALL: Okay. That's fine.

THE COURT: Unless -- yeah.

MS. GALL: Okay. That's fine. Then we --

THE COURT: I think -- I think we have one nonrelated person in the courtroom.

UNIDENTIFIED SPEAKER: Sure. I can step out if you like, Your Honor.

THE COURT: No, that's all right. Court is always open. We do the peoples' business. I'm not going to close the courtroom. So.

MR. EWING: I wasn't going to speak to the finances. I just wanted to add one point.

Mr. Moffly and Mr. Iglesias informed me that they have filed with the IRS both for the taxes paid in 2017 and unpaid.

THE COURT: All right. So the quarterly reports the 940s are current.

MR. EWING: Yeah.

THE COURT: Thank you.

MR. EWING: That's right.

THE COURT: Thank you for that.

MR. EWING: Thank you.

MS. GALL: Thank you, Your Honor. And then after Plaintiffs -- see, we oppose the receivership, and then after Plaintiffs' counsel speaks, I know Your Honor had asked for availability in the next 30 days for the evidentiary hearing and we can provide that --

THE COURT: Very good.

MS. GALL: -- at that time.

THE COURT: Thank you.

MS. GALL: Thank you.

THE COURT: All right. Mr. Kaye, your reply, please.

MR. KAYE: Your Honor, I want to address some of the things that management's counsel said and then get to some of the questions that the court had.

THE COURT: Thank you.

MR. KAYE: Some of the more perhaps -- some of them -- some of them are administrative, some of them go to the substance.

Once again, their defenses, such as they are, are that they've got these good financials that are just around the corner. We are entitled to see those financials under the stock purchase agreement.

Now, once again, this is not a -- this is not a case of -- for -- for breach of the stock purchase agreement. But that is illustrative, that sheds some light here. That we have been promised those financials. In fact, we've been promised financials going back several years, since October of 2016, and they have not appeared yet.

Here, we don't even have any indication beyond the general [indiscernible] description of what the financials will say.

There's the assertion that this is some -- some sort of misguided proxy fight. I think I addressed that earlier. Once again, no documentation of any of that.

I want to address the issue of the HMO contracts that supposedly are -- would in some manner preclude appointment of a receiver. And I don't -- I think that argument fails for a couple of reasons.

First of all, we can't reward management if they have effectively rigged the company to explode in the event that shareholders exercise their right to secure judicial oversight of the corporation.

Second of all, none of those HMO contracts are attached to the papers. None of the provisions are even cited. We don't know what they say. And they could say any number of things.

Third of all, what I suspect they say and what I suspect they're getting at, and this is conjecture, because we haven't seen them, is that there are protections for the HMOs in the event of a bankruptcy-type receiver.

But once again, we are not looking for a receiver to wind up

the company and sell it off. The opposite. We're looking for a receiver to stabilize the company and allow it to survive.

Another thing that I -- that's lacking in their papers and that I think is -- is telling is that we have not heard from any of the providers and any of the doctors that, in fact, things are going well. Once again, these doctors and providers who Mr. Williams indicates he is concerned about their departure, that they are starting to leave, these doctors are Hygea's business. That is Hygea's asset.

I want to talk about some of the specific points that -- that Defendants made. But first I want to return to one -- one more thing that they talk about in their papers, which is that there is a white knight investor who's coming around the corner. Well, that's another thing that we've been hearing for months going on years. And Mr. Fowler submitted a supplemental -- supplemental declaration on that point.

Once again, if the company was doing as well as management suggests, and if, in fact, the cash flow problems and the tax payment problems and the not paying the executive problems, if, in fact, that that's all part of the plan to build a -- a better company for the future, then people ought to be lining up to invest. And why the difficulty with getting this white knight investor who never shows up?

I want to address a few specific points. One of them is the issue of the declarations. Two of the corrected declarations with the requested language have been submitted. I don't foresee any problem with the others. I mean, obviously, everyone who submitted declarations did so with the understanding that they were being truthful with the court.

The -- the ***Searchlight*** case that talks about the -- when you calculate the -- when you calculate the 10 percent ownership, that -- that doesn't get to the issue of an improper dilution or a dilution that is -- that is not permitted under the governing agreements. And even if the -- even if the -- the dilution that's occurred here has happened because of preexisting warrants, that's still inconsistent with the stock purchase agreement and with its representation of -- or with the combination of its representation of what percentage ownership N5HYG had, and the counterpart nondilution provision.

I want to talk briefly about the supposed forthcoming Medicare reimbursement. And we talk about that in our papers, as well. That's a -- a risk for the -- it's a risk for the company in either direction. If, in fact, it comes and it goes into a system that is as disorganized or worse as the status quo, then that once-in-a-couple-of-years opportunity or once-at-least-in-a-couple-of-months opportunity could be squandered. And that squandering could itself be fatal to the corporation.

On the other hand, this is another thing that we've been hearing about, wow, there's going to be this big lump sum payment from the government. And thus far it doesn't seem like it has happened. That gets, again, to the issue of transparency. Once again, we are entitled to get financial information under the stock purchase agreement. There's the suggestion that, well, you know, we don't have any right to see this information or that that's somehow inappropriate. Well, no, we have every right under the stock purchase agreement. And moreover, the court has the inherent authority to ensure the -- to ensure the

responsible operation of this corporation for the benefit of all of the stakeholders. And the first part of that is, again, transparency.

I want to talk about the issue of sweeping practice accounts. Once again, why is this happening at the same time that Hygea is in arrears to these practices? That is itself a quite unusual situation. And we see that that has happened with -- at the very least with Dr. Cohen's practice, where there was a delinquent payment at the same time that the account is -- that the account is being swept.

So I want to talk briefly, then, about the mechanics of going forward and address some of the points that the court has -- that the court has made. One of them is the -- the scope of the receivership. And as we have -- as we present in our papers, we have suggested that Fred Waid of the Hutchison Steffen firm serve as receiver. We think that he's well qualified. He does have experience with medical clinics and with -- with Florida, the Florida market in particular. And he really hits both sides of the issues here, which is both medical management and the financial situation.

THE COURT: And isn't the Florida model unique in the way that medical practices are owned?

MR. KAYE: Your Honor, I -- I think that there -- there are differences --

THE COURT: Right.

MR. KAYE: -- in state-to-state regulations. We think that he does have experience with Florida and also does have experience with medical practices. And he brings to bear the resources of the Hutchison

Steffen firm.

That leads into the question of payment for the receivership. Now, we would be -- we would be willing to pay for the receiver subject to the ability -- and I don't think either of these is -- is entirely -- is at all -- at all inconsistent with a blanket willingness to -- to fund the receiver. But subject to our ability to seek -- to seek reimbursement in the event that it turns out that the entire need for the receiver can be -- can be placed squarely on the shoulders of one person or another.

And also as the receiver comes back and reports, if it turns out that the company is in the black either because it has been in the black, which doesn't seem to be the case given the admissions made here, or because of the actions taken by the receiver, or because of intervening events, that then we believe the corporation should fund -- should fund the receiver at that point. But in the interim, on an interim basis, we would certainly be willing to do that.

I want to talk about the -- you know, one of the questions that the court raised is the immediacy, you know, what are the -- the risks here? Once again, I think there's two things that illustrate the immediate need. One is that the biweekly payrolls, the last one was February 9th, that means there's going to be another one on Friday and that's another payroll that I think a lot of people are going to be sweating. We heard the concern from Mr. Williams that, in fact, providers are leaving. If there is a nonpayment of payroll, that will in all likelihood be the end of Hygea, because at that point -- at that point practitioners leave.

And that gets to the second issue of immediacy. I think it's telling how much has developed in this situation simply since we filed our petition. You've seen the departure of Mr. Williams, you see the apparent departure of another top executive, Dan Miller, which is -- seems to be ongoing, as noted in the defendants' papers. And you've also seen the continuing problems illustrated by Dr. Cohen's declaration.

So this is a -- an apparently accelerating situation. And that illustrates the need at the very least to have someone in there overseeing the situation that -- that can report to the court in the interim before there is -- before we continue with a -- with an evidentiary hearing. Although, certainly, the preferable situation is to have a receiver who has authority over the corporation both to look at the corporation and to also replace the existing management, which appears to be down to Mr. Iglesias at this point. Because, remember, Mr. Moffly indicates in the papers that he is the former CFO. The rest of the top executives are unpaid and several of them are departing. So I think it's appropriate to have someone -- to have someone in there to manage the corporation.

The -- the court inquired about the single cause of action, the fact that there's a single cause of action here. And that -- this is a -- an action under the statute and it is an exercise of these shareholders' rights to -- to seek this -- to seek the appointment of a receiver.

Some of the plaintiffs do have other actions, as -- as has been noted, but those are distinct actions. Those are actions for, you know, for example, in the case of N5HYG, we just joined with another

plaintiff to seek damages. This is not a damage action. It's simply an action to protect the corporation.

The -- I want to talk about the issue of a protective order and I want to talk -- we certainly would have no objection to a protective order. What we do have an objection to is an attorneys' eyes only or an attorneys' ears only provision in the protective order. And there's a couple of reasons for that.

First of all, once again, our clients are shareholders, and they are entitled to this information as shareholders.

Second of all, in the instance of N5HYG, there's specific authority in the -- or specific -- specific obligation, in fact, multiple obligations in the stock purchase agreement for them to be provided this information. So it seems to be inappropriate, after Hygea has promised to share the information, to then try to seek a court order saying, well, we're going to -- we're going to present it without it going to -- without it going to the clients, to the shareholders themselves. I think that, again, indicates the attitude that -- that management has conveyed regarding its obligations to the shareholders.

In terms of preparation for a -- an evidentiary hearing, and we think once again to be clear, there should be some judicial oversight of the corporation in advance of any evidentiary hearing because of the day-to-day nature of the situation that Hygea faces.

But one of the things that I think would be very helpful and would -- would ensure a full presentation to the court is something I mentioned earlier, which is the issue of nondisclosure agreements and

confidentiality provisions. Hygea has used these in a number of its agreements with many of the relevant people that have information about the company. One in particular is the entity that's come up a couple of times, which is FTI. The corporation's consultant that has engaged in a review of its books, but appears to find itself compelled in its estimation to refrain from discussing or presenting to the court what it has found.

Now, I would anticipate that at an evidentiary hearing, we might use the CourtCall capability to -- to take remote testimony from officials with FTI and -- and with other individuals, as well. Another example that is Mr. Miller, who is a departing executive, as indicated in the papers.

But in the meantime, we should not have confidentiality or -- provisions or NDAs interfering with the preparation of that information for the court, and those should be relieved for purposes of preparation -- as -- for purposes of preparation for the hearing.

Another thing, in addition to -- in addition to that, another thing that I think would be quite helpful for any evidentiary hearing is, look, if there is any documentation of the arguments made in the -- in the management response, for example, the supposed HMO contracts that put the corporation at risk, the -- the financial information, even the letter of intent that supposedly exists from the new investor, these should be provided in advance of the hearing, and they certainly should be presented to -- to the court.

And I'd be happy to answer any other questions that the

court may have, either about the substance of the motion or about, you know, or about how we would foresee matters proceeding here. But to recapitulate, we find it critical to have some measure of judicial oversight immediately. We are willing to finance that on a -- on the same interim basis as we seek that -- as we seek that oversight, and would certainly seek, you know, an expedited -- expedited analysis of the long-term need, or at least medium-term need or something beyond the next few weeks in terms of an evidentiary hearing and in terms of a full presentation of the -- of the evidence.

THE COURT: Thank you both.

The matter is submitted at this point. This is the emergency petition for appointment of receiver on OST. The matter's submitted and subject to the holding of an evidentiary hearing. Court declines to grant interim relief for a number of reasons.

I -- there's -- I just see no need for interim relief, because the issue -- the potential of the receivership still hangs over the head of the -- the company in the meantime. I have at this point an explanation with regard to the nonpayment of payroll taxes, and executives foregoing pay during a cash crunch.

I -- I would have to find that there's mismanagement or insolvency to grant interim relief. I don't have enough here. The affidavits and declarations I have at this point lack specificity for me to make any finding with regard to mismanagement or insolvency.

Clearly, they -- they suggest that you believe that's occurred and that -- that would have to be flushed out at an evidentiary hearing for

me to grant relief.

The -- appointing a receiver to stabilize a company is just not an interim option to me to -- to provide that on an interim basis. I -- I would suggest the parties work together on a protective order and that the issue of HMOs and the effect of a receiver be something that the defendant be -- should be ready to address at the evidentiary hearing.

One question I also had to the plaintiff, who I -- I should have asked before I started ruling. Do Plaintiff have any representation -- any of the plaintiffs have any representation on the board of directors?

MR. KAYE: To my knowledge --

THE COURT: Are corporate formalities maintained? Regular annual shareholder meetings and board meetings, is all of that --

MS. GALL: There --

THE COURT: -- in order?

MS. GALL: There was a board meeting just yesterday, Your Honor.

THE COURT: All right. So the annual shareholders meeting and the list and the board is meeting regularly?

MS. GALL: My understanding -- and I would need to --

THE COURT: Sorry, we'll give you a chance, Mr. Kaye.

MR. KAYE: Yeah.

MS. GALL: -- explain this, and that there is a reason why the annual shareholder meeting was not held last year. My understanding, and they can -- Mr. Iglesias and Mr. Moffly can correct

me if I'm wrong, is -- is that there was an intention for the shareholder meeting to be held this year.

But there is a legal --

THE COURT: Well, there's a statutory requirement, unless there's a waiver to do that annually.

MS. GALL: I believe -- and they can correct me if I'm wrong -- it had to do with when the corporation was potentially going public. They're nodding yes. And we can have a full explanation for the court about that issue at the evidentiary hearing.

THE COURT: Okay. You know, if -- if it appears that there's an ongoing deterioration, or if it appears as though there is a mismanagement or an -- a solvency issue, I -- I will make an effort to protect those minority shareholders.

MS. GALL: I understand, Your Honor. And I apologize that I don't have a full explanation --

THE COURT: Well --

MS. GALL: -- about the annual shareholder meeting --

THE COURT: -- nobody does.

MS. GALL: -- right now.

THE COURT: This case is not even a month old.

MS. GALL: I understand, Your Honor.

THE COURT: So --

MS. GALL: And so I appreciate Your Honor's inclination to hold the evidentiary hearing, so that we can -- so both sides --

THE COURT: Right.

MS. GALL: -- can make a full presentation before this court.

THE COURT: Thank you.

Mr. Kaye, you wish to add something?

MR. KAYE: Your Honor, I do. I just want to address briefly your question.

Under the stock purchase agreement, N5HYG has observer rights on the board. We understand that some board meetings have taken place, but we haven't been notified of them, and had those rights, respectfully.

THE COURT: That's an issue, then. All right.

So I need availability within the next 30 days. Today is Wednesday. Can you provide that to me by Friday afternoon so that we can schedule something next week?

MS. GALL: We can -- we can, Your Honor.

THE COURT: If -- if you both need until Monday afternoon, I understand.

MS. GALL: If I --

THE COURT: Because I assume you have witnesses. And I notice the affidavits came from several different states for the declarations.

MS. GALL: If we could have the court's indulgence until Monday, I would really appreciate that.

THE COURT: Let's say Monday. Monday at 5:00, if you can give me availability.

MR. KAYE: Certainly.

THE COURT: If -- if there's any objection to remote appearances, make that clear right away. Because my tendency is to grant that very liberally.

MS. GALL: I understand, Your Honor.

THE COURT: I want the matter to be determined on the merits.

MS. GALL: Understood. Your Honor, you may be getting to this one housekeeping point. Could we get some direction on the orders for the motions -- the other two motions that you decided?

THE COURT: Sure. The judicial notice requirement -- the judicial Notice Motion, Mr. Kaye should prepare the order. Mr. Kaye should also prepare the order denying the Motion to Dismiss on the lack of jurisdiction issue.

MS. GALL: And will we have --

THE COURT: And --

MS. GALL: -- an opportunity to review?

THE COURT: You will have the opportunity to review --

MS. GALL: Thank you.

THE COURT: -- and approve the form. That's my standard in all business court cases.

MR. KAYE: Certainly, Your Honor.

THE COURT: And availability in the next 30 days. Do you think you need more than a day? We have half days on Wednesdays and Thursdays due to the docket. Address that on Monday --

MS. GALL: Yes.

THE COURT: -- when you let me know, as well.

MS. GALL: Okay. Very good.

THE COURT: And if you can, in that same e-mail or fax on Monday, give me a tentative list of witnesses.

MS. GALL: Very good.

THE COURT: Not to hold you to it, but I -- I need to plan, too.

MS. GALL: Understood, Your Honor.

THE COURT: All right.

MR. KAYE: Your Honor, can I raise a few more housekeeping points?

THE COURT: Of course.

MR. KAYE: Regarding the evidentiary hearing.

THE COURT: Of course.

MR. KAYE: First of all, as to remote testimony --

THE COURT: Uh-huh.

MR. KAYE: -- we would probably seek the issuance of subpoenas for that. And I want to know if there's any objection to the issuance of subpoenas for remote testimony, such that this court would issue the subpoena. And then depending on the court where the testimony takes place, we may need to perfect it in that state.

THE COURT: I believe that our court rule takes that into consideration. So I would suggest that you take a look at --

MR. KAYE: Certainly, Your Honor.

THE COURT: -- the court rule.

MR. KAYE: The other -- the other housekeeping matter, in terms of materials that are going to -- they are going to be provided either that support the contentions that were made in the response brief that's been submitted or in terms of, you know, documents for use at the hearing, I would suggest a deadline be put in place. I recognize that that could be effective in some sense by the negotiation of a protective order.

THE COURT: I would suggest that if you can't resolve that between yourselves, ask for a telephonic. And I will intervene via telephone. Just -- I'll entertain all telephonics on business court cases and anything that's not dispositive or asking for relief, scheduling issues, that type of thing, we do telephonics all the time. Saves time and effort, even for the local lawyers.

MR. KAYE: Thank you, Your Honor. We just want to make sure that we know what facts in evidence we're dealing with in advance of the hearing.

THE COURT: Sure. I would suggest that you --

MS. GALL: Try to --

THE COURT: That's why I'm suggesting a tentative witness list.

And there's a follow-up to that?

MS. GALL: Yes, Your Honor. Not to that point. One further point on the protective order.

If we -- I -- my hope is, is that we can agree on a protective order, just the same way we can agree on a date and the witness list and deadline for the evidence, so on and so forth.

If we cannot agree on a stipulated protective order, how -- would Your Honor entertain competing protective orders, and how would she like to receive those?

THE COURT: I would suggest that -- agree to what you can agree to, and then schedule a hearing with me as to what you can't agree on. And I'll be happy to let either of you appear telephonically.

MS. GALL: Understood, Your Honor.

MR. KAYE: Thank you, Your Honor.

MS. GALL: Thank you.

THE COURT: Does that conclude today's hearing?

MS. GALL: Yes.

MR. KAYE: I believe it does, Your Honor.

THE COURT: All right. Thank you all.

MS. GALL: Thank you, Your Honor.

MR. ALBRIGHT: Thank you, Your Honor.

MR. EWING: Thank you, Your Honor. Appreciate it.

[Proceedings concluded at 12:44 p.m.]

ATTEST: I do hereby certify that I have truly and correctly transcribed the audio/video proceedings in the above-entitled case to the best of my ability.

Shawna Ortega, CET*562

EXHIBIT “8”

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

MIAMI DIVISION

HYGEA HOLDINGS CORP.,

Plaintiff,

v.

LIBERTY INSURANCE UNDERWRITERS, INC.

Defendant,

_____/

Case No. 1:18-cv-20833-FAM

PLAINTIFF'S RESPONSE IN OPPOSITION TO DEFENDANT'S MOTION TO DISMISS WITH PREJUDICE

A claim for declaratory judgment requires plausible allegations of a ripe dispute over which the parties have a *bona fide* need for a federal court's intervention. Defendant Liberty Insurance Underwriters, Inc. ("Liberty") does not claim that Plaintiff Hygea Holdings Corp. ("Hygea") failed to satisfy this straightforward pleading standard.

Liberty instead seeks dismissal with prejudice at the pleading stage by implicitly arguing that under no set of facts pled in the underlying complaint for which Hygea seeks a defense could Liberty ever have a duty to defend. This position ignores the procedural posture of this case, the broad scope of the duty to defend under Florida law, the narrow interpretation which must be given to Liberty's chosen policy exclusion on a motion to dismiss, and the actual allegations and causes of action against Hygea in the underlying complaint.

Hygea may ultimately be liable in damages to an entity not owning 5% or more of its common stock, and Hygea's complaint for declaratory judgment plausibly alleges as much. The complaint also alleges a basis for equitable estoppel inherent in the delay and foot-dragging

Liberty showed in the selection of counsel process. Taking the facts pled as true, Liberty's motion should be denied.

FACTUAL BACKGROUND AS PLED IN HYGEA'S COMPLAINT

On motion to dismiss, the well pleaded facts as well as all inferences to be drawn from those facts must be taken as true. *See American Dental Ass'n v. Cigna Corp.*, 605 F.3d 1283, 1288 (11th Cir. 2010); *Mills v. Foremost Ins. Co.,* 511 F.3d 1300, 1303 (11th Cir.2008). Liberty pays lip-service to this standard, instead arguing its own case on the merits while largely ignoring the allegations pled by Hygea.

Liberty sold to Hygea a Directors, Officers, and Company liability insurance policy for the period December 20, 2016 through December 20, 2017 (the "Liberty Policy"). D.E. 1, ¶¶ 7-12. Hygea and certain of its directors and officers were sued on October 5, 2017 in the matter styled *N5HYG, LLC and Nevada 5, Inc. v. Hygea Holdings Corp., et. al.*, Case No. A-17-762664-B in the District Court, Clark County, Nevada (the "Underlying Action"). *Id*. at ¶ 1, 19. The Underlying Action seeks damages pursuant to twenty-one (21) causes of action asserted by two plaintiffs: (1) N5HYG, LLC and (2) Nevada 5, Inc. D.E. 1 at ¶ 1, 20; D.E. 1, Ex. B. The Underlying Action alleges that at the time suit was filed, N5HYG owned 8.57% of the outstanding shares of Hygea. *Id*. at ¶ 20.

The Underlying Action seeks damages suffered by a legally distinct entity other than N5HYG. Seventeen (17) causes of action are asserted by both Nevada 5 and N5HYG.[1] Ex. B.

[1] Count I (Statutory Securities Fraud under Nevada law); Count II (Federal Securities Fraud); Count III (Failure to Comply with State Registration Requirements); Count IV (Failure to Comply with Federal Registration Requirements); Count V ("Control Liability" under Nevada law); Count VI ("Control Liability" under Federal law); Count VII (Common Law Fraud); Count VIII (Negligent Misrepresentation); Count IX (Silent Fraud; Material Omission); Count XII (Breach of Fiduciary Duty and Corporate Waste); Count XIII (Breach of the Duty of Candor against the individual defendants); Count XIV (Breach of the Duty of Loyalty against the individual defendants); Count XVI (Tortious Interference with Contract); Count XVII (Civil Conspiracy); Count XVIII ("Concert of Action"); Count XIX (Unjust Enrichment); and Count XX (Constructive Fraud).

Only four are brought solely by N5HYG.[2] Both plaintiffs seek "**Loss**" as defined by the Liberty Policy, the Underlying Action was filed within the policy period, and various "**Wrongful Acts**" are alleged to have been committed by various insureds, including Hygea and its directors and officers. D.E. 1 at ¶¶ 15-16, 20-21, 23.

The Underlying Action does not allege that Nevada 5, Inc. directly or beneficially owns any of Hygea's common stock. It merely alleges Nevada 5, Inc. owns all of the membership shares of N5HYG:

> 19. Plaintiff N5HYG, LLC…is a limited liability company organized under the laws of the State of Michigan for the purpose of acquiring the shares at issue in this lawsuit. All of [N5HYG's] membership shares are owned by Plaintiff Nevada 5, Inc., a corporation organized under the laws of the State of Nevada.

D.E. 1-4, pg. 5. The Underlying Action also speaks to the formation of N5HYG, but falls short of alleging that Nevada 5, Inc. is the direct or beneficial owner of any Hygea stock:

> 34. Eventually, Nevada 5, in reliance upon these representations and omissions, formed N5HYG to execute a Stock Purchase Agreement dated October 5, 2016, which N5HYG did…
>
> 35. Under the terms of the Stock Purchase Agreement, N5HYG paid $30 million for 23,437,500 shares of Hygea's Common Stock, constituting 8.57% of the outstanding shares…

D.E. 1-4, pg. 9 (emphasis supplied).

Hygea – on its own behalf and on behalf of its directors and officers – timely tendered the Underlying Action to Liberty, seeking a defense and indemnity. Liberty acknowledged receipt of the tender, but failed to secure counsel or obtain an enlargement of time to respond to the Underlying Action. *Id*. at ¶¶ 24-25. After waiting more than ten days, local counsel for Hygea wrote to Liberty, explaining that a notice of default had been received by the insureds, asserting

[2] Count X (Breach of Contract); Count XI (Rescission of Contract); Count XV ("Minority Shareholder Oppression"); and Count XXI (Accounting).

that Liberty was in breach of its obligations, and informed Liberty that a Las Vegas law firm had been identified to represent the insureds' interests. Liberty responded three days later, consenting conditionally to the selection of counsel (provided an agreement on rates, budget, and billing guidelines could be reached). *Id*. at ¶¶ 25-26. Hygea's chosen counsel refused to proceed, prompting Hygea to again request that Liberty secure counsel while the insureds separately pursued that effort without Liberty. Hygea was able to secure representation by Ballard Spahr, and requested that Liberty acquiesce in Hygea's choice of counsel. *Id*. at ¶¶ 27-28.

Rather than agree, Liberty engaged coverage counsel and advised Hygea that it was vetting two other firms including Greenberg Traurig. Hygea again requested approval of its chosen counsel, and advised Liberty that plaintiffs in the Underlying Action were pursuing a $40 million default judgment. Rather than consent to Ballard Spahr at lower rates, and even though Hygea would be responsible for the costs of defense within the retention of the Liberty Policy (or all of them were Liberty to deny coverage – which it did and likely had already decided to do), Liberty rejected Hygea's choice of counsel. *Id*. at ¶¶ 29-30.

Liberty finally refused to defend and denied coverage on December 11, 2017. *Id*. at ¶ 31. Liberty's denial was based on the purported application of the "Major Shareholder Exclusion," which states that:

> "[Liberty] shall not be liable…for **Loss** on account of any **Claim** made against any Insured…brought or maintained in any capacity by, or behalf of, or at the behest of any individual, firm, corporation or entity owning 5% or more of the outstanding common shares of the **Company**, either directly or beneficially."

Liberty Policy, End. 3 (emphasis in original). The delay inherent in Liberty's response to the tender and its failure to consent to Hygea's chosen counsel prejudiced Hygea. D.E. 1 at ¶ 41. Liberty's refusal to agree to Hygea's chosen counsel with knowledge that it was going to deny

resulted in the retention by Liberty of counsel at higher rates than what the insureds had already arranged. *Id*. at ¶ 42. Even in the absence of coverage, Hygea has been damaged by Liberty's conduct by paying legal fees and costs it would not have otherwise been obligated to pay had Liberty acted fairly, honestly, and with due regard for Hygea's interests, including but not limited to defense costs at the hourly rates for which Hygea could have secured counsel. *Id*.

Liberty disagrees that it has any obligations to Hygea and its directors and officers under the Liberty Policy or otherwise stemming from the Underlying Action, and asserts that its conduct and coverage denial were proper under the circumstances. *Id*. at ¶¶ 32-35, 43.

ARGUMENT AND MEMORANDUM OF LAW

I. Hygea states a claim for declaratory relief that Liberty owes a duty to defend and is equitably estopped from claiming that it need not pay for the more expensive defense counsel it agreed could defend the Underlying Action.

The Declaratory Judgment Act provides that "any court of the united States, upon filing of an appropriate pleading, may declare the rights and other legal relations of any interested party seeking such a declaration." 28 U.S.C. § 2201(a). To state a claim for declaratory relief, the facts alleged must establish a substantial continuing controversy between two adverse parties and the controversy must be real and immediate. *See, e.g., Malowney v. Fed. Collection Deposit Corp*., 193 F.3d 1342, 1347 (11th Cir. 1999); *Hartford Fire Ins. Co. v. Weathertrol Maintenance Corp*., Case No. 16-24509-CIV-ALTONAGA/O'SULLIVAN, 2017 WL 5643298 at *3 (S.D. Fla. Feb. 21, 2017). Once jurisdiction for a declaratory action is properly invoked, "the action should be disposed of by a judgment which declares the rights of the parties." *Weathertrol Maintenance Corp*., 2017 WL 5643298 at *3.

Courts do not look to the ultimate merits of a claim for declaratory relief on a motion to dismiss. Indeed, the test for the sufficiency of a complaint for declaratory relief "is not whether

the plaintiff will succeed in obtaining the decree he seeks favoring his position, but whether he is entitled to a declaration of rights at all." *Id.* at *3 (quoting *Murphy v. Bay Colony Prop. Owners Ass'n*, 12 So. 3d 924, 926 (Fla. 2d DCA 2009)); *Miracle Marketplace LLC v. Ulta Salon Cosmetics & Fragrances, Inc*., Case No. 09-21403-CIV-GOLD/MCALILEY, 2009 WL 10669190 at *8 (S.D. Fla. Dec. 10, 2009); *Nationwide Mut. Co. v. Ft. Myers Total Rehab Center, Inc*., 657 F. Supp. 2d 1279, 1292 (M.D. Fla. 2009).

The possibility that the court will rule adversely to the plaintiff on the merits does not mean the request for a declaration of rights is not plausible. *Weathertrol Maintenance Corp*., 2017 WL 5643298 at *4 (declining to dismiss an action for declaratory judgment as to the duty defend for failure to state a claim because a real and immediate controversy existed between the parties that will harm the plaintiff if left unresolved); *Miracle Marketplace LLC*, 2009 WL 10669190 at *8 (declining to dismiss an action for declaratory relief where the complaint showed a bona fide dispute as to the parties rights under a lease); *Allstate Ins. Co. v. Vizcay*, No. 8:11-CV-00804-EAK-EAJ, 2011 WL 5870016 at *4 (M.D. Fla. Nov. 22, 2011) (denying a motion to dismiss where a bona fide, real, and immediate controversy was pled); *Murphy*, 12 So. 3d at 926 (reversing trial court's grant of a motion to dismiss a claim for declaratory relief because the court "improperly ruled on the final merits of [Plaintiff's] claim rather than the sufficiency of her complaint").

The authority relied upon by Liberty to set up its merits - based arguments is inapposite. *See Reese v. Ellis, Painter, Ratteree & Adams, LLP*, 678 F.3d 1211 (11th Cir. 2012) (reversing district court's grant of a Rule 12(b)(6) motion to dismiss Fair Debt Collection Practices Act claims under the plausibility standard); *Wooten v. Quicken Loans, Inc*., 626 F. 3d 1187 (11th Cir.

2010) (affirming district court's grant of motion to dismiss Real Estate Settlement Procedures Act and breach of contract claims under the plausibility standard).

Hygea's complaint easily satisfies the plausibility standard as applied to an action for declaratory relief. A real, present, and *bona fide* controversy is plausibly pled between Hygea and its directors and officers on one hand, and Liberty on the other, regarding Liberty's obligations to provide a defense to the Underlying Action and Liberty's duty to make Hygea whole due to its conduct in the counsel selection process. Nothing further is required to deny Liberty's motion. *See Clarendon National Ins. Co. v. Vickers*, Case No. 05-60805-CIV-MORENO, 2006 WL 8434796 at *4 (S.D. Fla. May 25, 2006) (denying motion to dismiss declaratory action involving the duty to defend where "Plaintiff alleged facts that would entitle it to relief" and insurer's complaint "properly seeks a determination of its rights and obligations pursuant to the insurance policy in question"); *Capitol Spec. Ins. Corp. v. R.G. Rancho Grande Corp*., Case No. 09-22685-CIV-MORENO, 2010 WL 1541187 at *2 (S.D. Fla. April 16, 2010) (denying motion to dismiss and finding declaratory action filed by insurer on the duty to defend alleged sufficient facts to satisfy Rule 8(a)).

Liberty knows this because this Court has previously told it so. In *Scheider v. Liberty Insurance Underwriters, Inc*., Case No. 14-62290-CIV-MORENO, 2014 WL 6979563 (S.D. Fla. Dec. 9, 2014), this Court denied a motion to dismiss for failure to state a claim filed by the same Liberty unit which issued Hygea's policy. Liberty argued the merits of its coverage position based on the alleged "relatedness" of two underlying claims seeking damages against Liberty's insured. This Court declined Liberty's invitation on a motion to dismiss to find, as a matter of law, that Liberty could escape its duty to defend based on a coverage defense. *Id*. at *2, n. 2 ("…on a motion to dismiss, Plaintiffs allegations, taken as true, trigger [Liberty's] duty to

defend."); *Id*. at *3 (denying the motion after "accepting Plaintiffs' well-pled allegations as true and resolving any doubt as to the duty to defend in favor of [the insured]).[3]

II. Liberty cannot sustain its burden to prove the Major Shareholder Exclusion completely and unambiguously eliminates its duty to defend the Underlying Action.

Liberty nevertheless argues the merits of its coverage defense here, asserting that the Major Shareholder Exclusion "absolutely precludes any obligation for Liberty to pay Plaintiff's Defense Expenses for the Underlying Lawsuit" because (1) one of the two plaintiffs in the Underlying Action "owns more than 5% of Hygea;" (2) N5HYG's ownership triggers the exclusion as to the entire Underlying Action; (3) the other plaintiff (Nevada 5, Inc.) allegedly has a "beneficial interest" in more than 5% of Hygea's stock; and (4) the entirety of the Underlying Action is brought "on behalf of" and "at the behest of" Nevada 5.

Florida law on the duty to defend, the policy language drafted by Liberty, and the allegations, causes of action, and theories of liability alleged in the Underlying Action belie Liberty's arguments.

[3] Liberty does not challenge the sufficiency of Hygea's estoppel based request for declaratory relief. Nevada law – the place where the defense is to be performed - recognizes the doctrine of equitable estoppel, which "provides that a person may not deny the existence of a state of facts if he intentionally led another to believe a particular circumstance to be true and to rely upon such belief to his detriment." *USF Ins. Co. v. Smith's Food & Drug Ctr., Inc.*, 921 F. Supp. 2d 1082, 1095 (D. Nev. 2013). In order to establish equitable estoppel, "(1) the party to be estopped must be apprised of the true facts; (2) he must intend his conduct shall be acted upon, or must so act that the party asserting estoppel has the right to believe it was so intended; (3) the party asserting the estoppel must be ignorant of the true state of facts; (4) he must have relied to his detriment on the conduct of the party to be estopped." *Id.* (quoting *In re Harrison Living Tr.*, 112 P.3d 1058, 1062 (Nev. 2005)). During the weeks that Hygea requested Liberty retain defense counsel to defend Hygea in the Underlying Action, Liberty knew both the nature of the allegations and the contents of its policy. Despite that knowledge, Liberty agreed to the retention of a firm with higher rates than Hygea's preferred counsel, giving the appearance that Liberty would agree to defend the Underlying Action. Hygea and its directors and officers relied on Liberty's representation to their detriment, causing damages. This is sufficient to state a claim for equitable estoppel under Nevada law. *Smith's Food & Drug* 921 F. Supp. 2d at 1095 ("USF led Smith's into believing that it would defend and indemnify Smith's without reservation, and subsequently filed this declaratory action seeking a court proclamation that Smith's was not entitled to this representation").

In Florida, "[b]ecause the duty to defend is so broad and so important…its existence is determined early on based on only the allegations of the complaint." *U.S. Fire Ins. Co. v. Hayden Bonded Storage Co.*, 930 So. 2d 686, 691 (Fla. 4th DCA 2006). When evaluating an insurer's duty to defend, a court considers both the allegations and the causes of action asserted in a complaint. *Orlando Nightclub Enterprises, Inc. v. James River Ins. Co.*, No. 607 CV1121ORL19KRS, 2007 WL 4247875, at *9 (M.D. Fla. Nov. 30, 2007). The truth, falsity, or legal merit of the allegations is irrelevant. *Jones v. Florida Ins. Guar. Ass'n*, 908 So. 2d 435, 443 (Fla. 2005). If the allegations *even arguably* come within the policy coverage, a defense must be provided. *See, e.g., Pepper's Steel & Alloys, Inc. v. U.S. Fid. & Guar. Co.*, 668 F. Supp. 1541, 1545 (S.D. Fla. 1987) (emphasis in original); *Atain Specialty Ins. Co. v. Miami Drywall & Stucco, Inc.*, Case No. 12-21370-CIV-MORENO, 2012 WL 3043002 at *1 (S.D. Fla. July 25, 2012).

Because Liberty has denied a duty to defend based upon the Major Shareholder Exclusion, it bears an extraordinarily heavy burden on the merits. Liberty must prove that "the allegations of the complaint are cast solely and entirely within [the Major Shareholder Exclusion] and are subject to no other reasonable interpretation." *Mt. Hawley Ins. Co. v. Dania Distribution Ctr., Ltd.*, 763 F. Supp. 2d 1359, 1364 (S.D. Fla. 2011), *aff'd,* 513 F. App'x 890 (11th Cir. 2013) (emphasis supplied); *Hartford Acc. & Indem. Co. v. Beaver*, 466 F.3d 1289, 1296 (11th Cir. 2006); *Evanston Ins. Co. v. Gaddis Corp.*, 145 F. Supp. 3d 1140, 1146 (S.D. Fla. 2015).

Liberty cites *Dania Distribution* for the proposition that no duty to defend exists "when the complaint shows that a policy exclusion applies to exclude coverage." Motion, pg. 7. But that is not the standard. Florida law is unequivocal: where "the complaint *alleges facts showing*

two or more grounds for liability, one being within the insurance coverage and the other not, the insurer is obligated to defend the entire suit." *Lime Tree Village Cmty. Club Ass'n, Inc. v. State Farm Gen. Ins. Co.*, 980 F.2d 1402, 1405 (11th Cir. 1993) (emphasis in original). Any uncertainty as to the duty to defend – whether in the meaning of policy language, the state of the law interpreting the policy language, or the allegations of the underlying pleadings – must be resolved in favor of a defense. *Bear Wolf, Inc. v. Hartford Ins. Co. of SE*, 819 So. 2d 818, 820 (Fla. 4th DCA 2002); *Carithers v. Mid-Continent Cas. Co.*, 782 F.3d 1240, 1246 (11th Cir. 2015).

Stated differently, if the allegations of the Underlying Action raise even the slightest possibility that Hygea and its directors and officers could be found liable under a covered theory of liability, Liberty has breached the duty to defend, and its motion to dismiss must be denied.

a. It is possible that Hygea and its directors and officers could be found liable to an entity that does not directly or beneficially own any of its common stock.

Courts construing an insurance policy must read the entire policy as a whole, endeavoring to give every provision its full and operative effect. *Auto-Owners Ins. Co. v. Anderson*, 756 So. 2d 29, 34 (Fla. 2000); *Dahl-Elmers v. Mut. of Omaha Life Ins. Co*., 986 F.2d 1379, 1381 (11th Cir. 1993).

The "insurer, as the writer of an insurance policy, is bound by the language of the policy, which is to be construed liberally in favor of the insured and strictly against the insurer." *Berkshire Life Ins. Co. v. Adelberg*, 698 So. 2d 828, 830 (Fla. 1997). "Exclusionary clauses are generally disfavored and are strictly construed to afford the broadest possible coverage." *Westmoreland v. Lumbermens Mut. Cas. Co.*, 704 So. 2d 176, 179 (Fla. 4th DCA 1997). Exclusions must be stated in clear, unmistakable language. *Fayad v. Clarendon Nat'l Ins. Co.,* 899 So. 2d 1082, 1086 (Fla. 2005). "When an insurer fails to define a term … the

insurer cannot take the position that there should be a narrow, restrictive interpretation of the coverage provided." *State Farm Fire and Cas. Co. v. CTC Dev. Corp.*, 720 So. 2d 1072, 1076 (Fla. 1998).

Liberty casts these rules aside, and instead asks this Court to rewrite the Major Shareholder Exclusion on a motion to dismiss. But Hygea's complaint and the allegations in the Underlying Action clearly set forth the path to a defense: (1) Nevada 5, Inc. is not alleged to be either the direct or beneficial owner of any of Hygea's stock, and (2) Nevada 5, Inc. itself – not on behalf of N5HYG – asserts seventeen (17) causes of action against Insureds under the Policy several of which could give rise to covered liability. The possibilities are legion, and include as examples:

- Damages for negligent misrepresentation (Count VIII) asserted by Nevada 5 against Hygea and its directors and officers;
- Damages for breach of fiduciary duty (Count XII) asserted by Nevada 5 against certain insured directors and officers;
- Damages for breach of the duty of candor (Count XIII) asserted by Nevada 5 against certain insured directors and officers;
- Damages for breach of the duty of loyalty (Count XIV) asserted by Nevada 5 against certain insured directors and officers;
- Damages for tortious interference with contract (Count XVI) asserted by Nevada 5 against certain insured directors and officers;

D.E. 1-4. Liberty does not claim – nor can it – that the Underlying Action does not seek to recover **Loss** for **Wrongful Acts** against Liberty's **Insureds**, as those terms as defined by the Liberty Policy. The possibility of liability to Nevada 5, Inc. for (1) alleged **Loss** suffered by an entity that is not alleged to own (directly or beneficially) any of Hygea's common stock (2) that is caused by alleged **Wrongful Acts** that are (3) allegedly committed by **Insureds** as those terms are defined by the Liberty Policy is fatal to Liberty's motion. Nevada 5 plausibly has damages

of its own, distinct from those asserted by the stockholder (N5HYG) – it would not be a necessary part to the Underlying Action were this not the case.

This result is in harmony with the "Allocation" clause in the Liberty Policy, which provides that:

> "[i]f in any **Claim** the **Insureds**…incur an amount consisting of both **Loss** covered by this **Policy** and loss not covered by this **Policy** because such **Claim** includes both covered and uncovered matters, then the **Insureds** and [Liberty] shall allocate such amounts between covered **Loss** and uncovered loss as follows:…100% of such amount constituting defense costs shall be allocated to covered **Loss**."

D.E. 1-3, General Terms and Conditions, Section 8 (emphasis in original). The presence of matters uncovered by the Liberty Policy in the form of relief sought by N5HYG cannot defeat Liberty's duty to defend.

i. The mere fact that N5HYG is alleged to own more than 5% of Hygea's common stock is insufficient to sustain Liberty's burden.

Liberty's interpretive failures are underscored by the case central to its theory of coverage. Judge Cohn's decision in *United States Liability Insurance Co. v. Kelley Ventures*, 137 F. Supp. 3d 1312 (S.D. Fla. 2015) cannot carry Liberty's burden. The underlying action in Kelley Ventures was a suit by a single plaintiff (Kelley Automotive, Inc.) against two defendants (Kelley Ventures LLC and Mr. Kevin Kelley) seeking damages for various alleged forms of corporate malfeasance typically covered by a directors and officers liability policy. The carrier there (unlike Liberty here) defended its insureds under a reservation of rights and filed a declaratory action seeking policy rescission under Section 627.409, Florida Statutes, and a declaration of no coverage based on three policy exclusions. *Id*. at 1317.

Judge Cohn denied the carrier's attempt at rescission on summary judgment. After finding a "pending and prior litigation exclusion" barred coverage, *in dicta* the court analyzed a

"percentage shareholder exclusion" barring coverage for "…Loss in connection with any Claim made against any Insured that is brought, maintained, or asserted by or on behalf of any person or entity which owns or did own directly or beneficially more than 10% of the Organization's voting securities." *Id*. at 1318-19.

The sole plaintiff in the underlying action owned more 10% of voting securities in Kelley Ventures LLC, so the exclusion applied. *Id*. at 1319.[4] In other words, there was never the possibility of coverage for the liability sought against the defendants in Kelley Ventures because the only plaintiff in the underlying case owned more than 10% of the "voting securities" of Kelley Ventures LLC.

Liberty does not dispute that more than one plaintiff – one of which does not own any shares in Hygea – has brought and maintained the Underlying Action. It cannot carry its burden on a motion to dismiss to cast the allegations of the underlying Action "solely and entirely" within the Major Shareholder Exclusion. *Beaver*, 466 F.3d at 1296; *Dania Distribution*, 763 F. Supp. 2d at 1364.

Liberty next argues that orders on motions for summary judgment interpreting different "capacity exclusions" support dismissal with prejudice. One of the cases cited by Liberty reveals the problem with this effort. *Sphinx International, Inc. v. National Union Fire Insurance Co. of Pittsburgh, Pa*., 412 F.3d 1224, 1231 (11th Cir. 2005) (cases involving dissimilar policy language and dissimilar facts are not controlling in matters of insurance policy interpretation).

Indeed the underlying allegations and policy language at issue in *Sphinx* and *Powersports, Inc. v. Royal & Sunalliance Insurance Co.*, 307 F. Supp. 2d 1355 (S.D. Fla. 2004) are completely inapposite. Both involved the application of "insured vs. insured" exclusions

[4] Judge Cohn rejected an argument Hygea does not make here: that the "capacity" in which the underlying plaintiff brings the action may render the exclusion inapplicable. *Kelley Ventures*, 137 F. Supp. 3d at 1319. Hygea has never contended that the capacity in which N5HYG brings its claims is sufficient to avoid the exclusion.

typical in directors and officers liability policies.[5] The policyholders in *Sphinx* argued that the presence of uninsured plaintiffs in the underlying action meant that coverage could be denied "only to that percentage of the claim attributed to [the insured plaintiff]." *Id*. at 1227. The Eleventh Circuit affirmed summary judgment in favor of the carrier and rejected that argument, finding not only that the insured person "*brought* the lawsuit and *recruited* every other plaintiff." *Id*. at 1231 (emphasis in original). The allegations here fall short of suggesting that N5HYG "recruited" Nevada 5 or "maintained" the Underlying Action on Nevada 5's behalf.

Liberty's reliance on *Powersports* fares no better. *Powersports* involved three underlying plaintiffs, two of which were insureds under the relevant policy. Judge Ryskamp found the "insured vs. insured" exclusion bars coverage for the entire action where the insured plaintiffs were parties to all claims in the underlying action. *Powersports*, 307 F. Supp. 2d at 1361. Judge Ryskamp's note that the allocation clause was irrelevant to the analysis distinguishes his holding from any applicability to Liberty's chosen policy language. The allocation clause at issue in *Powersports* is far different from the one Liberty sold to Hygea as it did not allocate 100% of defense costs to covered **Loss**. *Powersports*, 307 F. Supp. 2d at 1362. Liberty's policy language explicitly provides that the presence of uncovered matters does not defeat Liberty's obligation to pay 100% of defense costs. D.E. 1-3, General Terms and Conditions, Section 8.

[5] "Insured vs. Insured" exclusions serve as an attempt to bar coverage for collusive suits, such as a suit where a corporation sues its officers and directors for the corporation's business mistakes. *See, e.g., Sphinx*, 412 F.3d at 1229. The exclusion in *Powersports* barred coverage for "…Loss resulting from any Claim made against any Insured person…brought or maintained by or on behalf of the Company or any insured person in any capacity." *Powersports*, 307 F. Supp. 2d at 1359. The exclusion at issue in *Sphinx* was extraordinarily broad and barred coverage for claims made "by or at the behest of…any DIRECTOR or OFFICER…unless such claim is instigated and continued totally independent of, and totally without the solicitation of, or assistance of, or active participation of, or intervention of, any DIRECTOR or OFFICER or the COMPANY or any affiliate of the COMPANY." *Sphinx*, 412. F.3d at 1231.

Powersports suffers from a more serious fundamental flaw: it is at odds with the bedrock principle of Florida law that a defense must be provided when the underlying complaint alleges facts and theories of liability partially within and partially outside the scope of coverage. *Lime Tree Village*, 980 F.2d at 1405; *Certain Underwriters at Lloyds, London v. Melnick, Lilienfeld & Co.*, No. 05-21611-CIV-MORENO, 2006 WL 8432001, *1 (S.D. Fla. May 31, 2006). Courts in other jurisdictions have recognized as much. *Megavail v. Illinois Union Ins. Co*., Civil No. 05-1374-AS, 2006 WL 2045862 at *2 (D. Or. July 16, 2009) (recognizing the conflict between *Powersports* and *Sphinx* and the rule that "if any allegations of the complaint…could impose liability, the insurance company must defend, even if the complaint contains allegations outside the scope of coverage"). That flaw cannot support dismissal with prejudice here.

ii. The Underlying Action does not allege that Nevada 5 has a "beneficial interest" in more than 5% of Hygea's stock.

Liberty concedes by silence that Nevada 5, Inc. is not alleged to "directly" own any Hygea common stock. Liberty's theory is that because Nevada 5 owns N5HYG, and N5HYG owns more than 5% of Hygea's common stock, the entire Underlying Action is brought by direct or beneficial owners of Hygea.

Having failed to define the term "beneficially" in the exclusion it added to its policy by endorsement, Liberty has left the term to interpretation, and its attempt at a restrictive interpretation on a motion to dismiss must fail. *See, e.g., CTC Dev. Corp.*, 720 So. 2d at 1076. One reasonable interpretation is that entities (such as Nevada 5) who control stock of a third-party (such as Hygea) through a wholly owned subsidiary (such as N5HYG) do not beneficially own the third-party's stock. *CME Grp. Inc. v. Chicago Bd. Options Exch. Inc.*, C.A. No. 2369-VCN, 2009 WL 1856693, at *5-6 (Del. Ch. June 25, 2009) (rejecting a claim of beneficial

ownership where the shares in question were held by a wholly owned subsidiary of the entity claiming beneficial ownership).

Liberty's claimed definition of "beneficially" as meaning "any person who…has or shares a direct or indirect pecuniary interest" in stock is irrelevant as a matter of law. *Washington Nat. Ins. Corp. v. Ruderman*, 117 So. 3d 943, 948 (Fla. 2013) (finding of ambiguity only requires more than one reasonable interpretation of coverage, one limiting coverage and one providing coverage). This is particularly true on a motion to dismiss. *SeaSpecialties, Inc. v. Westport Ins. Corp*., No. 08-20917-CIV-MORENO, 2008 WL 4845037 at *3 (S.D. Fla. Nov. 7, 2008) (denying a motion to dismiss based on a policy exclusion where the exclusion was potentially ambiguous).

iii. The entire Underlying Action is not brought "on behalf of" or "at the behest of" Nevada 5.

Saving a weak argument for last, Liberty then claims that the entirety of the Underlying Action is brought either "on behalf of" or "at the behest of" N5HYG as the "agent or representative" of Nevada 5. Of course the Underlying Action neither alleges this, nor is there any good reason why N5HYG is a necessary party to act on behalf of Nevada 5. By Liberty's interpretation, only one plaintiff should have filed the underlying action, but that is not grist for a duty to defend analysis. None of Nevada 5's theories of liability against the Insureds are brought or maintained "on behalf of" or "at the behest of" N5HYG. Whether Liberty likes it or not, there are two plaintiffs in the Underlying Action who have asserted direct theories of liability against Hygea and its directors and officers. The artfulness of that pleading effort and whether any Insured will actually be found liable to Nevada 5 is completely irrelevant to whether Liberty must provide a defense. *Jones*, 908 So. 2d at 443.

CONCLUSION

A properly pled ripe, *bona fide*, and actual controversy exists between Hygea and its directors and officers on one hand, and Liberty on the other, regarding the rights and obligations under the Liberty Policy for the defense of the Underlying Action, and whether Liberty is equitably estopped based on its conduct prior to denying coverage. Nor can Liberty carry its burden to cast all the allegations and theories of potential liability alleged in the Underlying Action solely and entirely within the Major Shareholder Exclusion.

The carrier's motion to dismiss under Rule 12(b)(6) should be denied.

Respectfully submitted,

/s/ Matthew B. Weaver
R. Hugh Lumpkin, Esq.
Florida Bar No. 308196
hlumpkin@vpl-law.com
Matthew B. Weaver, Esq.
Florida Bar No. 42858
mweaver@vpl-law.com

VER PLOEG & LUMPKIN, P.A.
100 S.E. 2nd Street – 30th Floor
Miami, FL 33131-2151
Tel: 305-577-3996
Fax: 305-577-3558
Attorneys for Plaintiff

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on April 23, 2018, I electronically filed the foregoing document with the Clerk of Court using CM/ECF. I also certify that the foregoing document is being served this day on all counsel of record identified on the attached Service List *via* transmission of Notice of Electronic Filing generated by CM/ECF.

By: */s/ Matthew B. Weaver*

SERVICE LIST

Alan Fiedel, Esq.
Wilson Elser Moskowitz Edelman & Dicker, LLP
100 S.E. Second St.
Miami, FL 33131
Alan.fiedel@wilsonelser.com

Counsel for Liberty Insurance Underwriters Co.

Daniel E. Tranen, Esq.
Wilson Elser Moskowitz Edelman & Dicker, LLP
101 West Vandalia Street
Suite 220
Edwardsville, IL 62025
Tel: 618-307-0200
Fax: 618-307-0221
daniel.tranen@wilsonelser.com

James K. Thurston, Esq.
Mark Joseph Sliwinski, Esq.
Wilson Elser Moskowitz Edelman & Dicker, LLP
55 West Monroe Street
Suite 3800
Chicago, IL 60603
Tel: 312-704-0550
Fax: 312-704-1522
james.thurston@wilsonelser.com
mark.sliwinski@wilsonelser.com

Co-Counsel for Liberty Insurance Underwriters Co.

Admitted Pro Hac Vice

EXHIBIT “9”

G. MARK ALBRIGHT, ESQ.
Nevada Bar 001394
D. CHRIS ALBRIGHT, ESQ.
Nevada Bar No. 004904
ALBRIGHT, STODDARD, WARNICK & ALBRIGHT
801 South Rancho Drive, Suite D-4
Las Vegas, Nevada 89106
Tel: (702) 384-7111
Fax: (702) 384-0605
gma@albrightstoddard.com
dca@albrightstoddard.com

E. POWELL MILLER, ESQ. (pro hac vice pending)
CHRISTOPHER D. KAYE, ESQ. (pro hac vice pending)
THE MILLER LAW FIRM, P.C.
950 W. University Dr., Ste. 300
Rochester, Michigan 48307
Tel: (248) 841-2200
epm@millerlawpc.com
cdk@millerlawpc.com
Attorneys for Plaintiffs

DISTRICT COURT
CLARK COUNTY, NEVADA

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

Plaintiffs,

vs.

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

Defendants.

CASE NO.: A-17-762664-B

DEPT. NO.: 27

Hon. Judge Nancy L. Allf

DECLARATION OF CHRISTOPHER FOWLER

I, Christopher Fowler, having been first duly sworn on oath, depose and state as follows:

1. I am over the age of eighteen years and have personal knowledge concerning this matter.

2. I am competent and willing to testify in court to the same if necessary.

3. I am familiar with the closing of the "Stock Purchase Agreement by and among N5HYG LLC, Hygea Holdings Corp., and the Seller Principles Named [Therein] Dated as of October 5, 2016" and documents associated therewith.

4. Attached is a true and accurate copy of the "Hygea Holdings Corp Certificate of Approval, Authority, and Incumbency" dated October 5, 2016 that a person affiliated with Hygea Holdings Corp provided in connection with the closing.

5. I am also familiar with the email that Mr. Moffly sent to Dan Miller on September 29, 2016, as well as its attachment, as described in Paragraph 41(k) of the First Amended Complaint in the above-captioned matter. The text of the email's body was "As promised this is what has been approved by Cormark and our board. Let me know if that answer your question. T" The purported EBIDTA and valuation figures were set forth in the attachment.

6. At the time of this email, Dan Miller worked for RIN Capital and reported to me. RIN Capital served at that time as Nevada 5, Inc.'s authorized agent, and its agency on behalf of Nevada 5, Inc. had been disclosed.

Dated this 13th day of September, 2018.

Christopher Fowler

LAW OFFICES
ALBRIGHT, STODDARD, WARNICK & ALBRIGHT
A PROFESSIONAL CORPORATION
QUAIL PARK, SUITE D-1
801 SOUTH RANCHO DRIVE
LAS VEGAS, NEVADA 89106

LAS VEGAS, NEVADA 89106

HYGEA HOLDINGS CORP

CERTIFICATE OF APPROVAL, AUTHORITY AND INCUMBENCY

OCTOBER 5, 2016

The undersigned Secretary of Hygea Holdings Corp, a Nevada corporation (the "Company"), pursuant to Sections 3.4.2 and 3.4.3 of that certain Stock Purchase Agreement, dated as of the date hereof (the "Purchase Agreement"), by and among N5HYG LLC, a Michigan limited liability company ("Buyer"), the Company, and the Seller Principals, (as defined therein), hereby certifies on behalf of the Company to Buyer, as of the date first set forth above, as follows that:

1. The undersigned Richard L. Williams is the duly elected, qualified and acting incumbent of the office of Secretary and of Chief Legal Officer of the Company.

2. The undersigned Richard L. Williams is qualified to make this certification and is authorized to give this certificate.

3. Manuel E. Iglesias is the duly elected and qualified Chief Executive Officer of the Company, and the signature set forth opposite his name below is his genuine signature or a true and correct copy thereof. Mr. Iglesias is authorized to execute and deliver, in the name of the Company, the Purchase Agreement and any and all other Ancillary Agreements to which the Company is a party. All governance approvals necessary to consummate the transactions contemplated by the Purchase Agreement (and by the Ancillary Agreements to which the Company is a party) have been obtained.

Name:	Title:	Specimen Signature:
MANUEL E. IGLESIAS	CHIEF EXECUTIVE OFFICER	

4. The Board of Directors of the Company has duly authorized Manuel E. Iglesias on behalf of the Company to enter and execute the Stock Purchase Agreement and Ancillary Agreements for the sale of stock of the Company to Buyer (as the designee of RIN Capital).

5. Attached hereto as Exhibit A is a correct and complete copy of the Articles of Incorporation of the Company, together with all amendments thereto through the date hereof, which Articles of Incorporation are in full force and effect on and as of the date hereof without revocation, modification or amendment in any respect.

6. Attached hereto as Exhibit B is a correct and complete copy of the duly adopted Bylaws of the Company, together with all amendments thereto through the

date hereof, which Bylaws are in full force and effect on and as of the date hereof without revocation, modification or amendment in any respect.

7. Attached hereto as Exhibit C is a correct and complete copies of the resolution duly adopted by the Board of Directors of the Company as of the date set forth thereon, evidencing the approval of the Stock Purchase Agreement and Ancillary Agreements to which the Company is a party and the transactions contemplated thereby, which resolutions are in full force and effect on and as of the date hereof without revocation, modification or amendment in any respect.

Capitalized terms not defined herein shall have the meanings given to them in the Purchase Agreement.

IN WITNESS WHEREOF, the undersigned has executed this Certificate of Approval, Authority and Incumbency on behalf of Hygea Holdings Corp as of the date first written above.

Richard L. Williams
Secretary, Hygea Holdings Corp

Sworn to and subscribed before me this 5th day of October, 2016.

MELISSA BUZEK
MY COMMISSION # FF213247
EXPIRES March 24, 2019
FloridaNotaryService.com

Notary public

Exhibit A

Articles of Incorporation – Hygea Holdings Corp

Attached hereto

EX-3.1 2 ex31.htm EXHIBIT 3.1
Exhibit 3.1

Dean Heller
Secretary of State
206 North Carson Street
Carson City, NV 89701-4288
778-684-8708

Document Number 20080570516-84
Filing Date and Time:
8/26/08 9:45 AM
Entity Number E0550162008-5

Articles of Incorporation
Pursuant to NRS 78

1.	Name of Corporation:	Piper Acquisition II, Inc.
2.	Resident Agent Name and Street Address	Vcorp Services, LLC 1409 Bonita Avenue, Las Vegas, NV 89104
3.	Shares	Number of shares with par value: 260,000,000 Par value: $.0001 Number of shares without par value: -0-
4.	Name & Address of Board of Directors/Trustees	Stephen c/o Fleming PLLC, 403 Merrick Ave, 2nd Fl E. Meadow, NY 11554
5.	Purpose	The purpose of this Corporation shall be: To engage in any lawful activity.
6.	Name, Address and Signature of Incorporator	Stephen M. Fleming /s/Stephen M. Fleming c/o Fleming PLLC, 403 Merrick Ave, 2nd Fl E. Meadow, NY 11554
7.	Certificate of Acceptance of Appointment of Resident Agent:	/s/ 8/26/08

Exhibit A

EIGHT: The Corporation is authorized to issue two classes of stock. One class of stock shall be common stock, par value $0.0001, of which the Corporation shall have the authority to issue 250,000,000 shares. The second class of stock shall be preferred stock, par value $0.0001, of which the corporation shall have the authority to issue 10,000,000 shares. The preferred stock, or any series thereof, shall have such designations, preferences and relative, participating, optional or other special rights and qualifications, limitations or restrictions thereof as shall be expressed in the resolution or resolutions providing for the issue of such stock adopted by the board of directors and may be made dependent upon facts ascertainable outside such resolution or resolutions of the board of directors, provided that the matter in which such facts shall operate upon such designations, preferences, rights and qualifications; limitations or restrictions of such class or series of stock is clearly and expressly set forth in the resolution or resolutions providing for the issuance of such stock by the board of directors.

NINTH: The governing board of this corporation shall be known as the Board of Directors, and the number of directors may from time to time be increased or decreased in such manner as shall be provided by the bylaws of this corporation, providing that the number of directors shall not be reduced to less than one (1).

TENTH: After the amount of the subscription price, the purchase price, of the par value of the stock of any class or series is paid into the corporation, owners or holders of shares of any stock in the corporation may never be assessed to pay the debts of the corporation.

ELEVENTH: The Corporation is to have a perpetual existence.

TWELFTH: No director or officer of the corporation shall be personally liable to the corporation or any of its stockholders for damages for breach of fiduciary duty as a director or officer of for any act or omission of any such director or officer; however, the foregoing provision shall not eliminate or limit the liability of a director or officer for (a) acts or omissions which involve intentional misconduct, fraud or a knowing violation of law; or (b) the payment of dividends in violation of Section 78.300 of the Nevada Revised Statutes. Any repeal or modification of this Article by the stockholders of this corporation shall be prospective only and shall not adversely affect any limitation on the personal liability of a director or officer of the corporation for acts or omissions prior to such repeal or modification.

THIRTEENTH: No shareholder shall be entitled as a matter of right to subscribe for or receive additional shares of any class of stock of the corporation, whether now or hereafter authorized, or any bonds, debentures or securities convertible into stock, but such additional shares of stock or other securities convertible into stock may be issued or disposed of by the Board of Directors to such persons and on such terms as in its discretion it shall deem advisable.

FOURTEENTH: This Corporation reserves the right to amend, alter, change or repeal and provision contained in the Articles of Incorporation, in the manner now or hereafter prescribed by statute, or by the Articles of Incorporation, and all rights conferred upon the Stockholders herein are granted subject to this reservation.

Dean Heller
Secretary of State
206 North Carson Street
Carson City, NV 89701-4288
778-684-8708

Document Number
Filing Date and Time:

Entity Number E0550162008-5

Certificate of Amendment
(Pursuant to NRS 78.385 and 78.390)

Certificate of Amendment to Articles of Incorporation
For Nevada Profit Corporations
(Pursuant to NRS 78.385 and 78.390 – After Issuance of Stock)

1. Name of Corporation

Piper Acquisition II, Inc.

2. The articles have been amended as follows: (provide article numbers, if available)

Article ONE NAME: the complete name of the Corporation shall be Hygea Holdings Corp.

3. The vote by which he stockholders holding shares in the corporation entitling them to classes or series, or as may be required by the provisions of he articles of incorporation

4. Effective date of filing (optional) 5/16/11 (must not be later than 90 days after the certif

5. Signature: (required)

x/s/Tim Betts, CEO

Exhibit B

Bylaws – Hygea Holdings Corp

Attached hereto

BY-LAWS

HYGEA HOLDINGS CORP

ARTICLE I - OFFICES

Section 1. The registered office of the corporation in the State of Florida shall initially be at: 8095 NW 12th St, Suite 105, Miami, Florida 33126, or as further directed by the Board of Directors. The registered agent in charge thereof shall be Lacy Loar.

Section 2. The corporation may also have offices at such other places as the Board of Directors may from time to time appoint or the business of the corporation may require.

ARTICLE II-SEAL

Section 1. The corporate seal shall have inscribed thereon the name of the corporation, the year of its organization and the words "Corporate Seal, Nevada".

ARTICLE III - STOCKHOLDERS' MEETINGS

Section 1. Meetings of stockholders shall be held at the registered office of the corporation in this state or at such place, either within or without this state, as may be selected from time to time by the Board of Directors.

Section 2. ANNUAL MEETINGS: The annual meeting of the stockholders shall be held on the 29th of December in each year if not a legal holiday, and if a legal holiday, then on the next secular day following at 10:00 o'clock A.M., when they shall elect a Board of Directors and transact such other business as may properly be brought before the meeting. If the annual meeting for election of directors is not held on the date designated therefor, the directors shall cause the meeting to be held as soon thereafter as convenient.

Section 3. ELECTION OF DIRECTORS: Elections of the directors of the corporation shall be by written or verbal ballot.

Section 4. SPECIAL MEETINGS: Special meetings of the stockholders may be called at any time by the Presidency, or the Board of Directors, or stockholders entitled to

Initial Initial

cast at least one-fifth of the votes which all stockholders are entitled to cast at the particular meeting. At any time, upon written request of any person or persons who have duly called a special meeting, it shall be the duty of the Secretary to fix the date of the meeting, to be held not more than sixty days after receipt of the request, and to give due notice thereof. If the Secretary shall neglect or refuse to fix the date of the meeting and give notice thereof, the person or persons calling the meeting may do so. Business transacted at all special meetings shall be confined to the objects stated in the call and matters germane thereto unless all stockholders entitled to vote are present and consent.

Written notice of a special meeting of stockholders stating the time and place and object thereof, shall be given to each stockholder entitled to vote thereat at least 10 days before such meeting, unless a greater period of notice is required by statute in a particular case.

Section 5. QUORUM: A majority of the outstanding shares of the corporation entitled to vote, represented in person or by proxy, shall constitute a quorum at a meeting of stockholders. If less than a majority of the outstanding shares entitled to vote is represented at a meeting, a majority of the shares so represented may adjourn the meeting from time to time without further notice. At such adjourned meeting at which a quorum shall be present or represented, any business may be transacted which might have been transacted at the meeting as originally noticed. The stockholders present at a duly organized meeting may continue to transact business until adjournment, notwithstanding the withdrawal of enough stockholders to leave less than a quorum.

Section 6. PROXIES: Each stockholder entitled to vote at a meeting of stockholders or to express consent or dissent to corporate action in writing without a meeting may authorize another person or persons to act for him by proxy, but no such

_____ Initial _____ Initial

proxy shall be voted or acted upon after three years from its date, unless the proxy provides for a longer period.

A duly executed proxy shall be irrevocable if it states that it is irrevocable and if, and only as long as, it is coupled with an interest sufficient in law to support an irrevocable power. A proxy may be made irrevocable regardless of whether the interest with which it is coupled is an interest in the stock itself or an interest in the corporation generally. All proxies shall be filed with the Secretary of the meeting before being voted upon.

Section 7. NOTICE OF MEETINGS: Whenever stockholders are required or permitted to take any action at a meeting, a written notice of the meeting shall be given which shall state the place, date and hour of the meeting, and, in the case of a special meeting, the purpose or purposes for which the meeting is called.

Unless otherwise provided by law, written notice of any meeting shall be given not less than ten nor more than sixty days before the date of the meeting to each stockholder entitled to vote at such meeting.

Section 8. CONSENT IN LIEU OF MEETINGS: Any action required to be taken at any annual or special meeting of stockholders of a corporation, or any action which may be taken at any annual or special meeting of such stockholders, may be taken without a meeting, without prior notice and without a vote, if a consent in writing, setting forth the action so taken, shall be signed by the holders of outstanding stock having not less than the minimum number of votes that would be necessary to authorize or take such action at a meeting at which all shares entitled to vote thereon were present and voted. Prompt notice of the taking of the corporate action without a meeting by less than unanimous written consent shall be given to those stockholders who have not consented in writing.

_____ Initial _____ Initial

Section 9. LIST OF STOCKHOLDERS: The officer who has charge of the stock ledger of the corporation shall prepare and make, at least ten days before every meeting of stockholders a complete list of the stockholders entitled to vote at the meeting, arranged in alphabetical order, and showing the address of each stockholder and the number of shares registered in the name of each stockholder. No share of stock upon which any installment is due and unpaid shall be voted at any meeting. The list shall be open to the examination of any stockholder, for any purpose germane to the meeting, during ordinary business hours for a period of at least ten days prior to the meeting, either at a place within the city where the meeting is to be held, which place shall be specified in the notice of the meeting, or, if not so specified, at the place where the meeting is to be held. The list shall also be produced and kept at the time and place of the meeting during the whole time thereof, and may be inspected by any stockholder who is present.

ARTICLE IV - DIRECTORS

Section 1. The business and affairs of this corporation shall be managed by its Board of Directors, at least two (2) in number. The board may be expanded to a total of fifteen (15) upon adoption of such a resolution by the majority of the directors. The directors need not be residents of this state or stockholders in the corporation. They shall be elected by the stockholders at the annual meeting of stockholders of the corporation, and each director shall be elected for the term of one year, and until his successor shall be elected and shall qualify or until his earlier resignation or removal.

Section 2. REGULAR MEETINGS: Regular meetings of the Board shall be held without notice at the registered office of the corporation, or at such other time and place as shall be determined by the Board

Section 3. SPECIAL MEETINGS: Special Meetings of the Board may be called by the President with 1 day notice to each director, either personally, by telephone, by

_____ Initial _____ Initial

mail, or by telegram. Special meetings shall be called by the President or Secretary in like manner and on like notice on the written request of a majority of the directors in office.

Section 4. QUORUM: A majority of the total number of directors shall constitute a quorum for the transaction of business.

Section 5. CONSENT IN LIEU OF MEETING; Any action required or permitted to be taken at any meeting of the Board of Directors, or of any committee thereof, may be taken without a meeting if all members of the Board or committee, as the case may be, consent thereto in writing, and the writing or writings are filed with the minutes of proceedings of the Board or committee. The Board of Directors may hold its meetings, and have an office or offices, outside of this state.

Section 6. CONFERENCE TELEPHONE: One or more directors may participate in a meeting of the Board, of a committee of the Board or of the stockholders, by means of conference telephone or similar communications equipment by means of which all persons participating in the meeting can hear each other; participation in this manner shall constitute presence in person at such meeting.

Section 7. COMPENSATION: Directors as such, shall not receive any stated salary for their services, but by resolution of the board, a fixed sum and expenses of attendance, if any, may be allowed for attendance at each regular or special meeting of the Board PROVIDED, that nothing herein contained shall be construed to preclude any director from serving the corporation in any other capacity and receiving compensation therefor.

Section 8. REMOVAL: Any director or the entire Board of Directors may be removed, with or without cause, by the holders of a majority of the shares than entitled to vote at an election of directors, except that when cumulative voting is permitted, if less than the entire Board is to be removed, no director may be removed without cause if the votes cast against his removal would be sufficient to elect him if then cumulatively voted

_____ Initial _____ Initial

at an election of the entire Board of Directors, or, if there be classes of directors, at an election of the class of directors of which he is a part.

ARTICLE V - OFFICERS

Section 1. The executive officers of the corporation shall be chosen by the directors and shall consist of a President, Secretary and Treasurer. The Board of Directors may also choose a Chairman, one or more Vice Presidents and such other officers as it shall deem necessary. Any number of offices may be held by the same person.

Section 2. SALARIES: Salaries of all officers and agents of the corporation shall be fixed by the Board of Directors.

Section 3. TERM OF OFFICE: The officers of the corporation shall hold office for one year and until their successors are chosen and have qualified. Any officer or agent elected or appointed by the Board may be removed by the Board of Directors whenever in its judgment the best interest of the corporation will be served thereby.

Section 4. PRESIDENT: The President shall be the chief executive officer of the corporation; he shall preside at all meetings of the stockholders and directors; he shall have general and active management of the business of the corporation shall see that all orders and resolutions of the Board are carried into effect, subject; however, to the right of the directors to delegate any specific powers, except such as may be by statute exclusively conferred on the President, to any other officer or officers of the corporation. He shall execute bonds, mortgages and other contracts requiring a seal, under the seal of the corporation. He shall be EX-OFFICIO a member of all committees, and shall have the general power and duties of supervision and management usually vested in the office of President of a corporation.

Section 5. SECRETARY: The Secretary shall attend all sessions of the Board and all meetings of the stockholders and act as clerk thereof, and record all the votes of the corporation and the minutes of all its transactions in a book to be kept for that purpose, and shall perform like duties for all committees of the Board of Directors when required. He

_____ Initial _____ Initial

shall give, or cause to be given, notice of all meetings of the stockholders and of the Board of Directors, and shall perform such other duties as may be prescribed by the Board of Directors or President, and under whose supervision he shall be. He shall keep in safe custody the corporate seal of the corporation, and when authorized by the Board, affix the same to any instrument requiring it.

Section 6. TREASURER: The Treasurer shall have custody of the corporate funds and securities and shall keep full and accurate accounts of receipts and disbursements in books belonging to the corporation, and shall keep the moneys of the corporation in a separate account to the credit of the corporation. He shall disburse the funds of the corporation as may be ordered by the Board, taking proper vouchers for such disbursements, and shall render to the President and directors, at the regular meetings of the Board, or whenever they may require it, an account of all his transactions as Treasurer and of the financial condition of the corporation.

ARTICLE VI - VACANCIES

Section 1. Any vacancy occurring in any office of the corporation by death, resignation, removal or otherwise, shall be filled by the Board of Directors. Vacancies and newly created directorships resulting from any increase in the authorized number of directors may be filled by a majority of the directors then in office, although less than a quorum, or by a sole remaining director. If at any time, by reason of death or resignation or other cause, the corporation should have no directors in office, then any officer or any stockholder or an executor, administrator, trustee or guardian of a stockholder, or other fiduciary entrusted with like responsibility for the person or estate of a stockholder, may call a special meeting of stockholders in accordance with the provisions of these By-Laws.

Section 2. RESIGNATIONS EFFECTIVE AT FUTURE DATE; When one or more directors shall resign from the Board, effective at a future date, a majority of the directors then in office, including those who have so resigned shall have power to fill such

_____ Initial _____ Initial

vacancy or vacancies, the vote thereon to take effect when such resignation or resignations shall become effective.

ARTICLE VII - CORPORATE RECORDS

Section 1. Any stockholder of record, in person or by attorney or other agent, shall, upon written demand under oath stating the purpose thereof, have the right during the usual hours for business to inspect for any proper purpose the corporation's stock ledger, a list of its stockholders, and its other books and records, and to make extracts therefrom. A proper purpose shall mean a purpose reasonably related to such person's interest as a stockholder. In every instance where an attorney or other agent shall be the person who seeks the right to Inspection, the demand under oath shall be accompanied by a power of attorney or such other writing which authorizes the attorney or other agent to so act on behalf of the stockholder. The demand under oath shall be directed to the corporation at its registered office in this state or at its principal place of business.

ARTICLE VIII – SHARES, STOCK CERTIFICATES, DIVIDENDS, ETC.

Section 1. AUTHORIZED SHARES. The Company is authorized to issue up to 500 million shares of stock; 490 million shares of Common Stock and 10 million shares of 'blank check' Preferred Stock.

Section 2. CERTIFICATES. The stock certificates of the corporation shall be numbered and registered in the share ledger and transfer books of the corporation as they are issued. They shall bear the facsimile of the corporate seal and shall bear the facsimile of the President; and be countersigned by the Transfer Agent.

Section 3. TRANSFERS: Transfers of shares shall be made on the books of the corporation upon surrender of the certificates therefor, endorsed by the person named in

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the certificate or by attorney, lawfully constituted in writing with signature guaranteed. No transfer shall be made which is inconsistent with law.

Section 4. LOST CERTIFICATE: The corporation may issue a new certificate of stock in the place of any certificate therefore signed by it, alleged to have been lost, stolen or destroyed, and the corporation may require the owner of the lost, stolen or destroyed certificate, or his legal representative to give the corporation a bond sufficient to indemnify it against any claim that maybe made against it on account of the alleged loss, theft or destruction of any such certificate or the issuance of such new certificate.

Section 5. RECORD DATE: In order that the corporation may determine the stockholders entitled to notice of or to vote at any meeting of stockholders or any adjournment thereof, or to express consent to corporate action in writing without a meeting, or entitled to receive payment of any dividend or other distribution or allotment of any rights, or entitled to exercise any rights in respect of any change, conversion or exchange of stock or for the purpose of any other lawful action, the Board of Directors may fix, in advance, a record date, which shall not be more than sixty nor less than ten days before the date of such meeting, nor wore than sixty days prior to any other action,

If no record date is fixed:

(a) The record date for determining stockholders entitled to notice of or to vote at a meeting of stockholders shall be at the close of business on the day next preceding the day on which notice is given, or, if notice is waived, at the close of business on the day next preceding the day on which the meeting is held.

(b) The record date for determining stockholders entitled to express consent to corporate action in writing without a meeting, when no prior action by the Board of Directors is necessary, shall be the day on which the first written consent is expressed.

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(c) The record date for determining stockholders for any other purpose shall be at the close of business on the day on which the Board of Directors adopts the resolution relating thereto.

(d) A determination of stockholders of record entitled to notice of or to vote at a meeting of stockholders shall apply to any adjournment of the meeting; provided, however, that the Board of Directors may fix a new record date for the adjourned meeting.

Section 6. DIVIDENDS: The Board of Directors may declare and pay dividends upon the outstanding shares of the corporation, from time to time and to such extent as they deem advisable, in the manner and upon the terms and conditions provided by statute and the Certificate of Incorporation.

Section 7. RESERVES: Before payment of any dividend there may be set aside out of the net profits of the corporation such sum or sums as the directors, from time to time, in their absolute discretion, think proper as a reserve fund to meet contingencies, or for equalizing dividends, or for repairing or maintaining any property of the corporation, or for such other purpose as the directors shall think conducive to the interests of the corporation, and the directors may abolish any such reserve in the manner in which it was created.

ARTICLE IX - MISCELLANEOUS PROVISIONS

Section 1. CHECKS: All checks or demands for money and notes of the corporation shall be signed by such officer or officers as the Board of Directors may from time to time designate.

Section 2. FISCAL YEAR: The fiscal year shall begin on the first day of January and end December 31st each year.

Section 3. NOTICE: Whenever written notice is required to be given to any person, it may be given to such person, either personally or by sending a copy thereof through the mail, or by telegram, charges prepaid, to his address

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appearing on the books of the corporation, or supplied by him to the corporation for the purpose of notice. If the notice is sent by mail or by telegraph, it shall be deemed to have been given to the person entitled thereto when deposited in the United States mail or with a telegraph office for transmission to such person. Such notice shall specify the place, day and hour of the meeting and, in the case of a special meeting of stockholders, the general nature of the business to be transacted.

Section 4. WAIVER OF NOTICE: Whenever any written notice is required by statute, or by the Certificate or the By-Laws of this corporation a waiver thereof in writing, signed by the person or persons entitled to such notice, whether before or after the time stated therein, shall be deemed equivalent to the giving of such notice. Except in the case of a special meeting of stockholders, neither the business to be transacted at nor the purpose of the meeting need be specified in the waiver of notice of such meeting. Attendance of a person either in person or by proxy, at any meeting shall constitute a waiver of notice of such meeting, except where a person attends a meeting for the express purpose of objecting to the transaction of any business because the meeting was not lawfully called or convened.

Section 5. DISALLOWED COMPENSATION: Any payments made to an officer or employee of the corporation such as a salary, commission, bonus, interest, rent, travel or entertainment expense incurred by him, which shall be disallowed in whole or in part as a deductible expense by the Internal Revenue Service, shall be reimbursed by such officer or employee to the corporation to the full extent of such disallowance. It shall be the duty of the directors, as a Board, to enforce payment of each such amount disallowed. In lieu of payment by the officer or employee, subject to the determination of the directors, proportionate amounts may he withheld from his future compensation payments until the amount owed to the corporation has been recovered.

Section 6. RESIGNATIONS: Any director or other officer may resign at any time, such resignation to be in writing and to take effect from the time of its receipt by the

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corporation, unless some time be fixed in the resignation and then from that date. The acceptance of a resignation shall not be required to make it effective.

ARTICLE X - ANNUAL STATEMENT

Section 1. The President and the Board of Directors shall present at each annual meeting a full and complete statement of the business and affairs of the corporation for the preceding year. Such statement shall be prepared and presented in whatever manner the Board of Directors shall deem advisable and need not be verified by a Certified Public Accountant.

ARTICLE XI - INDEMNIFICATION AND INSURANCE

Each person who was or is made a party or is threatened to be made a party or is involved in any action, suit or proceeding, whether civil, criminal, administrative or investigative (hereinafter a "proceeding"), by reason of the fact that he or she, or a person of whom he or she is the legal representative, is or was a director or officer, of the Corporation or is or was serving at the request of the Corporation as a director, officer, employee or agent of another corporation or of a partner ship, joint venture, trust or other enterprise, including service with respect to employee benefit plans whether the basis of such proceeding is alleged action in an official capacity as a director, officer, employee or agent or in any other capacity while serving as a director, officer, employee or agent, shall be indemnified and held harmless by the Corporation to the fullest extent authorized by the Florida Business Corporation Act, or such other state rules that may be the most expansive in a state in which the Company is doing business as the same exists or may

hereafter be amended (but, in the case of any such amendment, only to the extent that such amendment permits the Corporation to provide broader indemnification rights than said law permitted the Corporation to provide prior to such amendment), against all expense, liability

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and loss (including attorneys' fees, Judgments, fines, ERISA excise taxes or penalties and amounts paid or to be paid in settlement) reasonably incurred or suffered by such person in connection therewith and such indemnification shall continue as to a person who has ceased to be a director, officer, employee or agent and shall inure to the benefit of his or her heirs, executors and administrators; provided, however, that, except as provided in paragraph (b) hereof, the Corporation shall indemnify any such person seeking indemnification in connection with a proceeding (or part thereof) initiated by such person only if such proceeding (or part thereof) was authorized by the Board of Directors of the Corporation.

Section 1. (a) RIGHT TO INDEMNIFICATION. The Company shall advance all sums required to indemnify and hold the Members harmless as provided herein from the initiation of any claim against such Member, The right to indemnification conferred in this Section shall be a contract right and shall include the right to be paid by the Corporation the expenses incurred in defending any such proceeding in advance of its final disposition: provided, however, that, if the Florida Business Corporation Act or the laws of another state in which the Company conducts business requires the payment of such expenses incurred by a director or officer in his or her capacity as a director or officer (and not in any other capacity in which service was or is rendered by such person while a director or officer, including, without limitation, service to an employee benefit plan) in advance of the final disposition of a proceeding, shall be made only upon delivery to the corporation of an undertaking, by or on behalf of such director or officer, to repay all amounts so advanced if it shall ultimately be determined that such director or officer is not entitled to be indemnified under this Section or otherwise. The Corporation may, by action of its Board of Directors, provide indemnification to employees and agents of the Corporation with the same scope and effect as the foregoing indemnification of directors and officers.

(b) RIGHT OF CLAIMANT TO BRING SUIT:

If a claim under paragraph (a) of this Section is not advanced and paid in full by the Corporation, the claimant may at any time bring suit against the Corporation to recover the unpaid amount of the claim and, if successful in whole or in part, the claimant shall be entitled to be paid also the expense of prosecuting such claim. It shall be a defense to any

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such action (other than an action brought to enforce a claim for expenses incurred in defending any proceeding in advance of its final disposition where the required undertaking, if any is required, has been tendered to the Corporation) that the claimant has not met the standards of conduct which make it

permissible under the Florida Business Corporation Act or any law in such state as the Company is doing business for the Corporation to indemnify the claimant for the amount claimed, but the burden of proving such defense shall be on the Corporation. Neither the failure of the Corporation (including its Board of Directors, independent legal counsel, or its stockholders) to have made a determination prior to the commencement of such action that indemnification of the claimant is proper in the circumstances because he or she has met the applicable standard of conduct set forth in the Florida Business Corporation Act, nor an actual determination by the Corporation (including its Board of Directors, independent legal counsel, or Its stockholders) that the claimant has not met such applicable standard or conduct, shall be a defense to the action or create a presumption that the claimant has not met the applicable standard or conduct.

(c) Notwithstanding any limitation to the contrary contained in sub-paragraphs (a) and (b) of this section, the corporation shall to the fullest extent permitted by the Florida Business Corporation Act, as the same may be amended and supplemented, or under any state laws in which the Company conducts business, whichever is favorable, indemnify any and all persons whom it shall have power to indemnify under said section from and against any and all of the expenses, which it shall advance and pay as incurred, liabilities or other matters referred to in or covered by said section, and the indemnification provided for herein shall not be deemed exclusive of any other rights to which those indemnified may be entitled under any By-law, agreement, vote of stockholders or disinterested Directors or otherwise both as to action in his official capacity and as to action in another capacity while holding such office, and shall continue as to a person who

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has ceased to be director, officer, employee or agent and shall inure to the benefit of the heirs, executors and administrators of such a person.

(d) INSURANCE:

The Corporation may maintain insurance, at its expense, to protect itself and any director, officer, employee or agent of the Corporation or another corporation, partnership, joint venture, trust or other enterprise against any such expense, liability or loss, whether or not the Corporation would have the power to indemnify such person against such expense, liability or loss under the Florida Business Corporation Act.

ARTICLE XII – AMENDMENTS

Section 1. These by-laws may be amended or repealed by the vote of stockholders entitled to cast at least a majority of the votes which all stockholders are entitled to cast thereon, at any regular or special meeting of the stockholders, duly convened after notice to the stockholders of that purpose.

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Exhibit C

Board Resolution – Hygea Holdings Corp

Attached hereto

C.11

HYGEA HOLDINGS CORP
BOARD OF DIRECTORS
OCTOBER 4, 2016

RESOLUTION
RIN CAPITAL

PURSUANT TO NOTICE, the President and Chief Executive Officer of the Company called a meeting of the Board of Directors for 9:45 a.m., October 4, 2016. The meeting began at 9:45 a.m.

In attendance were:

Dan McGowan, Chairman
Frank Kelly, Vice Chairman
Manuel Iglesias, President and CEO
Ted Moffly, CFO
Richard Williams, Secretary
Lacy Loar, Assistant Secretary
Keith Collins, M.D.
Ray Gonzalez
Joe Campanella
Jack Mann
Martha Castillo
Glenn Marichi
and John Brecker and Rudy Rodriguez as observers

The Chairman advised that pursuant to the By-Laws there was a quorum.

On motion by Board Member Keith Collins and second by Vice Chairman Frank Kelly and opportunity for discussion, the Board resolved unanimously with no abstentions as follows

"That the executive management of Hygea Holdings Corp be authorized to negotiate, finalize and execute agreements for the sale of shares of the Company to RIN Capital or its designee on the following terms:

*$30 million (USD) pre IPO
*10% discount to IPO price
*Board and Observers seat to be determined
*price estimated at approximately $1.25 (US) per share including discount
and
That Manuel E. Iglesias, as President and Chief Executive Officer is authorized to execute all documents necessary or desirable to accomplish the foregoing."

RESOLVED by unanimous vote of the Board of Directors on October 4, 2016.

Richard L. Williams
Secretary

EXHIBIT “10”

Joel E. Tasca, Esq.
Nevada Bar No. 14124
Maria A. Gall, Esq.
Nevada Bar No. 14200
Kyle E. Ewing, Esq.
Nevada Bar No. 14051
BALLARD SPAHR LLP
1980 Festival Plaza Drive, Suite 900
Las Vegas, Nevada 89135
Telephone: (702) 471-7000
Fax: (702) 471-7070
tasca@ballardspahr.com
gallm@ballardspahr.com
ewingk@ballardspahr.com

Severin A. Carlson, Esq.
Nevada Bar No. 9373
Tara C. Zimmerman, Esq.
Nevada Bar No. 12146
KAEMPFER CROWELL
50 West Liberty St., Suite 700
Reno, Nevada 89501
Telephone: (775) 852-3900
Fax: (775) 327-2011
scarlson@kcnvlaw.com
tzimmerman@kcnvlaw.com

Attorneys for Defendant

IN THE FIRST JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

IN AND FOR CARSON CITY

CLAUDIO ARELLANO; CROWN EQUITY'S LLC; FIFTH AVENUE 2254 LLC; HALEVI ENTERPRISES LLC; HALEVI SV 1 LLC; HALEVI SV 2 LLC; HILLCREST ACQUISITIONS LLC; HILLCREST CENTER SV I LLC; IBH CAPITAL LLC; LEONITE CAPITAL LLC; N5HYG LLC; and RYMSSG GROUP, LLC,

Plaintiffs,

v.

HYGEA HOLDINGS CORP.,

Defendant.

Case No. 18 OC 00071 1B
Dept No. II

DEFENDANT'S MOTION TO DISMISS OR, ALTERNATIVELY, FOR SUMMARY JUDGMENT

DEFENDANT'S MOTION TO DISMISS OR, ALTERNATIVELY, FOR SUMMARY JUDGMENT

Defendant Hygea Holdings Corp. ("Hygea"), by and through its counsel of record, hereby submits this Motion (the "Motion") to Dismiss Pursuant to N.R.C.P. 12(b), including for Lack of Subject Matter Jurisdiction, Failure to State a Claim, and Failure to Name Indispensable Parties. Hygea alternatively moves for Summary Judgment under N.R.C.P. 56(b). Plaintiffs' Complaint is fatally flawed and must be dismissed because:

- Plaintiff do not collectively hold ten percent (10%) of the corporation's issued and outstanding stock, as is clearly required by NRS 78.650 and 78.630, and therefore lack standing to maintain this lawsuit;
- Plaintiffs seek to maintain their claim for the appointment of a receiver under NRS 32.010, when no ancillary action is pending, as is clearly required by that statute and binding case law interpreting that statute; and
- Plaintiffs have failed to name Hygea's directors as necessary and indispensable parties, as is clearly required by Nevada Supreme Court precedent.

This Motion is based on N.R.C.P. 12(b)(1),(5) & (6), 19(a) & (b), and 56(b) and the pleadings and papers on file. For the reasons set forth herein, Hygea respectfully requests that the Court dismiss Plaintiffs' Complaint, including in its entirety and with prejudice if dismissal is based on Plaintiffs' lack of standing and lack of an ancillary, pending action. If dismissal is based only on Plaintiffs' failure to name Hygea's directors as necessary and indispensable parties, Hygea respectfully requests that the Court dismiss Plaintiffs' Complaint with leave to amend.

MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

Plaintiffs seek the appointment of a receiver pursuant to NRS 78.650, 78.630, and 32.010 on the purported basis that Hygea is on the brink of "imminent financial collapse" due to

its officers' and directors' alleged mismanagement. *See generally* Complaint and Emergency Petition. Hygea strongly disputes Plaintiffs' allegations, and points out that despite the nearly two months between the filing of Plaintiffs' Complaint and this Motion, Hygea has not collapsed, and indeed, is in sound financial health. If this matter proceeds to the merits, Hygea will be prepared to present evidence that will clearly rebut Plaintiffs' allegations, which *at best* paint a hyperbolic and misleading picture of Hygea's financial health and management and *at worst* offer outright fabrications. However, Hygea submits that this is not the time to address the merits of the case given that there are serious, threshold issues this Court must decide before it can turn to the merits, including Plaintiffs' lack of standing to maintain this action and failure to name Hygea's directors as necessary and indispensable parties. Those issues, which are fatal to Plaintiffs' Complaint, are set forth below.

II. LEGAL ARGUMENT

"In [Nevada,] the appointment of receivers is controlled by statute." *State ex rel. Nenzel* 241 P. at 320. "Where the statute provides for the appointment of receivers, the statutory requirements must be met or the appointment is *void and in excess of jurisdiction.*" *Shelton v. Second Judicial Dist. Court in & for Washoe Cty.*, 64 Nev. 487, 494, 185 P.2d 320, 323 (1947) (emphasis added).

Here, the relevant statutes demand that Plaintiffs collectively hold more than ten (10) percent of Hygea's issued and outstanding stock to maintain their petition for a receiver under NRS 78.650 or 78.630 and that there be a pending, ancillary action to maintain their petition for a receiver under NRS 32.010. *See* NRS 78.650(1), 78.630(1) & 32.010. However, as explained below, Plaintiffs fail to plead that they own(ed) 10 percent of Hygea's stock (i) at the time of the filing of the Complaint, (ii) today, or (iii) at any time other than October of 2016, *nearly eighteen months ago*. That is because, in fact and indisputably, Plaintiffs hold only ~7.44% of Hygea's

issued and outstanding stock. Moreover, to the extent a receiver is sought under NRS 32.010, Plaintiffs have failed to plead any ancillary, pending claim (i.e., separate and apart from that to appoint a receiver) pursuant to which a receiver could be appointed. Accordingly, the Court should dismiss Plaintiffs' Complaint for lack of subject matter jurisdiction because, despite their attempts at artful pleading, a "lack of jurisdiction over the subject matter appears on the face of the pleading" and the requirements of receivership statutes are jurisdictional in nature. *Girola*, 81 Nev. at 663, 408 P.2d at 919; *Shelton*, 64 Nev. at 494, 185 P.2d at 323.

Even if Plaintiffs had standing by way of sufficient stock ownership (they do not) or the Court could construe the existence of an ancillary, pending claim pending in this Court (there is no such claim), Plaintiffs have failed to name Hygea's directors as necessary and indispensable parties to this litigation, as is clearly required by Nevada Supreme Court precedent. *Golden v. Averill*, 31 Nev. 250, 101 P. 1021, 1026 (1909); *see also Shelton v. Second Judicial Dist. Court in & for Washoe Cty.*, 64 Nev. 487, 492, 185 P.2d 320, 322 (1947). This is fatal to their Complaint. Accordingly, and as argued further below, Plaintiffs' Complaint must be dismissed.

A. Motion to Dismiss for Lack of Subject Matter Jurisdiction Pursuant to N.R.C.P. 12(b)(1) and 12(b)(5), or Alternatively, for Summary Judgment Because Plaintiffs Do Not Own 10% of Hygea's Issued and Outstanding Stock

1. Legal Standard

"[A motion to dismiss under N.R.C.P. 12(b)(1)] may be utilized when a lack of jurisdiction over the subject matter appears on the face of the pleading." *Girola v. Roussille*, 81 Nev. 661, 663, 408 P.2d 918, 919 (1965). Moreover, N.R.C.P. 12(h)(3) provides that "[w]henever it appears by suggestion of the parties or otherwise that the court lacks jurisdiction of the subject matter, the court shall dismiss the action." "The burden of proving the jurisdictional requirement is properly placed on the plaintiff." *Morrison v. Beach City LLC*, 116

Nev. 34, 36, 991 P.2d 982 (2000) (citing *Nelson v. Keefer*, 451 F.2d 289 (3d Cir. 1971)).

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

In the meantime, a court should grant summary judgment when the moving party demonstrates that no genuine issue of material fact exists, and that the moving party is entitled to judgment as a matter of law. N.R.C.P. 56(c). Nevada has expressly adopted the summary-judgment standard set forth by the United States Supreme Court in *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, (1986), *Celotex Corp. v. Catrett*, 477 U.S. 317 (1986), and *Matsushita Elec. Indus. Co. v. Zenith Radio Corp.*, 475 U.S. 574 (1986). *Wood v. Safeway, Inc.*, 121 Nev. 724, 731, 121 P.3d 1026, 1031 (2005).

Once the moving party has carried its burden of showing that no material fact is in dispute, "the party opposing the motion 'may not rest upon the mere allegations or denials in his pleadings, but . . . must set forth specific facts showing there is a genuine issue for trial.'" *Liberty Lobby, Inc.*, 477 U.S. at 248. A party opposing summary judgment "'must do more than simply show that there is some metaphysical doubt as to the material facts,' . . . and [it] 'may not rely on conclusory allegations or unsubstantiated speculation.'" *Matsushita Elec. Indus. Co. v. Zenith Radio Corp.*, 475 U.S. 574, 587 (1986).

2. Plaintiffs Have Failed to Plead That They Hold 10% of Hygea's Issued and Outstanding Stock

Plaintiffs allege in conclusory fashion that "based upon Hygea's calculations and representations set forth in the N5HYG Stock Purchase Agreement, the Plaintiffs herein currently own more than 10 percent of the shares of Hygea." Complaint, ¶ 33. Plaintiffs make this self-serving assertion, however, only by reference to the fact that "Hygea represented the 23,437,500 shares that [Plaintiff] N5HYG bought to represent 8.57%," a representation made when Hygea and N5HYG executed a stock purchase agreement *on October 5, 2016* (the "N5HYG SPA"), nearly eighteen months ago. *See* Complaint, ¶ 4; Ex. B to Complaint at 7 (setting forth the effective date of the N5HYG SPA). Indeed, Plaintiffs carefully avoid stating outright that they own 10% of the outstanding Hygea shares. *See generally* Complaint. Instead, they opt to *extrapolate* that they own 10% of the outstanding shares, relying on a representation from October of 2016: "[b]ased on the N5HYG Stock Purchase Agreement's calculations, [the non-N5HYG Plaintiffs] thus collectively own 5,663,200 shares – approximately 2.07 percent of the shares of Hygea." Complaint, ¶ 32.

Thus, it appears that Plaintiffs ask Hygea and this Court to simply infer and/or accept that because N5HYG's approximately 23.5 million shares represented approximately 8.6% of Hygea's shares on October 5, 2016, that the non-N5HYG Plaintiffs today own what *would have* represented 2.07% of Hygea's shares *on October 5, 2016*. Thus, even accepting all the facts pled by Plaintiffs as true, *see Wal-Mart*, 125 Nev. at 823, 221 P.3d at 1280, the fact that Plaintiffs owned 10 percent of Hygea's stock eighteen months ago is not enough to plead that they own 10 percent today.

By way of analogy, imagine if a shareholder-plaintiff in a derivative suit pled only that she held shares in the corporation at issue eighteen months ago, before the conduct complained

of occurred, and then asked the Court to just "infer" that nothing had changed since then, so she must own shares today. This would not be sufficient to show that the plaintiff continues to be a shareholder at the time of suit, as required by N.R.C.P. 23.1. *See* N.R.C.P. 23.1; *Keever v. Jewelry Mt. Mines, Inc.*, 100 Nev. 576, 688 P.2d 317 (1984). Rather, the plaintiff to a derivative action must instead plead that she holds shares *today*. *See id.*

Similarly, plaintiffs in a receivership action must plead facts creating a reasonable inference that they hold 10 percent of the corporation's outstanding stock—pleading that they hold stock that represents 10 percent of the shares issued and outstanding eighteen months ago cannot create such an inference. *See* NRS 78.630(1) & 78.650(1); *see also Med. Device All., Inc. v. Ahr*, 116 Nev. 851, 859, 8 P.3d 135, 140 (2000) ("The district court does not have jurisdiction to appoint a corporate receiver, unless the applicant holder or holders of one-tenth of the issued and outstanding stock has legal title *at the time the court considers the application.*") (emphasis added) (quoting *Searchlight Dev., Inc. v. Martello*, 84 Nev. 102, 109, 437 P.2d 86, 90 (1968)). Otherwise, subject matter jurisdiction will be lacking on the face of the complaint, and plaintiffs will have failed to plead the jurisdictional facts sufficient to state a claim for appointment of receiver under NRS 78.650(1) and 78.630(1).

Accordingly, because Plaintiffs have failed to plead that they own 10 percent of Hygea shares issued and outstanding either today, at the time they ask the Court to consider appointing a receiver, or at the time the Complaint and Emergency Petition were filed, the Complaint should be dismissed with respect to the those actions under N.R.C.P. 12(b)(1) *and* (5). *See* N.R.C.P. 12(b)(1) & (5); *Buzz Stew*, 124 Nev. at 228, 181 P.3d at 672; *Girola*, 81 Nev. at 663, 408 P.2d at 919; *Shelton*, 64 Nev. at 494, 185 P.2d at 323.

3. Plaintiffs In Fact Do Not, and Cannot Under Any Set of Facts Prove, that They Hold 10% of Hygea's Issued and Outstanding Stock

Alternatively, if the Court finds that Plaintiffs have properly pled subject matter jurisdiction and standing sufficient to withstand a motion under N.R.C.P. 12(b)(1) and 12(b)(5), Hygea asks that the Court consider summary judgment in its favor under N.R.C.P. 56(b). As argued before the Eighth Judicial District in opposition to Plaintiffs' Emergency Petition, the facts and evidence show that Plaintiffs do not hold anywhere close to 10 percent of Hygea's issued and outstanding stock. *See* Opposition to Emergency Petition (filed Feb. 20, 2018), 10:2–28.

As of the filing of that Opposition, Hygea had 401,014,603 shares of issued and outstanding stock. *See* **Ex. 1**, Declaration of Edward Moffly ("Moffly Decl."), ¶ 44–47. Plaintiffs plead that they collectively own 29,850,700 shares of Hygea's stock, which constitutes only ~7.44% of the issued and outstanding, as shown in Figure 1 below:

Figure 1 - Plaintiffs' Stock Ownership as a Share of Total Shares Issued and Outstanding

Total Shares Hygea:	401,014,603

Plaintiff	Shares	%
Arellano	2,813,200	0.70%
Crown Equity's	250,000	0.06%
Fifth Avenue 2254	100,000	0.02%
Halevi Enterprises	500,000	0.12%
Halevi SV1	250,000	0.06%
Halevi SV2	250,000	0.06%
Hillcrest Acquisitions	250,000	0.06%
Hillcrest Center SV I	250,000	0.06%
Hillcrest Center SV II	250,000	0.06%
Hillcrest Center SV III	500,000	0.12%
IBH Capital	250,000	0.06%
Leonite Capital	500,000	0.12%
N5HYG	23,437,500	5.84%
RYMSSG Group	250,000	0.06%

Shares Required for Standing:	40,101,460.30	10%
Total Shares Held by Plaintiffs:	29,850,700	7.44%

See id.; Complaint at ¶¶ 2–32; Plaintiffs' Declarations (filed Feb. 16, 2018), Exs. 1–3.

Accordingly, Plaintiffs are more than 10,000,000 shares short of the 10% threshold requirements of NRS 78.630(1) and 78.650(1).

Plaintiffs, despite being on notice that they lack standing since at least the filing of Hygea's Opposition to their Emergency Petition, have failed to produce evidence that casts doubt on the number of shares issued and outstanding, as testified to by Hygea's former chief financial officer ("CFO") and current director Edward Moffly. *See* **Ex. 1**, Moffly Decl., ¶ 44–47. Nor have Plaintiffs articulated any argument as to how that number is in genuine dispute. *See generally* Record. Instead, Hygea anticipates that Plaintiffs will, as they have done previously, raise tangentially related and legally irrelevant issues in an attempt to distract from an otherwise straightforward analysis. However, there is no set of facts that could change the number of shares Plaintiffs can plead that they own, nor is there any set of facts that can change the number of Hygea shares issued and outstanding. *Cf. Buzz Stew*, 124 Nev. at 228, 181 P.3d at 672.

Accordingly, the record shows that there is no, and can be no, *genuine* dispute as to this material fact, and the Court should enter summary judgment in Hygea's favor on Plaintiffs' claims under NRS 78.650 and NRS 78.630. *See Safeway*, 121 Nev. at 731, 121 P.3d at 1031.

B. Motion to Dismiss Pursuant to N.R.C.P. 12(b)(1) and 12(b)(5) Because Plaintiffs have Failed to Petition for a Receiver in a Court in which an Action is Pending, as Required by NRS 32.010

Plaintiffs' third basis for the appointment of a receiver is NRS 32.010. Complaint, ¶ 53. NRS 32.010 provides in relevant part:

> A receiver may be appointed by the court in which an action is pending, or by the judge thereof:
>
> . . .
>
> 5. In the cases when a corporation has been dissolved, or is insolvent, or in imminent danger of insolvency, or has forfeited its corporate rights.
>
> 6. In all other cases where receivers have heretofore been

appointed by the usages of the courts of equity.

NRS 32.010.

Notably, the statute's plain language allows for appointment of a receiver only "by [a] court in which an action is pending, or by the judge thereof." *Id.* The Nevada Supreme Court has long interpreted this provision to mean that a receiver may only be appointed in a case in which the applicant is maintaining a claim separate and apart from its request for a receivership. *See, e.g., State ex rel. Nenzel*, 49 Nev. 145, 241 P. 317 (1925); *Int'l Life Underwriters v. Second Judicial Dist. Court in & for Washoe Cty.*, 61 Nev. 42, 113 P.2d 616, 619 (1941) ("The *Nenzel* and *French Bank* and other cases cited by counsel for petitioners state that under [the identical predecessor to NRS 32.010] and similar statutes there must be an action pending before a receiver can be appointed.")

For instance, in *State ex rel. Nenzel*, the Nevada Supreme Court explained in connection with interpreting the identical predecessor to NRS 32.010 that a district court has no jurisdiction to appoint a receiver in a proceeding merely for the appointment of a receiver. *See* 241 P. at 320–21 (citing approvingly to *Vila v. Grand Island Elec. Light, Ice & Cold Storage Co.*, 68 Neb. 222, 97 N.W. 613, 616 (Neb. 1903)).[1] The Nevada Supreme Court explained that:

> [A]t least two things are essential to the appointment of a receiver under the statute mentioned: First, there must be an action pending in which the application is made; and, secondly, the petition must state sufficient facts under one of the subdivisions of the statute mentioned to justify such action. *If there is no action pending* in which the application for the appointment of a receiver is made, *the court should not inquire further.*

---

[1] "The law of receivership is peculiar in its nature in that it belongs to that class of remedies which are wholly ancillary or provisional, and the appointment of a receiver does not affect, either directly or indirectly, the nature of any primary right, but is simply a means by which primary rights may be more efficiently preserved, protected, and enforced in judicial proceedings. It adjudicates and determines the right of no party to the proceedings, and grants no final relief, directly or indirectly." *See Grand Island Elec. Light, Ice & Cold Storage Co.*, 68 Neb. 222, 97 N.W. 613, 616 (1903).

Id. (emphasis added).

The Complaint is indisputably for the appointment of a receiver only. Indeed, it sets forth a single "cause of action" or "claim": "Count I – Appointment of a Receiver." Complaint, ¶50. Under *Shelton*, a Plaintiff must meet all the requirements of a receivership statute or any appointment of a receiver is *void and without jurisdiction*. *Shelton*, 64 Nev. at 494, 185 P.2d at 323. Here, Plaintiffs have failed to meet NRS 32.010's plain and clear requirement that the application for receiver be made for appointment by "the court in which an action is pending, or by the judge thereof." NRS. 32.010.

Accordingly, "a lack of jurisdiction over the subject matter appears on the face of the pleading[,]" and the Court lacks subject matter jurisdiction under N.R.C.P. 12(b)(1). N.R.C.P. 12(b)(1); *Girola*, 81 Nev. at 663, 408 P.2d at 919; *Shelton*, 64 Nev. at 494, 185 P.2d at 323. Alternatively, Plaintiffs have failed to plead the elements of a claim for appointment of receiver under NRS 32.010, which requires maintenance of a pending action in which the receiver is requested and, therefore, have failed to state a claim under N.R.C.P. 12(b)(5). N.R.C.P. 12(b)(5); *Buzz Stew*, 124 Nev. at 228, 181 P.3d at 672. In either case, the Court should dismiss Plaintiffs' claim for appointment of receiver under NRS 32.010.[2]

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[2] Hygea notes that at least one Plaintiff, N5HYG, is maintaining a separate action in the United States District Court for the District of Nevada, in which it maintains no less than twenty-one causes of action against Hygea, as well as its directors. *See NY5HG, LLC, et al. v. Hygea Holdings Corp.*, Case No. 2:17-cv-02870-JCM-PAL (D. Nev.) (the "Federal Securities Litigation"). The Eighth Judicial District court already took judicial notice of that action herein. *See* February 21 Hearing Transcript at 9:16–24. N5HYG, who admits to being the lead Plaintiff herein, has not yet articulated a reason that it cannot move for a receiver in that action.

C. Motion to Dismiss Pursuant to N.R.C.P. 12(b)(6) Because Plaintiffs Failed to Name Necessary and Indispensable Parties: Hygea's Directors

1. Legal Standard

Under N.R.C.P. 19(a), a party is necessary when:

> (1) in the person's absence complete relief cannot be accorded among those already parties, or (2) the person claims an interest relating to the subject of the action and is so situated that the disposition of the action in the person's absence may (i) as a practical matter impair or impede the person's ability to protect that interest or (ii) leave any of the persons already parties subject to a substantial risk of incurring double, multiple, or otherwise inconsistent obligations by reason of the claimed interest.

N.R.C.P. 19(a). "If the person has not been so joined, the court shall order that the person be made a party." *Id.* Furthermore, if "joinder is not feasible, the court must determine, in equity and good conscience, whether the action should proceed or be dismissed." *Humphries v. Eighth Jud. Dist. Ct.*, 129 Nev. 788, 792, 312 P.3d 484, 487 (2013) (citing N.R.C.P. 19(b)). N.R.C.P. 19(b) sets forth a four-factor balancing test to determine a party's indispensability:

> The factors to be considered by the court include: first, to what extent a judgment rendered in the person's absence might be prejudicial to the person or those already parties; second, the extent to which, by protective provisions in the judgment, by the shaping of relief, or other measures, the prejudice can be lessened or avoided; third, whether a judgment rendered in the person's absence will be adequate; fourth, whether the plaintiff will have an adequate remedy if the action is dismissed for nonjoinder.

N.R.C.P. 19(b).

2. Hygea's Directors are Necessary and Indispensable Parties to this Lawsuit

In the context of an application for a receiver over the management and affairs of a corporation, the Nevada Supreme Court has long held that the corporation's directors are

necessary and indispensable parties:

> We think, however, that the directors are necessary parties. They of necessity have a financial interest in the corporation, and are the ones who are [e]ntrusted with its management by the stockholders. The right to control the affairs of a corporation in which they have a pecuniary interest is of itself an important privilege and usually a valuable right to the one exercising it. An order dissolving a corporation and placing its affairs in the hands of a receiver, not only effects a radical change in the legal status, but ousts the control of its affairs by the board of directors as such.

Golden v. Averill, 31 Nev. 250, 101 P. 1021, 1026 (1909); *see also Shelton v. Second Judicial Dist. Court in & for Washoe Cty.*, 64 Nev. 487, 492, 185 P.2d 320, 322 (1947). Here, it is undisputed that Plaintiffs have failed to name Hygea's directors as defendants to this lawsuit for the appointment of a receiver. This is fatal to Plaintiffs' Complaint because, as set forth by the foregoing precedent, the directors are necessary and indispensable parties to these proceedings because the appointment of a receiver "ousts the control of [the corporation's] affairs by the board of directors . . . ." *Golden*, 101 P. at 1026.

The Complaint and Emergency Petition are based, in part, on allegations of mismanagement, including presumably the alleged mismanagement of Hygea's directors. *See generally* Complaint and Emergency Petition. There can be no reasonable dispute that the directors claim an interest related to the subject matter of this litigation, not only because a receiver usurps their right and ability to manage the affairs of the corporation, but also because the Plaintiffs have accused the directors of breaching their fiduciary duties by way of mismanagement. There can also be no reasonable dispute that if this action proceeds without the directors' presence, they will not be able to defend themselves against such allegations, thereby impeding their interests as fiduciaries of the corporation. Indeed, there is a question as to whether Hygea can even respond to the Complaint's allegations with a proper denial or admission to the extent those allegations are directed against actions taken individually by

Hygea's directors. Accordingly, this Court should dismiss Plaintiffs' claims for failure to join Hygea's directors as necessary and indispensable parties.

III. CONCLUSION

For the foregoing reasons, Hygea respectfully requests that the Court dismiss Plaintiffs' Complaint, including in its entirety and with prejudice if dismissal is based on Plaintiffs' lack of standing and lack of an ancillary, pending action. If dismissal is based only on Plaintiffs' failure to name Hygea's directors as necessary and indispensable parties, Hygea respectfully requests that the Court dismiss Plaintiffs' Complaint with leave to amend.

Dated this 23rd day of March, 2018.

KAEMPFER CROWELL

By: Tara C. Zimmerman

Severin A. Carlson, Esq.
Nevada Bar No. 9373
Tara C. Zimmerman, Esq.
Nevada Bar No. 12146
50 West Liberty St., Suite 700
Reno, Nevada 89501

Joel E. Tasca, Esq.
Nevada Bar No. 14124
Maria A. Gall, Esq.
Nevada Bar No. 14200
Kyle A. Ewing, Esq.
Nevada Bar No. 14051
BALLARD SPAHR LLP
1980 Festival Plaza Drive, Suite 900
Las Vegas, Nevada 89135

Attorneys for Defendant

CERTIFICATE OF SERVICE

Pursuant to N.R.C.P. 5, I hereby certify that on March 23, 2018, a true and correct copy of **DEFENDANT'S MOTION TO DISMISS OR, ALTERNATIVELY, FOR SUMMARY JUDGMENT** was served on the following counsel of record by U.S. Mail, postage-prepaid, with a courtesy copy sent by e-mail:

G. Mark Albright, Esq.
D. Chris Albright, Esq.
ALBRIGHT, STODDARD, WARNICK & ALBRIGHT
801 South Rancho Drive, Suite D-4
Las Vegas, Nevada 89106

Ogonna M. Brown, Esq.
HOLLY DRIGGS, WALCH FINE WRAY PUZEY THOMPSON
400 South Fourth Street
Las Vegas, Nevada 89101

James W. Puzey, Esq.
HOLLY DRIGGS, WALCH FINE WRAY PUZEY THOMPSON
800 South Meadows Parkway, #800
Reno, Nevada 89521

Christopher D. Kaye, Esq.
(admitted pro hac vice)
THE MILLER LAW FIRM, P.C.
950 W. University Drive, Suite 300
Rochester, Michigan 48307

Attorneys for Plaintiffs

An Employee of Kaempfer Crowell

INDEX OF EXHIBITS

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EXHIBIT 1

DECL
Joel E. Tasca, Esq.
Nevada Bar No. 14124
Maria A. Gall, Esq.
Nevada Bar No. 14200
Kyle E. Ewing, Esq.
Nevada Bar No. 14051
BALLARD SPAHR LLP
1980 Festival Plaza Drive, Suite 900
Las Vegas, Nevada 89135
Telephone: (702) 471-7000
Facsimile: (702) 471-7070
tasca@ballardspahr.com
gallm@ballardspahr.com
ewingk@ballardspahr.com

Attorneys for Defendant

EIGHTH JUDICIAL DISTRICT COURT

CLARK COUNTY, NEVADA

CLAUDIO ARELLANO; CROWN EQUITY'S LLC; FIFTH AVENUE 2254 LLC; HALEVI ENTERPRISES LLC; HALEVI SV 1 LLC; HALEVI SV 2 LLC; HILLCREST ACQUISITIONS LLC; HILLCREST CENTER SV I LLC; IBH CAPITAL LLC; LEONITE CAPITAL LLC; N5HYG LLC; and RYMSSG GROUP, LLC Plaintiffs, v. HYGEA HOLDINGS CORP., Defendant.	Case No. A-18-768510-B Dept No. XXVII

DECLARATION OF EDWARD MOFFLY

I, Edward Moffly, under penalty of perjury under the law of the State of Nevada, declare as follows:

1. My name is Edward Moffly. I am a resident of Miami-Dade County in the State of Florida and am more than twenty-one (21) years old. I am of sound mind and consider myself competent to give testimony in legal proceedings.

2. I am the former Chief Financial Officer ("CFO") of Hygea Holdings

Corp. ("Hygea" or the "Company"), the Defendant in the above-captioned proceeding.

3. I co-founded Hygea in 2007.

4. I am also a member of Hygea's Board of Directors.

5. I submit this Declaration in support of Hygea's Opposition to Plaintiffs' Emergency Petition for Appointment of Receiver (the "Petition").

6. As the former CFO of Hygea, until I stepped down on August 9, 2017, and a current director, I am knowledgeable about Hygea's capital structure, its investors (including both shareholders and lenders), its day-to-day finances, its cash flow, and its financial outlook.

7. I am knowledgeable about the matters and facts attested to below; my testimony is made on personal knowledge, unless made upon information and belief (and so stated), in which case I believe it to be true.

BALLARD SPAHR LLP
1980 FESTIVAL PLAZA DRIVE, SUITE 900
LAS VEGAS, NEVADA 89135
(702) 471-7000 FAX (702) 471-7070

Background Regarding Hygea

8. Hygea is a diversified healthcare holding company led by a team of nationally recognized industry innovators and leaders who represent many aspects of healthcare, from insurance and finance, to medicine and technology.

9. Hygea owns physician practices, ancillary services companies (pharmacies, therapies and diagnostic facilities), independent physician associations (IPAs), and other medical service entities that provide seamless care to commercial, Medicare and Medicaid patients.

10. With a critical mass of physicians across numerous specialties, Hygea creates and owns management service organizations, under contract with Medicare and Medicaid HMO plans.

11. Hygea currently manages over 100,000 members and patients through their Medicare Advantage at-risk contracts and provides care through its Integrated Group Practice as an improved delivery model.

12. Hygea's business model applies best practices at every stage of healthcare delivery to reduce inefficiencies and improve patient care.

13. As the former CFO of Hygea and a current director, I am focused on continuing to expand the Company's reach geographically as well as expanding and integrating its portfolio of services.

14. Over the past four years, Hygea has undergone astonishingly rapid growth and expansion, with its revenues growing by a factor of approximately forty times during that same period.

15. Because Hygea's revenues are primarily generated by payments from the federal government health insurers, Medicare and Medicaid, it often does not receive all of its revenue payments until approximately eighteen (18) months after its healthcare professionals provide services; moreover, given Hygea's recent acquisition spree, and as explained further in ¶¶ 17–22, these funds are generally provided to Hygea in large, annual "lump sums" covering revenues generated the prior year, creating cash management challenges unique to Hygea's industry.

16. Specifically, these payments come through the Medicare Advantage Program; in short, the Medicare Advantage program financially incentivizes health management organizations ("HMOs") and other "capitated-fee" plans to provide insurance to those Americans over 65 years of age by providing the HMO or other plan a set payment amount per patient each month (the "capitation") that is determined by and benchmarked to both the beneficiary's risk profile and the relative cost of healthcare in the county in which the beneficiary resides; the HMO or other Medicare Advantage Plan "codes" its beneficiaries' personal health characteristics, which coding determines the risk-based adjustment for each beneficiary

17. Because many physicians are more concerned with providing good health care than helping their patients' insurers "code" their beneficiaries by keeping all relevant health characteristics up-to-date in the Medicare Advantage coding system, many HMOs have historically failed to realize optimal capitation for their beneficiaries' actual health characteristics; because Hygea administrates its physician's practices while the physicians focus on providing excellent care, Hygea

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1980 FESTIVAL PLAZA DRIVE, SUITE 900
LAS VEGAS, NEVADA 89135
(702) 471-7000 FAX (702) 471-7070

contracts with HMOs that cover eligible members in its practices where Hygea optimizes and properly codes each HMO's patient panel (the "Medicare Advantage Patient Panel" or "Patient Panel").

18. Revenues earned by Hygea physicians through treating beneficiaries of Medicare Advantage HMOs are placed in to what is called an aggregation or omnibus account, from which the expenses and costs associated with the revenue earned through Hygea's practices are paid; Hygea is paid from the residual after all payments for associated costs and expenses are remitted.

19. For mature medical management service organizations with up-to-date coding for a stable population of Medicare Advantage Patients, the residual or surplus amounts are distributed on a monthly or quarterly basis.

20. Hygea's business model, however, includes targeting medical practices with out-of-date coding that Hygea can improve as part of the management and administrative services it provides its medical practitioners; the Medicare Advantage process provides HMOs (like those that Hygea contracts with) an opportunity to "re-code" patient data for approximately one to up to two years looking backward; accordingly, Hygea can acquire a new practice, use its historical patient records to update the coding on its Patient Panel, and generate additional surplus funds for the HMO through larger capitations based on the Patient Panel's increased risk profile when taking into consideration the up-to-date coding.

21. Therefore, and because of Hygea's aggressive growth strategy over the last twenty-four months, Hygea has been playing a constant game of "catch up" over that same period, acquiring new practices that almost always need to have their Patient Panels' coding cleaned up ("re-coded") for periods prior to acquisition.

22. As a case in point, Hygea is still coding Patient Panel data for dates of service as far back as 2016, which will be submitted to the Centers for Medicare & Medicaid Services ("CMS")—the federal agency responsible for administering the Medicare and Medicaid programs—in the second quarter of 2018.

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23. This data "clean-up" that Hygea performs on behalf of its new acquisitions is not paid in the regular course with quarterly surplus distribution; instead, the "clean-up" surpluses are distributed in irregular, "lump sums."

24. For instance, as discussed above in ¶¶ 15 & 22, Hygea should receive one, very large surplus payment during the fourth quarter of 2018 or first quarter of 2019 for the updated coding it is performing for 2016 patient data.

25. In short, extreme capital expenditures, especially for growth, in an industry dependent on irregular, government-provided cash flows result in "growing pains" for high-growth healthcare companies like Hygea; however, the short term cash management challenges that Hygea has faced over its ten year history, including in the fourth quarter of 2017, have *never* rendered Hygea insolvent or caused it to experience any problems that threatened its status as a "going concern."

26. I have reviewed and am familiar with the allegations and issues set forth in Plaintiffs' Complaint and the Declaration of Christopher Fowler (the "Fowler Declaration"), attached as Exhibit D to Plaintiffs' Complaint.

27. Upon information and belief, Mr. Fowler is the Senior Managing Director of RIN Capital, LLC ("RIN"), a family investment fund.

28. Upon information and belief, including information gleaned from reviewing RIN's website, http://www.rincapital.com/, RIN was formed to manage the investments of Manoj Bhargava, founder of Living Essentials, LLC, the manufacturer of the popular "5-Hour Energy" drinks.

29. Upon information and belief, RIN (and/or its partners or members), is the ultimate beneficial owner of the Hygea common shares held by Plaintiff N5HYG, LLC ("N5HYG") and controls the voting rights associated with N5HYG's shares.

30. I have also reviewed and am familiar with the allegations and issues set forth in the Declarations of Jane Cohen, M.D., Claudio Arellano, Kevin Watts, Gilbert Leistner, and Raul Tamayo, attached as Exhibits 4–5 & 7–9, respectively, to

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(702) 471-7000 FAX (702) 471-7070

"Plaintiffs' Declarations in Support of Petition for Appointment of Receiver," filed February 16, 2017.

31. It is my belief as the former CFO and a current director of Hygea that placing Hygea in a receivership would materially damage Hygea's ability to continue as a "going concern," including, without limitation, because:

a. Hygea would stand to risk losing its contracts with HMO plans, all of whom have a contractual right to terminate their contract with Hygea in the case that a receiver is appointed to manage the Company's affairs;

b. if an HMO cancelled its contract with Hygea, the Medicare Advantage Patient Panel associated with that HMO, as described above, would be immediately and automatically reassigned to another provider, and Hygea would permanently lose its ability to generate revenue by optimizing capitation for that particular Patient Panel;

c. even more alarming, if the Patient Panel was reassigned, the new medical management service organization to which the Patient Panel would be automatically reassigned will have the right to receive all surpluses going forward, even those properly attributable to the coding and services provided by Hygea from 2016, 2017, and 2018;

d. in other words, the free cash flows associated with revenue and accounts receivable already booked by Hygea would be immediately and irrevocably assigned to a third-party—the money follows the Patient Panel; and

e. Hygea would stand to lose current financing opportunities with non-RIN investors, one of whom has issued an outstanding Letter of Intent regarding its intention to invest in Hygea (contingent upon the provision of an audited Quality of Earnings Report for the fiscal year ended 2017 (the "2017 QOE Report"); Hygea's certified public accountant, Clifton Larson Allen ("CLA"), a tier one accounting firm ranking the ninth-largest in the nation, is currently in the process of completing the

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audited 2017 QOE Report; Hygea expects to provide the financials to the prospective investor by mid-March).

32. Accordingly, the relief Plaintiffs request would have the exact opposite effect of Plaintiffs' purported goal of preserving Hygea's assets—it would instead impair those assets.

Information Regarding the Result Sought by RIN, Fowler, and N5HYG

33. Upon information and belief, RIN and/or Mr. Fowler and/or N5HYG hope to materially damage Hygea's ability to continue as a "going concern," which would allow them to make further investment in Hygea at artificially depressed prices instead of being forced to compete fairly with other investors.

34. Upon information and belief, Mr. Fowler and/or RIN have an established practice of taking large equity positions in private, growth-stage companies, using litigation and other tactics to devalue the target company, including by creating artificial insolvency, and then using the target's devaluation/distress to make further investment at an artificially low price to "leverage" its original investment and wipe out other equity holders, including founders.

35. Upon information and belief, Plaintiffs' Complaint and Emergency Petition is just one of many such tactics RIN is currently pursuing in an attempt to unseat/divest Hygea's current management and devalue the Company by artificially induced distress.

36. Accordingly, Plaintiffs' allegations, to the extent they are not outright false, paint an alarmist and misleadingly bleak picture of Hygea's health and its management's successes.

Response to Unverified Allegations in the Complaint

37. I have *never* diverted or otherwise converted the cash or other property of Hygea for my own personal benefit and have no plans to do so.

38. Hygea is *not* "failing" or "at or near the point of insolvency."

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39. In fact, Hygea currently awaits receipt from CLA of a final draft of the 2017 QOE Report discussed above, which Hygea expects will verify that during the year ended December 31, 2017, Hygea generated positive and robust earnings before interest, tax, depreciation, and amortization ("EBITDA"), a key metric for evaluating the health, and value, of a growth-stage company like Hygea.

40. Similarly, Hygea is finalizing a Cash Flow Analysis, estimating Hygea's incoming and outgoing cash flows through December 31, 2018 (the "2018 Cash Flow Analysis"), based on its 2017 CLA-audited "top-line" revenue figures; because approximately 75% of Hygea's revenues for a given year are generated from revenues earned the prior year through the Medicare Advantage Program, as explained in ¶¶ 15–24 above, Hygea is able to estimate ~75% of its revenues with near certainty, making its 2018 Cash Flow analysis highly reliable.

41. The final version of the 2018 Cash Flow Analysis is expected to predict substantial positive cash flow for Hygea in 2018.

42. Together, Hygea expects that the 2017 QOE Report and 2018 Cash Flow Analysis will demonstrate that Hygea is not only in a financial position much rosier than the Fowler Allegations imply, but also that Hygea is in fact poised to reap significant rewards on the back of the tremendous growth it has experienced over the past few years.

43. Beyond what I have described above, the information contained in the 2017 QOE Report and the 2018 Cash Flow Analysis, including the nominal figures for 2017 EBITDA and the 2018 cash flow estimates, is proprietary and confidential information, the public disclosure of which would damage Hygea's competitive advantage by revealing private financial information and valuable trade secrets involving Hygea's business model.

<u>Information Regarding Hygea's Capital Structure</u>

44. Hygea's transfer agent, VStock Transfer, provided Hygea with a Certified Shareholder List as of January 29, 2018.

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(702) 471-7000 FAX (702) 471-7070

45. The Certified Shareholder List indicates that as of January 29, 2018, Hygea had 401,014,603 shares of stock issued and outstanding.

46. The 401,014,603 shares figure is stated on a non-diluted basis; in other words, the figure does not reflect outstanding and unexercised warrants and instead reflects only those shares that have been issued and remain outstanding.

47. Hygea has neither issued nor repurchased, canceled, or otherwise terminated the outstanding status of any shares since January 29, 2018.

Response to Paras. 5(a), (c) & (d) of the Fowler Declaration Regarding Payroll

48. Hygea's payroll payments have not ceased.

49. Hygea pays its employees on a biweekly basis, every other Friday.

50. In fact, with the exception of a handful of C-Suite executives, all of Hygea's approximately 600 employees have *always* been paid on time.

51. With the exception of those C-Suite executive, all of Hygea's employees were recently issued paychecks on February 9, 2018.

52. All pay owed to "physicians" and "other administrative staff" has always been timely remitted to those employees, including on February 9, 2018; as for the C-Suite executives, those executives who have not been paid include myself, Mr. Manuel E. Iglesias, Esq. (Hygea's Chief Executive Officer ("CEO")), Aaron Kaufman (Hygea's former Chief Technology Officer), and Dan Miller (Hygea's former Chief Operating Officer).

53. I voluntarily agreed to temporarily forego timely pay, as has Mr. Iglesias.

54. Meanwhile, Mr. Miller is in the process of separating from Hygea and his separation package—including his back pay—is currently being negotiated.

55. Mr. Kaufman has been paid through December 31, 2017, and Hygea expects to bring him current shortly.

56. For a period of time, Hygea did pay its payroll through an American Express-sponsored payroll program, whereby American Express encouraged and

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(702) 471-7000 FAX (702) 471-7070

incentivized its employer customers to manage their payroll payments through American Express.

57. In my experience with corporate finance, making payroll through a revolving line of credit from a credible institution is both a normal and responsible business practice.

58. Accordingly, and to take advantage of American Express's promotional incentive program, Hygea elected to remit its payroll payments through American Express.

59. When American Express eventually terminated the above-referenced incentive program, Hygea began remitting its payroll payments through its prior payroll processing company, ADP, LLC ("ADP"), the industry leader in payroll processing, in October of 2017.

60. Hygea is current on all payroll payments to ADP, through which the Company's payroll is remitted to its employees.

61. While Hygea has not received correspondence from any taxing authority regarding a failure to pay payroll taxes, Hygea has acknowledged that it continues to owe back-payroll taxes for the fourth quarter of 2017 and is incurring payroll tax liabilities for 2018.

62. It is my understanding that this will result in a penalty that will require Hygea to pay additional funds on its payroll taxes for the fourth quarter of 2017 and any 2018 taxes that are not timely remitted to the IRS.

63. However, Hygea expects, based on the 2018 Cash Flow Analysis discussed above, to be cash flow positive by the second quarter of 2018 and has already engaged its long-time tax accountancy, Rodriguez, Trueba, & Co., P.A. ("RT&C"), a local Southeastern Florida Certified Public Accountant, to negotiate a standard two-year repayment plan with the Internal Revenue Service ("IRS"), with payments beginning some time in the second quarter of 2018; as discussed above,

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LAS VEGAS, NEVADA 89135
(702) 471-7000 FAX (702) 471-7070

Hygea expects to be cash flow positive for the year 2018 irrespective of these repayments.

64. In my experience in corporate finance, it is not unusual for a solvent company to voluntarily forego paying taxes temporarily during a period of tight cash flows, knowingly incurring a penalty, to ensure that its employees and other creditors are timely paid; this is a strategic decision for management in its business judgment.

Response to Para. 5(d) of the Fowler Declaration Regarding Default to One or More Large Lenders

65. I am unable to fully respond to Mr. Fowler's allegation that Hygea is "delinquent in payments to one or more large lenders," because Mr. Fowler has not identified these alleged lenders.

66. However, as the former CFO and a current director of Hygea, I can state that Hygea has only one third-party lender, Bridging Finance ("Bridging"); aside from Bridging, my family trust and the family trust of the Company's CEO, Mr. Manuel E. Iglesias, Esq. (the "Insider Lenders"), are Hygea's only other lenders.

67. Hygea is not delinquent to Bridging or the Insider Lenders.

68. Attached hereto as Exhibit B-1 is a true and correct copy of an audit letter from Bridging to Hygea, including a certification executed by both Hygea and Bridging that the information contained therein is accurate, which identifies a "Date to which interest paid" of December 31, 2017 and bears no indication that Hygea is in default.

Response to Paragraph 5(b) of the Fowler Declaration

69. Hygea hired FTI Consulting, Inc. ("FTI"), in or about April of 2017, to provide outside consulting services.

70. More specifically, Hygea hired Timothy J. Dragelin, a Senior Managing Director in FTI's Corporate Finance division, to provide consulting on Hygea's infrastructure and, more specifically, integration of accounting systems across

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Hygea's many newly acquired practices, which were operating disparate and incompatible accounting systems at the time Mr. Dragelin was retained by Hygea.

71. I did not refuse to share information with FTI; rather, upon his arrival at Hygea, the Company provided Mr. Dragelin with an office and unfettered access to its books, financial information, and management.

72. Neither Hygea nor its management, including me and Mr. Moffly, put up "constant roadblocks;" as alleged by Mr. Fowler. Hygea instead provided Mr. Dragelin with all information and support requested.

73. I have never been informed by FTI and/or Mr. Dragelin that FTI "concluded that certain financial information provided by Hygea's management to its shareholders was 'fabricated.'"

74. While Mr. Dragelin did identify areas for operational improvement, I have never been informed by FTI and/or Mr. Dragelin that FTI concluded that Hygea's performance was negatively impacted by *severe* operational deficiencies.

Response to the Allegations contained in the Declaration of Jane Cohen, M.D.

75. Hygea is current on all "monthly installments of purchase price," associated with its purchase of the assets of Physicians Group of South Florida, P.A. (the "Physician's Group")

76. While it is true that Hygea did not pay the purchase price installment due to the Physician's Group December 1, 2017, until on or about February 14, 2018, that installment has now been paid in full.

77. As explained above, Hygea is working with RT&C to negotiate a two-year repayment plan with the IRS to bring all payroll taxes for the fourth quarter of 2017 and any payroll tax liability incurred to date in 2018 current.

78. While Hygea asked the Physicians Group to refrain from distributing checks that Hygea issued on February 8, 2018, until February 9, 2018, this is for a very simple reason: Hygea pays its employees every other Friday; accordingly, while it issued the checks to the Physician's Group on February 8 (a Thursday), those

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checks were not due to any employee until February 9 (a Friday); in fact, Hygea recently began sending the checks a day early out of an abundance of caution after a FedEx logistical failure caused Hygea's pay checks to arrive late on a Friday afternoon to a number of Hygea's Southeast Florida medical practices, causing some employees who were to leave early to either forego being paid until Monday or return to the office; accordingly, and to ensure that its employees are paid timely, Hygea now ships its checks a day early and merely asks its medical practices to hold the checks until the Friday payday on which they checks are due.

79. All pay due to Physician's Group employees and all other employees of Hygea (besides the C-Suite executives described above) has been tendered as of the execution of this Declaration, as discussed above.

80. Hygea is not aware of any of its checks "bouncing" or any reason a check might bounce; any errors in the processing of one of Hygea's checks is not due to insufficiency of funds.

81. Hygea does not contend that any of the physicians employed at the Physicians Group qualified as 1099 contractors under the Internal Revenue Code ("1099 Contractors") at any point in time and has no plans to treat or begin to treat those physicians as 1099 Contractors.

82. While it is true that Hygea was forced to issue partial Internal Revenue Service Form W-2's ("Form W-2") to many of its employees, this was due to Hygea's transition from American Express to ADP for purposes of payroll processing, starting in October of 2017.

83. Hygea has sent ADP all relevant information required for it to issue complete 2017 Form W-2's to Hygea's employees and expects to have all complete 2017 Form W-2's shortly, at which point it will distribute the same to its employees.

84. As part of its normal business practice, Hygea sweeps the bank accounts of each of its more than thirty medical practices daily, pursuant to its management agreement with each practice, by which each practice cedes check writing authority

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and control over the funds in the account to Hygea, such that Hygea can administer the practice's finances, including paying everything from rent and pharmacy bills to covering the practice's payroll and other overhead.

85. In other words, this is a standard practice to which each of Hygea's medical practices agreed by way of the management agreement between Hygea and the practice; moreover, there is no way for Hygea to efficiently administer the finances of its more than thirty medical practices without sweeping the funds into a master account—this is done for efficiency and not any nefarious purpose such as diversion of funds.

86. Further, Hygea is obligated by its covenants to Bridging (as it was to its prior institutional lenders) to perform these daily sweeps as a standard measure of corporate financial governance best practices to protect the free cash flows generated day-to-day by its practices; in fact, the process is employed in part to ensure that cash flowing into the practices' accounts is not diverted *from Hygea*, protecting the interests of its shareholders and other stakeholders.

87. I am not aware of Hygea ever using funds swept from one of its medical practices "for purposes other than maintenance of the practice," as alleged in ¶ 5(e) of Dr. Cohen's Declaration.

88. Accordingly, and given the above, Dr. Cohen's unsupported and vague accusation to that effect has no basis in fact.

89. With the exception of certain practices' leases, which leases predated Hygea's acquisition of the practice, all of the liabilities incurred by Hygea's medical practices are Hygea's liabilities alone and not those of either the practice or its medical professionals, including its former principals; further, Hygea has paid all rents for all of its practices due and owing through December 31, 2017, including rents due subject to a lease in which a practice's former principal(s) may remain liable on the lease.

90. Specifically, Hygea has paid all of the liabilities incurred by Physician's

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(702) 471-7000 FAX (702) 471-7070

Group and provided everything Dr. Cohen's practice has ever needed from an administrative and/or financial perspective; given all of the above, Ms. Cohen has no legitimate basis on which to believe she may incur some liability as a result of Hygea's failure to pay a liability of Physician's Group or that Hygea will fail to pay such a liability in the first place.

91. Hygea received the notices of breach discussed in ¶ 6 of Dr. Cohen's Declaration and attached thereto as Exhibits 1 and 2, and I have reviewed those letters.

92. Each letter discusses two alleged breaches of agreements between Hygea and the Physician's Group: (a) failure to pay the monthly purchase price installment and (b) failure to pay payroll taxes for the fourth quarter of 2017.

93. As discussed above, alleged breach (a) has been cured, and Hygea and I are working diligently to resolve alleged breach (b).

Responses to the Allegations Contained in the Declaration of Claudio Arellano

94. Hygea's former in-house general counsel, Richard L. Williams, Esq., is no longer an employee of Hygea.

95. Contrary to the (at least) second-hand allegations set forth by Mr. Arellano, Hygea did not "fail to pay" Mr. Williams, who agreed to voluntarily forego *timely* payment and whose pay has since been tendered in full, and I am not aware of any other alleged breach by Hygea of the employment agreement between Hygea and Mr. Williams. Hygea's relationship with Mr. Williams, including the separation of Mr. Williams from Hygea, is discussed further below in the section entitled, "Responses to the Allegations contained in the E-Mail of Richard L. Williams, Esq."

96. As discussed above, Hygea has provided all information to ADP required for it to issue complete 2017 Form W-2's, including that for Mr. Arellano, and expects to receive and distribute those 2017 Form W-2's shortly.

97. As discussed in Paragraph 89 above, Hygea has paid all rents for all of its practices due and owing through December 31, 2017.

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LAS VEGAS, NEVADA 89135
(702) 471-7000 FAX (702) 471-7070

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1980 FESTIVAL PLAZA DRIVE, SUITE 900
LAS VEGAS, NEVADA 89135
(702) 471-7000 FAX (702) 471-7070

Responses to the Allegations Contained in the E-Mail of Richard L. Williams, Esq.

98. As discussed above, Hygea recently separated from its former general counsel, Richard L. Williams, Esq.

99. I have reviewed the declaration of Kevin Watts, including Exhibit A thereto, which appears to be electronic mail (an "E-mail") from Mr. Williams, which was purportedly not solicited by Mr. Watts, according to ¶ 3 of his Declaration.

100. While some of the allegations in Mr. Williams's E-mail are too vague for me to respond to fully and truthfully, I respond below to those that are stated with sufficient specificity for me to attest to their veracity.

101. Further, a number of the allegations contain confidential and propriety information of Hygea, which should not have been distributed to outside individuals, particularly attorneys associated with or representing the Plaintiffs to this action; because any response I may have to those allegations would cause further disclosure of confidential and proprietary information, which would serve to further diminish Hygea's competitiveness and business opportunities, I cannot respond to those allegations herein; however, I am willing and able to provide further testimony regarding certain of those allegations, subject to a legal procedure that protects the confidential and proprietary nature of the information from public disclosure, to the extent that the Court so desires.

102. As of the execution of this Declaration, Hygea has tendered a final paycheck to Mr. Williams for all pay owed pursuant to the employment agreement between Hygea and Mr. Williams.

103. Any failure to collect or cash this paycheck is at Mr. Williams's election; accordingly, any status Mr. Williams may have as a creditor of Hygea is voluntary, contrary to his assertion to the opposite effect in the E-mail attached to Mr. Watts's Declaration.

104. The final paycheck includes back-pay for a period during which Mr.

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Williams, like myself, voluntarily agreed to forego *timely* pay during a brief period of tight cash flows.

105. Some of Hygea's medical professionals have left their practice since its acquisition by Hygea; conversely, Hygea has hired new medical professionals to staff various of its medical practices; these departures and new hires are a natural part of the business cycle of employee attrition and acquisition—Hygea's medical practices are not frozen in time, and its employees are people, not machines—medical providers may leave a practice for any variety of reasons; accordingly, it is not clear what Mr. Williams is implying when he states that, "I think the providers are leaving;" given that Mr. Williams does not identify any providers, I am unable to comment further on this speculation.

106. While Hygea has experienced negative cash-flow through growth related operating activity, in my experience in corporate finance, this is not unusual for a young company during its growth phase because even though a company may be generating healthy streams of revenue and cash flows, it is expending an even greater amount on cash capital expenditures to fuel its growth; this is exactly the case with Hygea, as explained above; further, Hygea's EBITDA for 2017 demonstrates that it is in fact financially healthy.

107. Given that Mr. Williams was (until recently) Hygea's general counsel, I have never cut Mr. Williams "out of the loop."

108. However, to the extent information was consciously withheld from Mr. Williams, this was due to my and Mr. Iglesias's personal suspicion that Mr. Williams may have been revealing confidential and proprietary, inside information about Hygea to parties outside of Hygea; Mr. Williams's e-mail to Mr. Watts appears to confirm our suspicion.

109. It is my belief that Mr. Williams statement that, "there is a substantial impetus toward favoring Mr. [Bhargava] in the management control disputes," is an indication of N5HYG's and/or RIN's and/or Mr. Fowler's and/or Mr. Bhargava's true

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intention in maintaining this lawsuit—to replace Hygea's management with themselves through litigation, instead of through the traditional legal procedures for doing so, as contemplated by Nevada's corporate law and Hygea's bylaws.

Responses to the Declaration of Gilbert Leistner

110. The Leistner Group LLC ("TLG") provided advisory services to a Hygea predecessor called Hygea Health Network (no longer in existence) during 2008 and 2009; Mr. Leistner was also an employee of Hygea Health Network; due to a restructuring during this time period, Mr. Leistner is the sole, hold-out, minority shareholder of one of Hygea's otherwise wholly-owned subsidiary corporations; since 2009, Mr. Leistner and TLG have had no formal relationship with Hygea beyond that of a minority shareholder (holding less than 1% of shares) in an otherwise wholly-owned subsidiary of Hygea; accordingly, I do not have any reason to believe that either Mr. Leistner or TLG has any personal knowledge of Hygea events since then, particularly the cash flow challenges experienced by Hygea in the fourth quarter of 2017 (eight years later) or Hygea's current prospects for obtaining outside financing.

111. Many of the allegations contained in Mr. Leistner's Declaration are too vague for me to respond to truthfully and fully; for instance, I have no idea what Mr. Leistner refers to in ¶ 11 when he states that his experience with Hygea since September 6, 2009 has included: "false representations, material omissions, and failures to provide statutorily required financial statement and corporate records . . ."

112. Similarly, I have no idea what Mr. Leistner means when he states in ¶¶ 18 & 19 that Hygea's officers and directors "won't" manage their own business model or "will never be willing to manage properly the companies or their cash flows."

113. Similarly, I am not sure what Mr. Leistner's basis for his statement in ¶ 21 that "TLG believes it will be very difficult for Hygea to borrow additional money to support the business . . . ;" moreover, that statement ignores the significant and imminent equity financing opportunities Hygea is exploring, as discussed above.

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LAS VEGAS, NEVADA 89135
(702) 471-7000 FAX (702) 471-7070

114. Additional allegations included in the Declaration of Gilbert Leistner have already been addressed above.

Responses to the Declaration of Raul Tamayo, M.D.

115. I am unable to respond to Dr. Tamayo's statement in ¶ 5 of his Declaration that "Hygea made a number of fraudulent misrepresentations to induce me to enter into the Agreements," because it lacks the specificity for me to defend any representations I or Hygea made in connection with Hygea's acquisition of his former medical practice.

116. I can, however, confirm that Hygea has paid all the debts and liabilities of the medical practice Hygea acquired from Dr. Tamayo, with the exception of the payroll taxes discussed above, for which only Hygea is liable and working with RT&C to bring current, contrary to Dr. Tamayo's assertion in ¶ 5(a) of his Declaration.

117. Hygea fired Dr. Tamayo in August of 2015 after it caught him stealing from Hygea; litigation initiated by Hygea against Dr. Tamayo is currently pending in the Miami-Dade County Circuit Court in Miami-Dade County, Florida.

118. After his firing, Dr. Tamayo has not had access to the financial and other information of the practice for which he worked and/or that of Hygea; accordingly, I do not have any reason to believe that Dr. Tamayo has any personal knowledge of events happening since then, including the cash flow challenges experienced by Hygea in the fourth quarter of 2017.

119. To my knowledge, Hygea has provided Dr. Tamayo and/or his medical practice with all financial statements it is contractually and/or legally obligated to provide, contrary to Dr. Tamayo's assertion in ¶ 5(b) of his Declaration.

120. As part of its normal business practice, Hygea sweeps the bank accounts of each of its more than thirty medical practices daily, pursuant to its management agreement with each practice, by which each practice cedes check writing authority and control over the funds in the account to Hygea, such that Hygea can administer the practice's finances, including paying everything from rent and pharmacy bills to

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LAS VEGAS, NEVADA 89135
(702) 471-7000 FAX (702) 471-7070

covering the practice's payroll and other overhead.

122. In other words, this is a standard practice to which each of Hygea's medical practices agreed by way of the management agreement between Hygea and the practice; moreover, there is no way for Hygea to efficiently administer the finances of its more than thirty medical practices without sweeping the funds into a master account—this is done for efficiency and not any nefarious purpose like diversion of funds.

123. Further, Hygea is obligated by its covenants to Bridging (as it was to its prior institutional lenders) to perform these daily sweeps as a standard measure of corporate financial governance best practices to protect the free cash flows generated day-to-day by its practices; in fact, the process is employed in part to ensure that cash flowing into the practices' accounts is not diverted *from Hygea*, protecting the interests of its shareholders and other stakeholders.

124. I am not aware of Hygea ever using funds swept from one of its medical practices "for purposes other than maintenance of the practice," as alleged in ¶ 5(c) of Dr. Tamayo's Declaration.

125. Accordingly, and given the above, Dr. Tamayo's unsupported and vague accusation to that effect has no basis in fact.

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I declare under penalty of perjury under the law of the State of Nevada that the foregoing is true and correct.

Executed on February 19th, 2018

Edward Moffly

BALLARD SPAHR LLP
1980 FESTIVAL PLAZA DRIVE, SUITE 900
LAS VEGAS, NEVADA 89135
(702) 471-7000 FAX (702) 471-7070

EXHIBIT “11”

HOLLEY, DRIGGS, WALCH,
FINE, WRAY, PUZEY & THOMPSON
James W. Puzey, Esq. (NV Bar No. 5745)
jpuzey@nevadafirm.com
Clark V. Vellis, Esq. (NV Bar No. 5533)
cvellis@nevadafirm.com
Ogonna M. Brown, Esq. (NV Bar No. 7589)
obrown@nevadafirm.com
800 South Meadows Parkway, #800
Reno, Nevada 89521
Telephone: 775-851-8700
Facsimile: 702-851-7681

ALBRIGHT, STODDARD, WARNICK
& ALBRIGHT
G. Mark Albright, Esq. (NV Bar No. 1394)
gma@albrightstoddard.com
D. Chris Albright, Esq., (NV Bar No. 4904
dca@albrightstoddard.com
801 South Rancho Drive, Suite D-4
Las Vegas, Nevada 89106
Telephone: 702-384-7111
Facsimile: 702-384-0605
Attorneys for Plaintiffs

THE MILLER LAW FIRM, P.C.
Christopher D. Kaye, Esq.
(Admitted *pro hac vice*)
cdk@millerlawpc.com
950 W. University Drive, Suite 300
Rochester, Michigan 48307
Telephone: 248-841-2200
Attorneys for Plaintiff N5HYG, LLC

HOLLEY·DRIGGS·WALCH
FINE·WRAY·PUZEY·THOMPSON

IN THE FIRST JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

IN AND FOR CARSON CITY

CLAUDIO ARELLANO; CROWN EQUITY'S LLC; FIFTH AVENUE 2254 LLC; HALEVI ENTERPRISES LLC; HALEVI SV 1 LLC; HALEVI SV 2 LLC; HILLCREST ACQUISITIONS LLC; HILLCREST CENTER SV I LLC; IBH CAPITAL LLC; LEONITE CAPITAL LLC; N5HYG LLC; and RYMSSG GROUP, LLC,

Plaintiffs,

v.

HYGEA HOLDINGS CORP.,

Defendant.

Case No.: 18 OC 00071 1B

Dept. No.: II

STIPULATION FOR PLAINTIFFS TO FILE FIRST AMENDED COMPLAINT

Plaintiffs CLAUDIO ARELLANO; CROWN EQUITY'S LLC; FIFTH AVENUE 2254 LLC; HALEVI ENTERPRISES LLC; HALEVI SV 1 LLC; HALEVI SV 2 LLC; HILLCREST ACQUISITIONS LLC; HILLCREST CENTER SV I LLC; HILLCREST CENTER SV II LLC; HILLCREST CENTER SV III LLC; IBH CAPITAL LLC; LEONITE CAPITAL LLC; N5HYG LLC; and RYMSSG GROUP, LLC, by and through their undersigned counsel of record, and Defendant HYGEA HOLDINGS CORP., by and through its undersigned counsel, hereby stipulate as follows:

1. Defendant has filed a Motion to Dismiss or, alternatively, for Summary Judgment. Therein Defendant contends, in part, that dismissal or summary judgment is appropriate because Plaintiffs have not named Hygea's Board of Directors (the "Directors") as individual defendants in this matter, the Directors being necessary and indispensable parties.

2. Plaintiffs dispute Defendant's contention, maintaining that the Directors are not necessary and indispensable parties.

3. In an effort to resolve the dispute, avoid procedural hurdles or delay, and in satisfaction of Defendant's argument that the Directors are necessary and indispensable parties in this matter, Plaintiffs shall be entitled to and shall amend their complaint to add the following Directors as defendants in this matter, whom Defendant Hygea represents constitutes the current Board of Directors:

Manuel Iglesias

Edward Moffly

Joe Campanella

Martha Castillo

Daniel T. McGowan

Frank Kelly, Jr.

Keith Collins, M.D.

Jack Mann, M.D.

Glenn T. Marrichi

4. Plaintiffs' stipulation to this Order is conditioned upon the expectation that the

addition of the Directors will not delay the dates currently set in this matter, and accordingly none of the stipulating parties shall argue that the addition of the Directors necessitates any delay in any currently scheduled court date. However, if one or more Directors asserts that he or she is unable to proceed according to the current schedule or that such proceeding would be improper, then Plaintiffs shall have the right to renew their claim that the Directors are not necessary and indispensable parties, and to therefore argue that one or more date(s) in the case should not be delayed.

5. Defendant Hygea agrees to cooperate with, and not interfere with, the service of the Amended Complaint on the Directors by way of service on Hygea's registered agent pursuant to NRS 75.160.

6. The caption of the First Amended Complaint and subsequent filings in this case may be corrected to reflect the identity of the Plaintiffs.

DATED this 17th day of APRIL, 2018.

HOLLEY, DRIGGS, WALCH, FINE, WRAY, PUZEY & THOMPSON

JAMES W. PUZEY, ESQ.
NV Bar #5745
CLARK V. VELLIS, ESQ.
NV Bar #5533
OGONNA M. BROWN, ESQ.
NV BAR #007589
800 South Meadows Parkway, #800
Reno, Nevada 89521

ALBRIGHT, STODDARD, WARNICK & ALBRIGHT
G. Mark Albright, Esq. (NV Bar No. 1394)
D. Chris Albright, Esq., (NV Bar No. 4904
801 South Rancho Drive, Suite D-4
Las Vegas, Nevada 89106
Attorneys for Plaintiffs

THE MILLER LAW FIRM, P.C.
Christopher D. Kaye, Esq.
(Admitted *pro hac vice*)
950 W. University Drive, Suite 300
Rochester, Michigan 48307
Attorneys for Plaintiff N5HYG, LLC

DATED this 17th day of APRIL, 2018.

KAEMPFER CROWELL

By: _____

Severin A. Carlson, Esq.
Nevada Bar No. 9373
Tara C. Zimmerman, Esq.
Nevada Bar No. 12146
50 West Liberty St., Suite 700
Reno, Nevada 89501

Joel E. Tasca, Esq.
Nevada Bar No. 14124
Maria A. Gall, Esq.
Nevada Bar No. 14200
Kyle A. Ewing, Esq.
Nevada Bar No. 14051
BALLARD SPAHR LLP
1980 Festival Plaza Drive, Suite 900
Las Vegas, Nevada 89135

EXHIBIT “12”

Joel E. Tasca, Esq.
Nevada Bar No. 14124
Maria A. Gall, Esq.
Nevada Bar No. 14200
Kyle E. Ewing, Esq.
Nevada Bar No. 14051
BALLARD SPAHR LLP
1980 Festival Plaza Drive, Suite 900
Las Vegas, Nevada 89135
Telephone: (702) 471-7000
Fax: (702) 471-7070
tasca@ballardspahr.com
gallm@ballardspahr.com
ewingk@ballardspahr.com

Severin A. Carlson, Esq.
Nevada Bar No. 9373
Tara C. Zimmerman, Esq.
Nevada Bar No. 12146
KAEMPFER CROWELL
50 West Liberty St., Suite 700
Reno, Nevada 89501
Telephone: (775) 852-3900
Fax: (775) 327-2011
scarlson@kcnvlaw.com
tzimmerman@kcnvlaw.com

Attorneys for Defendants

IN THE FIRST JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

IN AND FOR CARSON CITY

CLAUDIO ARELLANO, et al.,

Plaintiffs,

v.

HYGEA HOLDINGS CORP., et al.,

Defendants.

Case No. 18 OC 00071 1B
Dept No. II

DEFENDANTS' ANSWER TO FIRST AMENDED COMPLAINT FOR APPOINTMENT OF RECEIVER

Defendants Hygea Holdings Corp. ("Hygea"), Manuel Iglesias, Edward Moffly, Daniel

T. McGowan, Frank Kelly, Martha Mairena Castillo, Glenn Marrichi, M.D., Keith Collins, M.D., Jack Mann, M.D., and Joseph Campanella, by and through their counsel of record, hereby Answer the First Amended Complaint for Appointment of Receiver as set forth below. Any allegation that is not specifically admitted is denied. Moreover, by answering the First Amended Complaint prior to any ruling on Hygea's Motion to Dismiss, or in the Alternative for Summary Judgment (filed March 23, 2018), Hygea does not waive any arguments set forth therein.

1. Defendants admit the allegations set forth in Paragraph 1 of the First Amended Complaint.

2. Defendants admit the allegations set forth in Paragraph 2 of the First Amended Complaint.

3. Defendants admit the allegations set forth in Paragraph 3 of the First Amended Complaint.

4. Defendants admit the allegations set forth in Paragraph 4 of the First Amended Complaint.

5. Defendants admit the allegations set forth in Paragraph 5 of the First Amended Complaint.

6. Defendants admit the allegations set forth in Paragraph 6 of the First Amended Complaint.

7. Defendants deny the allegations set forth in Paragraph 7 of the First Amended Complaint

8. Defendants admit the allegations set forth in Paragraph 8 of the First Amended Complaint.

9. Defendants admit the allegations set forth in Paragraph 9 of the First Amended Complaint.

10. Defendants admit the allegations set forth in Paragraph 10 of the First Amended Complaint.

11. Defendants admit that Claudio Arellano is an individual but are without sufficient information or knowledge to admit or deny the remaining allegations set forth in Paragraph 11 of the First Amended Complaint, and therefore, deny these allegations.

12. The Arellano Stock Purchase Agreement as appended to the First Amended Complaint speaks for itself, and Defendants deny any allegations inconsistent with the Agreement.

13. The N5HYG Stock Purchase Agreement as appended to the First Amended Complaint speaks for itself, and Defendants deny any allegation inconsistent with the Agreement.

14. Defendants admit only that the lawsuit styled *N5HYG LLC, et al. v. Hygea Holdings Corp., et al.*, Case No. 2:17-cv-02870-JCM-PAL was removed from the Eighth Judicial District Court, Clark County, Nevada to the U.S. District Court for the District of Nevada. Defendants are without sufficient information or knowledge to admit or deny the remaining allegations set forth in first Paragraph 14 of the First Amended Complaint, and therefore, deny these allegations.

15. Defendants admit only that in the lawsuit styled *N5HYG LLC, et al. v. Hygea Holdings Corp., et al.*, Case No. 2:17-cv-02870-JCM-PAL, Hygea filed a motion to dismiss, which is docketed as ECF No. 11. Defendants further state that the motion to dismiss, which is a publicly filed document, speaks for itself and deny any allegation inconsistent with the motion.

16. Defendants are without sufficient information or knowledge to admit or deny the allegations set forth in Paragraph 16 of the First Amended Complaint, and therefore, deny these allegations.

17. Defendants admit only that Fifth Avenue 2254 LLC is a stockholder of record of Hygea and holds 100,000 shares of Hygea. Defendants deny the remaining allegations set forth in Paragraph 17 of the First Amended Complaint.

18. Defendants are without sufficient information or knowledge to admit or deny the allegations set forth in Paragraph 18 of the First Amended Complaint, and therefore, deny these allegations.

19. Defendants admit only that Hillcrest Acquisitions, LLC is a stockholder of record of Hygea and holds 250,000 shares of Hygea. Defendants deny the remaining allegations set forth in Paragraph 19 of the First Amended Complaint.

20. Defendants are without sufficient information or knowledge to admit or deny the allegations set forth in Paragraph 20 of the First Amended Complaint, and therefore, deny these allegations.

21. Defendants admit only that Hillcrest Center SV I is a stockholder of record of Hygea and holds 250,000 shares of Hygea. Defendants are without sufficient information or knowledge to admit or deny whether Hillcrest Center SV I paid $125,000 for these shares, and therefore, deny this allegation. Defendants also deny the remaining allegations set forth in Paragraph 21 of the First Amended Complaint.

22. Defendants are without sufficient information or knowledge to admit or deny the allegations set forth in Paragraph 22 of the First Amended Complaint, and therefore, deny these allegations.

23. Defendants admit only that Hillcrest Center SV II is a stockholder of record of Hygea and holds 250,000 shares of Hygea. Defendants are without sufficient information or knowledge to admit or deny whether Hillcrest Center SV II paid $125,000 for these shares, and therefore, deny this allegation. Defendants also deny the remaining allegations set forth in

Paragraph 23 of the First Amended Complaint.

24. Defendants are without sufficient information or knowledge to admit or deny the allegations set forth in Paragraph 24 of the First Amended Complaint, and therefore, deny these allegations.

25. Defendants admit only that Hillcrest Center SV III is a stockholder of record of Hygea and holds 500,000 shares of Hygea. Defendants are without sufficient information or knowledge to admit or deny whether Hillcrest Center SV I paid $125,000 for these shares, and therefore, deny this allegation. Defendants also deny the remaining allegations set forth in Paragraph 25 of the First Amended Complaint.

26. Defendants are without sufficient information or knowledge to admit or deny the allegations set forth in Paragraph 26 of the First Amended Complaint, and therefore, deny these allegations.

27. Defendants admit only that Leonite Capital LLC is a stockholder of record of Hygea and holds 500,000 shares of Hygea. Defendants are without sufficient information or knowledge to admit or deny whether Leonite Capital paid $125,000 for these shares, and therefore, deny this allegation. Defendants also deny the remaining allegations set forth in Paragraph 27 of the First Amended Complaint.

28. Defendants are without sufficient information or knowledge to admit or deny the allegations set forth in Paragraph 28 of the First Amended Complaint, and therefore, deny these allegations.

29. Defendants admit only that Crown Equities (and not Crown Equity's) is a stockholder of record of Hygea and holds 250,000 shares of Hygea. Defendants deny the remaining allegations set forth in Paragraph 29 of the First Amended Complaint.

30. Defendants are without sufficient information or knowledge to admit or deny the

allegations set forth in Paragraph 30 of the First Amended Complaint, and therefore, deny these allegations.

31. Defendants admit only that Halevi Enterprises, LLC is a stockholder of record of Hygea and holds 500,000 shares of Hygea. Defendants deny the remaining allegations set forth in Paragraph 31 of the First Amended Complaint.

32. Defendants are without sufficient information or knowledge to admit or deny the allegations set forth in Paragraph 32 of the First Amended Complaint, and therefore, deny these allegations.

33. Defendants admit only that Halevi SV I is a stockholder of record of Hygea and holds 250,000 shares of Hygea. Defendants deny the remaining allegations set forth in Paragraph 33 of the First Amended Complaint.

34. Defendants are without sufficient information or knowledge to admit or deny the allegations set forth in Paragraph 34 of the First Amended Complaint, and therefore, deny these allegations.

35. Defendants admit only that Halevi SV2 is a stockholder of record of Hygea and holds 250,000 shares of Hygea. Defendants deny the remaining allegations set forth in Paragraph 35 of the First Amended Complaint.

36. Defendants are without sufficient information or knowledge to admit or deny the allegations set forth in Paragraph 36 of the First Amended Complaint, and therefore, deny these allegations.

37. Defendants admit only that Ibh Capital is a stockholder of record of Hygea and holds 250,000 shares of Hygea. Defendants deny the remaining allegations set forth in Paragraph 37 of the First Amended Complaint.

38. Defendants are without sufficient information or knowledge to admit or deny the

allegations set forth in Paragraph 38 of the First Amended Complaint, and therefore, deny these allegations.

39. Defendants admit only that RYMSSG Group is a stockholder of record of Hygea and holds 250,000 shares of Hygea. Defendants are without sufficient information or knowledge to admit or deny the remaining allegations set forth in Paragraph 39 of the First Amended Complaint, and therefore, deny these allegations.

40. Defendants are without sufficient information or knowledge to admit or deny the allegations set forth in Paragraph 11 of the First Amended Complaint, and therefore, deny these allegations.

41. Defendants deny the allegations set forth in Paragraph 41 of the First Amended Complaint.

42. Defendants deny the allegations set forth in Paragraph 42 of the First Amended Complaint.

43. Defendants admit only that Hygea has more than 30 stockholders of record. Defendants deny the remaining allegations set forth in Paragraph 43 of the First Amended Complaint.

44. Defendants admit only that venue is proper in the First Judicial District Court. Defendants deny the remaining allegations set forth in Paragraph 44 of the First Amended Complaint.

45. Defendants admit only that Hygea is managed by its Board of Directors. Defendants deny the remaining allegations set forth in Paragraph 45 of the First Amended Complaint.

46. Defendants admit only that Hygea's business model includes the acquisition and management of independent medical practices, primarily doctors' practices, focusing on the

Southeastern United States and Florida and that Hygea acquires such practices from their doctor owners, after which the doctors go from being owners to employees and are paid a salary by Hygea or its subsidiary. Defendants deny any suggestion that Hygea's business model is limited to the acquisition of practices from their doctor owners. Defendants further admit that Hygea's fundamental value proposition includes the statement: let the doctors focus on medical care, while Hygea uses its economies of scale and operational expertise to effectively operate the practices from a business perspective. Defendants, however, deny any suggestion the foregoing accurately represents the entirety of Hygea's value proposition or any of Hygea's core competencies.

47. Defendants are without sufficient information or knowledge to admit or deny the allegations set forth in Paragraph 47 of the First Amended Complaint, including because the allegation appears to be styled as Plaintiffs' opinion given the phrase "is perhaps its greatest asset," and therefore, deny these allegations.

48. Defendants deny the allegations set forth in Paragraph 48 of the First Amended Complaint.

49. Defendants admit only that for a certain period of time Hygea paid its payroll through an American Express-sponsored payroll program. Defendants deny the remaining allegations set forth in Paragraph 49 of the First Amended Complaint.

50. Defendants admit only that it retained FTI Consulting to provide outside consulting services. Defendants deny the remaining allegations set forth in Paragraph 50 of the Complaint.

51. Defendants are without sufficient information or knowledge to admit or deny the allegations set forth in Paragraph 51 of the First Amended Complaint, and therefore, deny these allegations.

52. Defendants are without sufficient information or knowledge to admit or deny the allegations set forth in Paragraph 52 of the First Amended Complaint, and therefore, deny these allegations, including because Plaintiffs have not identified the alleged "large lenders."

53. Defendants deny the allegations set forth in Paragraph 53 of the First Amended Complaint.

54. Defendants deny the allegations set forth in Paragraph 54 of the First Amended Complaint.

55. Defendants are without sufficient information or knowledge to admit or deny the allegations set forth in Paragraph 55 of the First Amended Complaint, and therefore, deny these allegations.

56. Defendants are without sufficient information or knowledge to admit or deny the allegations set forth in the first and second sentences of Paragraph 56 of the First Amended Complaint, including because the term "white knight" is vague and ambiguous, and therefore, deny these allegations. Defendants deny the remaining allegations of Paragraph 56 of the First Amended Complaint.

57. Defendants admit only that Claudio Arellano filed a lawsuit against Hygea, Manuel Iglesias, and Lacy Loar styled as *Claudio Arellano v. Hygea Holdings Corp., et al.*, Case No. 2017-019495 CA in the Circuit Court of the 11th Judicial District Circuit, in and for Miami-Dade County, Florida. Defendants deny the remaining allegations set forth in Paragraph 57 of the First Amended Complaint.

58. Defendants admits only that N5HYG filed a lawsuit against Hygea, Manuel Iglesias, and Hygea's Board of Directors styled as *N5HYG LLC, et al. v. Hygea Holdings Corp., et al.*, and that it was initially assigned to Department 25 of the Eighth Judicial District Court, Clark County, Nevada before being removed to the U.S. District Court for the District of

Nevada. Defendants deny that the lawsuit was filed in the First Judicial District Court on October 5, 2017 or any other date. Defendants further deny any suggestion that the defendants to the lawsuit are limited to Hygea, Manuel Iglesias, and Hygea's Board of Directors. Defendants also deny the remaining allegations set forth in Paragraph 58 of the First Amended Complaint.

59. Defendants restate each of their answers as if fully set forth here.

60. Defendants deny the allegations set forth in Paragraph 60 of the First Amended Complaint.

61. Defendants deny the allegations set forth in Paragraph 61 of the First Amended Complaint.

62. Defendants deny the allegations set forth in Paragraph 62 of the First Amended Complaint.

63. Defendants deny the allegations set forth in Paragraph 63 of the First Amended Complaint.

AFFIRMATIVE DEFENSES

1. Defendants assert that Plaintiffs have failed to state any claims upon which relief can be granted.

2. Defendants assert that Plaintiffs have through representations or actions waived their right to sue, and therefore, cannot sustain this lawsuit.

3. Defendants assert that Plaintiffs come to this Court with unclean hands, and therefore, are not entitled to the remedies they seek in this lawsuit.

4. Defendants assert that Plaintiffs lack standing to maintain this lawsuit—and thus the Court is without jurisdiction to appoint a receiver—because Plaintiffs do not hold at least 10% of Hygea's issued and outstanding stock.

5. Defendants assert that this action constitutes impermissible claim splitting given

the first filed lawsuit by Plaintiff N5HYG LLC styled *N5HYG LLC, et al. v. Hygea Holdings Corp., et al.*, Case No. 2:17-cv-02870-JCM-PAL pending in the U.S. District Court for the District of Nevada and/or the first filed lawsuit by Plaintiff Claudio Arellano styled *Claudio Arellano v. Hygea Holdings Corp., et al.*, Case No. 2017-019495 CA in the Circuit Court of the 11th Judicial District Circuit, in and for Miami-Dade County, Florida.

AFFIRMATION

Pursuant to NRS 239B.030, the undersigned hereby affirms this document does not contain the social security number of any person.

Dated this 30th day of April, 2018.

KAEMPFER CROWELL

By: _____

Severin A. Carlson, Esq.
Nevada Bar No. 9373
Tara C. Zimmerman, Esq.
Nevada Bar No. 12146
50 West Liberty St., Suite 700
Reno, Nevada 89501

Joel E. Tasca, Esq.
Nevada Bar No. 14124
Maria A. Gall, Esq.
Nevada Bar No. 14200
Kyle A. Ewing, Esq.
Nevada Bar Nofe. 14051
BALLARD SPAHR LLP
1980 Festival Plaza Drive, Suite 900
Las Vegas, Nevada 89135

Attorneys for Defendants

CERTIFICATE OF SERVICE

Pursuant to N.R.C.P. 5, I hereby certify that on April 30, 2018, a true and correct copy of **DEFENDANTS' ANSWER TO FIRST AMENDED COMPLAINT FOR APPOINTMENT OF RECEIVER** was served on the following counsel of record by U.S. Mail, postage-prepaid, and e-mail:

G. Mark Albright, Esq.
D. Chris Albright, Esq.
ALBRIGHT, STODDARD, WARNICK & ALBRIGHT
801 South Rancho Drive, Suite D-4
Las Vegas, Nevada 89106

Ogonna M. Brown, Esq.
HOLLY DRIGGS, WALCH FINE WRAY PUZEY THOMPSON
400 South Fourth Street
Las Vegas, Nevada 89101

James W. Puzey, Esq.
HOLLY DRIGGS, WALCH FINE WRAY PUZEY THOMPSON
800 South Meadows Parkway, #800
Reno, Nevada 89521

Christopher D. Kaye, Esq.
(admitted pro hac vice)
THE MILLER LAW FIRM, P.C.
950 W. University Drive, Suite 300
Rochester, Michigan 48307

Attorneys for Plaintiffs

An Employee of Kaempfer Crowell

EXHIBIT “13”

IN THE CIRCUIT COURT OF THE THIRTEENTH JUDICIAL CIRCUIT
IN AND FOR HILLSBOROUGH COUNTY, FLORIDA
CIVIL DIVISION

CEA ATLANTIC ADVISORS, LLC,

Plaintiff,

v.

Case No.:
Division:

HYGEA HOLDINGS CORP.,

Defendant.
_____/

COMPLAINT

Plaintiff CEA ATLANTIC ADVISORS, LLC ("CEA") sues Defendant, HYGEA HOLDINGS CORP ("HYGEA") as follows.

The Parties, Jurisdiction and Venue

1. CEA is a limited liability company in good standing with the Florida Department of State, Division of Corporations, and CEA conducts business through its principal place of business in Tampa, Hillsborough County, Florida.

2. HYGEA is a for-profit corporation that maintains offices in Florida and is duly registered with the Florida Department of State, Division of Corporations.

3. The parties have contractually stipulated that venue is proper in Hillsborough County, Florida, and have waived any jurisdictional challenges to this forum.

4. Venue and jurisdiction are also proper in this Court because the payment that is the subject of this dispute is due in Hillsborough County, Florida.

5. The damages sought by CEA against HYGEA are $1,500,000 in addition to costs and attorneys' fees, all well in excess of this Court's jurisdictional requirements.

General Allegations

6. CEA and HYGEA entered into a Financing Representation Agreement dated August 19, 2015 ("the Agreement"), and a copy of that Agreement, which was duly executed by authorized representatives of the parties, is attached as Exhibit 1.

7. Under the express terms of the Agreement, HYGEA exclusively engaged CEA to arrange equity and/or debt financing in exchange for a fee.

8. Under paragraph 4 of the Agreement, that fee is "immediately due and payable to CEA following the closing of any Financing or Financing related transaction."

9. CEA introduced an entity known as RIN Capital ("RIN") to HYGEA, and CEA solicited from RIN an equity investment for HYGEA.

10. CEA worked with HYGEA to pursue an equity investment from RIN.

11. CEA and its representatives did all that was requested of them by HYGEA, and performed all tasks necessary to successfully advance the RIN investment for HYGEA.

12. On or about October 16, 2016, CEA's efforts on HYGEA's behalf produced a $30,000,000 equity investment from RIN.

13. Under paragraph 4.b.a. of the Agreement, the fee due to CEA from HYGEA for facilitating that RIN investment is a cash fee of $1,500,000, an amount equal to five percent of the $30,000,000 HYGEA received from RIN.

14. HYGEA has failed and refused to pay the fee due to CEA, despite CEA's demand, resulting in this lawsuit.

15. All conditions precedent to the bringing of this action have occurred, or been satisfied or waived.

Count I – Breach of Contract

16. All allegations prior to Count I are realleged and are incorporated by reference.

17. This is an action for HYGEA's breach of the Agreement.

18. The Agreement constitutes a valid and binding contract between CEA and HYGEA.

19. HYGEA has breached its contractual obligations to CEA by failing to pay the fee required by the Agreement, and CEA, which is due $1,500,000 exclusive of interest, attorneys' fees and costs, has been damaged.

20. The Agreement provides for an award of attorneys' fees and costs incurred in the context of any court proceeding.

WHEREFORE, CEA demands judgment against HYGEA for damages, interest, attorneys' fees, costs, and such other relief as this Court deems just.

Count II – Quantum Meruit

21. All allegations prior to Count I are realleged and incorporated by reference.

22. This is an action by CEA against HYGEA for quantum meruit, and CEA's damages should be measured by the fee anticipated in the Agreement.

23. CEA was the procuring cause of the RIN investment in HYGEA.

24. CEA conferred a benefit on HYGEA by providing services as anticipated in the Agreement, and HYGEA acquiesced in the provision of those services, knowing that CEA expected to be compensated.

25. HYGEA accepted the services CEA provided, and HYGEA has been unjustly enriched by receiving services for which it has not.

WHEREFORE, CEA demands judgment against HYGEA for damages, interest, attorneys' fees, costs, and such other relief as this Court deems just.

Count III – Unjust Enrichment

26. All allegations prior to Count I are realleged and incorporated by reference.

27. This is an action by CEA against HYGEA for unjust enrichment, and CEA's damages should be measured by the fee anticipated in the Agreement.

28. CEA was the procuring cause of the RIN investment in HYGEA.

29. CEA conferred a benefit on HYGEA by providing valuable services.

30. HYGEA voluntarily accepted and retained the services CEA provided to it.

31. The circumstances are such that it would be unfair for HYGEA to retain the benefit of CEA's services, which resulted in $30,000,000 of equity invested in HYGEA by RIN, without paying.

WHEREFORE, CEA demands judgment against HYGEA for damages, interest, attorneys' fees, costs, and such other relief as this Court deems just.

Dated: December 9, 2016

/s/ Guy M. Burns
Guy M. Burns
FL Bar No. 0160901
Email 1: GuyB@JPFirm.com
Email 2: LauraH@JPFirm.com
Jonathan S. Coleman
FL Bar No. 0797480
Email 1: JonathanC@JPFirm.com
Email 2: KatieT@JPFirm.com
JOHNSON, POPE, BOKOR, RUPPEL & BURNS, LLP
Post Office Box 1100
Tampa, Florida 33601-1100
P: (813) 225-2500
F: (813) 225-1857
Attorneys for Plaintiff

EXHIBIT “14”

Joel E. Tasca, Esq.
Nevada Bar No. 14124
Maria A. Gall, Esq.
Nevada Bar No. 14200
Kyle E. Ewing, Esq.
Nevada Bar No. 14051
BALLARD SPAHR LLP
1980 Festival Plaza Drive, Suite 900
Las Vegas, Nevada 89135
Telephone: (702) 471-7000
Fax: (702) 471-7070
tasca@ballardspahr.com
gallm@ballardspahr.com
ewingk@ballardspahr.com

Severin A. Carlson, Esq.
Nevada Bar No. 9373
Tara C. Zimmerman, Esq.
Nevada Bar No. 12146
KAEMPFER CROWELL
50 West Liberty St., Suite 700
Reno, Nevada 89501
Telephone: (775) 852-3900
Fax: (775) 327-2011
scarlson@kcnvlaw.com
tzimmerman@kcnvlaw.com

Attorneys for Defendant

IN THE FIRST JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

IN AND FOR CARSON CITY

CLAUDIO ARELLANO; CROWN EQUITY'S LLC; FIFTH AVENUE 2254 LLC; HALEVI ENTERPRISES LLC; HALEVI SV 1 LLC; HALEVI SV 2 LLC; HILLCREST ACQUISITIONS LLC; HILLCREST CENTER SV I LLC; IBH CAPITAL LLC; LEONITE CAPITAL LLC; N5HYG LLC; and RYMSSG GROUP, LLC, Plaintiffs, v. HYGEA HOLDINGS CORP., Defendant.	Case No. 18 OC 00071 1B Dept No. II **ORDER**

ORDER

On April 6, 2018, the Parties, by and through their respective counsel of record, appeared before the Court pursuant to its Order Setting Conference Under N.R.C.P. 16(A) (the "April 6 Status Conference"). The Court, having heard from the Parties and having considered the status of this matter and the motions and papers before it, finds and orders as follows:

1. Pursuant to N.R.C.P. 65(a)(2), the trial of this action on the merits shall be advanced and consolidated with the evidentiary hearing on Plaintiffs' Emergency Petition for the Appointment of a Receiver. As set forth in the Court's Trial Date Memo distributed to the Parties at the April 6 Status Conference, the trial shall commence on May 14, 2018 at 9:00 o'clock a.m. The trial shall continue for a total of 30 hours, with Plaintiffs allotted 15 hours and Defendant(s) allotted 15 hours. The trial shall proceed from May 14 through May 18 with half days on May 15 and 18, on which days the parties will reconvene at 1:00 p.m. and proceed until close of business. The Parties may request that the Court reconsider the advancement and consolidation of the trial on the merits with the evidentiary hearing upon a showing of good cause.

2. The Parties' Joint Motion for the Entry of a Protective Order is **GRANTED**, and with respect to the disputed provisions, the Court is persuaded by:

a. the provision proposed by Defendant that permits the designation of "Attorneys' Eyes Only" for highly confidential documents and information and restricts the disclosure of such documents and information to the parties and the parties' counsel of record, except that the provision shall be modified to permit disclosure to any retained experts and Mr. Kevin Watts (as Plaintiff N5HYG LLC's designated outside general counsel), so long as any retained expert and Mr. Watts execute the agreement to be bound to the protective order;

b. the provision proposed by Defendant that restricts use and dissemination of documents and information designated confidential to this lawsuit and this lawsuit only;

c. the provision proposed by Defendant that requires any witness at any argument, hearing, or trial of this matter to execute the agreement to be bound to the protective order if he or she is to be shown or made privy to documents or information designated confidential;

d. the provision proposed by Defendant that permits any Party to move the Court for an order governing the use and disclosure of confidential documents and information at any argument, hearing, or trial of this matter;

e. the provision proposed by Defendant that requires the destruction of documents and information designated confidential after the conclusion of this lawsuit; and

f. the provision proposed by Plaintiffs that permits the clawback of inadvertently disclosed privileged information only.

Defendant shall submit a proposed protective order consistent with the foregoing and also containing those provisions that were not in dispute between the Parties.

3. There is insufficient evidence of witness intimidation by Defendant, including any of its officers and directors, and therefore, Plaintiffs' Motion for an Injunction Against Witness Intimidation is **DENIED**.

4. On or before **April 20, 2018**, the Parties shall file *motions in limine* on any anticipated evidentiary issues. The Parties shall file *motions in limine* on any evidentiary issues that they were unable to anticipate as soon as possible after the Parties exchange their final list of witnesses and exhibits as set forth herein.

5. Plaintiffs' Motion for Limited Waiver of N.R.C.P. 16 Requirements is **GRANTED**. On or before **April 23, 2018**, Defendant shall produce the documents identified therein and in Plaintiffs' supplemental brief in support of the motion, specifically:

a. 2017 Audited Quality of Earnings Report

b. 2018 Cash Flow Analysis (and underlying "2017 audited revenue figures")

c. HMO Contracts that purportedly preclude appointment of a receiver

d. Letter of Intent from purported investor

e. 2017 Quarterly Tax Filings

f. V Stock Transfer List for shares issued

g. 2/20/2018 Board Meeting (minutes)

h. Balance sheet showing current assets and debts

i. Aged receivables and payables

j. Previously requested V Stock certificates

k. Copies of the actual warrants/stock options that Hygea claims have been exercised since October 2016

l. Documents reflecting the number of shares issued since October 2016 and lists identifying the names of new shareholders

m. Transfer documents, stock certificates, and records reflecting the consideration paid for stock issued since October 2016

Defendant shall be permitted to request documents from Plaintiffs and is to make such requests expeditiously.

6. On **April 26, 2018**, the Parties shall engage in a settlement conference before Judge Russell, including pursuant to any further orders Judge Russell may issue relating to the settlement conference.

7. On or before **April 30, 2018**, the Parties shall exchange their final list of witnesses and exhibits.

8. On or before **May 4, 2018**, Plaintiffs shall submit a proposed order defining the scope of the receivership they seek to impose upon Defendant Hygea Holdings Corp.

9. The Parties shall submit a stipulation and order that permits Plaintiffs to amend their Complaint to name Defendant Hygea Holding Corp.'s directors as individual defendants to this lawsuit.

10. The Court shall appoint a special master to oversee certain disputes that may arise before the commencement of the trial of this matter. At the April 6 status conference, the parties agreed to the appointment of either Sr. Judge Gamble or Sr. Justice Rose to serve as the special master, or, in the event that neither is available, a mutually agreeable alternative.

11. In addition to the requirements of N.R.C.P. 5 for the service and filing of pleadings and other papers, the Parties shall effect service by e-mailing a copy of the pleading or other paper to counsel of record in this lawsuit.

12. Defendant's Motion to Dismiss, or Alternatively, for Summary Judgment—which is not yet fully briefed—shall be considered at the trial of this lawsuit.

13. Any Party that desires any motion to be decided in advance of or contemporaneously with the May 14, 2018, consolidated trial of this matter shall ensure that a written request for submission of the motion to the Court is filed and served pursuant to FJDCR 15(6) by May 7, 2018, including any motion *in limine* discussed above.

IT IS SO ORDERED.

Dated this 23 day of April, 2018.

James E. Wilson

The Honorable James E. Wilson Jr.
District Court Judge

Respectfully submitted by:

KAEMPFER CROWELL

By: _____
Severin A. Carlson, Esq.
Nevada Bar No. 9373
Tara C. Zimmerman, Esq.
Nevada Bar No. 12146
50 West Liberty St., Suite 700
Reno, Nevada 89501

Joel E. Tasca, Esq.
Nevada Bar No. 14124
Maria A. Gall, Esq.
Nevada Bar No. 14200
Kyle A. Ewing, Esq.
Nevada Bar No. 14051
BALLARD SPAHR LLP
1980 Festival Plaza Drive, Suite 900
Las Vegas, Nevada 89135

Attorneys for Defendant

REVIEWED AND APPROVED/DISAPPROVED AS TO FORM/CONTENT:

HOLLEY, DRIGGS, WALCH, FINE, WRAY, PUZEY & THOMPSON

By: _____
James W. Puzey, Esq.
Nevada Bar No. 5745
Clark V. Vellis, Esq.
Nevada Bar No. 5533
Ogonna M. Brown, Esq.
Nevada Bar No. 7589
800 South Meadows Parkway, #800
Reno, Nevada 89521

Christopher D. Kaye, Esq.
(admitted pro hac vice)
THE MILLER LAW FIRM, P.C.
950 W. University Drive, Suite 300
Rochester, Michigan 48307

Attorneys for Plaintiffs

CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b), I certify that I am an employee of The First Judicial District Court, and I certify that on this 23rd day of April 2018 I deposited for mailing at Carson City, Nevada, or caused to be delivered by messenger service, a true and correct copy of the foregoing order and addressed to the following:

Ballard Spahr, Esq.
1980 Festival Plaza Drive, Suite 900
Las Vegas, NV 89135
GallM@ballardspahr.com

Severin A. Carlson, Esq.
50 West Liberty ST., #700
Reno, NV 89501
scarlson@kcnvlaw.com

James Puzey, Esq.800 South Meadows Parkway, #800
Reno, NV 89521
jpuzey@nevadafirm.com

G. Mark Albright, Esq.
801 S. Rancho Drive, Suite D-4
Las Vegas NV 89106
gma@albrightstoddard.com

Christopher D. Kaye, Esq.
950 W. University Dr. #300
Rochester, Michigan 48307
cdk@millerlawpc.com

Susan Greenburg
Judicial Assistant