

**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.

Electronically Filed  
June 06 2021 01:12 p.m.  
Elizabeth A. Brown  
Clerk of Supreme Court  
Distr. Ct. Case No. A-17-702604-B  
Dept. XXVII

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

**(VOLUME VII)**

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

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## **PROOF OF SERVICE**

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

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

/s/ Sunny Southworth  
An employee of Kaplan Cottner

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“Exhibit 15”

“Exhibit 15”

*Steven D. Grierson*

DISTRICT COURT  
CLARK COUNTY, NEVADA

\* \* \* \*

N5HYG, LLC, et al.

CASE NO.: A-17-762664

Plaintiff(s)

vs.

DEPARTMENT 27

HYGEA HOLDINGS CORP., et al.

Defendant(s)

**NOTICE OF ENTRY OF DECISION AND ORDER**

PLEASE TAKE NOTICE that a Decision and Order was entered in this action on or about November 21, 2018, a true and correct copy of which is attached hereto.

DATED this 21<sup>st</sup> day of November, 2018.

*Nancy L Allf*

NANCY ALLF  
DISTRICT COURT JUDGE

**CERTIFICATE OF SERVICE**

I hereby certify that on or about the date signed I caused the foregoing document to be electronically served pursuant to EDCR 8.05(a) and 8.05(f) through the Eighth Judicial District Court's electronic filing system (with the date and time of the electronic service substituted for the date and place of deposit in the mail) and by email to:

G. Mark Albright, Esq. – [gma@albrightstoddard.com](mailto:gma@albrightstoddard.com)

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*K. Lawrence*

Karen Lawrence  
Judicial Executive Assistant

RECEIVED  
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CLERK OF THE COURT  
HONORABLE NANCY L. ALLF

DISTRICT COURT JUDGE

DEPT XXVII

PET001437

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**DISTRICT COURT  
CLARK COUNTY, NEVADA**

\* \* \* \*

N5HYG, LLC, et al.

CASE NO.: A-17-762664

Plaintiff(s)

vs.

DEPARTMENT 27

HYGEA HOLDINGS CORP., et al.

Defendant(s)

**DECISION AND ORDER**

**COURT FINDS** after review that the Motion to Dismiss Amended Complaint on Behalf of Defendant Ray Gonzalez ("Gonzalez Motion") and the Motion to Dismiss the First Amended Complaint and to Strike Supplemental Pleadings and Jury Demand ("Hygea Motion") were filed on August 17, 2018. The Gonzalez Motion and the Hygea Motion (collectively, the "Motions") were set for hearing before the Court on October 3, 2018.

**COURT FURTHER FINDS** after review that the Court heard oral arguments on the Gonzalez Motion and the Hygea Motion on October 3, 2018. The Court took the matter under submission and set a Status Check for November 6, 2018 on Chambers Calendar for the Court to release a Decision on the Motions. Thereafter, the November 6, 2018 Status Check was continued to November 20, 2018.

**COURT FURTHER FINDS** after review that "[t]o survive dismissal, a complaint must contain some set of facts, which, if true, would entitle the plaintiff to relief." *In re Amerco Derivative Litig.*, 127 Nev. 196, 210–11 (2011), citing *Buzz Stew, LLC v. City of N. Las Vegas*, 124 Nev. 224, 228, 181 P.3d 670, 672 (2008).

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**COURT FURTHER FINDS** after review that, with respect to the claims by Plaintiff Nevada 5, Inc., “wrongdoing to a subsidiary does not confer standing upon the parent company, even where the parent is the sole shareholder of the subsidiary.” *In re Neurontin Mktg. & Sales Practices Litig.*, 810 F. Supp. 2d 366, 370 (D. Mass. 2011).

**COURT FURTHER FINDS** after review that “a subsidiary is a ‘separate corporation,’ and thus the parent company ‘has no standing to assert [the subsidiary’s] legal rights’.” *Clarex Ltd. v. Natixis Sec. Am. LLC*, No. 12 CIV. 0722 PAE, 2012 WL 4849146, at \*6 (S.D.N.Y. Oct. 12, 2012), citing to *Hudson Optical Corp. v. Cabot Safety Corp.*, No. 97–9046, 1998 WL 642471, at \*3 (2d Cir. Mar. 25, 1998).

**COURT FURTHER FINDS** after review that Plaintiff Nevada 5, Inc. lacks standing to assert any of the claims set forth in the Amended Complaint.

**THEREFORE, COURT ORDERS** for good cause appearing and after review that with respect to the claims by Plaintiff Nevada 5, inc., the Motions are hereby **GRANTED IN PART** and all of the claims asserted in the Amended Complaint by Plaintiff Nevada 5, Inc. are hereby **DISMISSED WITH PREJUDICE**.

**COURT FURTHER FINDS** after review that, with respect to the Nevada Securities Act claims, “90.460, 90.570, ... and 90.660 apply to a person who sells or offers to sell a security or investment advisory service if:(a) An offer to sell is made in this State; or (b) An offer to purchase is made and accepted in this State.” NRS 90.830(1).

**COURT FURTHER FINDS** after review that Plaintiff’s Amended Complaint has failed to allege that either (a) an offer to sell is made in Nevada; or that (b) an offer to purchase is made and accepted in Nevada. *See Prime Mover Capital Partners, L.P. v. Elixir Gaming Techs., Inc.*, 793 F. Supp. 2d 651, 669–70 (S.D.N.Y. 2011).

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1           **COURT FURTHER FINDS** after review that “an offer to sell or to purchase is made  
2 in [Nevada], whether or not either party is present in [Nevada], if the offer: (a) Originates in  
3 [Nevada]; or (b) Is directed by the offeror to a destination in [Nevada] and received where it  
4 is directed....” NRS 90.830(3).  
5

6           **COURT FURTHER FINDS** after review that Plaintiff’s Amended Complaint has  
7 failed to allege that an offer to sell or to purchase either (a) originated in Nevada, or (b) was  
8 directed to a destination in Nevada and received therein.

9           **THEREFORE, COURT FURTHER ORDERS** for good cause appearing and after  
10 review that the Motions are hereby **GRANTED IN PART** and the First, Third and Fifth  
11 Causes of Action in Plaintiff’s Amended Complaint are hereby **DISMISSED** without  
12 prejudice as to all Defendants.  
13

14           **COURT FURTHER FINDS** after review that, with respect to federal securities fraud  
15 claims, a “court may also consider unattached evidence on which the complaint necessarily  
16 relies if: (1) the complaint refers to the document; (2) the document is central to the  
17 plaintiff’s claim; and (3) no party questions the authenticity of the document.” *Baxter v.*  
18 *Dignity Health*, 131 Nev. Adv. Op. 76, 357 P.3d 927, 930 (2015) (internal citations and  
19 quotations omitted). Further, “[w]hile presentation of matters outside the pleadings will  
20 convert the motion to dismiss to a motion for summary judgment, ...such conversion  
21 is not triggered by a court’s consideration of matters incorporated by reference or integral to  
22 the claim, ... as where the complaint ‘relies heavily’ on a document’s terms and effect.” *Id.*  
23

24           **COURT FURTHER FINDS** after review that a private cause of action exists against a  
25 “person who ... offers or sells a security in violation of [15 U.S.C.A. § 77e].” 15 U.S.C.A. §  
26 77l(a)(1).  
27

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1           **COURT FURTHER FINDS** after review that a private cause of action exists when a  
2 party sells a security "by means of a prospectus or oral communication, which includes an  
3 untrue statement of material fact or omits to state a material fact necessary in order to make  
4 the statements, in light of the circumstances under which they were made...." 15 U.S.C.A. §  
5 771(a)(2).  
6

7           **COURT FURTHER FINDS** after review that "it is clear that for § 12(a)(2) to apply  
8 there must be a public offering." *Artist Hous. Holdings, Inc. v. Davi Skin, Inc.*, No. 2:06 CV  
9 893 RLH LRL, 2007 WL 951947, at \*2 (D. Nev. Mar. 28, 2007),  
10

11           **COURT FURTHER FINDS** after review that an exemption from liability exists for  
12 "transactions by an issuer not involving any public offering." 15 U.S.C.A. § 77d(a)(2).  
13

14           **COURT FURTHER FINDS** after review that in determining whether a private  
15 offering exists, the Court should consider "(1) the number of offerees; (2) the sophistication  
16 of the offerees; (3) the size and manner of the offering; and (4) the relationship of the  
17 offerees to the issuer." *S.E.C. v. Murphy*, 626 F.2d 633, 644-45 (9th Cir. 1980) (internal  
18 citations and quotations omitted).  
19

20           **COURT FURTHER FINDS** after review that the Stock Purchase Agreement dated  
21 October 5, 2016 and referenced in the Amended Complaint contemplates only a private sale  
22 of securities, and that the sale of securities described by Plaintiffs' Amended Complaint  
23 does not constitute a public offering. *Id.*

24           **COURT FURTHER FINDS** after review that in order to state a claim for control  
25 person liability, a plaintiff must allege the following: "(1) a primary violation of federal  
26 securities laws ...; and (2) that the defendant exercised actual power or control over the  
27 primary violator." *Howard v. Everex Sys., Inc.*, 228 F.3d 1057, 1065 (9th Cir. 2000).  
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1           **COURT FURTHER FINDS** after review that Plaintiffs have failed to allege both (1) a  
2 primary violation of federal securities laws, and (2) that the Defendants exercised actual  
3 power or control over the primary violator or one another.  
4

5           **THEREFORE, COURT FURTHER ORDERS** for good cause appearing and after  
6 review that the Motions are hereby **GRANTED IN PART** and the Second, Fourth and Six  
7 Causes of Action in Plaintiffs' Amended Complaint are hereby **DISMISSED** without  
8 prejudice as to all Defendants.

9           **COURT FURTHER FINDS** after review that, with respect to the fiduciary duty  
10 claims, "plaintiffs [cannot] prosecute a claim for breach of fiduciary duty that essentially  
11 restated their claim for breach of contract." *Blue Chip Capital Fund II Ltd. P'ship v.*  
12 *Tubergen*, 906 A.2d 827, 832–33 (Del. Ch. 2006) ("because the dispute related to  
13 obligations expressly governed by contract, the fiduciary claims must be dismissed.").  
14

15           **COURT FURTHER FINDS** after review that "to distinguish between direct and  
16 derivative claims, Nevada courts ... should consider only (1) who suffered the alleged harm  
17 (the corporation or the suing stockholders, individually); and (2) who would receive the  
18 benefit of any recovery or other remedy (the corporation or the stockholders, individually)?"  
19 *Parametric Sound Corp. v. Eighth Judicial Dist. Court in & for Cty. of Clark*, 401 P.3d  
20 1100, 1108 (Nev. 2017), *citing Tooley v. Donaldson, Lufkin & Jenrette, Inc.*, 845 A.2d  
21 1031, 1033 (Del. 2004).  
22

23           **COURT FURTHER FINDS** after review that "directors and officers may only be  
24 found personally liable for breaching their fiduciary duty of loyalty if that breach involves  
25 intentional misconduct, fraud, or a knowing violation of the law." *Shoen v. SAC Holding*  
26 *Corp.*, 122 Nev. 621, 640 (2006); *see also Wynn Resorts, Ltd. v. Eighth Judicial Dist. Court*  
27 *in & for Cty. of Clark*, 399 P.3d 334, 342 (Nev. 2017).  
28

1           **COURT FURTHER FINDS** after review that Plaintiffs' Amended Complaint has  
2 failed to state a direct claim against the Defendants for Breach of Fiduciary Duty. *Id.* at  
3 1107-1108.  
4

5           **COURT FURTHER FINDS** after review that Plaintiffs' Amended Complaint has  
6 failed to state a derivative claim against the Defendants for Breach of Fiduciary Duty as  
7 Plaintiffs have failed to adequately plead demand futility. *In re Amerco Derivative Litig.*,  
8 127 Nev. 196, 218-19, 252 P.3d 681, 697-698 (2011), *citing to* *Aronson v. Lewis*, 473 A.2d  
9 805, 814 (Del.1984).  
10

11           **THEREFORE, COURT FURTHER ORDERS** for good cause appearing and after  
12 review that the Motions are hereby **GRANTED IN PART** and the Twelfth, Thirteenth,  
13 Fourteenth and Fifteenth Causes of Action in Plaintiffs' Amended Complaint are hereby  
14 **DISMISSED** without prejudice as to all Defendants.

15           **COURT FURTHER FINDS** after review that "[i]n actions involving fraud, the  
16 circumstances of the fraud are required by NRCP 9(b) to be stated with particularity. The  
17 circumstances that must be detailed include averments to the time, the place, the identity of  
18 the parties involved, and the nature of the fraud or mistake." *Brown v. Kellar*, 97 Nev. 582,  
19 583-84, 636 P.2d 874 (1981); *see also In re Daou Sys., Inc.*, 411 F.3d 1006, 1027-28 (9th  
20 Cir. 2005).  
21

22           **COURT FURTHER FINDS** after review that Plaintiffs' Amended Complaint has  
23 failed to plead these causes of action with sufficient particularity as required by NRCP 9(b).  
24

25           **THEREFORE, COURT FURTHER ORDERS** for good cause appearing and after  
26 review that the Motions are hereby **GRANTED IN PART** and the Seventh, Ninth and  
27 Twentieth Causes of Action in Plaintiff's Amended Complaint are hereby **DISMISSED**  
28 without prejudice as to all Defendants.

1           **COURT FURTHER FINDS** after review that Plaintiffs have failed to plead a non-  
2 exculpated claim against the Director Defendants. *In re Cornerstone Therapeutics Inc.*  
3 *Stockholder Litig.*, 115 A.3d 1173, 1179 (Del. 2015).  
4

5           **THEREFORE, COURT FURTHER ORDERS** for good cause appearing and after  
6 review that the Motions are hereby **GRANTED IN PART** and the Eighth Cause of Action  
7 is hereby **DISMISSED** without prejudice as to the Director Defendants.

8           **COURT FURTHER ORDERS** for good cause appearing and after review that, with  
9 respect to the Eight Cause of Action, the Hygea Motion is **DENIED IN PART** as to  
10 Defendant Hygea Holdings Corp.  
11

12           **COURT FURTHER FINDS** after review that “[a] cause of action for an accounting  
13 requires a showing that a relationship exists between the plaintiff and defendant that  
14 requires an accounting, and that some balance is due the plaintiff that can only be  
15 ascertained by an accounting.” *Teselle v. McLoughlin*, 173 Cal. App. 4th 156, 179 (2009).  
16

17           **COURT FURTHER FINDS** after review that Plaintiffs’ Amended Complaint failed to  
18 plead that such relationship exists wherein payment was collected by any of the Director  
19 Defendants.

20           **THEREFORE, COURT FURTHER ORDERS** for good cause appearing and after  
21 review that the Motions are hereby **GRANTED IN PART** and the Twenty-First Cause of  
22 Action is hereby **DISMISSED** without prejudice as to the Director Defendants.

23           **COURT FURTHER ORDERS** for good cause appearing and after review that the  
24 Hygea Motion and the Gonzalez Motion are **DENIED IN PART** with respect to the  
25 Sixteenth, Seventeenth, Eighteenth and Nineteenth Causes of Action.  
26

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**COURT FURTHER ORDERS** for good cause appearing and after review that the Hygea Motion is **DENIED IN PART** with respect to the request to strike supplemental pleadings and **GRANTED IN PART** with respect to the request to strike the jury demand set forth in the Plaintiffs' Amended Complaint.

**COURT FURTHER ORDERS** for good cause appearing and after review Defendants are directed to prepare and submit an order containing detailed findings of fact and conclusions of law ("Order") based upon the Courts decision as set forth hereinabove. Defendants are further ordered to provide opposing counsel with the proposed Order at least one (1) week prior to submitting the Order to the Court, to allow opposing counsel to review the Order as to form.

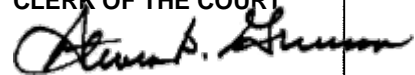
**COURT FURTHER ORDERS** for good cause appearing and after review that Plaintiff is hereby GRANTED leave of thirty (30) days from the filing of the Order in order to amend the Amended Complaint. Defendants shall have twenty (20) days from the service of any amended complaint in order to file an Answer or otherwise respond thereto.

DATED this 21 day of November, 2018.

Nancy L Alf  
NANCY ALF  
DISTRICT COURT JUDGE

“Exhibit 16”

“Exhibit 16”



**MCLA**

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*Attorneys for Ray Gonzalez*

**DISTRICT COURT**

**CLARK COUNTY, NEVADA**

N5HYG, LLC and NEVADA 5, INC.,

Plaintiffs,

v.

HYGEA HOLDINGS CORP.; MANUEL  
IGLESIAS; EDWARD MOFFLY; DANIEL  
T. MCGOWAN; FRANK KELLY;  
MARTHA MAIRENA CASTILLO; LACY  
LOAR; RICHARD WILLIAMS, ESQ.;  
GLENN MARICHI, M.D.; KEITH  
COLLINS, M.D.; JACK MANN, M.D.; THE  
ESTATE OF HOWARD SUSSMAN, M.D.;  
JOSEPH CAMPANELLA; CARL  
ROSENCRANTZ; and RAY GONZALEZ;  
DOES 1-X; and ROES 1-X,

Defendants.

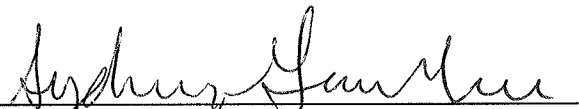
Case No. : A-17-762664-B  
Dept. No.: XXVII

**DEFENDANT RAY GONZALEZ'S  
LIMITED MOTION FOR  
CLARIFICATION OF DECISION AND  
ORDER AND**

**EX PARTE APPLICATION FOR ORDER  
SHORTENING TIME AND ORDER  
THEREON**

1 Pursuant to EDCR 2.24, Defendant Ray Gonzalez ("Mr. Gonzalez") respectfully moves  
2 this Court for clarification or reconsideration, on a limited basis, of the Court's Decision and  
3 Order filed November 21, 2018 ("Decision") on his Motion to Dismiss Amended Complaint  
4 ("Gonzalez Motion"). This Limited Motion is based upon the attached Memorandum of Points  
5 and Authorities, the papers and pleadings on file herein, and any oral argument this Court may  
6 allow.

7 DATED this 3rd day of December, 2018.

8   
9

10 Robert J. Cassity, Esq.  
11 Sydney Gambee, Esq.  
12 HOLLAND & HART LLP  
13 9555 Hillwood Drive, 2nd Floor  
14 Las Vegas, Nevada 89134

15 Jeffrey T. Kucera  
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20 Stavroula E. Lambrakopoulos  
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23 (Admitted pro hac vice)  
24 K&L GATES LLP  
25 1601 K Street, N.W.  
26 Washington, D.C. 20006-1600

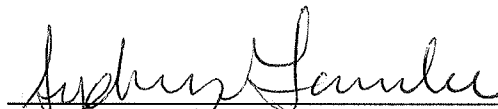
27 *Attorneys for Ray Gonzalez*  
28

### 29 APPLICATION FOR ORDER SHORTENING TIME

30 Pursuant to EDCR 2.26 and the Declaration of Sydney R. Gambee, Esq. below, Mr.  
31 Gonzalez hereby applies for an order shortening time for hearing on his Limited Motion for  
32 Clarification of Decision and Order ("Limited Motion") as Mr. Gonzalez requests such  
33 clarifications before submitting the order required by the Decision. Generally, EDCR 7.21  
34 requires preparation of the order, judgment or decree within 10 days after counsel is notified of  
35 the ruling. Here, the Decision was signed on November 21, 2018 and emailed to counsel on the

1 same date, making the proposed order due to the Court by December 7, 2018. The Court also  
2 directed that defense counsel provide Plaintiff's counsel with the proposed Order at least one  
3 week prior to submitting the order to the Court. Mr. Gonzalez respectfully requests that this  
4 Limited Motion be heard at the Court's earliest available opportunity, as the form of the  
5 proposed order depends on the clarification requested herein. Specifically, the Gonzalez  
6 Motion requested dismissal of Plaintiffs' claims on the basis of lack of personal jurisdiction  
7 over Mr. Gonzalez, but the Decision does not include any findings or any determination by the  
8 Court regarding the threshold question of personal jurisdiction over Mr. Gonzalez under NRC  
9 12(b)(2). Therefore, Mr. Gonzalez requests that this Limited Motion be heard on shortened  
10 time and before Defendants are required to submit the proposed order.

11 DATED this 3rd day of December, 2018.

12 

13 Robert J. Cassidy, Esq.  
14 Sydney Gambee, Esq.  
15 HOLLAND & HART LLP  
16 9555 Hillwood Drive, 2nd Floor  
17 Las Vegas, Nevada 89134

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21 200 South Biscayne Boulevard  
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23 Stavroula E. Lambrakopoulos  
24 (Admitted pro hac vice)  
25 Theodore L. Kornobis  
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28 1601 K Street, N.W.  
Washington, D.C. 20006-1600

*Attorneys for Ray Gonzalez*

**DECLARATION OF SYDNEY R. GAMBEE, ESQ.**

**IN SUPPORT OF APPLICATION FOR ORDER SHORTENING TIME**

I, Sydney R. Gambee, hereby declare as follows:

1. I am an attorney at the law firm of Holland & Hart LLP, counsel for Defendant Ray Gonzalez in the above-captioned case. I am duly admitted to practice law in the State of

1 Nevada. I have personal knowledge of the matters stated herein and would be competent to  
2 testify if called upon to do so.

3 2. Good cause exists for Mr. Gonzalez's Limited Motion to be heard on shortened  
4 time.

5 3. Pursuant to EDCR 7.21, the order that Defendants are required by the Decision  
6 to submit is due to the Court by December 7, 2018.

7 4. Mr. Gonzalez respectfully requests that the Limited Motion be heard at the  
8 earliest available opportunity, as the form of the proposed order depends on the clarification  
9 requested herein.

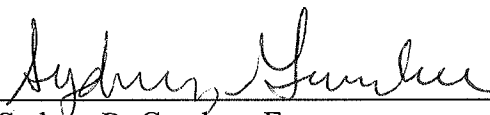
10 5. Specifically, the Gonzalez Motion requested dismissal of Plaintiffs' claims on  
11 the basis of lack of personal jurisdiction over Mr. Gonzalez, but the Decision does not include  
12 any findings or any determination by the Court regarding the threshold question of personal  
13 jurisdiction over Mr. Gonzalez under NRCP 12(b)(2).

14 6. Therefore, Mr. Gonzalez requests that this Limited Motion be heard on  
15 shortened time and before Defendants are required to submit the proposed order.

16 7. An order shortening time is necessary to enable Defendants to draft the proposed  
17 order in a timely fashion.

18 I declare under penalty of perjury that the foregoing is true and correct.

19 EXECUTED this 3rd day of December, 2018 in Clark County, Nevada.

20  
21   
22 Sydney R. Gambee, Esq.

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IT IS HEREBY ORDERED that Mr. Gonzalez's request for an Order Shortening Time to hear the Limited Motion is granted, and said Limited Motion shall be heard in Dept. 27 on the 12<sup>th</sup> day of December, 2018, at the hour of 9:30 a.m./p.m.

Submitted by:

JUDGE BARE FOR DISTRICT COURT JUDGE  
NANCY ALLEN

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Washington, D.C. 20006-1600

*Attorneys for Ray Gonzalez*


Among other grounds, the Gonzalez Motion sought to dismiss the Amended Complaint for lack of personal jurisdiction pursuant to NRCp 12(b)(2), due to the lack of the requisite minimum contacts by Mr. Gonzalez with the Nevada forum to establish jurisdiction under Nevada's long-arm statute and consistent with due process requirements. The Court dismissed with prejudice Nevada 5, the sole Nevada plaintiff, for lack of standing to assert the claims.

1 The Court also resolved the Gonzalez Motion to dismiss for failure to state a claim under  
2 NRCP 12(b)(5), failure to plead fraud with particularity under NRCP 9(b), and failure to state a  
3 derivative claim under NRCP 23.1. However, the Decision does not include any findings or  
4 any determination by the Court regarding the threshold question of personal jurisdiction over  
5 Mr. Gonzalez under NRCP 12(b)(2).

6 The Court directed that Defendants prepare and submit an order containing detailed  
7 findings of fact and conclusions of law ("Order") based upon the Decision. However, the  
8 preparation of such an Order as it relates to the Gonzalez Motion is hampered by the absence of  
9 any decision or guidance from the Court as to its determination of the jurisdictional question.

10 Accordingly, and in light of the dismissal of any Nevada plaintiff in this litigation, Mr.  
11 Gonzalez seeks clarification by the Court as to its findings and the nature of its decision solely  
12 as it relates to his motion to dismiss the Amended Complaint pursuant to Rule 12(b)(2) for lack  
13 of personal jurisdiction. In the meantime, Mr. Gonzalez respectfully submits that the  
14 preparation of the Order be stayed pending the issuance of a clarification order by the Court.

15 DATED this 3rd day of December, 2018.

16  
17   
18 Robert J. Cassity, Esq.  
19 Sydney Gambee, Esq.  
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27 *Attorneys for Ray Gonzalez*  
28

**CERTIFICATE OF SERVICE**

I hereby certify that on the 5<sup>th</sup> day of December, 2018, a true and correct copy of the foregoing **DEFENDANT RAY GONZALEZ'S LIMITED MOTION FOR CLARIFICATION OF DECISION AND ORDER AND APPLICATION FOR ORDER SHORTENING TIME** was served by the following method(s):

☒ **Electronic:** by submitting electronically for filing and/or service with the Eighth Judicial District Court's Odyssey eFileNV Electronic Filing system and serving all parties with an email address on record, as indicated below, pursuant to Administrative Order 14-2 and Rule 9 of the N.E.F.C.R. That date and time of the electronic proof of service in place of the date and place of deposit in the U.S. Mail.

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D. Chris Albright, Esq.  
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Castillo, Lacy Loar, Glenn Marichi, Keith  
Collins, Jack Mann, Joseph Campanella  
and Carl Rosencrantz*

1 ☒ U.S. Mail: by depositing same in the United States mail, first class postage fully  
2 prepaid to the persons and addresses listed below:

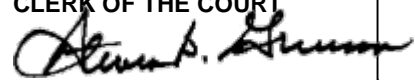
3 Richard Williams  
4 8110 SW 78th Street  
5 Miami, Florida 33143  
6 Tel: (786) 405-3312

7 *Defendant Pro Per*

8   
9 An Employee of Holland & Hart LLP  
10  
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“Exhibit 17”

“Exhibit 17”



**OPPS**

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*Attorneys for Plaintiffs*

*See Signature Page for Additional Counsel*

**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

**PLAINTIFFS' OPPOSITION TO  
DEFENDANT RAY GONZALEZ'S  
LIMITED MOTION FOR  
CLARIFICATION OF DECISION  
AND ORDER AND EX PARTE  
APPLICATION FOR ORDER  
SHORTENING TIME AND ORDER  
THEREON**

1 Defendant Gonzalez's Motion for Clarification fails for many of the same reasons as his co-  
2 Defendants' counterpart motion. Both Motions are untimely, and effectively an attempt to  
3 circumvent and to *de facto* rewrite of the Court's Decision requiring Defendants to provide Plaintiffs  
4 with the proposed Order at least one week before its submission to the Court.<sup>1</sup> Neither Motion has  
5 substantive merit: just as the Court has clearly rejected Defendants' claim preclusion argument, it  
6 has also clearly rejected their personal jurisdiction argument.

7  
8 However, there are a few things specific to the Gonzalez Motion worth noting. *First*, Mr.  
9 Gonzalez calculates that the Order is due to the Court on Friday, December 7, whereas his co-  
10 Defendants claim it is due on December 10. And Mr. Gonzalez acknowledges that the Decision  
11 requires Defendants to provide Plaintiffs with a copy one week before submission to the Court. *See*  
12 *Gonz. Appl. for Ord. Sh. Tm.* at 2-3. But he did not file his Motion for Clarification until after 5:00  
13 PM, a mere three days before December 7. Thus, Mr. Gonzalez effectively concedes that his Motion  
14 is untimely and that the Defendants together have missed the deadline to submit the draft to  
15 Plaintiffs. Indeed, a December 7 deadline would have made his co-Defendants' proposal to truncate  
16 Plaintiffs' review outright impossible even if the Court had not set the hearing on that Motion for  
17 December 12; as it stands, the co-Defendants' proposal is literally impossible.

18  
19 *Second*, and relatedly, Mr. Gonzalez explicitly asks that the "preparation of the Order be  
20 stayed pending the issuance of a clarification order by the Court." *Gonz. Mot.* at 6. If Defendants  
21 are still the party to prepare the Order—and Plaintiffs submit that the Court should hold that  
22 Defendants have forfeited this position by their failure to adhere to the Decision's deadline—this is  
23 necessary in order to accommodate the Decision's requirement that Defendants afford Plaintiffs a  
24 week to review the proposed Order before submission to the Court. And, as Plaintiffs discuss in  
25 their response to the other Defendants, they would have been amenable to an extension had  
26

27  
28 <sup>1</sup> Terms defined in Plaintiffs' Response to the other Motion for Clarification are defined the same here. "Decision" means the Court's Decision and Order dated November 21, 2018, and "Order" means the proposed Order that the Decision directed Defendants to prepare, share with Plaintiffs a week before submission, and submit to the Court.

Defendants approached them instead of simply failing to provide a draft Order. But Plaintiffs also note again that this case is already well over a year old, and Defendants should not be permitted to impose unwarranted delay through their failure to prepare a timely Order.

*Third*, the Court has unequivocally found that it has jurisdiction over Mr. Gonzalez because it is exercising jurisdiction over him, explicitly upholding four claims against him. Decision at 7 (“the Hygea Motion and the Gonzalez Motion are DENIED IN PART with respect to the Sixteenth, Seventeenth, Eighteenth and Nineteenth causes of Action”). The Court is not presumably exercising this jurisdiction as an oversight, or as an intentional violation of Mr. Gonzalez’s due process rights.

For all of these reasons, and the reasons set forth in Plaintiffs’ Response to the other Defendants’ Motion for Clarification, Plaintiffs respectfully request that the Court should deny the Motion and either (1) deem Defendants to have forfeited the opportunity to prepare the initial proposed Order; or (2) if the Court continues to direct that the Defendants prepare the Order, reaffirm the Decision’s requirement that Defendants afford Plaintiffs a week to review the proposed Order.

DATED this 27<sup>th</sup> day of December, 2018.

ALBRIGHT, STODDARD, WARNICK & ALBRIGHT

  
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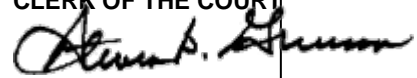
**CERTIFICATE OF SERVICE**

I hereby certify that I am an employee of Albright, Stoddard, Warnick & Albright, and that on the 7 day of December, 2018, I served a true and correct copy of the foregoing **PLAINTIFFS' OPPOSITION TO DEFENDANT RAY GONZALEZ'S LIMITED MOTION FOR CLARIFICATION OF DECISION AND ORDER AND EX PARTE APPLICATION FOR ORDER SHORTENING TIME AND ORDER THEREON** upon all counsel of record by electronically serving the document using the Court's electronic filing system.

  
An employee of Albright, Stoddard, Warnick & Albright

“Exhibit 18”

“Exhibit 18”



TRAN

DISTRICT COURT  
CLARK COUNTY, NEVADA

N5HYG, LLC,

Plaintiff(s),

vs.

HYGEA HOLDINGS CORP,

Defendant(s).

Case No. A-17-762664-B

DEPT. XXVII

BEFORE THE HONORABLE NANCY ALLF, DISTRICT COURT JUDGE

WEDNESDAY, DECEMBER 12, 2018

**TRANSCRIPT OF PROCEEDINGS RE:  
ALL PENDING MOTIONS**

(Appearances on page 2.)

RECORDED BY: BRYNN GRIFFITHS, COURT RECORDER

1 APPEARANCES:

2 For the Plaintiff(s):

GEORGE MARK ALBRIGHT, ESQ.  
KEVIN WATTS, ESQ.  
CHRISTOPHER D. KAYE, ESQ.  
(appearing via CourtCall)

5 For the Defendant(s), Carl  
6 Rosencrantz, Joseph  
7 Campanella, Jack Mann, M.D.,  
8 Keith Collins, M.D., Glenn  
9 Marichi, M.D., Lacy Loar,  
10 Martha Mairena Castillo,  
11 Kelly Frank, Daniel T.  
McGowan, Edward Moffly,  
Manuel Iglesias, and Hygea  
Holdings Corp.:

MARIA A. GALL , ESQ.  
KYLE A. EWING, ESQ.

12 For the Defendant(s), Ray  
13 Gonzalez:

14 SYDNEY R. GAMBEE, ESQ.  
15 STAVROULA E.  
16 LAMBRAKOPOULOS, ESQ.  
(appearing via CourtCall)

1                   **LAS VEGAS, NEVADA, WEDNESDAY, DECEMBER 12, 2018**

2                   [Proceeding commenced at 9:38 a.m.]

3  
4                   THE COURT: That takes us to N5HYG v. Hygea.

5                   MR. KAYE: Good morning, Your Honor. Christopher Kaye  
6 appearing for the plaintiff via CourtCall.

7                   THE COURT: Thank you, Mr. Kaye.

8                   Let's take appearances in the courtroom from your right to left,  
9 please.

10                  MR. ALBRIGHT: I'm Mark Albright, local counsel appearing  
11 on behalf of the plaintiffs, Your Honor.

12                  THE COURT: Thank you.

13                  MS. GALL: I'm Maria Gall of Ballard Spahr, appearing on  
14 behalf of most of the defendants, including Hygea.

15                  THE COURT: Thank you.

16                  MR. EWING: Good morning, Your Honor. Kyle Ewing on --  
17 from Ballard Spahr, also on behalf of Hygea and most of the individual  
18 defendants.

19                  THE COURT: Thank you.

20                  MS. GAMBEE: Good morning, Your Honor. Sydney Gambee  
21 from Holland and Hart on behalf of Ray Gonzalez.

22                  THE COURT: Thank you.

23                  Were there any other appearances on the phone?

24                  MS. LAMBRAKOPOULOS: Yes, Your Honor. This is  
25 Stavroula Lambrakopoulos on behalf of Defendant Ray Gonzalez.

1 THE COURT: Thank you.

2 All right. So we have --

3 MR. WATTS: Good morning, Your Honor. Kevin Watts also  
4 on behalf of Plaintiffs.

5 THE COURT: Thank you.

6 All right. So we have basically three matters here today, two  
7 motions to -- I'm sorry, well, two motions. And it's for clarification. And  
8 just to let everybody know, never feel awkward about seeking  
9 reconsideration or clarification.

10 So let me hear first from Hygea and then from Gonzalez.

11 MS. GALL: Thank you, Your Honor.

12 We filed just a very brief motion for clarification. I'm sure Your  
13 Honor has reviewed it. And it sets forth the basis for why we're seeking  
14 clarification. The -- we had moved on two other bases to dismiss the  
15 case, both on -- one on claim preclusion and on personal jurisdiction.  
16 Your Honor's decision and order were silent on those matters, but Your  
17 Honor did direct Defendants to prepare detailed findings and  
18 conclusions of law.

19 THE COURT: Right. And I don't consider anyone to be in  
20 violation of the local rules at this point, just to let everybody know.

21 MS. GALL: Thank you, Your Honor. I don't feel that our  
22 motion is -- should be very contentious. But it seems to be contentious.  
23 I'll just address -- given Your Honor's advisement just a few moments  
24 ago, I'll only address one of the contentions, which is Defendants appear  
25 to oppose our motion on the basis that Your Honor's decision and order

1 carried an implicit finding. That may be the case, Your Honor, but I  
2 prefer not to put words in Your Honor's mouth.

3 And in any event, even if there was an implicit finding, that you  
4 were denying the motions on those bases, we were struggling to prepare  
5 detailed findings and conclusions of law with the silence. So we would  
6 just respectfully request that the Court, should it choose to provide us  
7 some guidance in that respect. Thank you.

8 THE COURT: Thank you.

9 Oppositions and -- let me hear from all parties.

10 MS. GAMBEE: Do you want to hear the motions first or do we  
11 want to take them each separately?

12 THE COURT: I'm just going to take them separately and --  
13 and not rule until I've heard everything.

14 MR. ALBRIGHT: Good morning, Your Honor.

15 THE COURT: Mr. Albright.

16 MR. ALBRIGHT: Our -- our concern, of course, is that the --  
17 the proposed findings were due about nine days ago. And rather call us  
18 and get a continuance or -- or propose some findings and conclusions  
19 that just had the two blanks, we could have saved a lot of time and effort  
20 by just focusing on those -- those two items.

21 Because we're now up against the -- the holiday, if -- if the  
22 Court wants, we're happy to prepare the proposed findings and  
23 conclusions by the end of next week and we're happy to give the  
24 opposing parties two weeks, because of the holidays, to review them.  
25 We believe that it's very clear that, on the jurisdictional issue, that the --

1 the laws that we submitted, including the statute 75.160, is a director  
2 consent statute for directors that agree to perform their services in  
3 Nevada.

4 And, in addition, with respect to claim preclusion, very simple.  
5 The Supreme Court has already ruled that an order appointing a  
6 receiver or denying a Motion to Appoint a Receiver is not a final  
7 judgment on the merits. It's not entitled to any preclusive effect under  
8 the *Johnson v. Steel* case. And because those two are assumed and  
9 implied, we submit, Your Honor, it's very clear from the points and  
10 authorities what the conclusions and findings are.

11 If it's good enough for the Supreme Court of Nevada to  
12 assume and imply findings when they're not there, then it's certainly  
13 good enough for opposing counsel on a Motion to Dismiss, Your Honor.  
14 Thank you.

15 THE COURT: Thank you.

16 Any other parties wish to weigh in on this motion?

17 MS. GALL: Could I just make a very brief reply?

18 THE COURT: Well, unless anybody else --

19 MS. GALL: Understood.

20 THE COURT: -- has -- Ms. Gambee, did you have anything?

21 MS. GAMBEE: No.

22 THE COURT: Yes, then your reply, please.

23 MS. GALL: Your Honor, on just two points. One, this is not a  
24 Motion for Reconsideration, and so, obviously, I dispute Mr. Albright's  
25 substantive arguments both on claim preclusion and on the personal

1 jurisdiction matter. But in addition we'll state there were a number of  
2 bases on which both parties both moved and opposed those subjects.

3 As far as the findings of fact, we have not just been sitting  
4 around. On all other issues, Defendants have conferred amongst  
5 ourselves, counsel have conferred. We have the findings of fact and  
6 conclusions of law prepared with the exception of the two issues that are  
7 before the Court today. And we will -- once Your Honor provides her  
8 clarification, we will be in a position within one to two days to circulate  
9 that to the -- to the plaintiffs. Thank you, Your Honor.

10 THE COURT: Thank you.

11 All right. So the first motion is submitted.

12 Let's take now Ms. Lambrakopoulos, your motion with regard  
13 to Mr. Gonzalez.

14 MS. LAMBRAKOPOULOS: Yes, thank you, Your Honor. We  
15 appreciate the opportunity.

16 We, again, also seek a limited clarification on the issue of  
17 Mr. Gonzalez's motion based on Rule 12(b)(2) for lack of jurisdiction,  
18 personal jurisdiction by the Court. We noted that there was nothing in  
19 the Court's November 21st decision that spoke to that issue and thus  
20 seek clarification, particularly in light of the fact that the Court has also,  
21 as per that order, dismissed the sole Nevada plaintiff and has also  
22 dismissed all of the claims that could arguably constitute harm to the  
23 corporation, at least as to Mr. Gonzalez.

24 And based on *concupio*, we sought further guidance from the  
25 Court to try to understand what the decision has been on that issue and

1 what the basis for that decision, so that we could work together to craft  
2 that portion of -- of the final order.

3 THE COURT: Thank you.

4 And the opposition?

5 MR. ALBRIGHT: No, Your Honor. Just a request that if they  
6 submit them to us, the findings and conclusions, in the next few days,  
7 we would like seven to 10 days, of course, to review them. They're  
8 going to be complex and we -- we've got the holidays facing us.

9 THE COURT: Thank you.

10 And anything?

11 MS. GALL: I just wanted to note --

12 MS. LAMBRAKOPOULOS: No.

13 THE COURT: Ms. Gall --

14 MS. GALL: Apologize.

15 THE COURT: Ms. Gall and then Ms. Lambrakopoulos.

16 MS. GALL: I just wanted to know that the -- the clients that  
17 Ballard Spahr represents, all but Hygea, Mr. Iglesias, and Mr. Moffly, join  
18 in the Motion for clarification made by Mr. Gonzalez.

19 THE COURT: Thank you.

20 MS. GALL: Thank you.

21 THE COURT: Ms. Lambrakopoulos?

22 MS. LAMBRAKOPOULOS: Yes. And we have no issue with  
23 providing the plaintiffs with whatever time they need in order to review  
24 the draft order, which should be -- we should be in a position to, jointly  
25 with the other defendants, deliver to them very soon.

1 THE COURT: Very good.

2 The -- I'm going to take the matters under consideration.  
3 They'll be submitted at this point. The ruling -- this will go on my  
4 chambers calendar for the 18th, and you'll have a decision that day.  
5 We -- we are almost ready in drafting it. I wanted to have it for you  
6 today, but I couldn't get there.

7 So the -- the findings of facts will be due on the 4th of  
8 January -- I'm sorry, hang on. Findings of fact will be due on the 4th of  
9 January after I issue the order on the 18th. And the plaintiffs then will  
10 have 10 days to respond before they're submitted to me or available for  
11 signature.

12 I apologize for the delay.

13 MR. ALBRIGHT: No problem. We appreciate it, Your Honor.

14 MS. GALL: As a matter of clarification, Your Honor, are the  
15 findings due to the plaintiffs on the 4th or due to the Court on the 4th?

16 THE COURT: To the plaintiffs on the 4th and they'll have 10  
17 days to respond before it comes to me.

18 MS. GALL: Understood, Your Honor. Thank you.

19 THE COURT: And -- and I'll review if there are objections. I  
20 assume there will be a written objections, I anticipate that. I'll either sign  
21 or convene a telephonic, or if they're substantive, just ask for another  
22 hearing.

23 MS. GALL: Understood.

24 THE COURT: I'll set another hearing.

25 MR. ALBRIGHT: Okay.

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THE COURT: Thank you all.

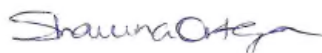
MS. GALL: Thank you, Your Honor.

MR. ALBRIGHT: Thank you.

[Proceeding concluded at 9:47 a.m.]

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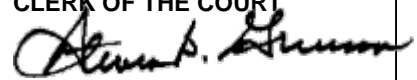
ATTEST: I do hereby certify that I have truly and correctly transcribed the audio/video proceedings in the above-entitled case to the best of my ability.



Shawna Ortega, CET\*562

“Exhibit 19”

“Exhibit 19”



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Campanella, and Carl Rosenkrantz*

**DISTRICT COURT**

**CLARK COUNTY, NEVADA**

N5HYG, LLC, a Michigan limited liability  
company, et al.,

Plaintiffs,

v.

HYGEA HOLDINGS CORP., a Nevada  
corporation, et al.,

Defendants.

CASE NO.: A-17-762664-B

DEPT NO.: 27

**NOTICE OF ENTRY OF  
FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER**

1 The Findings of Fact, Conclusions of Law, and Order on Defendants' Motions  
2 to Dismiss was filed in the above-entitled matter on May 10, 2019, a copy of which is  
3 attached as Exhibit A.

4 Dated: May 24, 2019

5 BALLARD SPAHR LLP

6 By: /s/ Maria A. Gall

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18 *Loar, Glenn Marrichi, Keith Collins, M.D.,*  
19 *Jack Mann, M.D., Joseph Campanella, and*  
20 *Carl Rosenkrantz*  
21  
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**CERTIFICATE OF SERVICE**

I certify that on May 24, 2019, a true and correct copy of the foregoing  
**NOTICE OF ENTRY OF FINDINGS OF FACT, CONCLUSIONS OF LAW,  
AND ORDER** was served on the following parties through the Court's e-service  
system:

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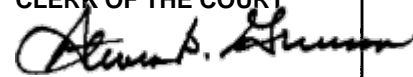
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# **EXHIBIT A**



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16 *Castillo, Lacy Loar, Glenn Marrichi, Keith*  
*Collins, M.D., Jack Mann, M.D., Joseph*  
*Campanella, and Carl Rosenkrantz*

17 DISTRICT COURT

18 CLARK COUNTY, NEVADA

19 N5HYG, LLC, a Michigan limited liability  
20 company, et al.,

21 Plaintiffs,

22 v.

23 HYGEA HOLDINGS CORP., a Nevada  
24 corporation, et al.,

25 Defendants.

CASE NO.: A-17-762664-B

DEPT NO.: 27

26  
27 FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER  
28

1 On October 3, 2018, two motions to dismiss came before this Court for  
2 hearing: (1) the Motion to Dismiss the First Amended Complaint and to Strike  
3 Supplemental Pleadings and Jury Demand brought by Defendant Hygea Holdings  
4 Corp. ("Hygea"), Defendants Manuel Iglesias and Edward Moffly (the "Guarantor  
5 Defendants"), and Defendants Daniel T. McGowan, Frank Kelly, Martha Mairena  
6 Castillo, Lacy Loar, Glenn Marrichi, Dr. Keith Collins, M.D., Dr. Jack Mann, M.D.,  
7 Joseph Campanella, and Carl Rosenkrantz (the "Non-Guarantor Defendants" and  
8 together with the Guarantor Defendants, the "Individual Hygea Defendants")  
9 (collectively, the "Hygea Defendants") and (2) the Motion to Dismiss Amended  
10 Complaint brought by Defendant Ray Gonzalez. The Hygea Defendants joined the  
11 arguments made by Mr. Gonzalez and vice versa. Defendant Richard Williams, who  
12 is proceeding pro se, joined in both Motions.<sup>1</sup> The Individual Hygea Defendants, Mr.  
13 Gonzalez, and Mr. Williams are referred to herein as the "Director Defendants."

14 Maria A. Gall and Kyle A. Ewing of the law firm Ballard Spahr LLP appeared  
15 on behalf of the Hygea Defendants. Stavroula E. Lambrakopoulos of the law firm  
16 K&L Gates LLP and Robert Cassity and Sydney Gambee of the law firm Holland &  
17 Hart LLP appeared on behalf of Gonzalez. Christopher D. Kaye of the Miller Law  
18 Firm, G. Mark Albright of the law firm Albright, Stoddard, Warnick & Albright,  
19 Ogonna M. Brown of the law firm Lewis Roca Rothgerber Christie LLP, and Robert  
20 L. Eisenberg of the law firm Lemons, Grundy & Eisenberg appeared on behalf of  
21 Plaintiffs N5HYG, LLC and Nevada 5, Inc.

22 On November 21, 2018, the Court entered a Decision and Order resolving the  
23 motions to dismiss with regard to all arguments other than claim preclusion and  
24 personal jurisdiction. On December 3, 2018, the Hygea Defendants moved for  
25 clarification of the Court's determination with regard to claim preclusion and Mr.

26  
27 <sup>1</sup> The Court recognizes that Plaintiffs have also named The Estate of Howard  
28 Sussman, M.D. as a defendant in this lawsuit but did not serve The Estate until  
November 29, 2018.

1 Gonzalez moved for clarification with regard to personal jurisdiction. On December  
2 12, 2018, the Court heard oral argument on the motions for clarification, at which  
3 time the Hygea Defendants joined in the motion for clarification made by Mr.  
4 Gonzalez. Ms. Gall and Mr. Ewing appeared on behalf of the Hygea Defendants.  
5 Ms. Lambrakopoulos and Ms. Gambee appeared on behalf of Mr. Gonzalez. Mr.  
6 Kaye and Mr. Albright appeared on behalf of Plaintiffs. On December 14, 2018, the  
7 Court issued a minute order resolving the issue of claim preclusion and the issue of  
8 personal jurisdiction as to Mr. Gonzalez and directed Defendants to prepare and  
9 submit an order containing detailed findings of fact and conclusions of law based  
10 upon the Court's decision as clarified. On April 24, 2019, the Court issued a second  
11 minute order directing Defendants to revise and resubmit their proposed order to  
12 contain findings related to the Court's lack of personal jurisdiction over the Non-  
13 Guarantor Defendants.

14 The Court now having considered the motions and briefing related thereto, all  
15 pleadings and papers on file in this matter, having heard from the parties and  
16 thereafter taken this matter under advisement, hereby finds as follows:

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FINDINGS OF FACT

On October 5, 2017, Plaintiffs filed their original Complaint commencing this action. On November 16, 2017, Mr. Gonzalez filed a Notice of Filing Notice of Removal, notifying this Court and the other parties that he had removed this action to the U.S. District Court for the District of Nevada. On June 8, 2018, Plaintiffs filed a Notice of Entry of Order of Certified Copy of Order Remanding Case to District Court, notifying this Court and the other parties that the U.S. District Court had remanded this case to the Eighth Judicial District Court for Clark County, Nevada. On July 13, 2018, Plaintiffs filed the First Amended Complaint and Jury Demand.

The Amended Complaint alleges the following pertinent facts:

1. Hygea is a Nevada corporation that is in the business of acquiring and managing physician practices.

2. N5HYG is a Michigan limited liability company; Nevada 5, a Nevada corporation, is the sole member of N5HYG. Nevada 5 formed N5HYG to execute a Stock Purchase Agreement dated October 5, 2016.

3. None of the Director Defendants reside in Nevada.

4. On October 5, 2016, N5HYG entered into a Stock Purchase Agreement with Hygea, pursuant to which N5HYG purchased 23,437,500 shares of Hygea's common stock, which at that time constituted an 8.57% ownership interest in Hygea's common stock issued and outstanding.

5. All Director Defendants approved Hygea's entry into the Stock Purchase Agreement.

6. Defendants Iglesias and Moffly personally guaranteed certain of Hygea's obligations under the Stock Purchase Agreement.

7. Hygea's obligations to N5HYG under the Stock Purchase Agreement include certain monthly payments of \$175,000, the delivery of certain financials, the opportunity to receive notice of the issuance of new shares and purchase additional shares so that N5HYG could maintain its 8.57% ownership interest in Hygea, and

1 the right to appoint a member to Hygea's board of directors and to designate a non-  
2 voting observer of the board.

3 8. Plaintiffs allege that Defendants made misrepresentations during the  
4 course of negotiating the Stock Purchase Agreement and that Hygea subsequently  
5 breached its obligations under the Agreement.

6 9. Plaintiffs further allege that each of the Director Defendants, at various  
7 points in time, have mismanaged Hygea in breach of their alleged fiduciary duties to  
8 N5HYG.

9 Plaintiffs brought the following twenty-one causes of actions against  
10 Defendants based on the alleged misrepresentations and breaches: (1) statutory  
11 securities fraud under NRS Chapter 90 (the "Nevada Securities Act"), (2) statutory  
12 securities fraud under the Securities Act of 1933 (the "1933 Act"), (3) failure to  
13 register securities under the Nevada Securities Act, (4) failure to register securities  
14 under the 1933 Act, (5) control person liability under the Nevada Securities Act, (6)  
15 control person liability under the 1933 Act, (7) common law fraud, (8) negligent  
16 misrepresentation, (9) silent fraud/material omission, (10) breach of contract, (11)  
17 rescission of contract, (12) breach of fiduciary duty and waste of corporate assets,  
18 (13) breach of the duty of candor, (14) breach of the duty of loyalty, (15) minority  
19 shareholder oppression, (16) tortious interference with contract, (17) civil conspiracy,  
20 (18) concert of action, (19) unjust enrichment, (20) constructive fraud, and (21)  
21 accounting.

22 The Hygea Defendants moved to dismiss all the foregoing causes of action  
23 based on the doctrine of claim preclusion, an argument in which Messrs. Gonzalez  
24 and Williams joined. The Non-Guarantor Defendants and Mr. Gonzalez also moved  
25 to dismiss themselves from this action pursuant to N.R.C.P. 12(b)(2) based on the  
26 Court's lack of personal jurisdiction, arguments in which Mr. Williams joined. The  
27 Hygea Defendants further moved to dismiss all but the Tenth and Eleventh Causes  
28 of Action and Mr. Gonzalez moved to dismiss the entirety of the Amended Complaint

1 based on Plaintiffs' failure to state a claim upon which relief can be granted,  
2 including based on N.R.C.P. 9(b) and N.R.C.P. 23.1, arguments in which Mr.  
3 Williams joined.

## 4 CONCLUSIONS OF LAW

### 5 THE APPLICABILITY OF CLAIM PRECLUSION

6 The Court first turns to the Motion made by the Hygea Defendants based on  
7 claim preclusion. Typically, in order for claim preclusion to apply, a defendant must  
8 demonstrate that "(1) there has been a valid, final judgment in a previous action; (2)  
9 the subsequent action is based on the same claims or any part of them that were or  
10 could have been brought in the first action; and (3) the parties or their privies are the  
11 same in the instant lawsuit as they were in the previous lawsuit, or the defendant  
12 can demonstrate that he or she should have been included as a defendant in the  
13 earlier suit and the plaintiff fails to provide a good reason for not having done so."  
14 *Weddell v. Sharp*, 131 Nev. Adv. Op. 28, 350 P.3d 80, 82 (Nev. 2015), *reh'g denied*  
15 (July 23, 2015).

16 The Hygea Defendants premise their claim preclusion argument on the case  
17 styled *Claudio Arellano, et al. v. Hygea Holdings Corp., et al.*, Case No. 18-OC-00071-  
18 1B, which was brought before the First Judicial District Court of the State of Nevada  
19 in and for Carson City (the "Receivership Action" before the "Receivership Court").  
20 Plaintiff N5HYG was the lead plaintiff in the Receivership Action and Hygea and  
21 most of the Non-Guarantor Defendants were defendants thereto. The Receivership  
22 Action was filed on or around January 26, 2018, while this case was removed to the  
23 U.S. District Court for the District of Nevada. The plaintiffs to the Receivership  
24 Action sought the appointment of a receiver over Hygea pursuant to NRS 78.650,  
25 78.630 and/or 32.010. On May 14, 2018, the Receivership Case proceeded to a trial  
26 on the merits.

27 On May 16, 2018, the defendants to the Receivership Action moved at the close  
28 of plaintiffs' evidence for judgment as a matter of law under N.R.C.P. 50(a) with

1 respect to all claims. After hearing argument from the parties, the Receivership  
2 Court denied the request for a receiver under NRS 78.630 after finding that there  
3 was insufficient evidence that Hygea had been and was then being conducted at a  
4 great loss and greatly prejudicial to the interest of its creditors and stockholders.  
5 The Receivership Court further denied the plaintiffs' request for a receiver in part  
6 under NRS 78.650 after finding that there was no evidence that Hygea had willfully  
7 violated its charter, that Hygea's directors had been guilty of fraud or collusion in its  
8 affairs, that Hygea abandoned its business, that Hygea had become insolvent, or that  
9 Hygea was not about to resume its business with safety to the public. The  
10 Receivership Court, however, found that there was some evidence for the remaining  
11 bases to appoint a receiver under NRS 78.650(1) and the case proceeded to the  
12 defense on those remaining bases.

13 At the conclusion the defense and after closing arguments, the Receivership  
14 Court orally announced its preliminary findings of fact and conclusions of law on the  
15 record and rendered judgment in favor of the defendants. The Receivership Court  
16 later entered written findings of fact and conclusions of law. Therein, the  
17 Receivership Court concluded that the plaintiffs had failed to establish by a  
18 preponderance of the evidence that they held one-tenth of the issued and outstanding  
19 stock of Hygea and thus failed to establish that the Receivership Court had  
20 jurisdiction to appoint a receiver under NRS 78.650(1). Accordingly, the Receivership  
21 Court denied the plaintiffs' amended complaint and petition for appointment of a  
22 receiver. The Receivership Court, however, also made conclusions on the substantive  
23 merits of the plaintiffs' petition under NRS 78.650(1)(b)–(e) and (i), concluding that  
24 no good cause existed to appoint a receiver over Hygea. Accordingly, it denied  
25 plaintiffs' amended complaint and petition for the appointment of a receiver and  
26 entering judgment in the defendants' favor.

27 As an initial matter, a court's decision whether or not to appoint a receiver is  
28 not a final decision for purposes of claim preclusion. *See Johnson v. Steel, Inc.*, 100

1 Nev. 181, 678 P.2d 676 (1984). Moreover, based on the Receivership Court's finding  
2 that it lacked jurisdiction to appoint a receiver under NRS 78.650(1), this Court finds  
3 that Receivership Court did not render a final judgment for purposes of determining  
4 claim preclusion. *See Five Star Capital Corp. v. Ruby*, 124 Nev. 1048, 194 P.3d 709  
5 (2008). Accordingly, this Court denies the motion to dismiss based on claim  
6 preclusion.

## 7 THE COURT'S JURISDICTION OVER DEFENDANTS

8 The Court next turns to the Motions made by the Non-Guarantor Defendants  
9 and Mr. Gonzalez, and in which Mr. Williams joined, to dismiss themselves from this  
10 action pursuant to N.R.C.P. 12(b)(2) for lack of personal jurisdiction by this Court.  
11 The Court refers to the Non-Guarantor Defendants and Messrs. Gonzalez and  
12 Williams as the "Personal Jurisdiction Defendants" for purposes of addressing this  
13 argument.

14 Nevada's long-arm statute provides for personal jurisdiction on any basis that  
15 is consistent with the federal Constitution. NRS 14.065; *Judas Priest v. District Ct.*,  
16 104 Nev. 424, 426, 760 P.2d 137, 138 (1988). Due process requires that a defendant  
17 have certain minimum contacts with the forum state such that the assertion of  
18 jurisdiction "does not offend traditional notions of fair play and substantial justice."  
19 *Baker v. District Ct.*, 116 Nev. 527, 531, 999 P.2d 1020, 1023 (2000). The burden of  
20 establishing personal jurisdiction rests with Plaintiffs. *See, e.g., Abbott-Interfast*  
21 *Corp. v. District Ct.*, 107 Nev. 871, 873, 821 P.2d 1043, 1044 (1991). "In order for a  
22 court to exercise specific jurisdiction over a claim, there must be an 'affiliation  
23 between the forum and the underlying controversy, principally, [an] activity or an  
24 occurrence that takes place in the forum State.'" *Bristol-Myers Squibb Co. v.*  
25 *Superior Ct.*, 137 S. Ct. 1773, 1781 (2017) (citation omitted). Plaintiffs must  
26 establish each element of a three-prong test required for specific personal  
27 jurisdiction: (1) that the defendant "purposefully avail[ed] himself of the privilege of"  
28 conducting activities in Nevada; (2) that the claims arise or relate to such activities

1 in Nevada; and (3) that “the exercise of jurisdiction comports with fair play and  
2 substantial justice,” *i.e.* it must be “reasonable.” *Catholic Diocese, Green Bay v. John*  
3 *Doe 119*, 131 Nev. Adv. Op. 29, 349 P.3d 518, 520 (2015).

4 Further, Plaintiffs must show that the Personal Jurisdiction Defendants’  
5 involvement with Nevada “was more than simply being a . . . director . . . of one of the  
6 state’s corporations.” *See Southport Lane Equity II, LLC v. Downey*, 177 F. Supp. 3d  
7 1286, 1294–95 (D. Nev. 2016). Indeed, Plaintiffs must sufficiently allege that the  
8 directors of a Nevada corporation took purposeful action to harm that corporation.  
9 *Consipio Holding, BV v. Carlberg*, 128 Nev. 454, 458-59, 282 P.3d 751, 755 (2012).  
10 Further, even “after the district court determines that an officer or director directly  
11 harmed a Nevada corporation, it must also determine whether it is reasonable to  
12 exercise personal jurisdiction.” *Consipio*, 282 P.3d at 756 n.4; *Southport Lane*, 177 F.  
13 Supp. 3d at 1294-95.

14 The Amended Complaint alleges that Nevada 5 formed N5HYG to purchase  
15 securities from Hygea pursuant to a Confidential Information Memorandum and a  
16 Stock Purchase Agreement (“SPA”). Hygea is incorporated in Nevada but has no  
17 offices, personnel, or operations there. All of Hygea’s operations are in Florida or  
18 surrounding states. Although Plaintiff Nevada 5 is a Nevada citizen, there is no  
19 allegation that it has any operations in this state; its sole officer is based in  
20 Michigan.<sup>2</sup> Plaintiff N5HYG is incorporated in Michigan and there are no allegations  
21 of any connection to Nevada other than the corporate citizenship of its sole member,  
22 and the corporate citizenship of the company—Hygea—whose shares comprise its  
23 sole assets. The Amended Complaint asserts that, during the course of discussions  
24 involving the purchase of Hygea stock and the exchange of certain financial  
25 information, Defendants made “two sets of misrepresentations” that “interlocked

26  
27 <sup>2</sup> As noted below in this order, the Court finds that Nevada 5 lacks standing to bring  
28 this action and is therefore dismissed as a party.

1 with one another”—one as to Hygea’s financial performance and the other as to its  
2 intention to take Hygea public via a reverse takeover (“RTO”) that never occurred.  
3 Plaintiffs assert that these misrepresentations were made solely to personnel of its  
4 agent, RIN Capital, a Michigan entity based in Michigan. In the few instances where  
5 a location of communications is identified, it is in Florida. The Personal Jurisdiction  
6 Defendants are alleged to have approved the October 4, 2016, resolution of the Board  
7 authorizing Hygea’s officers to enter into negotiations and the SPA with RIN Capital,  
8 a Michigan entity. The Amended Complaint, however, is otherwise silent as to any  
9 particular allegations regarding the Personal Jurisdiction Defendants’ actions with  
10 respect to either the SPA or the state of Nevada.

11 The Court considered an affidavit submitted by Mr. Gonzalez in support of his  
12 motion containing facts relating to personal jurisdiction.<sup>3</sup> Plaintiffs neither sought  
13 nor conducted any discovery relating to personal jurisdiction, and therefore the  
14 affidavit of Mr. Gonzalez is un rebutted. Mr. Gonzalez has never conducted any  
15 business related to Hygea (or otherwise) in Nevada. Mr. Gonzalez has resided in  
16 Florida since 1972, is registered to vote in Florida, and holds a Florida driver’s  
17 license. Mr. Gonzalez does not and has not ever owned or rented property in Nevada,  
18 does not own any assets in the state, has never traveled to Nevada to conduct  
19 business, and otherwise does not have any other “continuous and systematic”  
20 contacts with this forum so as to make him “at home” in Nevada. Mr. Gonzalez  
21 served as a member of Hygea’s Board of Directors for a brief period from February  
22 2016 until October 2016. Any business that he conducted related to Hygea took place  
23 in Florida. He did not oversee any offices, facilities, bank accounts, or personnel in  
24 Nevada because Hygea has none in Nevada. Mr. Gonzalez did not have any  
25 interaction with the Plaintiffs or their representatives in connection with the

26 <sup>3</sup> A Defendant may submit affidavits as to matters of personal jurisdiction on a  
27 motion to dismiss under Rule 12(b)(2). *See Viega GmbH v. Eighth Judicial Dist.*  
28 *Court*, 130 Nev. Adv. Op. 40, 328 P.3d 1152, 1156 (2014) (quotation omitted).

1 transactions described in the Amended Complaint. He resigned from the Board soon  
2 after the Board approved the stock purchase at issue.

3 In response, Plaintiffs presented three documents. First, they submitted the  
4 October 2016 Resolution that Hygea's managers "be authorized to negotiate, finalize  
5 and execute agreements for the sale of shares to RIN Capital or its designee". The  
6 Resolution indicates that certain of the Personal Jurisdiction Defendants were  
7 present at the meeting that adopted the Resolution and that those in attendance  
8 voted for it. Second, Plaintiffs referenced the SPA. Except for Messrs. Iglesias and  
9 Moffly, none of the Director Defendants signed or was a party to the SPA. The SPA  
10 contained a provision titled "Seller's Knowledge" that defined the knowledge of the  
11 "Seller" (i.e. Hygea), to include knowledge of the Board Members. Plaintiffs argued  
12 that this provision supported that all of the Director Defendants were aware of  
13 Hygea's actual condition. Third, Plaintiffs submitted a declaration from RIN  
14 executive Chris Fowler that quoted an email sent by Mr. Moffly (and not received by  
15 any of the Director Defendants) in which Mr. Moffly purportedly stated that certain  
16 financials were approved by Hygea's board. Similarly, neither the provision in the  
17 SPA nor the email quoted in the Fowler declaration (neither of which were created by  
18 the Personal Jurisdiction Defendants) demonstrate any action by the Personal  
19 Jurisdiction Defendants involving Nevada.

20 The remaining Personal Jurisdiction Defendants did not submit affidavits  
21 relating to personal jurisdiction, but this matters not because it is Plaintiffs who bear  
22 the burden of setting forth a *prima facie* case of personal jurisdiction. *Trump v.*  
23 *Eighth Judicial Dist. Court*, 109 Nev. 687, 692, 857 P.2d 740, 743 (1993) ("When a  
24 challenge to personal jurisdiction is made, the plaintiff has the burden of introducing  
25 competent evidence of essential facts which establish a *prima facie* showing that  
26 personal jurisdiction exists.") Plaintiffs have failed to meet this burden. Plaintiffs  
27 did not establish that the Personal Jurisdiction Defendants created or approved the  
28

1 October 2016 resolution<sup>4</sup> in Nevada or that such Defendants had any knowledge that  
2 a Nevada citizen was involved in the transactions at issue, let alone purposefully  
3 directed harm toward a Nevada citizen. Purposeful direction requires that the  
4 defendant took an act expressly aimed at the forum state. *See In re W. States*  
5 *Wholesale Nat. Gas Litig.*, 605 F. Supp. 2d 1118, 1140 (D. Nev. 2009).

6 The Court lacks personal jurisdiction over the Personal Jurisdiction  
7 Defendants in this matter. In particular, the Court finds, based on the foregoing,  
8 that (1) the Personal Jurisdiction Defendants have not, merely through their service  
9 as directors, purposely availed themselves of the privilege of serving the market in  
10 Nevada or established the necessary minimum contacts therein; (2) the causes of  
11 action asserted against the Personal Jurisdiction Defendants do not arise from their  
12 purposeful contact with Nevada or from conduct targeting Nevada; and (3) exercising  
13 jurisdiction over the Personal Jurisdiction Defendants and requiring them to appear  
14 in this action would be unreasonable and would fail to comport with traditional  
15 notions of fair play and substantial justice. *Catholic Diocese, Green Bay v. John Doe*  
16 *119*, 131 Nev. Adv. Op. 29, 349 P.3d at 520.

17 Accordingly, the Motions made by the Non-Guarantor Defendants and Mr.  
18 Gonzalez pursuant to N.R.C.P. 12(b)(2), and joined by Mr. Williams, are granted, and  
19 they are dismissed from this action for lack of personal jurisdiction by this Court.

## 20 PLAINTIFFS' FAILURE TO STATE A CLAIM

21 The Court now turns to Defendants' Motions based on "failure to state a claim  
22 upon which relief can be granted." N.R.C.P. 12(b)(5). In construing a motion to  
23 dismiss for failure to state a claim, "[a]ll factual allegations of the complaint must be  
24 accepted as true." *Vacation Village v. Hitachi Am.*, 110 Nev. 481, 484, 874 P.2d 744,

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25 <sup>4</sup> In fact, Plaintiffs have shown by the October 2016 Resolution that at least one  
26 Personal Jurisdiction Defendant, Carl Rosenkrantz, and another alleged director,  
27 Howard Sussman, were not in attendance for the October 4, 2016 meeting at which  
28 the Resolution was adopted and thus neither could have even voted for the  
Resolution.

1 746 (1994) (citation omitted). However, “the allegations must be legally sufficient to  
2 constitute the elements of the claim asserted.” *Sanchez v. Wal-Mart Stores, Inc.*, 125  
3 Nev. 818, 823, 221 P.3d 1276, 1280 (2009) (citation omitted). A complaint should be  
4 dismissed where a party can prove no set of facts that, if true, would entitle it to  
5 relief. *See Buzz Stew, LLC v. City of N. Las Vegas*, 124 Nev. 224, 228, 181 P.3d 670,  
6 672 (2008).

7 As an initial matter, this Court addresses whether Plaintiff Nevada 5 has  
8 standing to assert any claims, certain amended pleadings made in Plaintiffs’  
9 Amended Complaint, and Plaintiffs’ demand for a jury trial.

10 Nevada 5 Inc.’s Standing as a Plaintiff

11 Plaintiff Nevada 5 is Plaintiff N5HYG’s parent company. Plaintiffs argue that  
12 Nevada 5 is a proper party-plaintiff for five reasons: (1) Defendants’ alleged  
13 misrepresentations were made to Nevada 5, through its agent RIN Capital, LLC; (2)  
14 Nevada 5 formed N5HYG to purchase Hygea stock based on Defendants’  
15 misrepresentations; (3) Nevada 5 should be considered to have purchased Hygea  
16 stock because, in the context of alleged securities fraud, the term “buyer” is expanded  
17 to include anyone involved in the buying process; (4) Hygea conceded in its insurance  
18 coverage action that Nevada 5 has claims against Hygea and is now estopped from  
19 arguing otherwise; and (5) Defendants have not argued that Nevada 5 failed to plead  
20 its claims. The Court is not persuaded by these arguments.

21 Plaintiffs’ allegations concern the damages N5HYG allegedly suffered as a  
22 result of the stock it purchased based on Defendants’ alleged misrepresentations. If  
23 Nevada 5 has been harmed by virtue of its subsidiary’s purchase, then Nevada 5’s  
24 damages are merely derivative and duplicative of those purportedly suffered by  
25 N5HYG. This Court joins the courts of other jurisdictions, which have specifically  
26 found that alleged wrongdoing to a subsidiary does not confer standing upon the  
27 parent corporation, even where the parent is the sole shareholder of the subsidiary.  
28 *See In re Neurontin Mktg. & Sales Practices Litig.*, 810 F. Supp. 2d 366, 370 (D.

1 Mass. 2011) (citation omitted)); *Clarex Ltd. v. Natixis Securities America, LLC*, 2012  
2 WL 4849146; *BNP Paribas Mortg. Corp. v. Bank of Am., N.A.*, 778 F. Supp. 2d 375,  
3 420 (S.D.N.Y. 2011); *Diesel Sys. Ltd. v. Yip Shing Diesel Eng'g Co.*, 861 F. Supp. 179,  
4 181 (E.D.N.Y. 1944).

5 The Court also declines Plaintiffs' invitation to expand the meaning of "buyer"  
6 to include a stockholder's parent corporation. As set forth by the Stock Purchase  
7 Agreement, which is incorporated by reference to the First Amended Complaint and  
8 of which the Court takes judicial notice, only one party-plaintiff purchased Hygea  
9 stock, that being N5HYG. There is no allegation that Nevada 5 purchased or ever  
10 owned or possessed Hygea stock. The Court further rejects Plaintiffs' argument that  
11 Defendants are estopped from arguing that Nevada 5 has no claims. The Court takes  
12 judicial notice of the fact that Hygea, in an action to enforce insurance coverage,  
13 pointed out the existence of Nevada 5's claims in this lawsuit. This, however, does  
14 not mean that Hygea concurrently took the position that Nevada 5 has standing to  
15 bring such claims, as would be required for estoppel to apply. *Cf. NOLM, Ltd. Liab.*  
16 *Co. v. Cty. of Clark*, 120 Nev. 736, 743, 100 P.3d 658, 663 (2004).

17 For the foregoing reasons, the Court dismisses with prejudice Nevada 5 as a  
18 party to this action.

19 **Plaintiffs' Supplemental Pleadings**

20 The Hygea Defendants argue that because Plaintiffs' Amended Complaint  
21 contains a number of new allegations setting transactions or occurrences that have  
22 happened since the original Complaint, Plaintiffs were obligated to seek this Court's  
23 permission prior to serving the Amended Complaint under N.R.C.P. 15(d). The Court  
24 disagrees, because the Court construes those new allegations as relating back to  
25 Plaintiffs' allegations in the original complaint. Plaintiffs accordingly amended the  
26 original complaint as a matter of course under N.R.C.P. 15(a). For the foregoing  
27 reasons, the Court denies Defendants' request to strike such allegations.

28

1 Plaintiffs' Demand for a Jury Trial

2 Pursuant to N.R.C.P. 38(b), "[a]ny party may demand a trial by jury of any  
3 issue triable of right by a jury by serving as required by Rule 5(b) upon the other  
4 parties a demand therefor in writing at any time after the commencement of the  
5 action and not later than the time of the entry of the order first setting the case for  
6 trial." In their Amended Complaint, Plaintiffs made a demand for a jury trial. The  
7 Hygea Defendants moved to strike the demand, arguing the Plaintiffs had waived  
8 their right to a jury trial by virtue of the Stock Purchase Agreement. In their  
9 Opposition to the Motions to Dismiss, Plaintiffs declined to oppose this argument and  
10 at the October 3, 2018, oral argument withdrew the jury demand. For the foregoing  
11 reasons, the Court strikes Plaintiffs' demand for a jury trial.

12 The Court now addresses Plaintiffs' causes of action.

13 The First, Third, and Fifth Causes of Action Under the Nevada Securities Act

14 Plaintiffs assert three claims under Nevada's Securities Act: one for securities  
15 fraud under NRS 90.570 (First Cause of Action), a second for failure to register under  
16 NRS 90.460 (Third Cause of Action), and a third for control person liability under  
17 NRS 90.660 (Fifth Cause of Action). A claim arises under these statutes only "if (a)  
18 an offer to sell is made in this State; or (b) an offer to purchase is made and accepted  
19 in this State." NRS 90.830(1). An offer to sell occurs in Nevada only if the offer "(a)  
20 originates in this State; or (b) is directed by the offeror to a destination in this State  
21 and received where it is directed . . . ." NRS 90.830(3). *See also Prime Mover Capital*  
22 *Partners, L.P. v. Elixir Gaming Techs., Inc.*, 793 F. Supp. 2d 651, 669 (S.D.N.Y.  
23 2011).

24 The Amended Complaint fails to allege that an offer to sell or to purchase  
25 either originated in Nevada or was directed by Hygea to a destination in Nevada and  
26 received therein. For instance, the Amended Complaint makes no allegation that  
27 Hygea has operations in Nevada; that either Plaintiff or their agent, RIN Capital,  
28 LLC, received any offer to buy Hygea securities that originated in Nevada; that any

1 Defendant directed an offer to a destination in Nevada; that Plaintiffs or RIN  
2 correspondingly received such an offer in Nevada; or that any act whatsoever  
3 occurred in, originated from, or was in any way associated with Nevada. Instead, the  
4 only location where the Amended Complaint asserts that the misrepresentations  
5 were made to RIN is Florida. .

6 For the foregoing reasons, the Court dismisses without prejudice Plaintiffs'  
7 First, Third, and Fifth Causes of Action with respect to all Defendants.

8 The Second, Fourth, and Sixth Causes of Action Under the 1933 Act

9 Plaintiffs assert three claims under the 1933 Act: one for securities fraud  
10 (Second Cause of Action), a second for failure to register (Fourth Cause of Action),  
11 and a third for control person liability (Sixth Cause of Action).

12 With regard to Plaintiffs' claim in the Second Cause of Action for federal  
13 securities fraud, the Court construes the Amended Complaint as making this claim  
14 under Section 12(a)(2) of the 1933 Act. A claim under Section 12(a)(2) requires the  
15 existence of a public offering. *Artist Hous. Holdings, Inc. v. Davi Skin, Inc.*, No. 2:06-  
16 cv-893-RLH-LRL, 2007 U.S. Dist. LEXIS 25364, at \*5 (D. Nev. Mar. 27, 2007). In  
17 determining whether Plaintiffs have alleged the existence of a public offering, the  
18 Court examines the Amended Complaint's allegations regarding "(1) the number of  
19 offerees; (2) the sophistication of the offerees; (3) the size and manner of the offering;  
20 and (4) the relationship of the offerees to the issuer." *S.E.C. v. Murphy*, 626 F.2d  
21 633, 644-45 (9th Cir. 1980) (internal citations and quotations omitted). In making  
22 this examination, the Court again takes judicial notice of the Stock Purchase  
23 Agreement and considers it as part of the Amended Complaint. A "court may . . .  
24 consider unattached evidence on which the complaint necessarily relies if: (1) the  
25 complaint refers to the document; (2) the document is central to the plaintiffs claim;  
26 and (3) no party questions the authenticity of the document." *Baxter v. Dignity*  
27 *Health*, 131 Nev. Adv. Op. 76, 357 P.3d 927,930 (2015) (internal citations and  
28 quotations omitted). Further, "[w]hile presentation of matters outside the pleadings

1 will convert the motion to dismiss to a motion for summary judgment . . . such  
2 conversion is not triggered by a court's consideration of matters incorporated by  
3 reference or integral to the claim . . . as where the complaint 'relies heavily' on a  
4 document's terms and effect." *Id.*

5 Plaintiffs allege that Defendants undertook a public offering. However, this is  
6 a legal conclusion that the Court need not accept as true. It is also belied by  
7 Plaintiffs' specific allegations, which clearly describe a private sale of securities. For  
8 instance, the Amended Complaint alleges and the Stock Purchase Agreement  
9 identifies a bilateral transaction that involved one purchaser (N5HYG) and one seller  
10 (Hygea) and does not allege any other offerees. *See Murphy*, 626 F.2d at 645 ("[T]he  
11 more offerees, the more likelihood that the offering is public." (citation and quotation  
12 marks omitted)). The Amended Complaint and the Stock Purchase Agreement  
13 support that N5HYG is a sophisticated entity that used RIN to obtain direct access to  
14 Hygea representatives and to request and review a large amount of confidential  
15 financial data during the course of privately negotiating the Agreement between the  
16 two parties. *See id.* at 647 (that "all the offerees have relationships with the issuer  
17 affording them access to or disclosure of the sort of information about the issuer that  
18 registration reveals" supports a finding that an offering is private). The Amended  
19 Complaint also indicates that the stock at issue was offered directly to N5HYG,  
20 through RIN, and not by way of a securities exchange. *See id.* at 646 ("If an offering  
21 is small and is made directly to the offerees rather than through the facilities of  
22 public distribution such as investment bankers or the securities exchanges, a court is  
23 more likely to find that it is private."). Accordingly, the Court concludes that the  
24 Amended Complaint and the Stock Purchase Agreement describe a sale of securities  
25 that constitutes a private offering.

26 With regard to Plaintiffs' claim in the Fourth Cause of Action for failure to  
27 register securities, the Court construes the Amended Complaint as making this claim  
28 under Section 12(a)(1) of the 1933 Act, which provides "the exclusive federal cause of

1 action for failure to register public or private securities . . . .” *Brown v. Earthboard*  
2 *Sports USA, Inc.*, 481 F.3d 901, 916 (6th Cir. 2007). However, Section 4(a)(2) of the  
3 1933 Act provides a safe harbor from registration for “transactions by an issuer not  
4 involving any public offering.” 15 U.S.C. § 77d(a)(2). As set forth above, the  
5 Amended Complaint supports that Hygea sold the securities at issue to N5HYG  
6 pursuant to a private offering. Accordingly, Plaintiffs have failed to state a claim  
7 under Section 12(a)(1) of the 1933 Act.

8 With regard to Plaintiffs’ claim in the Sixth Cause of Action for control person  
9 liability, the 1933 Act provides for “control person” liability where there is “(1) a  
10 primary violation of federal securities laws . . . ; and (2) [] the defendant exercised  
11 actual power or control over the primary violator.” *Howard v. Everex Sys., Inc.*, 228  
12 F.3d 1057, 1065 (9th Cir. 2000). Plaintiffs, however, have failed to adequately plead  
13 both that there was any primary violation of the 1933 Act and that Defendants  
14 exercised actual power or control over the primary violator or one another.  
15 Allegations that merely establish a person as a director of a company alleged to be  
16 the primary violator are insufficient. Rather, a plaintiff must set forth “specific  
17 factual allegations indicating how [the alleged] control was manifested” by, for  
18 instance, including facts “supporting that the defendant was either involved in the  
19 day-to-day business of the primary violator or connected to the fraudulent act in  
20 some way.” *Richardson v. Oppenheimer & Co. Inc.*, No. 2:11-cv-02078-GMN-PAL,  
21 2014 U.S. Dist. LEXIS 43419, at \*34 (D. Nev. Mar. 31, 2014). Plaintiffs, here, have  
22 done neither.

23 For the foregoing reasons, the Court dismisses without prejudice Plaintiffs’  
24 Second, Fourth, and Sixth Causes of Action with respect to all Defendants.

25 The Twelfth, Thirteenth, Fourteenth, and Fifteenth Causes of Action for Breach of  
26 Fiduciary Duty

27 Plaintiffs assert a number of claims for breach of fiduciary duty against the  
28 Director Defendants, including for waste (Twelfth Cause of Action), breach of the

1 duty of candor (Thirteenth Cause of Action), breach of the duty of loyalty (Fourteenth  
2 Cause of Action), and minority shareholder oppression (Fifteenth Cause of Action).  
3 Because the Director Defendants had no fiduciary relationship with N5HYG prior to  
4 its becoming a Hygea stockholder, the Court construes these claims as being based on  
5 those allegations of misconduct that occurred after October 5, 2016 (the date of the  
6 Stock Purchase Agreement).

7 Certain of Plaintiffs' post-October 5 allegations include Hygea's alleged failure  
8 to go public, to provide financials, and to make post-closing monthly payments. Such  
9 contentions, however, merely repeat Plaintiffs' claim for breach of contract. Although  
10 the Nevada Supreme Court has not yet addressed the issue, the Court is persuaded  
11 by Delaware law that Plaintiffs cannot "prosecute a claim for breach of fiduciary duty  
12 that essentially restate[s] their claim for breach of contract." *Blue Chip Capital Fund*  
13 *II Ltd. P'ship v. Tubergen*, 906 A.2d 827, 832–33 (Del. Ch. 2006). As Delaware courts  
14 have explained, claims for breach of fiduciary duty cannot "proceed in parallel with  
15 breach of contract claims unless there is an independent basis for the fiduciary duty  
16 claims apart from the contractual claims." *CIM Urban Lending GP, LLC v. Cantor*  
17 *Commer. Real Estate Sponsor, L.P.*, No. 11060-VCN, 2016 Del. Ch. LEXIS 47, at \*7  
18 (Del. Ch. Feb. 26, 2016). Accordingly, Plaintiffs cannot maintain their claims for  
19 breach of fiduciary duty based on the same allegations that serve as the basis for  
20 their breach of contract claim.

21 The Court, however, finds that certain of Plaintiffs' allegations for breach of  
22 fiduciary duty exist independent of the obligations under the Stock Purchase  
23 Agreement. Such contentions include Plaintiffs' allegations of the Director  
24 Defendants' disorganized accounting, ineffective management, and failure to oversee  
25 Hygea's compliance with federal laws and securities regulations. The Court must  
26 decide whether these allegations describe claims for breach of fiduciary duty that are  
27 derivative in nature, as Defendants urge, or direct in nature, as Plaintiffs urge. If  
28 the claims are derivative in nature, N.R.C.P. 23.1 and NRS 41.520(2) require that

1 Plaintiffs make a demand upon Hygea's board of directors prior to initiating suit or  
2 plead with particularity why demand would have been futile. *See Parametric Sound*  
3 *Corp. v. Eighth Judicial Dist. Court*, 133 Nev. Adv. Op. 59, 401 P.3d 1100, 1105  
4 (2017); *Shoen v. SAC Holding Corp.*, 122 Nev. 621, 633-34, 137 P.3d 1171, 1179  
5 (2006).

6 "[T]o distinguish between direct and derivative claims, Nevada courts . . .  
7 should consider only '(1) who suffered the alleged harm (the corporation or the suing  
8 stockholders, individually); and (2) who would receive the benefit of any recovery or  
9 other remedy (the corporation or the stockholders, individually)?" *Parametric Sound*  
10 401 P.3d at 1107 (quoting *Tooley v. Donaldson, Lufkin & Jenrette, Inc.*, 845 A.2d  
11 1031, 1033 (Del. 2004)). In order to maintain a direct claim, both questions must be  
12 answered in favor of the suing stockholder. *See id.* at 1106. Here, Plaintiffs'  
13 allegations that exist independent of their claim for breach of contract describe what  
14 can only be called a derivative claim for mismanagement. For instance, Plaintiffs  
15 allege that the Director Defendants had "the highest fiduciary obligations in the  
16 management and administration of the affairs of Hygea . . . ." Plaintiffs allege that  
17 such mismanagement led to Hygea's "current distress." However, any alleged harm  
18 from these actions would have been suffered by the company (Hygea). Plaintiffs'  
19 injury would only be derivative of the alleged harm to the company, which would  
20 affect all stockholders equally. Any recovery for such an injury would also be made  
21 to the company. Accordingly, Plaintiffs' claims for breach of fiduciary duty are  
22 derivative in nature under the test adopted by *Parametric Sound*.

23 Plaintiffs admittedly did not make any demand on Hygea's board of directors  
24 prior to bringing their derivative claims for breach of fiduciary duty. Plaintiffs, thus,  
25 were obligated to plead with particularity why a demand would have been futile and  
26 thus excused. In determining demand futility, a court must decide whether, "under  
27 the particularized facts alleged, a reasonable doubt is created that: (1) the directors  
28 are disinterested and independent or (2) the challenged transaction was otherwise

1 the product of a valid exercise of business judgment.” *Shoen*, 122 Nev. at 637, 137  
2 P.3d at 1182. Plaintiffs allege that demand would be futile for three reasons: (1) the  
3 demand would be for the Board to authorize a lawsuit against themselves, among  
4 others who are not currently on the Board; (2) the Board has shown an inclination “to  
5 fight tooth and nail against Plaintiffs,” including by having “vigorously contested the  
6 receivership action”; and (3) the Board has “longstanding deference to Mr. Iglesias  
7 and Hygea’s management generally.” The Court is not persuaded that such  
8 allegations meet the standard for excusing demand.

9 Courts have consistently held that “[a]llegations of mere threats of liability  
10 through approval of the wrongdoing or other participation . . . do not show sufficient  
11 interestedness to excuse the demand requirement.” *Shoen*, 122 Nev. at 639-40, 137  
12 P.3d at 1183. “Interestedness because of potential liability can be shown only in  
13 those ‘rare case[s] . . . where defendants’ actions were so egregious that a substantial  
14 likelihood of director liability exists.” *Shoen*, 122 Nev. at 640, 137 P.3d at 1184.  
15 Plaintiffs have not met that burden here and the Court therefore rejects the assertion  
16 that demand is excused because of any potential liability among the Director  
17 Defendants.

18 Moreover, Plaintiffs’ conclusory allegation that the Board’s “vigorous contest”  
19 of the receivership action demonstrates its “deference” to Mr. Iglesias does not  
20 amount to sufficient particularized facts that would show that a majority of the board  
21 is beholden to directors who would be liable. *Kahn v. Dodds (In re AMERCO*  
22 *Derivative Litig.)*, 127 Nev. 196, 219, 252 P.3d 681, 698 (2011). Such an allegation  
23 also could not apply to those Director Defendants who were not members of the  
24 Board at the time that the receivership action was contested and not parties to that  
25 lawsuit (i.e., Defendants Gonzalez, Loar, Rosencrantz, Williams, and the Estate of  
26 Howard Sussman). Accordingly, the Court concludes that Plaintiffs’ obligation to  
27 have made a demand on Hygea’s board of directors is not excused.

28 ///

1 Even if the Court found Plaintiffs' allegations sufficient to excuse demand or to  
2 state a direct claim for breach of fiduciary duty (in which case demand would not be  
3 necessary), pursuant to NRS 78.138(7), "a director or officer is not individually liable  
4 to the corporation or its stockholders . . . unless . . . [i]t is proven that (1) [t]he  
5 director's or officer's act or failure to act constituted a breach of his or her fiduciary  
6 duties as a director or officer; and (2) [s]uch breach involved intentional misconduct,  
7 fraud or a knowing violation of the law." *See also Shoen*, 122 Nev. at 640, 137 P.3d  
8 at 1184 ("directors and officers may only be found personally liable for breaching  
9 their fiduciary duty of loyalty if that breach involves intentional misconduct, fraud,  
10 or a knowing violation of the law.")

11 To allege a breach of fiduciary duty, a plaintiff must overcome the business  
12 judgment rule codified at NRS 78.138(3), pursuant to which directors and officers  
13 benefit from the presumption that "in deciding upon matters of business . . . [they]  
14 act[ed] in good faith, on an informed basis and with a view to the interests of the  
15 corporation." *Id.* "To rebut the rule, a shareholder plaintiff assumes the burden of  
16 providing evidence that directors, in reaching their challenged decision, breached any  
17 one of the triads of their fiduciary duty—good faith, loyalty or due care." *Cede II*, 634  
18 A.2d at 361. *See also Shoen*, 122 Nev. at 635-36, 137 P.3d at 1181 (explaining that  
19 the business judgment rule "applies only in the context of valid interested director  
20 action, or the valid exercise of business judgment by disinterested directors in light of  
21 their fiduciary duties").

22 The duty of loyalty and good faith mandates that the best interests of the  
23 corporation and its shareholders takes precedence over any interest possessed by a  
24 director and not shared by the stockholders generally. *Shoen*, 122 Nev. at 632, 137  
25 P.3d at 1178. "Classic examples of director self-interest in a business transaction  
26 involve either a director appearing on both sides of a transaction or a director  
27 receiving a personal benefit from a transaction not received by the shareholders  
28

1 generally.” *Cede II*, 634 A.2d at 362. Plaintiffs have not pled any facts that establish  
2 that any Director Defendant was self-interested in any transaction at issue.

3 Meanwhile, the duty of care demands that directors of a company act on an  
4 informed basis. *Shoen*, 122 Nev. at 632, 137 P.3d at 1178. *See also Cede II*, 634 A.2d  
5 at 368. Directors violate the duty of care when they “fail[] to inform themselves fully  
6 and in a deliberate manner before voting as a board upon a transaction.” *Cede II*,  
7 634 A.2d at 368. Plaintiffs have not pled any facts explaining how any Director  
8 Defendant failed to inform him- or herself in any transaction at issue.

9 Even if Plaintiffs had sufficiently pled a breach of fiduciary duty to overcome  
10 the business judgment rule, Plaintiffs have not sufficiently alleged intentional  
11 misconduct, fraud, or a knowing violation of the law in connection with the alleged  
12 breach. For the reasons set forth below, Plaintiffs have not sufficiently pled fraud as  
13 to any point in time, but in particular as to that timeframe after Plaintiff N5HYG  
14 became a Hygea stockholder. Nor have Plaintiffs made sufficient allegations of  
15 intentional misconduct or a knowing violation of the law. Accordingly, Plaintiffs’  
16 claims for breach of fiduciary duty—whether brought derivatively or directly—fail to  
17 overcome the protection of the business judgment rule and Nevada’s exculpatory  
18 provision.

19 For the foregoing reasons, the Court dismisses without prejudice Plaintiffs’  
20 Twelfth, Thirteenth, Fourteenth, and Fifteenth causes of action with respect to all  
21 Defendants.

22 **The Seventh, Ninth, and Twentieth Causes of Action For or Grounded In Fraud**

23 The Court next addresses Plaintiffs’ claims that are for or grounded in fraud,  
24 those being the claims for common law fraud (Seventh Cause of Action), silent  
25 fraud/material omission (Ninth Cause of Action), and constructive fraud (Twentieth  
26 Cause of Action). N.R.C.P. 9(b) demands that “[i]n all averments of fraud or mistake,  
27 the circumstances constituting fraud or mistake shall be stated with particularity.”  
28 “Malice, intent, knowledge, and other condition of mind of a person may be averred

1 generally.” *Id.* The Nevada Supreme Court has explained that “[t]he circumstances  
2 that must be detailed include averments to the time, the place, the identity of the  
3 parties involved, and the nature of the fraud or mistake.” *Brown v. Kellar*, 97 Nev.  
4 582, 583-84, 636 P.2d 874, 874 (1981). Moreover, when suing more than one  
5 defendant—as Plaintiffs do here—the Court is persuaded that N.R.C.P. 9(b), like its  
6 federal counterpart, requires a plaintiff to “differentiate [her] allegations . . . and  
7 inform each defendant separately of the allegations surrounding his alleged  
8 participation in the fraud.” *Swartz v. KPMG LLP*, 476 F.3d 756, 764-65 (9th Cir.  
9 2007). Stated differently, a plaintiff cannot “lump” the defendant at issue with other  
10 defendants. *See id.*

11 In short, Plaintiffs’ allegations do not provide any Defendant with the notice  
12 needed to defend him-, her-, or itself against the claims for or grounded in fraud.  
13 With regard to Hygea, Mr. Iglesias, and Mr. Moffly, Plaintiffs assert that these  
14 defendants misrepresented Hygea’s financial performance and plans to “go public.”  
15 Plaintiffs, however, do not identify the allegedly inaccurate financial figures with any  
16 specificity or explain how the financial figures were wrong. Even if such allegations  
17 met the heightened pleading standard of Rule 9(b), they are belied by Plaintiffs’  
18 admission that the representations made by Hygea, Iglesias, and Moffly  
19 encompassed numbers that were subject to *ongoing adjustment* and that the last  
20 financial report Plaintiffs received only *could have* been inaccurate. The Court need  
21 not accept contradictory allegations as true.

22 As to the remaining defendants, Plaintiffs plead no facts that these defendants  
23 ever made any representation to Plaintiffs or were involved in any interactions where  
24 those defendants could have possibly omitted any information. Plaintiffs’ assertions  
25 that these defendants knew or should have known that the information Plaintiffs  
26 received from Hygea, Mr. Iglesias, and Mr. Moffly was false does not meet Rule 9(b)’s  
27 requirements or provide any individualized allegations as to each Defendant’s role in  
28 the alleged fraud.

1 For the foregoing reasons, the Court dismisses without prejudice Plaintiffs'  
2 Seventh, Ninth, and Twentieth causes of action with respect to all Defendants.

3 The Eighth Cause of Action for Negligent Misrepresentation

4 In their Eighth Cause of Action, Plaintiffs make a claim for negligent  
5 misrepresentation against all Defendants. A claim for negligence under Nevada law  
6 must be based on an existing duty of care, and to set forth a claim for negligent  
7 misrepresentation, a plaintiff must plead that (1) the defendant supplied information  
8 while in the course of his business, profession or employment, or any other  
9 transaction in which he had a pecuniary interest; (2) the information was false; (3)  
10 the information was supplied for the guidance of the plaintiff in his business  
11 transactions; (4) the defendant failed to exercise reasonable care or competence in  
12 obtaining or communicating the information; (5) the plaintiff justifiably relied upon  
13 the information by taking action or refraining from it; and (6) as a result of his  
14 reliance upon the accuracy of the information, the plaintiff sustained damage. *See*  
15 *Jordan v. State ex rel. Dept. of Motor Vehicles and Public Safety*, 110 P.3d 30, 51  
16 (Nev. 2005); *Barmettler v. Reno Air, Inc.*, 114 Nev. 441, 449, 956 P.2d 1382, 1387  
17 (1998).

18 Plaintiffs do not plead the existence of any relationship between them and  
19 Defendants that would have given rise to a duty of care prior to N5HYG's execution  
20 of the Stock Purchase Agreement. Therefore, the Court construes Plaintiffs' claim for  
21 negligent misrepresentation to be based on representations purportedly made by  
22 Defendants *after* N5HYG executed the Stock Purchase Agreement, at which time  
23 N5HYG would have been in a fiduciary relationship with the Director Defendants  
24 and in a contractual relationship with Hygea.

25 Directors and officers of Nevada corporations cannot be personally liable for  
26 negligent acts or omissions in their official capacities given Nevada's exculpatory  
27 statute. *See* NRS 78.138(7); *see also In re Cornerstone Therapeutics Inc.*,  
28 *Stockholder Litig.*, 115 A.3d 1173, 1179 (Del. 2015). Here, Plaintiffs allege that the

1 Director Defendants negligently made misrepresentations in their capacities as  
2 directors and/or officers of Hygea. Mere negligence, however, is insufficient to  
3 overcome Nevada's exculpation statute, which requires allegations of intentional  
4 misconduct, fraud, or knowing violation of the law. *See* NRS 78.138(7). For the  
5 foregoing reasons, the Court dismisses without prejudice Plaintiffs' Eighth Cause of  
6 Action against the Director Defendants.

7       The same analysis, however, does not apply to Plaintiffs' claim of negligent  
8 misrepresentation against Hygea. The Amended Complaint alleges a contract  
9 between N5HYG and Hygea, that being the Stock Purchase Agreement. This  
10 allegation could give rise to a duty of care owned by Hygea, with respect to which the  
11 exculpation statute cannot foreclose liability given that it applies only to the personal  
12 liability of directors and officers. Although Defendants urge the Court to dismiss  
13 Plaintiffs' negligent misrepresentation claim against Hygea based on the economic  
14 loss doctrine, the Court is persuaded that "negligent misrepresentation is a special  
15 financial harm claim for which tort recovery is permitted because without such  
16 liability the law would not exert significant financial pressures to avoid such  
17 negligence." *Terracon Consultants W., Inc. v. Mandalay Resort Grp.*, 125 Nev. 66,  
18 206 P.3d 81, 88 (Nev. 2009). The Supreme Court of Nevada, therefore, has held that  
19 there are "exceptions to the economic loss doctrine for negligent misrepresentation  
20 claims in a certain category of cases when strong countervailing considerations weigh  
21 in favor of imposing liability." *Halcrow, Inc. v. Eighth Judicial Dist. Court*, 302 P.3d  
22 1148, 1153 (Nev. 2013) (internal quotations omitted). "These types of cases  
23 encompass economic loss sustained, for example, as a result of ... negligent  
24 misstatements about financial matters." *Id.*

25       For the foregoing reasons, the Court dismisses without prejudice Plaintiffs'  
26 Eighth Cause of Action with respect to the Director Defendants, but the Court denies  
27 the dismiss the Eighth Cause of Action with respect to Hygea.

28 ///

1 The Sixteenth Cause of Action for Tortious Interference

2 In its Sixteenth Cause of Action, Plaintiff N5HYG makes a claim for tortious  
3 interference against all Director Defendants. To set forth a claim for tortious  
4 interference with a contract, a plaintiff must plead "(1) a valid and existing contract;  
5 (2) the defendant's knowledge of the contract; (3) intentional acts intended or  
6 designed to disrupt the contractual relationship; (4) actual disruption of the contract;  
7 and (5) resulting damage." *J.J. Industries, LLC v. Bennett*, 119 Nev. 269, 274, 71  
8 P.3d 1264, 1267 (2003). The Court finds that Plaintiffs' allegations set forth these  
9 elements under Nevada's notice pleading standard.

10 Defendants argue that N5HYG's claim for tortious interference fails as a  
11 matter of law because officers, directors, employees, and agents of a company cannot  
12 tortiously interfere with their own company's contracts. The Court agrees that such  
13 is the law under *Bartsas Realty, Inc. v. Nash*, 81 Nev. 325, 402 P.2d 650, 651 (1965).  
14 However, Plaintiffs alternatively plead that, for purposes of the tortious interference  
15 claim, the Director Defendants took these actions outside the scope of their agency  
16 with Hygea. The Court—construing all allegations and inferences in Plaintiffs'  
17 favor—finds under Nevada's notice pleading standard that Plaintiffs have  
18 sufficiently pled that the Director Defendants may have tortiously interfered in  
19 Hygea's alleged breach of the Stock Purchase Agreement while acting outside the  
20 scope of their agency.

21 For the foregoing reasons, the Court denies the motions as they relate to the  
22 Sixteenth Cause of Action.

23 The Seventeenth and Eighteenth Causes of Action for Conspiracy and Concert of  
24 Action

25 In their Seventeenth and Eighteenth Causes of Action, Plaintiffs set forth  
26 claims for conspiracy and concert of action against all Defendants. To set forth a  
27 claim for civil conspiracy, a plaintiff must plead (1) a combination of two or more  
28 persons; (2) who intend to accomplish an unlawful objective together; (3) the

1 association acts by a concert of action by agreement, understanding, or “meeting of  
2 the minds” regarding the objective and the means of pursuing it, whether explicit or  
3 by tacit agreement; (4) the association intends to accomplish an unlawful objective  
4 for the purpose of harming another; and (5) causation and damages. *Collins v. Union*  
5 *Fed. Sav. & Loan Ass’n*, 99 Nev. 284, 303, 662 P.2d 610, 622 (1983). The Court finds  
6 that Plaintiffs’ allegations set forth these elements under Nevada’s notice pleading  
7 standard.

8 Defendants argue that the claims for civil conspiracy and concert of action fail  
9 as a matter of law due to the intracorporate conspiracy doctrine, which provides that  
10 “[a]gents and employees of a corporation cannot conspire with their corporate  
11 principal or employer where they act in their official capacities on behalf of the  
12 corporation and not as individuals for their individual advantage.” *Collins v. Union*  
13 *Federal Sav. & Loan Ass’n*, 99 Nev. 284, 303, 662 P.2d 610, 622 (1983). *See also U-*  
14 *Haul Co. of Nevada, Inc. v. U.S.*, Case No. 2:08-cv-0729-KJD-RJJ, 2012 WL 3042908,  
15 at \*3 (D. Nev. July 25, 2012); *Rebel Communications, LLC v. Virgin Valley Water*  
16 *Dist.*, Case No. 2:10-cv-0513-LRH-PAL, 2010 WL 363176, at \*2 (D. Nev. 2010).

17 Plaintiffs respond that the Director Defendants were not *per se* agents or  
18 employees of Hygea in their role as directors. However, Plaintiffs expressly plead  
19 that the Director Defendants were acting in their capacity as Hygea officers and  
20 directors in their dealings with Plaintiffs. Again, the Court does not need to reach  
21 this issue. As with the tortious interference claim, Plaintiffs alternatively plead that  
22 for purposes of the civil conspiracy and concert of action claims, the Director  
23 Defendants took their actions outside the scope of their agency with Hygea. The  
24 Court—construing all allegations and inferences in Plaintiffs’ favor—concludes that  
25 such pleading is sufficient to defeat a motion to dismiss under Nevada’s notice  
26 pleading standard.

27 For the foregoing reasons, the Court denies the motions as they relate to the  
28 Seventeenth and Eighteenth Causes of Action.

1 The Nineteenth Cause of Action for Unjust Enrichment

2 Plaintiffs' Nineteenth Cause of Action asserts unjust enrichment against the  
3 Director Defendants. "Unjust enrichment occurs whenever a person has and retains  
4 a benefit which in equity and good conscience belongs to another. Unjust enrichment  
5 is the unjust retention of a benefit to the loss of another, or the retention of money or  
6 property of another against the fundamental principles of justice or equity and good  
7 conscience. Money paid through misapprehension of facts belongs, in equity and  
8 good conscience, to the person who paid it." *Nev. Indus. Dev. v. Benedetti*, 103 Nev.  
9 360, 363 n.2, 741 P.2d 802, 804 (1987). To the extent any alleged unjust enrichment  
10 represents a value that Defendants received from the Company (and for which  
11 recovery would inure to the Company), the claim would be derivative for the reasons  
12 explained above. Further, a claim for unjust enrichment does not lie when a contract  
13 governs the transaction. *Villa v. First Guar. Fin. Corp.*, No. 2:09-CV-02161, 2010 WL  
14 2953954, at \*5 (D. Nev. July 23, 2010).

15 Additional proceedings and discovery may reveal that some or all of the  
16 Director Defendants did not receive any benefit directly from Plaintiff that was not  
17 also governed by the Stock Purchase Agreement. However, the Court finds that  
18 Plaintiffs' allegations, taken as true, set forth enough at this stage to support a non-  
19 derivative claim for unjust enrichment under Nevada's notice pleading standard. For  
20 the foregoing reasons, the Court denies the motions as they relate to the Nineteenth  
21 Cause of Action.

22 The Twenty-First Cause of Action for Accounting

23 In the Twenty-First Cause of Action, Plaintiff N5HYG seeks an accounting  
24 from the Director Defendants. To set forth a cause of action for an accounting, a  
25 plaintiff must plead "that a relationship exists between the plaintiff and defendant  
26 that requires an accounting, and that some balance is due the plaintiff that can only  
27 be ascertained by an accounting." *Teselle v. McLoughlin*, 173 Cal. App. 4th 156, 179,  
28 92 Cal. Rptr. 3d 696, 715 (2009). Courts have found the requisite relationship exists

1 where there is a contract pursuant to which payment is collected by one party and  
2 the other party is entitled to payment by the collecting party. *See Wolf v. Superior*  
3 *Court*, 107 Cal. App. 4th 25, 130 Cal.Rptr.2d 860 (Cal. Ct. App. 2003). Plaintiffs,  
4 however, have not pled the existence of a relationship, contractual or otherwise,  
5 between N5HYG and the Director Defendants pursuant to which the Director  
6 Defendants collected any payment. Accordingly, Plaintiffs have failed to set forth a  
7 claim for accounting.

8 For the foregoing reasons, the Court dismisses without prejudice Plaintiffs'  
9 Twenty-First Cause of Action.

10 \*\*\*

11 Plaintiff N5HYG is hereby granted thirty (30) days from the Court's filing of  
12 this Order to amend the Amended Complaint. If Plaintiff N5HYG does not intend to  
13 amend the Amended Complaint, it shall so notify the Court and Defendants by filing  
14 a notice of the same. Defendants shall have twenty (20) days from the service of such  
15 notice or any second amended complaint to answer or otherwise respond.

16  
17 Dated this 8 day of May, 2019.

18  
19 Nancy L. Allf  
20 HONORABLE NANCY L. ALLF  
21 DISTRICT COURT JUDGE  
22  
23  
24  
25  
26  
27  
28



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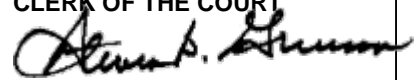
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“Exhibit 20”

“Exhibit 20”



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15 **DISTRICT COURT**

16 **CLARK COUNTY, NEVADA**

17 N5HYG, LLC, a Michigan limited liability  
18 company, et al.,

19 Plaintiffs,

20 v.

21 HYGEA HOLDINGS CORP., a Nevada  
22 corporation, et al.,

23 Defendants.

CASE NO.: A-17-762664-B

DEPT NO.: 27

**HEARING REQUESTED**

24  
25 **MOTION FOR RECONSIDERATION AND CLARIFICATION OF ORDER ON**  
26 **DEFENDANTS' MOTION TO DISMISS BASED ON CLAIM PRECLUSION**  
**AND, ALTERNATIVELY, MOTION TO STAY**  
27  
28

## REQUESTED RELIEF

Hygea<sup>1</sup> asks the Court for the following relief:

1. That the Court reconsider its finding that the Receivership Court did not render a final judgment on the merits;
2. *Regardless of reconsideration*, that the Court clarify its decision and make findings on the remaining elements of claim preclusion and N5HYG's "defenses" to claim preclusion; and
3. *Alternatively to reconsideration*, that the Court stay this Action pending Hygea's petition for writ relief and/or N5HYG's appeal of the Receivership Court's finding that it lacked jurisdiction to appoint a receiver.

## SUMMARY OF ARGUMENTS

This Action is based on the same facts N5HYG alleged in the Receivership Action,<sup>2</sup> including Hygea's alleged misrepresentations and breach of the stock purchase agreement; management's failure to properly govern the company; and the company's purported insolvency and financial distress. It is thus barred by the Receivership Judgment<sup>3</sup> under the doctrine of claim preclusion and, for this reason, should have been dismissed in its entirety in connection with Defendants' Motions to Dismiss. The Court, however, rejected the claim preclusion argument after finding: (1) that "a court's decision whether or not to appoint a receiver is not a final decision for purposes of claim preclusion;" and that (2) "based on the Receivership Court's finding that it lacked jurisdiction to appoint a receiver, the Receivership Court did not render a final judgment for purposes of determining claim preclusion." Findings

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<sup>1</sup> Unless otherwise specified, "Hygea" or the "Hygea Defendants" refer to the remaining defendants: Hygea Holdings Corp., Manuel Iglesias, and Edward Moffly.

<sup>2</sup> *Arellano, et al. v. Hygea Holdings Corp., et al.*, Case No. 18 OC 00071 1B (First Judicial District Court), and previously Case No. 18-768510-B (Eighth Judicial District Court).

<sup>3</sup> "Receivership Judgment" refers to the Receivership Court's Amended Findings of Facts and Conclusions of Law (filed Oct. 29, 2018), attached here as Exhibit A, which also notes the Receivership Court's judgment as a matter of law rendered at the close of N5HYG's case-in-chief.

of Fact, Conclusions of Law, and Order (“FFCO”) (filed May 10, 2019), p. 3:27–4:4.

Hygea submits that the Court erred and should reconsider its decision because:

- The Court failed to consider the Nevada Supreme Court’s opinion in *Lynch v. Awada*, holding that a decision whether to appoint a receiver *is* a final decision for purposes of claim preclusion;
- The Court overlooked the fact that the Receivership Court issued a *judgment as a matter of law* at the conclusion of N5HYG’s case-in-chief, whereby the Receivership Court rendered judgment in Hygea’s favor and denied N5HYG’s claims for relief under NRS 78.630 entirely and under NRS 78.650 in part—not because it lacked jurisdiction to hear the claims—but because N5HYG had failed to meet its burden of proof on the substantive merits of these claims; and with regard to N5HYG’s remaining claims for relief under NRS 78.650,
- The Court failed to distinguish between the Receivership Court’s jurisdiction to decide N5HYG’s claims underlying its request for a receiver and the Receivership Court’s jurisdiction to grant the remedy of a receiver, where only a lack of the former renders a court without jurisdiction to enter a judgment on the merits.

Hygea also asks for clarification and findings on the remaining elements of claim preclusion, as well as N5HYG’s “defenses” to claim preclusion, including:

- Whether this Action is based on the same claims or any part of them that were or could have been brought in the Receivership Action (it is);
- Whether the parties or their privies in this Action are the same as in the Receivership Action (they are);
- Whether Hygea is estopped from arguing claim preclusion (it is not); and
- Whether Hygea consented to claim splitting (it did not).

Hygea makes this request for further findings so that it may have a full record of this Court’s decisions when Hygea petitions for writ relief. The Supreme Court is likely to hear the petition, which will present issues of first impression and important public policy concerns, including whether a plaintiff like N5HYG can skirt the effects of claim preclusion by taking a defendant through trial, knowing that it

1 never had the right to ask for the relief it sought.

2 If the Court is not inclined to reconsider its prior order and dismiss N5HYG's  
3 Complaint as claim precluded, Hygea asks the Court—in the alternative—to stay  
4 this lawsuit pending its petition for writ relief and/or pending N5HYG's appeal of the  
5 Receivership Court's finding that it lacked jurisdiction to appoint a receiver. Hygea  
6 is likely to succeed on the merits of the petition for the reasons stated here, but even  
7 if it does not succeed, the petition and/or N5HYG's appeal will resolve the question of  
8 whether the Receivership Court rendered a final decision *on the merits*. Proceeding  
9 in the absence of the Nevada Supreme Court's guidance on this matter would be  
10 inefficient, waste the resources of the Court and the parties, and potentially result in  
11 inconsistent rulings that would need to be corrected in light of the Supreme Court's  
12 decisions.

13 Moreover, the wide-ranging discovery N5HYG will undoubtedly seek will  
14 impose a heavy burden on Hygea and the Court—this after N5HYG forced Hygea to  
15 endure a 5-day trial based on the same facts that will be litigated in this case but  
16 purportedly in pursuit of a different remedy. N5HYG, in contrast, will not be unduly  
17 prejudiced by a stay while the Nevada Supreme Court considers a writ petition  
18 and/or N5HYG's *own* appeal of the Receivership Court's "jurisdictional" finding.  
19 Given the notions of comity at stake, the Court should at the very least grant a stay.

#### 20 MEMORANDUM OF POINTS AND AUTHORITIES

#### 21 **I. THE COURT SHOULD RECONSIDER ITS FINDING THAT THE** 22 **RECEIVERSHIP COURT DID NOT RENDER A FINAL JUDGMENT** 23 **ON THE MERITS.**

24 The first element of claim preclusion asks whether there was a final judgment  
25 on the merits. *Weddell v. Sharp*, 131 Nev. Adv. Op. 28, 350 P.3d 80, 82 (Nev. 2015),  
26 *reh'g denied* (July 23, 2015). This requires a judgment that is both (1) final and (2)  
27 on the merits. *Id.* With regard the Receivership Judgment, the Court found: (1) that  
28 "a court's decision whether or not to appoint a receiver is not a final decision for  
purposes of claim preclusion;" and that (2) "based on the Receivership Court's

1 finding that it lacked jurisdiction to appoint a receiver, the Receivership Court did  
2 not render a final judgment for purposes of determining claim preclusion.”<sup>4</sup> FFCO,  
3 3:27–4:4. The Court was wrong and should reconsider its decision for the reasons set  
4 forth below. *See Masonry & Tile Contractors v. Jolley, Urga & Wirth Ass’n*, 113  
5 Nev. 737, 741, 941 P.2d 486, 489 (1997) (“A district court may reconsider a  
6 previously decided issue if . . . the decision is clearly erroneous.”) Section A  
7 addresses why the Receivership decisions were final; Sections B and C address why  
8 they were on the merits.

9           **A.     A Recent Supreme Court Ruling In *Lynch v. Awada* Holds That**  
10           **Judgments Denying The Appointment Of A Receiver Are Final.**

11           The Court’s holding that “a court’s decision whether or not to appoint a  
12 receiver is not a final decision,” FFCO, 3:27–28, contravenes *Lynch v. Awada*, a  
13 Nevada Supreme Court decision issued after briefing on the Motions to Dismiss  
14 closed. 427 P.3d 123, 2018 Nev. Unpub. LEXIS 882, at \*9 (Sept. 28, 2018) (not  
15 designated for publication and published in table format only). In *Awada*, the  
16 appellant-plaintiffs successfully brought a first action seeking the equitable  
17 remedies of dissolution and *appointment of a receiver*. *See id.* at \*1.<sup>5</sup> They then  
18 brought a second action seeking damages based on the same facts as the receivership  
19 action. *See id.* Judge Delaney, writing for the “damages” court, granted summary  
20 judgment based on claim preclusion after finding that the receivership action barred  
21 further claims based on the same facts. *See id.* at \*1–2.

22           

---

<sup>4</sup> In the second half of its finding, the Court spoke in terms of there not being “a final  
23 judgment” for purposes of claim preclusion. Given its earlier reference to  
24 “jurisdiction,” however, the Court may have meant to say that there was no judgment  
“on the merits” for purposes of claim preclusion.

25           <sup>5</sup> The *Awada* appellants moved for dissolution and the appointment of a receiver  
26 under NRS Chapter 86, which governs Nevada LLCs. While N5HYG moved for a  
27 receiver under NRS Chapter 78, the Supreme Court’s decision applies with equal  
28 force to a corporation because the preclusive nature of the claim does not turn on the  
type of entity for which a receiver is sought but instead on the plaintiff’s ability to  
liberally join other claims under the procedural rules.

1 The plaintiffs appealed, arguing that they could not have brought their  
2 “damages” claims in the receivership action—N5HYG made the same argument  
3 here. See N5HYG’s Opp. to Hygea’s Mot. to Dismiss, p. 9:23–26. The Nevada  
4 Supreme Court, however, said such argument “lacks merit.” *Awada*, 2018 Nev.  
5 Unpub. LEXIS 882, at \*7. It affirmed Judge Delaney, holding that “ancillary claims  
6 may be raised in dissolution actions” seeking the appointment of a receiver, because  
7 “barring a petitioner from asserting supplemental claims in a special proceeding and  
8 requiring a separate [damages] action would produce additional and unnecessarily  
9 formalistic practice.” *Id.* (internal quotations omitted).<sup>6</sup> *Awada* thus confirms two  
10 things: (1) N5HYG could have brought the claims here in the Receivership Action;  
11 and (2) an order *disposing of* a receivership action by granting or denying the  
12 appointment of a receiver *is* a final judgment that bars future actions based on the  
13 same facts as the receivership case.

14 Even if the Court ignores *Awada*, it should still reconsider its finding because  
15 it is based on a misreading of *Johnson v. Steel, Inc.*, 100 Nev. 181, 678 P.2d 676  
16 (1984). See FFCO, pp. 3:27–4:1; Minute Order (filed Dec. 14, 2019) (serving as the  
17 basis for the FFCO and citing *Johnson*). *Johnson* is inapposite because it concerned  
18 an *interlocutory* order for the appointment of a *temporary* receiver. There, the  
19 plaintiff brought a derivative claim for breach of fiduciary duty and asked for a  
20 receiver *pendente lite*—i.e., while the action was pending. As explained by the  
21 *Johnson* court, “[t]he use of a receiver *pendente lite* is an ancillary remedy use to  
22 preserve the value of assets *pending outcome of the principal case*. The appointment  
23 determines no substantive rights between the parties but is merely a means of  
24 preserving the status quo. Accordingly, an order appointing a receiver or denying a  
25 motion to appoint a receiver [*pendente lite*] is not a final judgment on the merits.”

26 <sup>6</sup> See also *Awada*, 2018 Nev. Unpub. LEXIS 882, at \*4 (noting that the court’s  
27 decision in the receivership action was final and that no party had challenged its  
28 validity).

1 *Id.* at 678 (emphasis added).<sup>7</sup> In contrast to the plaintiff in *Johnson*, N5HYG did *not*  
2 seek a receiver *pendente lite*, and the Receivership Judgment denying the  
3 appointment of a receiver was *not* a means of preserving the status quo—it was a  
4 final judgment passing on the merits of N5HYG’s claims based on Hygea’s alleged  
5 financial distress; fraud; other mal-, mis-, or nonfeasance; and mismanagement.

6 **B. This Court Overlooked The Receivership Court’s Judgment As A**  
7 **Matter Of Law Denying N5HYG’s Claims On the Merits, And Not**  
8 **Because It Lacked Jurisdiction.**

9 The Receivership record belies N5HYG’s related argument that the  
10 Receivership Court did not render a judgment on the merits. The Receivership  
11 Court made rulings on the merits when it granted Hygea’s motion for judgment as a  
12 matter of law after N5HYG rested its case-in-chief. Specifically, the Receivership  
13 Court dismissed N5HYG’s claims under NRS 78.630 entirely and NRS 78.650 in part  
14 because N5HYG failed to provide sufficient evidence on the merits of such claims  
15 (and not for want of jurisdiction). *See* Hygea’s Reply to Mot. to Dismiss, p. 2:18–24;  
16 Tr. of Proceedings on Oct. 3, 2018 (filed Oct. 19, 2019), pp. 7:6–15; 88:25–89:8; 121:7–  
17 19. Below is an excerpt from the relevant transcript:<sup>8</sup>

18 Well, on NRS 32.010, the Court agrees with the defense  
19 based on the Nenzel case, 49 Nev. 145, that the statute --  
20 well, the Supreme Court, the gloss on the statute requires  
21 that there be an action pending, something other than just  
22 a receivership. *So the claims under 32.010 are dismissed as*  
23 *a matter of law.*

24 The 78.630, the Court finds that there is not sufficient  
25 evidence, that the business has been and is being conducted  
26 at a great loss and greatly prejudicial to the interests of its

23 <sup>7</sup> *Johnson* relied on *C & H Constr. & Paving Co. v. Citizens Bank*, 93 N.M. 150, 597  
24 P.2d 1190 (N.M. App. 1979), which presented the same circumstance. As the court in  
25 *SAO Realty, Inc. v. Second St. Realty, LLC*, recognized in distinguishing *C & H*  
26 *Constr.*, “[a]ssuming, arguendo, that the assignment of a receiver is not a final  
judgment, *it does not automatically follow that the outcome of receivership*  
*proceedings is not either.*” No. 00-3643, 2006 R.I. Super. LEXIS 153, at \*10 (Super.  
Ct. Nov. 2, 2006) (emphasis added).

27 <sup>8</sup> The Receivership Court noted its decision on the judgment as a matter of law in its  
28 Findings of Fact and Conclusions of Law. Ex. A, Receivership Judgment, 4:16–5:5.

creditors or stockholders, *so that portion of the claim is also dismissed as a matter of law.*

Under NRS 78.650, the Court finds that the corporation has not -- there's not evidence to support a finding that the corporation has willfully violated its charter.

The Court agrees with plaintiffs that there is a reasonable inference that management -- Hygea's management's failure to manage cash flow, to be able to account for it, at least to the degree that an audited statement can be prepared, even though that's not required by the regulators, it's a reasonable inference that the directors have been guilty of gross mismanagement, [but] not of fraud or collusion.

...

*So it's granted in part and denied in part as I've gone through each of those.*

Ex. B, Excerpt from Receivership Tr. Transcr., Vol. III, May 16, 2018, pp. 609:10–611:14 (emphasis added).

The foregoing language demonstrates that the Receivership Court's decision to grant the judgment as a matter of law was undeniably one on the merits, a conclusion which Rule 41 supports. That Rule unambiguously states that "[u]nless the dismissal order or an applicable statute provides otherwise, a dismissal under Rule 41(b) *and any dismissal not under this rule*—except one for lack of jurisdiction, improper venue, or failure to join a party under Rule 19—*operates as an adjudication on the merits.*" N.R.C.P. 41(b) (emphasis added). What is clear is that the Receivership Court dismissed N5HYG's claims under Rule 50 based on N5HYG's failure to put forward sufficient evidence of the claims, and not for lack of jurisdiction.

**C. The Court Failed To Distinguish Between The Receivership Court's Jurisdiction To Decide N5HYG's Claims Underlying Its Request For a Receiver and the Receivership Court's Jurisdiction to Provide the Remedy of a Receiver.**

The Court failed to distinguish between the Receivership Court's jurisdiction to decide N5HYG's claims underlying its request for a receiver and the Receivership Court's jurisdiction to grant the remedy of a receiver, where only a lack of the former

renders a court without jurisdiction to enter a judgment on the merits. *See* Hygea’s Reply to Mot. to Dismiss, pp. 2:5–3:15; Tr. of Proceedings on Oct. 3, 2018 (filed Oct. 19, 2019), p. 121:7–13. The Court instead misinterpreted the Receivership Judgment to mean that the Receivership Court had not rendered a judgment on the merits because N5HYG had failed to establish that the “[Receivership] Court has *jurisdiction* to appoint a receiver . . . .” FFCO, p. 21:13–18 (emphasis added). In doing so, however, this Court read the words “subject matter” into the Receivership Judgment, where no such words exists.

The *better* reading of the Receivership Judgment is that it used the term “jurisdiction” in reference to the court’s *power* to *appoint* a receiver—i.e., to provide the sought-after remedy—not its power to hear and decide claims. Indeed, the term “jurisdiction” can have many meanings, and a lack of jurisdiction to provide a remedy, such as a receiver, does not render a court without jurisdiction to render judgment on the merits. Although there is no Nevada case on point, the case of *Abelleira v. Dist. Court of Appeal*, 109 P.2d 942 (1941), from the California Supreme Court provides guidance. *Abelleira* was cited to approvingly by the Nevada Supreme Court in *Landreth v. Malik*, 125 Nev. Adv. Rep. 61, 221 P.3d 1265, 1269–70 (2009).

But in its ordinary usage the phrase “lack of jurisdiction” is not limited to these fundamental situations. For the purpose of determining the right to review by certiorari, restraint by prohibition, or dismissal of an action, a much broader meaning is recognized. Here it may be applied to a case where, though the court has jurisdiction over the subject matter and the parties in the fundamental sense, it has no “jurisdiction” (or power) to act except in a particular manner, *or to give certain kinds of relief*, or to act without the occurrence of certain procedural prerequisites. Thus, a probate court, with jurisdiction of an estate, and therefore *over the appointment of an administrator*, nevertheless acts in excess of jurisdiction if it fails to follow the statutory provisions governing such appointment. The superior court may have jurisdiction over a cause of action and the parties to a suit for libel, but in the case of nonresidents, a bond for costs is required by statute, and unless such bond is filed, it is without jurisdiction to proceed, and will be restrained by writ of prohibition. A court with jurisdiction over a cause may hear and determine it and give judgment, *but it cannot award costs in a situation not provided by statute.*

1 *Abelleira*, 109 P.2d at 947–48 (emphasis added). Similarly, the Receivership Court  
2 had jurisdiction over N5HYG’s claims based on Hygea’s alleged mismanagement, but  
3 the Receivership Court could not appoint a receiver because N5HYG had failed to  
4 demonstrate that it met a statutory prerequisite to obtain a receiver.

5 Indeed, the Receivership Court exercised substantial jurisdiction over  
6 N5HYG’s claims, including through a week-long trial, and by *entering judgment* at  
7 the conclusion of trial, the Receivership Court itself decided that it had subject  
8 matter jurisdiction. The Receivership Court intended its judgment to have  
9 preclusive effect. Stated differently, the Receivership Court could not have entered  
10 judgment in Hygea’s favor without at least implicitly finding that it had jurisdiction  
11 to hear and decide N5HYG’s claims. *See Stoll v. Gottlieb*, 305 U.S. 165, 171-72, 59  
12 S. Ct. 134, 137 (1938) (holding that “[e]very court *in rendering a judgment*, tacitly, if  
13 not expressly, *determines its jurisdiction over the parties and the subject matter.*”)  
14 (emphasis added). In fact, had the Receivership Court found that it lacked  
15 jurisdiction to decide N5HYG’s claims, it would have *dismissed* the claims under  
16 Rule 12(h) for want of subject matter jurisdiction, not entered judgment in Hygea’s  
17 favor after *denying* N5HYG’s petition. *See* N.R.C.P. 12(h)(3) (“If the court  
18 determines at any time that it lacks subject-matter jurisdiction, the court *must*  
19 *dismiss* the action.”) (emphasis added). It did not.

20 **II. THE COURT SHOULD ISSUE FINDINGS ON THE REMAINING**  
21 **ELEMENTS OF CLAIM PRECLUSION.**

22 Hygea also asks for clarification and findings on the remaining elements of  
23 claim preclusion, as well as N5HYG’s “defenses” to claim preclusion:

- 24 • Whether this Action is based on the same claims or any  
25 part of them that were or could have been brought in the  
Receivership Action;
- 26 • Whether the parties or their privies in this Action are the  
27 same as in the Receivership Action;
- 28 • Whether Hygea its estopped from arguing claim preclusion;  
and

- Whether Hygea consented to claim splitting.

The Parties briefed these issues extensively in the Motions to Dismiss, and therefore, Hygea provides only a summary of the arguments below. These arguments demonstrate that the Court should find in Hygea's favor on the remaining issues related to claim preclusion.

**A. The Receivership Action and This Action Are Based On The Same Facts And Allege The Same Wrongful Conduct.**

The second element of claim preclusion asks whether "the subsequent action is based on the same claims or any part of them that were or could have been brought in the first action." *Weddell*, 350 P.3d at 82. Bucking this plain language, N5HYG argued that it has to assert the exact same grounds for recovery and seek the exact same relief in this Action as it did in the Receivership Action for claim preclusion to apply. See N5HYG's Opp. to Hygea's Mot. to Dismiss, p. 11:6–21. However, the Supreme Court explicitly rejected this approach in *Five Star Capital* when it held that claim preclusion applies where "the subsequent action is based on the same claims or any part of them that were *or could have been brought* in the first case" because "*claim preclusion applies to preclude an entire second suit that is based on the same set of facts and circumstances as the first suit.*" *Five Star Capital Corp. v. Ruby*, 124 Nev. 1048, 1055, 194 P.3d 709, 713–14 (2008) (emphasis added).

N5HYG has never meaningfully disputed that it pled the same allegations and circumstances in this Action as it did in the Receivership Action. In fact, N5HYG's attorneys admitted during trial that the Receivership Action was based, at least in part, on the same set of facts at issue in this Action: the communications between N5HYG (or its agents) and Hygea, as well as the information provided to N5HYG by Hygea prior to N5HYG's stock purchase:

I do think that the fact of *the representations and the information provided in 2016* does have some *probative value here* because if there were *inaccuracies* or if there was anything *misleading* about that information, that gets to the misfeasance, malfeasance, and nonfeasance criteria.

Hygea's Mot. to Dismiss, Ex. H, Condensed Tr. Transcr., p. 289:2-7 (emphasis added). For these reasons, Hygea requests a finding that this Action is based on the same facts and circumstances as the Receivership Action, and thus, the claims in this Action could have been brought in the Receivership Action.

**B. The Parties Between The Receivership Action And This Action Are The Same Or In Privity With One Another.**

The third element for claim preclusion asks whether (i) the parties or their privies are the same in the instant lawsuit as they were in the previous lawsuit, or (ii) the defendant can demonstrate that he or she should have been included as a defendant in the earlier suit and the plaintiff fails to provide a good reason for not having done so. *Weddell*, 350 P.3d at 85. There is no dispute that N5HYG was a plaintiff in the Receivership Action. There is also no dispute that the Hygea Defendants were defendants to the Receivership Action.<sup>9</sup> For these reasons, Hygea requests a finding that the parties between the Receivership Action and this Action are the same or in privity with one another.

**C. Hygea Is Not Estopped From Arguing Claim Preclusion**

N5HYG argued that Hygea is estopped from asserting claim preclusion because N5HYG could not have brought its request for appointment of a receiver in federal court because NRS 78.630 and 78.650 vest jurisdiction exclusively in Nevada state court. This is immaterial, however, because Hygea is not arguing that N5HYG should have sought the appointment of a receiver in this Action while it was removed to federal court. Hygea is arguing that N5HYG should have brought the

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<sup>9</sup> The following named defendants, who have been dismissed for lack of personal jurisdiction, were also parties to the Receivership Action: Daniel T. McGowan, Frank Kelly, Martha Mairena Castillo, Glenn Marrichi, Keith Collins, Jack Mann, and Joseph Campanella. The remaining named defendants, most of whom have also been dismissed for lack of personal jurisdiction, are in privity with Hygea as its former directors: Lacy Loar, Richard Williams, Carl Rosenkrantz, Ray Gonzalez, and The Estate of Howard Sussman.

claims in this Action in the Receivership Action.<sup>10</sup> N5HYG also argued that Hygea is estopped from asserting claim preclusion because the Stock Purchase Agreement demands that all claims be brought in Clark County, Nevada, and Hygea insisted that the Receivership Action be transferred to the First Judicial District. This argument holds no water because forum selection clauses are not an absolute bar to litigating in fora other than the contractually chosen one. If a forum selection clause leads to an unreasonable result, such as claim-splitting, a court may decline to enforce the clause. *See Tandy Comput. Leasing, Div. of Tandy Elecs. v. Terina's Pizza*, 105 Nev. 841, 844, 784 P.2d 7, 8 (1989) (declining to enforce a forum selection clause where doing so would be unreasonable and unjust.) N5HYG did not even try to bring all its claims in one forum. For these reasons, Hygea requests a finding that it is not estopped from arguing claim preclusion.

**D. Hygea Did Not Acquiesce to Claim Splitting.**

N5HYG argued that Hygea acquiesced to claim splitting during the Receivership Action. Even if acquiescence mattered, Hygea did not acquiesce. Out of an abundance of caution, Hygea expressly objected to claim splitting in the answer to N5HYG's amended complaint in the Receivership Action. *See Hygea's Reply to Mot. to Dismiss, Ex. A, Receivership Action, Answer to First Amended Complaint at 11-12, Fifth Affirmative Defense* ("Defendants assert that this action constitutes impermissible claim splitting given the first filed lawsuit by Plaintiff N5HYG LLC ....")<sup>11</sup> In any event, Hygea's acquiescence or lack thereof is immaterial because a

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<sup>10</sup> Also, to the extent it matters, the Ninth Circuit has long-opined that a federal court sitting in diversity can take jurisdiction of a claim grounded in NRS 78.650 and 78.630. *Pioche Mines Consol., Inc. v. Dolman*, 333 F.2d 257, 273 (9th Cir. 1964). Indeed, in *Backman v. Goggin*, No. 2:16-CV-1108 JCM (PAL), 2017 U.S. Dist. LEXIS 37342, at \*10-11 (D. Nev. Mar. 15, 2017), the U.S. District Court for the District of Nevada dismissed a claim made under NRS 78.650, not because the court was without authority to hear the claim, but because the company at issue was a Massachusetts corporation with a Massachusetts principal place of business, and therefore, NRS 78.650 did not govern.

<sup>11</sup> *Cf. Riel v. Stanley*, No. 06 CV 5801 (TPG), 2009 U.S. Dist. LEXIS 68767, at \*16 (S.D.N.Y. Aug. 5, 2009) (explaining that a defendant does not consent to claim

(continued...)

plaintiff may freely split a cause of action between federal and state courts, *albeit at the risk of claim preclusion*. See *Sprint Commc'ns, Inc. v. Jacobs*, 134 S. Ct. 584, 588 (2013) (explaining that a pending state-court action “is no bar to proceedings concerning the same matter in the Federal court having jurisdiction”); *Carter v. City of Emporia*, 815 F.2d 617, 621 (10th Cir. 1987) (explaining that a plaintiff “may freely split a cause of action between federal and state courts and pursue both actions,” though noting the risk of claim preclusion); *Klane v. Mayhew*, No. 1:12-cv-00203-NT, 2013 U.S. Dist. LEXIS 42053, at \*17–18 (D. Me. Mar. 26, 2013) (same). Hygea had no vehicle to stop N5HYG from voluntarily splitting its claims, but at the same time, had no obligation to save N5HYG from itself. For these reasons, Hygea requests a finding that it did not acquiesce to claim splitting.

**III. THE COURT SHOULD STAY THIS ACTION PENDING RESOLUTION OF HYGEA’S WRIT PETITION AND/OR N5HYG’S APPEAL OF THE RECEIVERSHIP COURT’S “JURISDICTIONAL” FINDING.**

If the Court is not inclined to reconsider its decision and dismiss this case based on claim preclusion, Hygea asks that it stay this action pending resolution of Hygea’s writ petition and/or N5HYG’s appeal of the Receivership Court’s “jurisdictional” finding. See *Maheu v. Eighth Judicial Dist. Court*, 89 Nev. 214, 217, 510 P.2d 627, 629 (1973) (quoting *Landis v. N. Am. Co.*, 299 U.S. 248, 254–55, 57 S. Ct. 163, 166 (1936))<sup>12</sup> (finding that a district court may stay an action at its

(...continued)

splitting where he “(1) raises an objection to claim splitting prior to the entry of a final judgment in either of the related cases and (2) does not affirmatively represent that he consents to the actions proceeding separately . . . because an objection raised prior to the entry of any final judgment puts the plaintiff on notice of the claim splitting problem and potential res judicata implications of inviting judgment against himself in one of the parallel actions.”)

<sup>12</sup> The Nevada Supreme Court has affirmed the district courts’ inherent power to manage the order of the proceedings before them in recent unpublished orders, citing approvingly to *Maheu*. See *Petrilla v. Castillo*, No. 67566, 2016 Nev. Unpub. LEXIS 518, at \*3 (Feb. 12, 2016) (affirming stay of one action pending proceedings in another on basis of judicial economy) (unpublished disposition); *Hemmer v. Eighth Judicial Dist. Court of Nev.*, 385 P.3d 606, No. 71753, 2016 Nev. Unpub. LEXIS 968, (continued...)

discretion, because “the power to stay proceedings is incidental to the power inherent in every court to control the disposition of the causes on its docket with economy of time and effort for itself, for counsel, and for litigants.”)

When issuing a stay pending writ or other appellate relief, the Nevada Supreme Court considers the following factors:

(1) Whether the object of the appeal or writ petition will be defeated if the stay is denied;

(2) Whether appellant/petitioner will suffer irreparable or serious injury if the stay is denied;

(3) Whether respondent/real party in interest will suffer irreparable or serious injury if the stay is granted; and

(4) Whether appellant/petitioner is likely to prevail on the merits in the appeal or writ petition.

*Fritz Hansen A/S v. Eighth Judicial Dist. Court*, 116 Nev. 650, 657, 6 P.3d 982, 986 (2000) (citing NRAP 8(c); *Kress v. Corey*, 65 Nev. 1, 16–17, 189 P.2d 352, 360 (1948)).

These factors are consistent with those considered by courts outside the context of appellate review, which calls “for the exercise of judgment which must weigh competing interests and maintain an even balance,” *Maheu*, 510 P.2d at 629, such as “the possible damage which may result from the granting of a stay, the hardship or inequity which a party may suffer in being required to go forward, and the orderly course of justice measured in terms of the simplifying or complicating of issues, proof, and questions of law which could be expected to result from a stay.” *CMAX, Inc. v. Hall*, 300 F.2d 265, 268 (9th Cir. 1962) (citing *Landis*, 299 U.S. at 254-255).

**A. Hygea Is Likely To Succeed On The Merits Of The Writ Petition.**

Hygea is likely to succeed on the merits of its petition for writ relief for the reasons set forth above.

///

(...continued)

at \*1–2 (Nov. 23, 2016) (declining to interfere with district court’s hearing setting) (not designated for publication and published in table format only).

1           **B.     A Stay Will Avoid The Risk Of Inconsistent Judgments While Allowing**  
2           **The Nevada Supreme Court To Decide An Issue Of First Impression**  
3           **And Important Public Policy.**

4           The object of Hygea's writ petition is twofold: (1) to obtain a decision on an  
5           issue of first impression and important public policy so that Hygea is not needlessly  
6           dragged through a second trial; and (2) to avoid the risk of inconsistent judgments,  
7           especially where N5HYG has appealed the very issue on which the Court rejected  
8           claim preclusion. Indeed, N5HYG confirmed in its docketing statement that the  
9           "[f]irst issue on appeal is whether the district court erred when it denied Plaintiffs'  
10          claim for the appointment of a receiver under NRS 78.650 on the basis that the court  
11          had no jurisdiction . . . ." See Ex. C, N5HYG's Docketing Statement, p. 5 ¶ 9.

12          The Nevada Supreme Court is thus exercising jurisdiction over a key issue  
13          relied on by this Court in denying Hygea's claim preclusion argument, that being:  
14          whether the Receivership Court had jurisdiction to appoint a receiver. The Supreme  
15          Court may decide the appeal in N5HYG's favor and reverse the Receivership Court's  
16          conclusion that N5HYG had "failed to establish that" the Receivership Court had  
17          "jurisdiction to appoint a receiver ...." Ex. A, Receivership Judgment, p. 21:14-15. If  
18          so, the Receivership Judgment will become one on the merits (to the extent it is now  
19          not), and this Court will need to revisit its decision denying Hygea's claim preclusion  
20          argument.

21          This is not the only inconsistent finding that may result if the Supreme Court  
22          decides the jurisdictional issue in N5HYG's favor. N5HYG did not indicate that it  
23          would be attacking the sufficiency of the Receivership Court's findings on the same  
24          facts N5HYG has put before this Court. See Ex. C, N5HYG's Docketing Statement,  
25          p. 5 ¶ 9. If the Supreme Court decides the jurisdictional issue in N5HYG's favor,  
26          those findings will "spring" into effect, and if this Court allows this action to proceed  
27  
28

1 while N5HYG's appeal progresses through disposition,<sup>13</sup> it risks making findings or  
2 entering judgment inconsistent with the Receivership Court's findings on the same  
3 facts. These risks are widely viewed as unacceptable, and while Hygea is not aware  
4 of a Nevada case on point, persuasive authority from the Southern District of New  
5 York provides guidance.

6 In *Catskill Mts. Chapter of Trout Unlimited, Inc. v. United States EPA*, the  
7 district court stayed proceedings to await resolution of the appeal of a related case,  
8 as Hygea asks the Court to do here. See 630 F. Supp. 2d 295, 304–06 (S.D.N.Y.  
9 2009). The district court held that the “orderly and efficient use of judicial  
10 resources” required the Court to “avoid . . . inconsistent judgments that [c]ould result  
11 if both courts . . . proceeded simultaneously.” *Id.* at 306 (ellipses and brackets in  
12 original) (internal quotations and citations omitted). As here, the district court  
13 found that a “stay may . . . be appropriate [while] awaiting the outcome of  
14 proceedings which bear upon the case, even if such proceedings are not necessarily  
15 controlling of the action that is to be stayed.” *Id.* at 305 (internal quotations  
16 omitted). Simply put, a stay furthers the policy of comity between the various courts  
17 of a state. See, e.g., *Church of Scientology v. United States Dep't of Army*, 611 F.2d  
18 738, 750 (9th Cir. 1979) (staying case based on comity between various federal courts  
19 and explaining that the “doctrine is designed to avoid placing an unnecessary burden  
20 on the federal judiciary, and to avoid the embarrassment of conflicting judgments”  
21 between different federal courts (quoting *Great Northern Railway Co. v. National*  
22 *Railroad Adjustment Board*, 422 F.2d 1187, 1193 (7th Cir. 1970))).

23 **C. The Competing Interests Favor A Stay Because Hygea Will Suffer**  
24 **Irreparable Injury If The Stay Is Denied, While N5HYG Will**  
25 **Suffer No Undue Prejudice.**

26 The balancing of interests weighs in Hygea's favor, because the risk of

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27 <sup>13</sup> N5HYG has not even filed its opening brief yet. See Appeal Docket, No. 76969.  
28 The Court may take judicial notice of the proceedings before the Supreme Court. See  
NRS 47.130, *et seq.*

inconsistent judgments creates the possibility of irreparable harm for Hygea, which now faces being dragged through a second lawsuit and trial. *See Crowe v. Dunleavy, P.C. v. Stidham*, 609 F. Supp. 2d 1211, 1222–23 (N.D. Okla. 2009) (“a significant risk that Crowe would be subject to inconsistent judgments” presents the possibility of irreparable harm), *aff’d* by 640 F.3d 1140, 1157 (10th Cir. 2011); *Chiwewe v. Burlington N. & Santa Fe Ry. Co.*, 2002 WL 31924768 (D.N.M. Aug. 15, 2002) (risk of “having inconsistent binding judgments from two different courts” sufficient to demonstrate irreparable harm); *InPhyNet Contr. Servs. v. Matthews*, 196 So. 3d 449, 463 (Fla. Ct. App. 2016) (“[W]e have previously said that exposure to a potential inconsistent ruling on the same issue by another court constitutes irreparable harm.” (citing *Cole v. Cole*, 937 So. 2d 261, 262 (Fla. Ct. App. 2006))). The risk of inconsistent judgments also risks irreparable harm to this Court, as the Receivership Appeal may impact the Court’s ability to make final factual findings and legal conclusions. There is thus the potential for a substantial waste of judicial resources, and really, N5HYG too should want to see how the Supreme Court will rule on its appeal of the jurisdictional issue before it proceeds into an expensive and onerous lawsuit.

Other competing interests weigh in favor of a stay. *See CMAX*, 300 F.2d at 268 (setting forth various competing interests). For instance, the orderly course of justice requires comity between the various courts of this state when exercising jurisdiction over claims between the same parties and based on the same facts. *Cf. id.* Further, if the Receivership Court’s “alternative” findings become final, they may simplify proof of certain issues in this matter, as the Receivership Court has already made findings on some of the facts N5HYG alleges here. *Cf. id.* Meanwhile, no damage will result to N5HYG from a stay, particularly one tied to an event certain: resolution of N5HYG’s own appeal from the Receivership Judgment. It is well-established that a mere delay in pursuing discovery and litigation does not constitute irreparable or serious harm. *See Mikohn Gaming Corp. v. McCrea*, 120

Nev. 248, 253, 89 P.3d 36, 39 (2004).

**CONCLUSION**

For the reasons argued here and in connection with the Motion to Dismiss, the Court should reconsider its decision and dismiss this Action on the basis of claim preclusion. Regardless, it should issue findings of fact and conclusions of law on the elements of claim preclusion it failed to address in its original decisions. If the Court does not dismiss this Action for claim preclusion, the Court should stay the Action pending the Hygea's pursuit of writ relief and/or N5HYG's appeal of the Receivership Judgment. Following resolution of that appeal, the Parties can reargue whether claim preclusion bars N5HYG's claims.

Dated: June 3, 2019

BALLARD SPAHR LLP

By: /s/ Maria A. Gall

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**CERTIFICATE OF SERVICE**

I certify that on June 3, 2019, a true and correct copy of the foregoing  
**MOTION FOR RECONSIDERATION AND CLARIFICATION OF ORDER ON  
DEFENDANTS' MOTION TO DISMISS BASED ON CLAIM PRECLUSION  
AND, ALTERNATIVELY, MOTION TO STAY** was served on the following parties  
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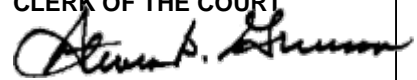
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“Exhibit 21”

“Exhibit 21”



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**DISTRICT COURT**

**CLARK COUNTY, NEVADA**

N5HYG, LLC, a Michigan limited liability  
company, et al.,

Plaintiffs,

v.

HYGEA HOLDINGS CORP., a Nevada  
corporation, et al.,

Defendants.

CASE NO.: A-17-762664-B

DEPT NO.: 27

**APPENDIX OF EXHIBITS TO MOTION FOR RECONSIDERATION AND  
CLARIFICATION OF ORDER ON DEFENDANTS' MOTION TO DISMISS BASED  
ON CLAIM PRECLUSION AND, ALTERNATIVELY, MOTION TO STAY**

Exhibit	Document	Appendix Page
A	Amended Findings of Fact and Conclusions of Law	1-24
B	Volume 3 of Receivership Trial Transcript	25-132
C	N5HYG's Docketing Statement	133-233

Dated: June 3, 2019

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**CERTIFICATE OF SERVICE**

I certify that on June 3, 2019, and pursuant to N.R.C.P. 5(b), a true and correct copy of the foregoing **APPENDIX OF EXHIBITS TO MOTION FOR RECONSIDERATION AND CLARIFICATION OF ORDER ON DEFENDANTS' MOTION TO DISMISS BASED ON CLAIM PRECLUSION AND, ALTERNATIVELY, MOTION TO STAY** was served on the following parties through the Court's e-service system:

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# EXHIBIT A

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**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

**[PROPOSED] AMENDED FINDINGS OF  
FACT AND CONCLUSIONS OF LAW**

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**[PROPOSED] AMENDED FINDINGS OF FACT AND CONCLUSIONS OF LAW**

On May 14, 2018, the bench trial of this matter commenced, with the trial continuing On May 14, 2018, the bench trial of this matter commenced, with the trial continuing through May 18, 2018. Plaintiffs Claudio Arellano, Crown Equities LLC; Fifth Avenue 2254LLC; Halevi Enterprises LLC; Halevi SV 1 LLC; Halevi SV 2 LLC; Hillcrest Acquisitions LLC; Hillcrest Center SV I LLC; Hillcrest Center SV II LLC; Ibh Capital LLC; Leonite Capital LLC; N5HYG LLC ("N5HYG"); and RYMSSG Group, LLC (collectively, the "Plaintiffs"), appeared at trial, by and through their counsel of record, Christopher D. Kaye, Esq., and David Viar, Esq., of the The Miller Law Firm, P.C., and Clark Vellis, Esq. of Holley, Driggs, Walch, Fine, Wray, Puzey, and Thompson. Defendants Hygea Holdings Corp. ("Hygea" or the "Company"), Manuel Iglesias, Edward Moffly, Daniel T. McGowan, Frank Kelly, Martha Mairena Castillo, Glenn Marrichi, Keith Collins, M.D., Jack Mann, M.D., and Joseph Campanella (collectively, the "Defendants" and, together with the Plaintiffs, the "Parties") also appeared at the trial, by and through their counsel of record, Maria A. Gall, Esq., and Kyle A. Ewing, Esq., of Ballard Spahr, LLP, and Severin A. Carlson, Esq. and Tara C. Zimmerman, Esq. of Kaempfer Crowell. The Court, having reviewed and considered the pleadings and papers on file herein and evidence admitted during the trial; having heard and considered the witnesses called to testify at the trial; having considered the oral and written arguments of counsel; and for good cause therefore, hereby enters the following findings of fact and conclusions of law:

**FINDINGS OF FACT AND CONCLUSIONS OF LAW**

**I. PROCEDURAL BACKGROUND**

This is an action in which Plaintiffs sought the appointment of a receiver over the Company pursuant to NRS 78.650, NRS 78.630, and NRS 32.010. Plaintiffs filed this action on

1 January 26, 2018, in the Eighth Judicial District Court of Nevada, in and for Clark County by the  
2 filing of an Emergency Complaint (the "Complaint"). On the same day, Plaintiffs filed an  
3 Emergency Petition (the "Petition") for Appointment of Receiver, requesting preliminary  
4 injunctive relief and the appointment of a temporary receiver.

5 Hygea opposed that Petition on February 20, 2018. The Eighth Judicial District Court,  
6 specifically Department XXVII, heard oral argument on the Petition but reserved decision  
7 thereon pending a to-be-set evidentiary hearing. Prior to opposing the Petition, on February 16,  
8 2018, Defendant Hygea filed a Motion for Change of Venue (the "Venue Motion") in the Eighth  
9 Judicial District Court. That court heard the Venue Motion on order shortening time on March 7,  
10 2018, and granted the venue change by way of its March 8, 2018, Order. The case was  
11 subsequently transferred to this Court. Upon transfer, this Court scheduled a status hearing for  
12 April 6, 2018, and asked the Parties to submit memoranda advising the Court of outstanding  
13 motions and any other matters each party wanted to discuss at the status hearing. Among other  
14 things, the Company in its memorandum requested that the Court combine the to-be-set  
15 evidentiary hearing with the trial on the merits pursuant to N.R.C.P. 65(a)(2). At the April 6,  
16 2018, status hearing, Hygea reiterated its request and moved orally to advance the trial of the  
17 action on the merits and consolidate the same with the hearing of Plaintiffs' Petition under  
18 N.R.C.P 65(a)(2) (the "Consolidation Motion"). After hearing argument from the Parties, the  
19 Court granted the Consolidation Motion.

20 The Court offered the weeks of April 23, 2018, May 14, 2018, or a week in or after July  
21 2018 for a consolidated trial of the matter. Hygea suggested a week in or after July 2018 so that  
22 the Court could first decide the Company's pending Motion to Dismiss, or alternatively, for  
23 Summary Judgment, but indicated that it would be prepared to proceed the week of May 14,  
24 2018 if necessary; Plaintiffs requested the week of April 23, 2018. The Court set trial of the

1 matter for five (5) calendar days beginning May 14, 2018.

2 Prior to the consolidated trial, the Parties conducted limited discovery pursuant to the  
3 Court's April 23, 2018, Order granting limited relief from N.R.C.P. 16 in light of the  
4 consolidated trial. Also pursuant to the April 23, 2018, Order and in preparation for the trial of  
5 the matter, on April 23, 2018, the Parties disclosed their witnesses and Plaintiffs scheduled the  
6 trial depositions of two witnesses. At a hearing on Defendants' Motion for a Protective Order to  
7 preclude the trial depositions of Norman Gaylis, M.D. and Dan Miller and Plaintiffs' Motion to  
8 Preclude the Testimony of Craig Greene, the Court offered to continue the trial of the matter.  
9 Defendants represented that they were not opposed to a continuance so that the Court could  
10 decide what Defendants believed to be threshold issues raised in their Motion to Dismiss, or  
11 alternatively, for Summary Judgment, but that if the Court declined to address the motion,  
12 Defendants were prepared to proceed on May 14, 2018. Plaintiffs represented that they did not  
13 want a continuance and were prepared to proceed on May 14, 2018. Based on the Parties'  
14 representations, the Court did not continue the trial, and a bench trial of this matter was held  
15 from May 14, 2018, through May 18, 2018

16 On May 16, 2018, Defendants moved at the close of the evidence offered by Plaintiffs for  
17 judgment as a matter of law under N.R.C.P. 50(a) with respect to all claims. After hearing  
18 argument from both Parties, the Court denied Plaintiffs' request for a receiver under NRS 32.010  
19 because, based on *State ex re. Nenzel*, 49 Nev. 145, 241 P. 317 (1925), NRS 32.010 requires that  
20 there be an action pending other than that for the request for a receivership, and in this case, there  
21 were no other claims pending. The Court also denied Plaintiffs' request for a receiver under NRS  
22 78.630 after finding that there was not sufficient evidence that Hygea has been and is being  
23 conducted at a great loss and great loss and greatly prejudicial to the interest of its creditors and  
24 stockholders. The Court further denied Plaintiffs' request for a receiver in part under NRS

1 78.650 after finding that there was no evidence that Hygea had willfully violated its charter  
2 (NRS 78.650(1)(a)), that Hygea's directors had been guilty of fraud or collusion in its affairs  
3 (NRS 78.650(1)(b)), that Hygea abandoned its business (NRS 78.650(1)(f)), that Hygea had  
4 become insolvent (NRS 78.650(1)(h)), or that Hygea is not about to resume its business with  
5 safety to the public (NRS 78.650(1)(j)).

6 The Court, however, found that there was some evidence that Hygea's management's  
7 failure to be able to account for cash flow to the degree that an audited financial statement could  
8 be prepared, even though not required by the regulators, created a reasonable inference that the  
9 directors have been guilty of gross mismanagement (NRS 78.650(1)(b)), that the directors have  
10 been guilty of misfeasance, malfeasance, or nonfeasance (NRS 78.650(1)(c)), that Hygea is  
11 unable to conduct the business or conserve its assets by reason of the act, neglect or refusal to  
12 function of any of its directors (NRS 78.650(1)(d)), that the assets of Hygea are in danger of  
13 waste, sacrifice, or loss (NRS 78.650(1)(e)), and that Hygea, although solvent, is for cause  
14 notable to pay its debts or other obligations as they mature (NRS 78.650(1)(i)). Accordingly, the  
15 Court denied Hygea's motion for judgment as a matter of law with respect to the foregoing, and  
16 the trial proceeded with Hygea's defense on those issues.

17 On May 17, 2018, during the fourth day of the trial, after Plaintiffs claimed that they  
18 were prejudiced by the late disclosure of a custodian of records affidavit authenticating a  
19 previously produced V Stock Transfer List Defendants proposed be admitted to demonstrate the  
20 Company's shares issued and outstanding, the Court again asked if the Parties wished to  
21 continue the trial. Neither Plaintiffs nor Defendants indicated that they wanted a continuance.  
22 Thus, after the trial concluded on May 18, 2018, the Court orally announced its preliminary  
23 findings of fact and conclusions of law on the record and rendered judgment on the matter in  
24 favor of Defendants. The Court now sets forth its final findings of fact and conclusions of law.

1     **II.     FINDINGS OF FACT**

2             The Court finds that the following facts were proven by a preponderance of the evidence:

3             1.       N5HYG entered a Stock Purchase Agreement (the "SPA") in October of 2016 in  
4     which it purchased 23,437,500 shares of Hygea Holdings Corp., which, at that time, represented  
5     8.57% of the issued and outstanding stock of Hygea.

6             2.       Section 6.4(a) of the SPA contains a provision providing for certain preemptive  
7     and anti-dilution rights, including the right to notice to N5HYG if Hygea is issuing stock that  
8     would dilute N5HYG's pro rata ownership of Hygea's shares.

9             3.       Section 6.3(a) of the SPA contains a provision providing for certain post-closing  
10    monthly payments to N5HYG, including a payment in the amount equal to \$175,000 until the  
11    occurrence of a "trigger event" as defined by the SPA. Hygea stopped paying the \$175,000 post  
12    closing payment after June of 2017 and has accrued \$1,750,000 in missed payments to N5HYG.

13            4.       Hygea has failed to adequately share financial information with its stockholders,  
14    and some information provided by the Company to its stockholders has not been accurate.

15            5.       Hygea has not provided audited financial statements to its stockholders, including  
16    N5HYG, and the last set of audited financial statements Hygea completed was for the year 2013.

17            6.       Minutes from a January 27, 2017, meeting of Hygea's Board of Directors (the  
18    "Board") indicate that, at that time, Hygea's audited financial statements for the years 2014 and  
19    2015 would be completed within a matter of weeks. However, the audited financial statements  
20    for 2014 and 2015 were never completed.

21            7.       The failure to complete audited financial statements were material for a time,  
22    when Hygea sought to "go public" on the Canadian financial markets.

23            8.       At the point that Hygea's Board decided that it would no longer be in the  
24    Company's best interests to "go public," the Board decided not to pursue audited financial

1 statements, including those for the years 2014 and 2015.

2 9. Audited financial statements are not required by any regulatory agency for a  
3 private company such as Hygea, and the Board made a decision not to incur the expense or  
4 otherwise spend the resources necessary to obtain audited financial statements.

5 10. In 2017 Hygea hired FTI Consulting, Inc. and specifically Mr. Timothy Dragelin  
6 of FTI, a testifying witness, to provide Hygea with certain management consulting. FTI's  
7 mission was to assist the Company in completing the financial statement audits for the years  
8 2014 and 2015, with the hope that Hygea would go public, and to develop a work plan for the  
9 company and its proposed "RTO" or reverse takeover in Canada.

10 11. Mr. Dragelin testified that Hygea's books and records were not complete when  
11 Mr. Dragelin was working at Hygea and that there were no finalized financial statements, and,  
12 that being the case, no financial statements were in any shape to be audited.

13 12. Mr. Dragelin further testified that the combination of incomplete financial  
14 statements, lack of supporting documentation required to complete the audits, and significant  
15 discord among management, posed significant impediments to Hygea's profitable operation.

16 13. Mr. Dragelin testified that prior to Mr. Sergey Savchenko being hired as the  
17 Company's director of finance, there was little financial management at Hygea but that once Mr.  
18 Savchenko did come on board, Mr. Savechenko was helpful in moving forward Hygea's ability  
19 to prepare timely financial documents.

20 14. Mr. Dragelin further testified that there remained, however, a lack of documentary  
21 support for large revenues and a lack of documentation regarding acquisitions and loans at the  
22 time that he left Hygea in June or July 2017.

23 15. Mr. Dragelin explained that FTI's role was that of a consultant and, accordingly,  
24 he and his team made certain proposals to Hygea, some of which Hygea accepted and some of

1 which it declined to accept.

2 16. Mr. Dragelin also explained challenges to gathering and completing Hygea's  
3 financial data based on the nature of its business. For instance, Hygea would not have had real  
4 data on costs until the end of 2017, at which point the Centers for Medicare and Medicaid  
5 Services would make two annual adjustment payments going forward, a preliminary one in  
6 September of 2018 and a final in July of 2019; he explained that how Hygea would be paid in  
7 2018 relates to data from as far back as 2016 and 2017.

8 17. In Mr. Dragelin's opinion, some of Hygea's stated financial numbers that were  
9 discussed with him lacked credibility and were outside the bounds of what he considered  
10 credible assumptions. Mr. Dragelin believes a number of proposals by Hygea relating to  
11 financial numbers that FTI thought could be supported.

12 18. Mr. Dragelin observed officers of Hygea ignoring issues, including financial  
13 issues, failing to value its acquisitions, and making assumptions that were not appropriate,  
14 possibly resulting in overvaluing of an acquisition or several acquisitions.

15 19. Mr. Dragelin observed that Hygea required only the signatory authority of its  
16 Chief Executive Officer, then Mr. Iglesias, with respect to which Hygea vendors were approved,  
17 who could pay those vendors, and general access to Hygea's cash accounts.

18 20. Mr. Dragelin witnessed an intentional misstatement of financial information by  
19 Mr. Iglesias when Mr. Iglesias told Mr. Dragelin that a loan-type transaction would be otherwise  
20 structured.

21 21. Based upon observations it appeared to Mr. Dragelin that Mr. Iglesias appeared to  
22 have a misunderstanding with respect to the relationship between Hygea's balance sheet and its  
23 EBITDA number (earnings before interest, taxes, depreciation, and amortization).

24 22. Exhibit 41-B, which are minutes memorializing an August 9, 2017, Board

1 meeting (the "August 2017 Minutes"), explains that Mr. Iglesias, then the CEO of Hygea,  
2 reported to the Board that the focus would be to maximize the return on Hygea's own system and  
3 focus inward, slowing acquisitions and concentrating on Hygea's position in the current political  
4 climate.

5 23. The August 2017 Minutes also reported that one of the blemishes on Hygea's  
6 progress was cash flow and that there were substantial obligations soon coming due, including an  
7 approximately \$9 million payment to the sellers of VRG Group MedPlan on August 24, which  
8 the Company would not be able to honor.

9 24. The August 2017 Minutes also report that the CEO wished to raise approximately  
10 \$15 million to \$20 million in equity financing through a private placement in case the  
11 Company's plans for going public were further delayed.

12 25. The August 2017 Minutes also reflect that Mr. Dragelin pointed out that  
13 numerous of the Company's processes were not formalized, that acquisitions were not properly  
14 and/or timely integrated into Hygea's system, that there was a lack of coordination among the  
15 Company's departments, and that other matters contributed to the result that information flow at  
16 Hygea was not what it should be.

17 26. The August 2017 Minutes further state that Mr. Dragelin advised that various  
18 deficiencies in the Hygea organization were already being overcome at that point in time; he  
19 explained that Mr. Sergey Savchenko, also a testifying witness at the trial, had been retained by  
20 the Company as its director of finance for his expertise in both financial and more general  
21 accounting and that various trust issues within management were being addressed, but that the  
22 Company's liquidity challenges still required resolution.

23 27. The August 2017 Minutes further indicated that Mr. Dragelin said the company  
24 needed "real-time" financial statements on a monthly basis.

1           28.     The August 2017 Minutes further state that Mr. Daniel McGowan, a Hygea  
2 director, opined that the Company could live or die on the audits.

3           29.     Finally, the August 2017 Minutes reflect that Dr. Norman Gaylis stated that the  
4 Company needed to do a better job of integrating acquired practices to market to replace  
5 hospitals with Hygea's resources and to develop better contracts.

6           30.     Exhibit 25 is an electronic mail message from Christopher Fowler, a testifying  
7 witness at the trial who is an employee of RIN Capital, LLC ("RIN") and the  
8 agent/representative of N5HYG, to Mr. McGowan, dated September 20, 2017 (the "September  
9 20 E-Mail"). In the email Mr. Fowler lists items that he wants to see addressed or clarified,  
10 including that the Board never received the Bridging Finance, Inc. cash flow projections, which  
11 show negative monthly cash flow.

12           31.     Mr. Fowler further stated in the September 20 E-Mail that the projections  
13 provided by the Board did not include acquisition payables of \$16.4 million, which, in Mr.  
14 Fowler's view, indicated more than \$5 million in negative cash flow.

15           32.     Mr. Fowler further complained in the September 20 E-Mail that the Bridging  
16 Finance cash flow projections required a statement of written assumptions, and that, in his view,  
17 the Board was not being properly informed of outstanding legal matters, including a yet-to-be-  
18 filed lawsuit from N5HYG.

19           33.     Mr. Fowler further indicated in the September 20 E-Mail that the Board should  
20 undertake to review all outstanding contracts, that Hygea's CEO (at that time, Mr. Iglesias) was  
21 mismanaging by, for instance, failing to provide accurate quarterly and annual audited financial  
22 statements to stockholders, by failing to inform the Board of current or pending defaults under  
23 multiple contractual agreements which could affect cash flow by significantly underperforming  
24 versus the plan, by failing to provide timely and accurate projections with written assumptions to

1 the Board, and by failing to adhere to corporate policies and procedures.

2 34. Hygea was a rapidly growing corporation and that this rapid growth caused a lot  
3 of challenges for Hygea.

4 35. Hygea has issued stock as "currency" to buy medical practices since October of  
5 2016.

6 36. Had Hygea used treasury stock to buy medical practices, which does not require  
7 the issuance of new shares, Hygea would not have diluted N5HYG's ownership share of Hygea;  
8 there is no evidence in the record, however, indicating whether Hygea possessed any treasury  
9 stock at any relevant time.

10 37. Hygea has a number of creditors, including Dr. Norman Gaylis, a testifying  
11 witness at the trial (approximately \$2.3 million owing); CuraScript (between \$2 million and \$2.5  
12 million owing); American Express (approximately \$8.5 million owing); Bridging Finance  
13 (between approximately \$60 million and \$75 million owing with interest accruing at fifteen  
14 percent (15%) per annum).

15 38. For a period of time Hygea employed Mr. Dan Miller, another testifying witness,  
16 as the Company's Chief Operations Officer, but Mr. Miller left Hygea because it was failing to  
17 pay him; there was a time during which Hygea was also unable to pay other executives in a  
18 timely matter.

19 39. Hygea stopped (at least for some time) using a recognized payroll company and  
20 instead went to paper checks to pay its payroll; the checks were, at least for a time, received  
21 more sporadically by Hygea's employees, and Hygea provided no explanation as to why the  
22 change to paper checks was made.

23 40. In February of 2018, payroll checks issued to two Hygea employees working at  
24 the offices of Dr. Edward Persaud "bounced."

1           41.     It had become evident that Hygea needed operational changes by the latter half of  
2 2017; Hygea, for instance, had a history of not timely closing its financial statements, making it  
3 difficult for executives to manage the business.

4           42.     Hygea offered Dr. Gaylis the position of President of Hygea in November of  
5 2017, but Dr. Gaylis declined that position when he did not receive requested information  
6 demonstrating that Hygea was compliant in paying its payroll taxes, information showing that  
7 Hygea was dealing with other financial obligations, or information explaining how certain  
8 obligations would be met.

9           43.     Dr. Gaylis is still affiliated with Hygea as an employee-physician and as a  
10 stockholder, and, on February 28, 2018, Dr. Gaylis communicated that he believed Hygea  
11 needed an immediate change of management and that the change in management needed to be  
12 "complete," or, alternatively, a receiver.

13           44.     In Dr. Gaylis's opinion, if a receiver is appointed, it is likely Hygea's contracts  
14 with health management organizations ("HMO's") would be terminated.

15           45.     The appointment of a receiver would put Hygea at increased risk for cancellation  
16 of the contracts it has with the HMOs, which account for approximately 70 percent (70%) of  
17 Hygea's gross revenue.

18           46.     If the Company's HMO contracts were terminated, it would likely be the death  
19 knell for Hygea.

20           47.     In 2017, Hygea prioritized maximizing revenue and, in so doing, failed to pay  
21 sufficient attention to operational inefficiencies that resulted in limited infrastructure, records,  
22 and processes to make, monitor, and manage Hygea's money.

23           48.     Mr. Iglesias and his family members are, collectively, Hygea's largest  
24 stockholders.

1           49.     Mr. Iglesias and his family are also creditors of Hygea, having loaned Hygea  
2 approximately \$4 million to cover operational costs in 2017. In 2018, Mr. Iglesias and his family  
3 loaned additional amounts to Hygea, including after having secured a \$3 million promissory  
4 note.

5           50.     Mr. Iglesias acknowledged that he lacked the technical expertise to take Hygea to  
6 the next level.

7           51.     The relationship between Hygea and RIN, an agent of N5HYG that advised  
8 N5HYG to invest in Hygea, soured when the Board decided to pursue private equity financing  
9 rather than attempt to go public.

10          52.     Liquidation of Hygea would result in a loss of all stockholder equity.

11          53.     All Parties involved in the case have indicated that their goal is to have Hygea  
12 succeed so that Hygea will continue to have value for the stockholders.

13          54.     Bridging Finance is currently funding Hygea's short-term cash shortfall.

14          55.     Hygea's Board recently appointed a new Chief Executive Officer, Chief  
15 Operating Officer, and Chief Financial Officer.

16          56.     After Mr. Iglesias resigned as Chief Executive Officer, the Board appointed Dr.  
17 Keith Collins, another testifying witness and a director of Hygea since 2013, as Chief Executive  
18 Officer, while Mr. Iglesias became the co-chair of the Board.

19          57.     Other members of the Board include Mr. McGowan, currently the other co-chair  
20 of Hygea's Board and a longtime Hygea director, who was a leader in the New York state  
21 healthcare market, and Mr. Glenn Marrichi, who was at one point an executive of a national  
22 marketing company.

23          58.     Dr. Keith Collins' education and experience include a term as Chief Medical  
24 Officer of an HMO with six smaller plans that evolved into a multibillion dollar, publicly traded

1 organization with operations in sixteen states; Dr. Collins eventually served as a vice president  
2 for business development of said HMO, which role included acquisition turnaround and HMO  
3 plan start-ups.

4 59. Dr. Collins was the founding Chief Executive Officer of the fastest growing HMO  
5 in New York City for a time.

6 60. Dr. Collins was vice president to another health network operating in New York  
7 and New Jersey and that, all in, he has over twenty years of experience creating and/or operating  
8 physician networks, all of which were successful to at least some extent and none of which  
9 failed.

10 61. The Board also appointed Mr. Savchenko as Hygea's acting Chief Financial  
11 Officer; Mr. Savchenko has a very strong financial background, including in connection with  
12 absorbing acquisitions at other organizations.

13 62. Dr. Collins, since taking the helm at Hygea, has been very active in his interaction  
14 with the Board, meeting with the Board every week to ten days; ensuring that Hygea replaced all  
15 executives that are appointed by the Board; and championing the establishment of a Board  
16 governance committee to better steer management's oversight of practices and its governance of  
17 a larger organization with appropriate checks and balances.

18 63. Dr. Collins recommended and oversaw the Board's approval of Dr. Gaylis as the  
19 new vice president of medical affairs and, as referenced above, Mr. Savchenko as the new, acting  
20 Chief Financial Officer.

21 64. Dr. Collins also identified twelve key employees at Hygea, made changes to their  
22 roles and duties, interviewed those people and the people they interface with, and made further  
23 appropriate changes to those roles.

24 65. Dr. Collins testified that Hygea's new management forecasts cash surpluses from

1 operations beginning in July.

2 66. Dr. Collins takes his new role as Chief Executive Officer extremely seriously, in  
3 part because federal regulations dictate that any person associated with a failed provider that  
4 takes money from Medicare, such as Hygea, is forbidden from working with another Medicare  
5 provider for two years and, as a practical matter, that person is forever tainted in the Medicare  
6 industry; Dr. Collins' reputation is extremely valuable to him and such a taint would be  
7 unacceptable.

8 67. Hygea made the decision not to pursue a public financing offering in the fall of  
9 2017 and conceded that Hygea has not always been able to pay its debt timely, in part because  
10 Hygea has experienced projected income failing to materialize.

11 68. Hygea is not paying Bridging Finance, which has agreed to capitalize Hygea's  
12 monthly interest payment until Hygea either goes public or is sold to a private equity investor.

13 69. The Bridging Finance debt is accumulating interest at fourteen percent (14%),  
14 which results in approximately \$1 million a month in interest debt, currently being capitalized to  
15 the principal of the loan; Hygea's operational cash flow projections for 2018 do not include this  
16 monthly amount and also do not provide for payments associated with an approximately \$8.5  
17 million balance associated with an American Express line of credit.

18 70. Hygea's projected operating cash flow through 2018 shows an operating loss  
19 through June of 2018 and then a relatively modest (compared to the size of the business) positive  
20 cash flow for the last six months of 2018.

21 71. When Hygea acquires a new medical practice, it takes anywhere from six to  
22 twelve to even twenty-four months before Hygea begins collecting cash revenue, but Hygea  
23 incurs the cash expenses associated with the acquisition immediately.

24 72. Bridging Finance is helping to finance the short-term critical debts and

obligations of Hygea.

### III. LEGAL PRINCIPLES

As stated above, Plaintiffs petitioned for a receiver pursuant to NRS 32.010, 78.630, and 78.650. Given the Court's decision on Defendants' motion for judgment as a matter of law, only subsections l(b)-(j), (i), and j) of NRS 78.650 remained at issue following closure of Plaintiffs' case.

With respect to those claims that remained at issue, NRS 78.650 provides in *relevant* part that:

1. Any holder or holders of one-tenth of the issued and outstanding stock may apply to the district court . . . for an order dissolving the corporation and appointing a receiver to wind up its affairs, and by injunction restrain the corporation from exercising any of its powers or doing business whatsoever, except by and through a receiver appointed by the court, whenever:

...

(b) Its trustees or directors have been guilty of . . . gross mismanagement in the conduct or control of its affairs;

(c) Its trustees or directors have been guilty of misfeasance, malfeasance or nonfeasance;

(d) The corporation is unable to conduct the business or conserve its assets by reason of the act, neglect or refusal to function of any of the directors . . . ;

(e) The assets of the corporation are in danger of waste, sacrifice or loss through attachment, foreclosure, litigation or otherwise;

...

(i) The corporation, although not insolvent, is for any cause not able to pay its debts or obligations as they mature . . . ;

...

4. The court may, if good cause exists therefor, appoint one or more receivers for such purpose, but in all cases directors or trustees who have been guilty of no negligence nor active breach of duty must be preferred in making the appointment. The court may at any time for sufficient cause make a decree terminating the receivership, or dissolving the corporation and terminating its existence, or both, as may be proper.

1 Among other things, NRS 78.650 demands that the stockholder(s) petitioning for the  
2 appointment of a receiver hold one-tenth of the corporation's issued and outstanding stock. In  
3 *Shelton v. Second Judicial Dist. Court in & for Washoe Cty.*, the Nevada Supreme Court held  
4 that "[w]here the statute provides for the appointment of receivers, the statutory requirements  
5 must be met or the appointment is *void and in excess of jurisdiction*." 64 Nev. 487, 494, 185 P.2d  
6 320, 323 (1947). Moreover, a district court must find that the applicant(s) for the receiver holds  
7 one-tenth of the issued and outstanding stock of the corporation at the time the court considers  
8 the application. *Searchlight Dev., Inc. v. Martello*, 84 Nev. 102, 109, 437 P.2d 86, 90 (1968)  
9 ("The district court does not have jurisdiction to appoint a corporate receiver, unless the  
10 applicant holder or holders of one-tenth of the issued and outstanding stock has legal title *at the*  
11 *time the court considers the application*." ) (emphasis added).

#### 12 IV. ANALYSIS

##### 13 A. Do Plaintiffs Hold One-Tenth of Hygea's Stock Issued and Outstanding?

14 As the Nevada Supreme Court stated in *Searchlight*, the time at which the Court  
15 must determine whether Plaintiffs hold the requisite one-tenth of the Company's shares issued  
16 and outstanding is the time at which the Court is considering the stockholders' application for the  
17 appointment of a receiver. *See Searchlight*, 84 Nev. at 109, 437 P.2d at 90. The Parties stipulated  
18 to the amount of shares that Plaintiffs own, so the Court has the numerator for the ten percent  
19 calculation, but the Court *does not* have any evidence of the total number of issued and  
20 outstanding shares as of today, this week, this month, or at *any time* during the last eighty-eight  
21 days since Mr. Edward Moffly, Hygea's former Chief Financial Officer and a Hygea director,  
22 made his declaration on February 19, 2018 or since even further back, to the time that Hygea and  
23 N5HYG executed the SPA in October of 2016. Neither of those—Mr. Moffly's declaration nor  
24 the SPA—inform the Court as to what the number of issued and outstanding shares is as of the

1 beginning of the trial on Monday, May 14, 2018, or the end of trial on May 18, 2018.

2 Plaintiffs have argued that it would be unfair to hold them to their burden of proof on the  
3 ten percent stock ownership issue because that information is within the possession of either  
4 Hygea or its agent, V Stock Transfer ("V Stock"). That might be a plausible argument if  
5 Plaintiffs came to this Court with evidence of their efforts to obtain information from Hygea or V  
6 Stpcl Transfer as to what the current number of shares issued and outstanding is. There are  
7 discovery procedures to obtain that information. The Court acknowledges that this was an  
8 expedited process, but notes that—had Plaintiffs moved for such relief—the Court could have  
9 ordered production of documents or at least tried to get Hygea to produce information from V  
10 Stock, but the Plaintiffs appear to assume that any information they would have received  
11 regarding the number of issued and outstanding shares would be inaccurate. That may or may not  
12 be true, but the Court cannot make such a determination because the Plaintiffs did not get or  
13 attempt to get issued and outstanding share information from Hygea or V Stock.

14 The question before the Court is then as follows: "is it fair to hold Plaintiffs to their  
15 burden?" In answering that question, the Court considers what Plaintiffs did to try to determine  
16 the actual number of shares issued and outstanding as of May 14, 2018 (the start of trial) and  
17 through May 18, 2018 (the time at which the Court considered appointment of a receiver), which  
18 the Court finds is hardly anything. There is no evidence that Defendants in any way interfered  
19 with Plaintiffs' ability to secure that information. Accordingly, Plaintiffs accepted the risk of  
20 bearing the burden of not knowing the number of shares issued and outstanding as they  
21 proceeded to trial without either obtaining the information or moving for a continuance to  
22 provide time to obtain the information. Had Plaintiffs come to Court with evidence that they had  
23 tried in good faith to secure the number of shares issued and outstanding and/or showed  
24 inaccuracies or an outright refusal or inability of Hygea or V Stock to produce the number, the

1 Court could have made adverse inferences against Hygea and the individual Defendants,  
2 precluded Defendants from even arguing that the Plaintiffs owned less than ten percent, or other  
3 sanctions. The record, however, is devoid of any evidence of Plaintiffs' efforts.

4 With that being the case, the Court does not know the number of shares issued and  
5 outstanding. Accordingly, it lacks the denominator necessary to complete the calculation and  
6 analysis necessary to determine whether Plaintiffs in fact hold ten percent of Hygea shares issued  
7 and outstanding. As such, the Court finds that Plaintiffs have failed to demonstrate by a  
8 preponderance of the evidence whether they hold ten percent (or "one-tenth") of Hygea's issued  
9 and outstanding stock. Under *Searchlight*, the Court cannot consider appointment of a receiver  
10 under NRS 78.650. *See id.*

11 **B. Even if Plaintiffs Held One-Tenth of Hygea's Stock Issued and Outstanding,**  
12 **Is There a Basis and Good Cause for the Appointment of a Receiver?**

13 An appellate court may disagree with this Court's analysis on the 10% issue, therefore  
14 the Court also provides analysis and substantive conclusions of law consistent with the above  
15 findings of fact on the remaining grounds for appointment of a receiver. With respect to those  
16 remaining grounds, the Court finds as follows:

- 17 • Under subsection 1 (b), the Court finds that Plaintiffs have failed to establish-  
18 by a preponderance of the evidence—that the directors have been guilty of  
gross mismanagement in the conduct or control of Hygea's affairs;
- 19 • Under subsection 1 (c), the Court finds that Plaintiffs have failed to establish-  
20 by a preponderance of the evidence—that the directors have been guilty of  
misfeasance or malfeasance; however, the Court does find, that Plaintiffs have  
21 established by a preponderance of the evidence that the directors have been  
guilty of nonfeasance;
- 22 • Under subsection 1(d), 1(e), and 1(i), that nonfeasance resulted in Hygea not  
23 being able to conserve its assets by reason of the directors' neglect, placed  
Hygea's assets in danger of waste, sacrifice, or loss, and caused Hygea to not  
24 be able to pay its debts or obligations as they mature except through costly  
agreements and/or loans.

1 While the Court acknowledges that it is easy for the Plaintiffs to come to Court (and for  
2 the Court now to sit) and pass judgment on the Board, the Court finds that the directors appear to  
3 have been sitting in the driver seat of Hygea, where they properly belong, but allowed  
4 themselves to be blinded by the huge success of the business's acquisitive model in early 2017  
5 and failed to pay attention to what was going on in the back seat, the processes and procedures  
6 for accounting for and managing Hygea's income. The Board should have been paying attention  
7 to both, and in particular how Hygea's management was governing the Company's affairs.  
8 Accordingly, the Court finds that while Plaintiffs have not established that any director was  
9 guilty of any misfeasance or malfeasance by a preponderance of the evidence, Plaintiffs have  
10 shown that the Board is guilty of nonfeasance.

11 The fact that the Court finds that the Board was guilty of nonfeasance under NRS  
12 78.650(1)(c) does not, however, mean that a receiver is automatically appointed or end the  
13 Court's analysis. The legislature could have chosen to word NRS 78.650 such that if a district  
14 court finds that any of the items listed in NRS 78.650(1) are found that a receiver must be  
15 appointed. Instead, though, NRS 78.650( 4) provides that this Court may, if good cause exists,  
16 appoint a receiver, providing the Court with discretion to consider other factors. See NRS  
17 78.650(4).

18 The Court considers first and foremost that Hygea's business model is both ingenious  
19 and successful and/or can be successful if properly managed going forward. The Court finds that  
20 Hygea currently appears to be in trouble because its infrastructure, records, and processes did not  
21 keep pace with its rapid acquisition of medical practices. Hygea's Board should have detected  
22 these issues earlier than it did and should have addressed the issues related to infrastructure,  
23 records, and processes before now. The Court also gives considerable weight in its  
24 considerations to the fact that all Parties profess the desire to have Hygea continue to operate.

1 Further, the Court considers the fact that the appointment of a receiver will (in the best  
2 case) increase the risk that the HMO's will cancel the contracts they have with Hygea, which  
3 could very well cause the death of the Company. If that occurs, all Parties lose.

4 Finally, the Court finds that in addition to the increased risk of HMO's terminating their  
5 contracts with Hygea, the appointment of a receiver would heap additional confusion on the  
6 management of Hygea, which has just changed over its C-Suite executives for new leadership.  
7 Similarly, the time that would be required for a new receiver or other leader to get acquainted  
8 with Hygea and put positive change in motion would likely provide additional stress and  
9 detriment to Hygea. Accordingly, and in light of all of the foregoing, the Court concludes that  
10 Dr. Collins, Hygea's new Chief Executive Officer, is at least as qualified to continue to guide  
11 Hygea as its CEO as would be the receiver proposed by the Plaintiffs.

## 12 V. CONCLUSIONS OF LAW

13 1. Plaintiffs have failed to establish by a preponderance of the evidence that they  
14 hold one-tenth of the issued and outstanding stock of Hygea and have thus failed to establish  
15 that this Court has jurisdiction to appoint a receiver under NRS 78.650(1) and the Nevada  
16 Supreme Court's decision in *Searchlight*. 84 Nev. at 109, 437 P.2d at 90.

17 2. Accordingly, the Amended Complaint and Petition for Appointment of a Receiver  
18 must be, and the same hereby are, **DENIED**, and judgment is entered in favor of Defendants.

19 Out of an abundance of caution, however, the Court makes the following conclusions on  
20 the substantive merits of Plaintiffs' Amended Complaint and Petition for Appointment of  
21 Receiver under subsections (l)(b)–(e) and (i) of NRS 78.650:

22 3. Hygea's Board is guilty of nonfeasance as a whole under NRS 78.650(l)(c).

23 4. No good cause exists to appoint a receiver over Hygea.


24 5. Relatedly, and in light of this conclusion but also because the Court has found the

1 Board generally guilty of nonfeasance.

2 6. Finally, the Court concludes that good cause does exist to instead allow Dr.  
3 Collins to continue to serve as the Chief Executive Officer of Hygea.

4 7. Accordingly, Plaintiffs' Amended Complaint and Petition for Appointment of a  
5 Receiver must be, and the same hereby are, **DENIED**, and judgment is entered in favor of  
6 Defendants.

7 Dated this 29 day of October, 2018.

8  
9   
10 THE HONORABLE JAMES WILSON  
11 DISTRICT COURT JUDGE  
12  
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20  
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23  
24

1 Respectfully submitted by:

2  
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**CERTIFICATE OF SERVICE**

Pursuant to N.R.C.P. 5, I hereby certify that on August 24, 2018, a true and correct copy of the [PROPOSED] AMENDED FINDINGS OF FACT AND CONCLUSIONS OF LAW was served on the following counsel of record by e-mail and a copy by U.S. Mail, postage-pre-paid:

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\_\_\_\_\_  
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An Employee of Kaempfer Crowell

# **EXHIBIT B**

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

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PET001553  
Page 23

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

CLAUDIO ARELLANO; CROWN EQUITIES  
LLC; FIFTH AVENUE 2254 LLC; HALEVI  
ENTERPRISES LLC; HALEVI SV I LLC,  
et al,

Plaintiffs,

-vs-

Case No. 18 OC 00071 1B

HYGEA HOLDINGS CORP,

Defendant.

\_\_\_\_\_ /

TRIAL TRANSCRIPT

BEFORE THE HONORABLE JAMES E. WILSON JR.

VOLUME III

PAGES 414 - 648

DATE: Wednesday, May 16, 2018

TIME: 9:00 a.m.

LOCATION: Carson City District Court

885 E. Musser Street

Carson City, Nevada

REPORTER: Daren Bloxham RPR/CSR-685

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

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

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

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

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

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

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1 sir.

2 Q. And that that be provided by April 23rd?

3 A. Yes, sir.

4 Q. And Hygea did not provide that, did they?

5 A. They have provided a draft of the report.

6 Q. The report itself is not done yet, is it?

7 A. It may be done as of today or tomorrow.

8 Q. Are you aware that that same court order

9 required Hygea to produce HMO contracts that

10 purportedly preclude appointment of a receiver?

11 A. I believe the Court was provided a copy of

12 our HMO contracts with the termination language.

13 MR. KAYE: And if I can step back a moment,

14 plaintiffs move for the -- move for the admission of

15 Exhibit 125.

16 THE COURT: Ms. Gall?

17 MS. GALL: I have no objection to the

18 admission of Exhibit 125.

19 THE COURT: 125 is admitted.

20 MR. KAYE: Thank you. And my apologies for

21 taking that issue a little bit out of order.

22 Q. (By Mr. Kaye) So you're aware that Hygea has

23 taken the position in this litigation that HMO contracts

24 preclude the appointment of a receiver?

25 MS. GALL: Objection, Your Honor. We have --

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1 I think that misstates the position that Hygea has

2 taken with respect to HMO contracts.

3 THE COURT: Overruled. That's the question

4 to him. Go ahead.

5 THE WITNESS: Could you repeat the question,

6 sir?

7 Q. (By Mr. Kaye) Can you repeat the question,

8 please.

9 (The following was read by the reporter: "So

10 you're aware that Hygea has taken the

11 position in this litigation that HMO

12 contracts preclude the appointment of a

13 receiver?")

14 THE WITNESS: HMOs historically have two

15 types of termination provisions in most contracts, one

16 for cause and one without cause. When a company is

17 deemed to be in bankruptcy, receiver, deemed insolvent,

18 most HMOs historically in Florida have canceled their

19 provider agreements. They do so mostly on a

20 not-for-cause basis because they don't want themselves

21 to be -- get into litigation as to the rationale.

22 But one of the reasons that they use most

23 commonly is lack of financial liability. And naming a

24 receiver in -- some of the contracts actually state

25 that if you name a receiver, it's a cause for

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1 cancellation. Others leave it more vague.

2 But the practical -- as a practical matter,

3 the naming of a receiver we feel would create the

4 cancellation of most, if not all of our HMO contracts.

5 Q. (By Mr. Kaye) And just to repeat my question,

6 you're aware that Hygea has taken the position in this

7 litigation that appointment of a receiver or that the HMO

8 contracts would preclude the appointment of a receiver?

9 A. I think the appointment of a receiver would

10 be a death nail to our HMO business. Our HMO Medicare

11 Advantage business represents about 70 percent of our

12 revenue. It would destroy Hygea as a going concern,

13 yes, sir. That is a position that we're taking.

14 Q. And you understand that the Court ordered

15 Hygea to produce the HMO contracts that purportedly

16 preclude appointment of a receiver, correct?

17 A. The contracts -- my understanding is the

18 contracts have been provided. And if the lawyers

19 involved in both sides understand what the language

20 means and how they are interpreted by the entities

21 that issue those contracts, they will understand that

22 the language there and the way they are interpreted

23 historically means that a company that goes into

24 receiver, a company deemed -- that goes into

25 bankruptcy, a company deemed insolvent will more than

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1 likely cause -- some are specific that it will happen

2 automatically. Others will give the HMO the latitude

3 of canceling those contracts. And it is my personal

4 belief that most of our contracts will be canceled

5 upon the appointment of a receiver.

6 Q. Well, with all due respect, Mr. Iglesias, I

7 didn't ask about your personal belief. I asked if you

8 understood that the Court ordered the HMO contracts

9 that purportedly preclude appointment of a receiver.

10 You're aware of that, right?

11 A. And I think we've complied.

12 Q. Okay. And I want to talk about the documents

13 that -- that have been produced that as you say comply

14 with that.

15 Can you turn to Exhibit 70, please.

16 THE COURT: He's going to need the second

17 volume.

18 THE WITNESS: ??

19 Q. (By Mr. Kaye) 70. 7-0, please.

20 If you'd turn to the first substantive page,

21 which is Bates number Hygea underscore a bunch of zeros

22 and then 4. And before we continue, Mr. Iglesias --

23 A. I'm sorry. What -- what page are we

24 talking?

25 Q. I was about to say something that might make

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

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

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

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

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

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1 additional signatory to be mutually agreed upon  
2 between the agent and RIN Capital, LLC (RIN) for cash  
3 management purposes and for any future payments (all  
4 checks to be signed by Mr. Manuel E. Iglesias and)"  
5 underlined "(such newly appointed signatory)."  
6 Q. That hasn't happened, has it?  
7 A. We have a treasury management per our  
8 agreement with Bridging Finance where they approve  
9 signors on the accounts, and we implemented that  
10 program for a while. That has since changed. And as  
11 we evolve, I'm in the process of being taken off  
12 the -- as we speak, taken off the check signing.  
13 Presently, we have three signors. And  
14 there's a process before a check is produced, it goes  
15 through our finance department that gets pre-approved  
16 before one of the signors approves it. Part of that  
17 number 3, it evolved. But in essence, we have created  
18 treasury management processes based on Bridging Finance  
19 requirements.  
20 Q. Mr. Iglesias, it's a yes-or-no question.  
21 I'll rephrase it.  
22 Has -- is there an additional signatory  
23 mutually agreed upon between -- that RIN Capital has  
24 agreed to?  
25 A. I have no idea of the relationship between

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1 Bridging Finance and RIN Capital. The person dealing  
2 with us has been Bridging Finance, who is our banker.  
3 And we have complied with all the requirements.  
4 Q. I want to go down a little bit to the third  
5 bullet point from the bottom that reads, "At or before  
6 5 p.m. EST." Can you please read that into the record.  
7 A. "At or before 5 p.m. EST on October 15,  
8 2017, hire a new chief financial officer for the  
9 borrowers."  
10 Q. And the incumbent chief financial officer at  
11 that time was Mr. Moffly, correct?  
12 A. We have tried to replace Mr. Moffly on  
13 multiple occasions. He has been already -- we have an  
14 interim chief financial officer in Sergey Savchenko.  
15 Mr. Moffly is currently not the chief financial  
16 officer. That said, I am not -- I do not remember if  
17 he had been replaced by October 15th.  
18 Q. You testified a few minutes ago that he was  
19 the -- I believe you said acting CFO at the time you  
20 signed your declaration in February 20th of 2018; isn't  
21 that right?  
22 A. He had offered his resignation. And until  
23 we named Mr. Savchenko as interim financial officer,  
24 he fulfilled some of those functions.  
25 Q. So that bullet point was not met, correct?

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1 A. We have, I think, a very good relationship  
2 with Bridging Finance, and this letter evolved. There  
3 were a lot of other subsequent conversations and  
4 negotiations. And I would tell you that we're in  
5 compliance with our lending -- Bridging Finance as our  
6 lender.  
7 Q. Mr. Moffly -- that was a yes or no question.  
8 That bullet point wasn't complied with, correct?  
9 A. I think we have complied with everything  
10 requested to us by Bridging Finance.  
11 Q. Meaning that at or before -- it's your  
12 position that at or before 5 p.m. EST on October 15th,  
13 2017, Hygea hired a new chief financial officer?  
14 A. No. There were a lot of subsequent  
15 conversations between the time this letter was sent  
16 to -- to today. It's an interactive relationship with  
17 our financial backer, our bank.  
18 And I -- A, we're in compliance with the  
19 bank. We're not in default. And we have met all their  
20 requirements. There have been changes. This is a  
21 snapshot of a request at the time, which was then  
22 subsequently renegotiated. I would tell you that  
23 whatever has been requested to us by Bridging Finance,  
24 we're currently in covenant with Bridging Finance.  
25 MR. KAYE: Your Honor, I'm going to move to

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1 strike that answer. That was a yes-or-no question, and  
2 we got a long disquisition about Hygea's relationship.  
3 THE COURT: The objection is sustained.  
4 Q. (By Mr. Kaye) So, again, that bullet point was  
5 not complied with, correct?  
6 A. Correct.  
7 MR. KAYE: Your Honor, at this time  
8 plaintiffs do move to admit Exhibit 6 into evidence.  
9 MS. GALL: Your Honor, we object. It's  
10 hearsay. It's a writing and statements made by  
11 Ms. Natasha Sharpe of Bridging. It's not part of  
12 Hygea's business records, if that is the exception that  
13 Mr. Kaye seeks. So I would object based on hearsay and  
14 a lack of foundation.  
15 MR. KAYE: Your Honor, there's a couple of  
16 reasons why I don't think that that objection prevails.  
17 First of all, while it may have been generated by -- by  
18 Bridging Finance, that doesn't mean that it's not a  
19 business record, something that came to -- I believe --  
20 and I believe we've had testimony that this was  
21 within -- was within Hygea's business records, but we  
22 can lay additional foundation.  
23 In fact, I don't think that's necessary  
24 because we've already heard the testimony that this was  
25 forwarded on to the board, and thereby came within

<p style="text-align: right;">Page 467</p> <p>1 Hygea's business records, forwarded by -- sent by 2 Mr. Iglesias to the board. 3 Moreover, there are additional indicia of 4 trustworthiness here, including the fact that this is 5 in certain respects a statement against interest from 6 an unavailable witness. 7 I say "unavailable" because, once again, as 8 we have heard and as shown on the face of the document, 9 Bridging is a Canadian entity, outside of the usual 10 subpoena process for a case such as this. And the 11 statement from Bridging that they are not being paid is 12 a statement against interest. Presumably, they want to 13 be paid. 14 Beyond that, I would -- I would say that by 15 presenting this to the board, Mr. Iglesias adopted as 16 an admission the statement, which he has said here 17 that -- that the monthly cash interest payments were 18 not made for those months as indicated, that Hygea had 19 missed those payments. 20 Beyond all of that, even if the Court is not 21 inclined to admit this document for the truth of the 22 matter asserted therein, which in some respects is a 23 tree falling in the forest because the witness has 24 already testified to the truth of the matter admitted 25 therein, this is still a -- it's still admissible as a</p> <p style="text-align: right;">Page 468</p> <p>1 verbal act. 2 We have heard a lot of testimony, some of 3 it's been stricken from the record, but not all of it, 4 from Mr. Iglesias that there have been ongoing 5 discussions about the topic of this letter. 6 Well, those sort of -- those sort of 7 discussions and the documents that comprise those sort 8 of discussions are very relevant to what's going on in 9 this case and are not at all excludable as hearsay. 10 That's -- if it's, as Mr. Iglesias has postured it, 11 almost a draft of an ongoing arrangement, that's 12 certainly admissible. 13 THE COURT: I'm going to overrule the hearsay 14 objection. I'm accepting it on the basis that it's not 15 as evidence of the truth of the matters asserted, 16 separate from Mr. Iglesias' testimony. The foundation 17 objection is also overruled. Exhibit 6 is admitted. 18 MR. KAYE: Thank you, Your Honor. 19 Q. (By Mr. Kaye) Mr. Iglesias, can you please turn 20 to Exhibit 14. 21 A. Yes. 22 Q. Do you recognize this document? 23 A. Yes. 24 Q. What is this document? 25 A. This is an email from Dr. Ewaul Persaud, one</p>	<p style="text-align: right;">Page 469</p> <p>1 of our Atlanta physicians, to us regarding the 2 February 23rd payroll. 3 Q. And Dr. Persaud is a physician within the 4 Hygea network of providers, correct? 5 A. Yes, he is. 6 Q. Do you remember receiving this email? 7 A. Yes, I do. 8 Q. And is this a true and accurate copy of the 9 email you received? 10 A. I believe it is. 11 Q. And I'm going to state one thing for the 12 record before I forget this. My copy has an indication 13 at the bottom of the page "Exhibit A." And I think I 14 discussed this with -- with opposing counsel. 15 And I think we sort of are in agreement that 16 we'll disregard the Exhibit A for right now. And if 17 this is eventually admitted as an exhibit, we would ask 18 to have the Exhibit A removed from this copy. But I 19 wanted to get that out there before I forgot it, that 20 that issue was out there. 21 MS. GALL: Your Honor, at this point I would 22 object to both any admission or use of this exhibit, 23 Your Honor has already ruled this exhibit inadmissible 24 based on hearsay. 25 MR. KAYE: Your Honor, we've not moved for</p> <p style="text-align: right;">Page 470</p> <p>1 admission -- 2 THE COURT: Right. 3 MR. KAYE: -- of the exhibit. I do intend to 4 move for admission of the exhibit. But this is an 5 additional examination about the exhibit that I 6 think -- not to get ahead of ourselves, I think we're 7 going to have probably some of the same issues we had 8 with the last exhibit. 9 THE COURT: It has not been offered. At this 10 point there is no outstanding question, so go ahead 11 with your next question. 12 MR. KAYE: Thank you. 13 Q. (By Mr. Kaye) If you read in this -- the main 14 paragraph of text here, there's a sentence that begins, 15 "The most disturbing." Do you see that? 16 A. I'm sorry. Could you repeat? 17 Q. There's a sentence that begins, "The most 18 disturbing"? 19 A. "The most disturbing issue was when two of 20 the employees in my office had their most recent 21 checks bounce." 22 Q. What did you do when you got that email? 23 A. We covered the checks, the payments to the 24 employees, plus any fees charged by their financial 25 institutions.</p>
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<p style="text-align: right;">Page 471</p> <p>1 Q. And because those checks had bounced, 2 correct? 3 <b>A. Yes, sir.</b> 4 MR. KAYE: Your Honor, at this time 5 plaintiffs do move to admit Exhibit 14. I will state 6 for the record that we believe that this falls within a 7 hearsay exception for similar reasons to the last 8 exhibit that we discussed, business record, and as 9 well -- anticipate the objections, but I think we know 10 what's coming. I'll let -- I'll let -- 11 MS. GALL: Your Honor, I suppose Mr. Kaye is 12 trying to admit it for the truth of the matters 13 asserted based on the one statement that Mr. Iglesias 14 has just stated. However, there are many more 15 statements in this email, and we have not laid the 16 foundation as to those statements. 17 This was written by Dr. Persaud. This is not 18 necessarily a Hygea business record, and it has not 19 been in -- the proper foundation it has not been 20 established. Dr. Persaud is not here today to testify 21 about his out-of-court statements. 22 MR. KAYE: Your Honor, the witness testified 23 that Dr. Persaud was a -- was a physician within the 24 Hygea network of -- of doctors. That is to my mind a 25 business relationship and makes this a business record.</p>	<p style="text-align: right;">Page 473</p> <p>1 the checks. So I'm going to admit it, though, on -- on 2 that basis, not for the truth of the matter asserted, 3 but for the notice that Mr. Iglesias received. 4 Q. (By Mr. Kaye) Mr. Iglesias, can you turn back 5 now to Exhibit 90. 6 <b>A. 90?</b> 7 THE COURT: Before we do that, we're going to 8 go ahead and take our morning recess. It will be 15 9 minutes, so we'll come back in 10:45. 10 MR. KAYE: Thank you. 11 THE COURT: You can step down. 12 <b>THE WITNESS: Thank you, sir.</b> 13 (Recess taken at 10:30, resuming at 10:45.) 14 THE COURT: Please be seated. 18 OC 71, 15 Arellano v. Hygea. Counsel, except for Mr. Ewing, are 16 present. 17 Mr. Kaye, go ahead with your direct. 18 Q. (By Mr. Kaye) Mr. Iglesias, before we took a 19 break there, I referred you to Exhibit 90. Do you have 20 Exhibit 90? 21 <b>A. 90, 9-0?</b> 22 Q. 9-0, yes. 23 <b>A. Yes, sir.</b> 24 Q. And this is the declaration that you made on 25 February 20th, 2018, correct?</p>
<p style="text-align: right;">Page 472</p> <p>1 Having said that, I believe that there is 2 again an alternative basis for the admission of this 3 document, which is not for the truth of the matter 4 asserted, which, once again, as to the issue that we 5 just discussed, there's, again, now been an admission 6 from the witness, so there's independent evidence of 7 that. 8 And so, once again, the hearsay issue on that 9 is to me -- is to me a moot point. This is, once 10 again, a verbal act. And the Court can certainly admit 11 it not for the truth of any matters asserted, which, 12 once again, I think the significance of which has been 13 minimized by the testimony, but, rather, as evidence 14 that this notification was sent to -- to Mr. Iglesias, 15 and that this -- now this fills in the story of what 16 prompted the action that Mr. Iglesias took. 17 THE COURT: Ms. Gall? 18 MS. GALL: If counsel wants to admit for 19 purposes of demonstrating that Mr. Iglesias received a 20 notification, I do not have any objection. If it's for 21 the truth of the matters asserted, I repeat my 22 objection. 23 THE COURT: I'm not going to accept it for 24 the truth of the matters asserted. Again, I have 25 addition -- testimony from Mr. Iglesias that addresses</p>	<p style="text-align: right;">Page 474</p> <p>1 <b>A. That is correct.</b> 2 Q. And I will direct your attention on Bates 3 page 108, document page 9, to paragraph 45 of your 4 declaration. Can you please read that into the record. 5 <b>A. "In fact, with the exception of a handful of 6 C-suite executives, all the Hygea employees" -- I'm 7 sorry -- "in fact, with the exception of a handful of 8 C-suite executives, all of Hygea's approximately 600 9 employees have always been paid on time."</b> 10 Q. And "always" is italicized in your 11 declaration, correct? 12 <b>A. Yes, sir.</b> 13 Q. Within about a week of you making that 14 declaration, there was at least one bounced paycheck, 15 correct? 16 <b>A. That is correct.</b> 17 Q. I want to turn to something from earlier. I 18 believe you testified that the completed quality of 19 earnings report could be done any day now; isn't that 20 right? 21 <b>A. Yes, sir.</b> 22 Q. Could you please go back to the first 23 exhibit, I think it's the first exhibit we looked at, 24 125. 25 <b>A. 125.</b></p>

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

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

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

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

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

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

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

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

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

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

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

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

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

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

10 **A. Yes, sir.**

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

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

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

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

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

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

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

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

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

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

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

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

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

4 **A. Yes.**

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

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

11 Q. What other names would there be?

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

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

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

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

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

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

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

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

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

3 **A. That is correct.**

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

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

10 Q. I'm getting there.

11 As to the other subsidiaries --

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

13 Q. If I can finish?

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

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

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

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

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

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

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

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

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

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

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

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

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

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

<p style="text-align: right;">Page 563</p> <p>1 document, my apologies for referring to the Bates stamps 2 that weren't on your copy throughout the exam. 3 If you can please read paragraph 4 into the 4 record. 5 <b>A. "4, Security," underscore. "The note is</b> 6 <b>secured by borrower's full and unconditional personal</b> 7 <b>guarantee, which includes but is not restricted to (1)</b> 8 <b>all of borrower's real estate (farm, house, condo),</b> 9 <b>(2) borrower's shares in Hygea Holdings Corp. (and all</b> 10 <b>of its affiliates and subsidiaries), collectively</b> 11 <b>referred to as Hygea, and (3) borrower's personal and</b> 12 <b>family trust signed by all trustees. Related</b> 13 <b>documentation including all forms of chattel and</b> 14 <b>mortgages will be perfected within 30 days."</b> 15 Q. Does Bridging know all -- about all of your 16 assets? 17 <b>A. They do now.</b> 18 Q. So you have -- you have disclosed all of your 19 assets to Bridging? 20 <b>A. I believe so.</b> 21 Q. Can you please read the handwriting in the 22 space above paragraph 4. 23 <b>A. "The security below does not include certain</b> 24 <b>insurance policies for the benefit of my sons. They</b> 25 <b>are comprised of one or more annuities for Manuel</b></p>	<p style="text-align: right;">Page 565</p> <p>1 guarantees absolutely and unconditionally and joint 2 and several (1) the full and prompt payment of 3 principal and interest and all other charges or sums 4 payable by borrower pursuant to the note and (2) and 5 the prompt and full" -- I'm sorry -- "prompt, full and 6 faithful performance by borrower of all terms and 7 conditions of the note." 8 Q. And when that refers to the note, did you 9 understand that to be referring to the note that we've 10 been looking at here? 11 <b>A. The front of Exhibit 194, yes, sir.</b> 12 Q. And the amount of that note is \$3 million? 13 <b>A. \$3 million.</b> 14 Q. And if you can look at page -- page 5 of the 15 document, you signed the note, correct? 16 <b>A. Yes, sir.</b> 17 Q. And if you can look at page 7 of the 18 document, you signed the guarantee? 19 <b>A. Yes, sir.</b> 20 MR. KAYE: No further questions, Your Honor. 21 THE COURT: Ms. Gall? Do you want to 22 cross-examine now? 23 MS. GALL: I do, Your Honor, but I'd like to 24 reserve my right to recall Mr. Iglesias on direct. 25 THE COURT: You will have that right.</p>
<p style="text-align: right;">Page 564</p> <p>1 <b>Alejandro Iglesias and whole life policy for Carlos</b> 2 <b>Andreas Iglesias."</b> 3 Q. And then you initialed that? 4 <b>A. Yes.</b> 5 Q. Who wrote that? 6 <b>A. I wrote it in.</b> 7 Q. And you underlined the word "not"; isn't that 8 correct? 9 <b>A. That's correct.</b> 10 Q. And can you turn to the first page, which is 11 page 6 of the personal guarantee. 12 <b>A. Yes.</b> 13 Q. And can you please read the first sentence of 14 that document into the record. 15 <b>A. "In consideration of and as an inducement</b> 16 <b>for the granting, execution, and delivery of the</b> 17 <b>promissory note, dated March 10, 2018 (Note) by Manny</b> 18 <b>Iglesias (Borrower), to Bridging Finance, Inc.</b> 19 <b>(Lender), and in further consideration of the sum of</b> 20 <b>\$10 and other good and value consideration paid by</b> 21 <b>lender to the undersigned, the receipt and sufficiency</b> 22 <b>of which is hereby acknowledged, Manny Iglesias</b> 23 <b>(Guarantor and hereafter referred to collectively as</b> 24 <b>Guarantors) having an address of 8750 N.W. 36th</b> 25 <b>Street, Suite 300, Doral, Florida 33178, hereby</b></p>	<p style="text-align: right;">Page 566</p> <p>1 CROSS-EXAMINATION 2 BY MS. GALL: 3 Q. Good afternoon, Mr. Iglesias. Could you 4 please, if you have it -- do you have the volume 3 with 5 Exhibit 90 in front of you? 6 <b>A. No, I have number 4.</b> 7 MS. GALL: May I approach the witness, 8 Your Honor? 9 THE COURT: Yes. 10 Q. (By Ms. Gall) Mr. Iglesias, would you turn to 11 Exhibit 90 and specifically to the page Bates stamped 12 NV5000111. 13 <b>A. I'm sorry. 90?</b> 14 Q. Correct. Exhibit 90. 15 <b>A. Which -- what number, ma'am?</b> 16 Q. NV5000111. It's page 12 of the document. 17 <b>A. Yes.</b> 18 Q. Mr. Iglesias, do you remember earlier 19 testifying today regarding an email from Dr. Persaud to 20 yourself and a few others? 21 <b>A. Yes.</b> 22 Q. And do you recall testifying as to the 23 accusation made in the email regarding bounced checks? 24 <b>A. Yes.</b> 25 Q. And do you remember the date of that email</p>

<p style="text-align: right;">Page 567</p> <p>1 being February 27th, 2018?</p> <p>2 <b>A. Yes.</b></p> <p>3 Q. Mr. Iglesias, what is the date of your</p> <p>4 declaration?</p> <p>5 <b>A. February 20th, 2018.</b></p> <p>6 Q. And so if you look at paragraph 74 on page 12</p> <p>7 of your declaration, where you state, "Hygea is not</p> <p>8 aware of any of its checks bouncing or any reason a</p> <p>9 check might bounce, any errors in the processing of one</p> <p>10 of Hygea's checks is not due to insufficiency of</p> <p>11 funds," was that a true and correct statement as of</p> <p>12 February 20th, 2018?</p> <p>13 <b>A. Yes. I checked both for '17 and '18. We</b></p> <p>14 <b>issued more than 15,000 payroll checks in '17, 2017.</b></p> <p>15 <b>One check bounced, but not for insufficiency of funds,</b></p> <p>16 <b>a technicality with the bank in 2017. And through</b></p> <p>17 <b>February 20th of 2018, no payroll check, I believe for</b></p> <p>18 <b>that matter any other check, had bounced in Hygea.</b></p> <p>19 Q. Do you have an explanation for why certain</p> <p>20 paper checks may have bounced after February 20th,</p> <p>21 2018?</p> <p>22 <b>A. Certain practices that were cash flow</b></p> <p>23 <b>positive, we swept all the practice revenue to Hygea</b></p> <p>24 <b>Health Holdings and from there issued payroll. And on</b></p> <p>25 <b>Wednesday and Thursday before the Friday --</b></p>	<p style="text-align: right;">Page 569</p> <p>1 <b>A. It's the contract between Simply Healthcare</b></p> <p>2 <b>Plans, which is an HMO owned by Anthem, and Medicare</b></p> <p>3 <b>Quality Medical Centers, which is a wholly-owned</b></p> <p>4 <b>subsidiary of Hygea.</b></p> <p>5 Q. Mr. Iglesias, would you please turn to the</p> <p>6 page marked HYGEA_000022.</p> <p>7 <b>A. The pages here are not marked.</b></p> <p>8 Q. You're right. Would you please turn to the</p> <p>9 page that begins with the Section 9.2.</p> <p>10 <b>A. Yes.</b></p> <p>11 Q. And do you recall earlier when plaintiffs'</p> <p>12 counsel had you read into the record the section</p> <p>13 beginning 9.4?</p> <p>14 <b>A. Yes.</b></p> <p>15 Q. Would you please turn to the next page to</p> <p>16 Section 9.6.</p> <p>17 <b>A. Yes.</b></p> <p>18 Q. Would you please read Section 9.6 into the</p> <p>19 record.</p> <p>20 <b>A. Yes, ma'am. "Insolvency, bankruptcy,"</b></p> <p>21 <b>underlined. "This agreement shall terminate (1) on</b></p> <p>22 <b>the filing of a voluntary petition in bankruptcy or</b></p> <p>23 <b>for reorganization under any bankruptcy law, or a</b></p> <p>24 <b>petition for the appointment of a receiver of all or</b></p> <p>25 <b>any substantial portion of the assets of either party,</b></p>
<p style="text-align: right;">Page 568</p> <p>1 February 23rd payroll, we were estopped by the doctors</p> <p>2 who were managing the Cohen practice, the Gaylis</p> <p>3 practice, and the Horowitz practice from sweeping</p> <p>4 money from those accounts to complete the payroll.</p> <p>5 So when we issued the approximate 600 checks</p> <p>6 for the 26th -- for the 23rd, we bounced 28 checks.</p> <p>7 Since then, we have bounced two other payroll checks</p> <p>8 that were held out of sequence. We have very tight</p> <p>9 cash management we've been going through. But those</p> <p>10 are the only payroll checks that have bounced.</p> <p>11 Q. With respect to the payroll checks that have</p> <p>12 bounced since February 20th, 2018, how has Hygea</p> <p>13 addressed that issue?</p> <p>14 <b>A. The payments were made to the employees with</b></p> <p>15 <b>additional monies to cover NSF charges, etc., within</b></p> <p>16 <b>24 hours, maximum 48 in one case, but immediately upon</b></p> <p>17 <b>hearing that a check had bounced.</b></p> <p>18 Q. Thank you very much. You can put that</p> <p>19 exhibit away. Could I have -- you can put that exhibit</p> <p>20 away, but please keep the exhibit binder.</p> <p>21 MS. GALL: Could I have volume 2, please.</p> <p>22 Q. (By Ms. Gall) Mr. Iglesias, would you please</p> <p>23 turn to Exhibit 70, please.</p> <p>24 <b>A. Yes.</b></p> <p>25 Q. Mr. Iglesias, what is this document?</p>	<p style="text-align: right;">Page 570</p> <p>1 or any voluntary or involuntary steps to dissolve</p> <p>2 unless such steps to dissolve are promptly reversed or</p> <p>3 voided; 2) upon the consent by either party of an</p> <p>4 order for relief under the federal bankruptcy laws or</p> <p>5 the failure to vacate such an order for relief within</p> <p>6 ninety days (90) days from and after the date of entry</p> <p>7 thereof; (3) upon the entry of an order, judgment, or</p> <p>8 decree adjudging a party as bankrupt or insolvent or</p> <p>9 which appoints or provides for the taking of</p> <p>10 possession by a receiver, trustee, liquidator, or</p> <p>11 similar official for any of the property of a party</p> <p>12 and any such order, judgment, or decree continuing</p> <p>13 unstayed and, in effect, for a period of 90 days."</p> <p>14 Q. Thank you, Mr. Iglesias.</p> <p>15 Would you please turn to Exhibit 71, which is</p> <p>16 in the same volume. Mr. Iglesias, do you recognize</p> <p>17 this document?</p> <p>18 <b>A. This is the Freedom contract with AllCare.</b></p> <p>19 Q. And --</p> <p>20 <b>A. HMO contract. Sorry.</b></p> <p>21 Q. Understood. I apologize.</p> <p>22 And does your version of this document have</p> <p>23 Bates stamps?</p> <p>24 <b>A. Yes, it does.</b></p> <p>25 Q. Would you please turn to the page marked</p>

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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1 that if you want.  
2 MS. GALL: No, Your Honor. I don't at this  
3 time.  
4 MR. KAYE: No, Your Honor.  
5 THE COURT: Okay. You can step down. We'll  
6 adjourn for the day. What's the time?  
7 COURT CLERK: Plaintiffs have 1 hour, 52  
8 minutes, and 55 seconds. Defendants have 9 hours, 12  
9 minutes, and 24 seconds.  
10 THE COURT: Okay. We will start up at 9 in  
11 the morning.  
12 (The proceedings concluded at 5:00.)  
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1 C E R T I F I C A T E  
2 STATE OF NEVADA )  
3 COUNTY OF CLARK )  
4 I, Daren S. Bloxham, a Certified Shorthand  
Reporter and Registered Professional Reporter, do  
5 hereby certify: That I reported the proceedings  
commencing on the 16th of May, 2018.  
6 That I thereafter transcribed my said  
shorthand notes into typewriting; and that the  
7 typewritten transcript is a complete, true, and  
accurate transcription of my said shorthand notes.  
8 I further certify that I am not a relative or  
employee of counsel of any of the parties, nor a  
9 relative or employee of the parties involved in said  
action, nor a person financially interested in the  
10 action.  
11 Witness my signature at Las Vegas, Nevada, on  
this 20th day of May, 2018.  
12  
13  
14  
15 Daren Bloxham  
DAREN S. BLOXHAM  
C.C.R. #685  
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# EXHIBIT C

**IN THE SUPREME COURT OF THE STATE OF 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; HILLCREST  
CENTER SV II LLC; HILLCREST CENTER SV III, LLC;  
LEONITE CAPITAL LLC; IBH CAPITAL LLC;  
N5HYG LLC; and RYMSSG GROUP, LLC,

Electronically Filed  
Oct 18 2018 04:14 p.m.  
Elizabeth A. Brown  
Clerk of Supreme Court  
No. 76969

Appellants,

v.

HYGEA HOLDINGS CORP.; MANUEL  
IGLESIA, an individual; EDWARD MOFFLY,  
an individual; DANIEL T. MCGOWAN, an  
individual; FRANK KELLY, an individual;  
MARTHA MAIRENA CASTILLO, an individual;  
GLENN MARRICHI, M.D.; an individual, KEITH  
COLLINS, M.D.; an individual, JACK MANN M.D.;  
an individual, and JOSEPH CAMPANELLA, an  
individual.

Respondents.

**APPELLANTS' CIVIL APPEAL DOCKETING STATEMENT**

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*ATTORNEYS FOR APPELLANTS*

## IN THE SUPREME COURT OF THE STATE OF NEVADA

INDICATE FULL CAPTION:

See previous page and attachment

No. 76969

### DOCKETING STATEMENT CIVIL APPEALS

#### GENERAL INFORMATION

Appellants must complete this docketing statement in compliance with NRAP 14(a). The purpose of the docketing statement is to assist the Supreme Court in screening jurisdiction, identifying issues on appeal, assessing presumptive assignment to the Court of Appeals under NRAP 17, scheduling cases for oral argument and settlement conferences, classifying cases for expedited treatment and assignment to the Court of Appeals, and compiling statistical information.

#### WARNING

This statement must be completed fully, accurately and on time. NRAP 14(c). The Supreme Court may impose sanctions on counsel or appellant if it appears that the information provided is incomplete or inaccurate. *Id.* Failure to fill out the statement completely or to file it in a timely manner constitutes grounds for the imposition of sanctions, including a fine and/or dismissal of the appeal.

A complete list of the documents that must be attached appears as Question 27 on this docketing statement. Failure to attach all required documents will result in the delay of your appeal and may result in the imposition of sanctions.

This court has noted that when attorneys do not take seriously their obligations under NRAP 14 to complete the docketing statement properly and conscientiously, they waste the valuable judicial resources of this court, making the imposition of sanctions appropriate. See KDI Sylvan Pools v. Workman, 107 Nev. 340, 344, 810 P.2d 1217, 1220 (1991). Please use tab dividers to separate any attached documents.

1. Judicial District First Department II

County \_\_\_\_\_ Judge James E. Wilson, Jr.

District Ct. Case No. 18 OC 00071 1B

**2. Attorney filing this docketing statement:**

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Client(s) See Attachment

If this is a joint statement by multiple appellants, add the names and addresses of other counsel and the names of their clients on an additional sheet accompanied by a certification that they concur in the filing of this statement.

**3. Attorney(s) representing respondents(s):**

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Client(s) Same as above

(List additional counsel on separate sheet if necessary)

**4. Nature of disposition below (check all that apply):**

- |  |   |
|--|---|
| <input checked="" type="checkbox"/> Judgment after bench trial | <input checked="" type="checkbox"/> Dismissal:  |
| <input type="checkbox"/> Judgment after jury verdict           | <input checked="" type="checkbox"/> Lack of jurisdiction                                |
| <input type="checkbox"/> Summary judgment                      | <input type="checkbox"/> Failure to state a claim                                       |
| <input type="checkbox"/> Default judgment                      | <input type="checkbox"/> Failure to prosecute   |
| <input type="checkbox"/> Grant/Denial of NRCP 60(b) relief     | <input type="checkbox"/> Other (specify): _____   |
| <input type="checkbox"/> Grant/Denial of injunction            | <input type="checkbox"/> Divorce Decree:  |
| <input type="checkbox"/> Grant/Denial of declaratory relief    | <input type="checkbox"/> Original <input type="checkbox"/> Modification                 |
| <input type="checkbox"/> Review of agency determination        | <input checked="" type="checkbox"/> Other disposition (specify): <u>Attorneys' fees</u> |

**5. Does this appeal raise issues concerning any of the following?**

- ☐ Child Custody
- ☐ Venue
- ☐ Termination of parental rights

**6. Pending and prior proceedings in this court.** List the case name and docket number of all appeals or original proceedings presently or previously pending before this court which are related to this appeal:

Hygea Holdings Corp. v. District Court (Arellano); No. 75215; original writ proceeding; writ denied.

**7. Pending and prior proceedings in other courts.** List the case name, number and court of all pending and prior proceedings in other courts which are related to this appeal (e.g., bankruptcy, consolidated or bifurcated proceedings) and their dates of disposition:

See attached.

**8. Nature of the action.** Briefly describe the nature of the action and the result below:

This is an action solely seeking appointment of a receiver on an emergency and expedited basis. The district court denied the claim on jurisdictional grounds and awarded attorneys' fees against Plaintiffs in the amount of more than \$700,000.

**9. Issues on appeal.** State concisely the principal issue(s) in this appeal (attach separate sheets as necessary):

First issue on appeal is whether the district court erred when it denied Plaintiffs' claim for the appointment of a receiver under NRS 78.650 on the basis that the court had no jurisdiction to hear the claim because the Plaintiffs did not provide evidence that they constituted 10 percent of the outstanding shares in Hygea.

Second issue on appeal is whether the district court erred when it dismissed Plaintiffs' claim for the appointment of a receiver under NRS 32.010 on the basis that there was no other action pending as an ancillary proceeding.

Third issue on appeal is whether the district court erred when it dismissed Plaintiffs' claim for the appointment of a receiver under NRS 78.630 on the basis that there was no evidence that Hygea's business had been and was being conducted at a great loss that was greatly prejudicial to the interests of its creditors or stockholders.

Fourth issue on appeal is whether the district court erred when it awarded attorneys' fees to Defendants.

**10. Pending proceedings in this court raising the same or similar issues.** If you are aware of any proceedings presently pending before this court which raises the same or similar issues raised in this appeal, list the case name and docket numbers and identify the same or similar issue raised:

We are not aware of any such cases.

**11. Constitutional issues.** If this appeal challenges the constitutionality of a statute, and the state, any state agency, or any officer or employee thereof is not a party to this appeal, have you notified the clerk of this court and the attorney general in accordance with NRAP 44 and NRS 30.130?

☒ N/A

☐ Yes

☐ No

If not, explain:

**12. Other issues.** Does this appeal involve any of the following issues?

☐ Reversal of well-settled Nevada precedent (identify the case(s))

☐ An issue arising under the United States and/or Nevada Constitutions

☒ A substantial issue of first impression

☐ An issue of public policy

☐ An issue where en banc consideration is necessary to maintain uniformity of this court's decisions

☐ A ballot question

If so, explain: This appeal involves substantial issues of first impression regarding requirements in receivership cases and awards of attorneys' fees in such cases.

**13. Assignment to the Court of Appeals or retention in the Supreme Court.** Briefly set forth whether the matter is presumptively retained by the Supreme Court or assigned to the Court of Appeals under NRAP 17, and cite the subparagraph(s) of the Rule under which the matter falls. If appellant believes that the Supreme Court should retain the case despite its presumptive assignment to the Court of Appeals, identify the specific issue(s) or circumstance(s) that warrant retaining the case, and include an explanation of their importance or significance:

The case is retained by the Supreme Court pursuant to NRAP 17(a)(10) as an issue of first impression and NRAP 17(a)(11) as an issue of statewide public importance. The substantive issue of first impression, with statewide importance, deals with the correct interpretation of the ten-percent stock ownership requirement of NRS 78.650, as well as other issues involving interpretation of that statute, and correct standards for attorneys' fee awards in receivership cases.

**14. Trial.** If this action proceeded to trial, how many days did the trial last? 4

Was it a bench or jury trial? Consolidated evidentiary hearing and bench trial

**15. Judicial Disqualification.** Do you intend to file a motion to disqualify or have a justice recuse him/herself from participation in this appeal? If so, which Justice?  
No.

## TIMELINESS OF NOTICE OF APPEAL

**16. Date of entry of written judgment or order appealed from** See attachment

If no written judgment or order was filed in the district court, explain the basis for seeking appellate review:

**17. Date written notice of entry of judgment or order was served** See attachment

Was service by:

☐ Delivery

☒ Mail/electronic/fax

**18. If the time for filing the notice of appeal was tolled by a post-judgment motion (NRCP 50(b), 52(b), or 59)**

(a) Specify the type of motion, the date and method of service of the motion, and the date of filing.

☐ NRCP 50(b)      Date of filing \_\_\_\_\_

☒ NRCP 52(b)      Date of filing Filed and served by mail on 6/18/18

☒ NRCP 59      Date of filing Filed and served by mail on 6/18/18

**NOTE: Motions made pursuant to NRCP 60 or motions for rehearing or reconsideration may toll the time for filing a notice of appeal. See AA Primo Builders v. Washington, 126 Nev. \_\_\_\_, 245 P.3d 1190 (2010).**

(b) Date of entry of written order resolving tolling motion 8/9/18; see attachment

(c) Date written notice of entry of order resolving tolling motion was served 8/14/18

Was service by:

☐ Delivery

☒ Mail

**19. Date notice of appeal filed** September 12, 2018

---

If more than one party has appealed from the judgment or order, list the date each notice of appeal was filed and identify by name the party filing the notice of appeal:

**20. Specify statute or rule governing the time limit for filing the notice of appeal, e.g., NRAP 4(a) or other**

See attachment.

---

**SUBSTANTIVE APPEALABILITY**

**21. Specify the statute or other authority granting this court jurisdiction to review the judgment or order appealed from:**

(a)

- |  |                                       |
|--|---------------------------------------|
| <input checked="" type="checkbox"/> NRAP 3A(b)(1)                                | <input type="checkbox"/> NRS 38.205   |
| <input type="checkbox"/> NRAP 3A(b)(2)   | <input type="checkbox"/> NRS 233B.150 |
| <input type="checkbox"/> NRAP 3A(b)(3)   | <input type="checkbox"/> NRS 703.376  |
| <input checked="" type="checkbox"/> Other (specify) <u>NRAP 3A(b)(4) and (8)</u> |                                       |
- 

(b) Explain how each authority provides a basis for appeal from the judgment or order:

See attachment

**22. List all parties involved in the action or consolidated actions in the district court:**

(a) Parties:

See Attachment

(b) If all parties in the district court are not parties to this appeal, explain in detail why those parties are not involved in this appeal, *e.g.*, formally dismissed, not served, or other:

**23. Give a brief description (3 to 5 words) of each party's separate claims, counterclaims, cross-claims, or third-party claims and the date of formal disposition of each claim.**

NRS 78.650: Claim for appointment of receiver, denied at May 18, 2018 evidentiary hearing and in Findings of Fact and Conclusions of Law filed on May 30, 2018

NRS 32.010: Claim for appointment of receiver, dismissed on May 16, 2018 at the evidentiary hearing

NRS 78.630: Claim for appointment of receiver, dismissed on May 16, 2018 at the evidentiary hearing

**24. Did the judgment or order appealed from adjudicate ALL the claims alleged below and the rights and liabilities of ALL the parties to the action or consolidated actions below?**

☒ Yes, but see attachment

☐ No

**25. If you answered "No" to question 24, complete the following:**

(a) Specify the claims remaining pending below:

(b) Specify the parties remaining below:

(c) Did the district court certify the judgment or order appealed from as a final judgment pursuant to NRCP 54(b)?

☐ Yes

☐ No

(d) Did the district court make an express determination, pursuant to NRCP 54(b), that there is no just reason for delay and an express direction for the entry of judgment?

☐ Yes

☐ No

**26. If you answered "No" to any part of question 25, explain the basis for seeking appellate review (*e.g.*, order is independently appealable under NRAP 3A(b)):**

**27. Attach file-stamped copies of the following documents:**

- The latest-filed complaint, counterclaims, cross-claims, and third-party claims
- Any tolling motion(s) and order(s) resolving tolling motion(s)
- Orders of NRCP 41(a) dismissals formally resolving each claim, counterclaims, cross-claims and/or third-party claims asserted in the action or consolidated action below, even if not at issue on appeal
- Any other order challenged on appeal
- Notices of entry for each attached order

## VERIFICATION

I declare under penalty of perjury that I have read this docketing statement, that the information provided in this docketing statement is true and complete to the best of my knowledge, information and belief, and that I have attached all required documents to this docketing statement.

all appellants  
Name of appellant

ROBERT L. EISENBERG  
Name of counsel of record

Oct. 18, 2018  
Date

Robert L. Eisenberg  
Signature of counsel of record

Washoe County NV  
State and county where signed

## CERTIFICATE OF SERVICE

I certify that on the \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_, I served a copy of this completed docketing statement upon all counsel of record:

- ☐ By personally serving it upon him/her; or
- ☐ By mailing it by first class mail with sufficient postage prepaid to the following address(es): (NOTE: If all names and addresses cannot fit below, please list names below and attach a separate sheet with the addresses.)

**SEE ATTACHED**

Dated this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_

\_\_\_\_\_  
Signature

CERTIFICATE OF SERVICE

I certify that I am an employee of Lemons, Grundy & Eisenberg and that on this date the foregoing Docketing Statement was filed electronically with the Clerk of the Nevada Supreme Court, and therefore electronic service was made in accordance with the master service list as follows:

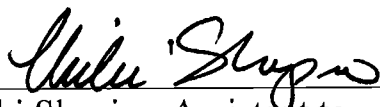
Maria Gall  
James Puzey  
Kyle Ewing  
Joel Tasca  
Tara Zimmerman  
G. Albright  
D. Albright  
Clark Vellis  
Severin Carlson

I further certify that on this date I served a copy of the foregoing, postage prepaid, by U.S. mail to:

Christopher Kaye  
The Miller Law Firm  
950 W. University Drive, Suite 300  
Rochester, Michigan 48307

David Wasick (Settlement Judge)  
P.O. Box 568  
Glenbrook, Nevada 89413

DATED: 10/18/18

  
\_\_\_\_\_  
Vicki Shapiro, Assistant to  
Robert L. Eisenberg

## **ATTACHMENT TO APPELLANTS' DOCKETING STATEMENT**

### **FULL CAPTION:**

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;  
LEONITE CAPITAL LLC; IBH CAPITAL LLC;  
N5HYG LLC; and RYMSSG GROUP, LLC,

Appellants,

v.

HYGEA HOLDINGS CORP.; MANUEL  
IGLESIA, an individual; EDWARD MOFFLY,  
an individual; DANIEL T. MCGOWAN, an  
individual; FRANK KELLY, an individual;  
MARTHA MAIRENA CASTILLO, an individual;  
GLENN MARRICHI, M.D.; an individual, KEITH  
COLLINS, M.D.; an individual, JACK MANN M.D.;  
an individual, and JOSEPH CAMPANELLA, an  
individual.

Respondents.

### **2. Clients of attorney filing this docket statement:**

Client(s): 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; LEONITE CAPITAL LLC; IBH  
CAPITAL LLC; N5HYG LLC; and RYMSSG GROUP, LLC

### **3. Clients of attorney(s) representing respondents(s):**

Client(s): HYGEA HOLDINGS CORP.; MANUEL IGLESIA, an individual; EDWARD MOFFLY, an individual; DANIEL T. MCGOWAN, an individual; FRANK KELLY, an individual; MARTHA MAIRENA CASTILLO, an individual; GLENN MARRICHI, M.D., an individual; KEITH COLLINS, M.D., an individual; JACK MANN M.D., an individual, and JOSEPH CAMPANELLA, an individual

**7. Pending and prior proceedings in other courts:**

The present appeal stems from an emergency action seeking solely the appointment of a receiver. Some of the parties to this appeal are subject to other pending litigation:

a. N5HYG, LLC, a Michigan Company, and Nevada 5, Inc., a Nevada Corporation v. Hygea Holdings Corp., et al, Case No. A-17-762664-B, District Court of Clark County, Dept. No. 27. Case is still pending.

b. Claudio Arellano, individually, v. Hygea Holdings Corp., et al, Case No. 2017-019495-CA-01, Circuit Court of the Eleventh Judicial Circuit in and for Miami-Dade County, Florida. Case is still pending

**16. Date of entry of written judgment or order appealed from:**

Findings of Fact and Conclusions of Law: May 30, 2018

Order awarding attorneys' fees: August 13, 2018

Amended Order awarding attorney's fees: October 10, 2018 (appeal to be filed)

**17. Date written notice of entry of judgment or order was served:**

Findings of Fact etc.: May 31, 2018

Attorneys' Fees order: August 20, 2018

Amended Attorneys' Fees order: October 11, 2018

**18. If the time for filing the notice of appeal was tolled by a post-judgment motion (NRCP 50(b), 52(b) or 59):**

The post-judgment tolling motion was a Motion to Amend the Findings of Fact and Conclusions of Law filed and serviced by mail on June 18, 2018. A written order resolving the tolling motion was entered on August 9, 2018. Defendants served an unstamped copy of the notice of entry of order on August 14, 2018.

**20. Statute or rule governing time limit for notice of appeal**

Timeliness of the notice of appeal is governed by NRAP 4(a)(1) [30 days after notice of entry of order being appealed] and 4(a)(4) [30 days after notice of entry of order on tolling motion]. This appeal was filed within 30 days after notice of entry of the order awarding attorneys' fees, and within 30 days after notice of entry of the order on the tolling motion.

The court should note that the order on the tolling motion granted the motion in part, and denied it in part. The order indicated that the court intended to enter an Amended Findings of Fact and Conclusions of Law. This would have constituted an amended judgment under NRAP 4(a)(5). The court has never entered the amended judgment. Additionally, the attorneys' fee order indicated that the court

would be determining additional post-judgment fees to be added to the award. The amended order awarding additional attorneys' fees was entered on October 10, 2018, and appellants will be filing an amended notice of appeal to include appeal of that amended order.

Under these circumstances, the record was unclear as to whether the time to appeal already commenced on the primary order/judgment and on the attorneys' fee order. Consequently, footnote 1 in appellants' notice of appeal indicated that the notice was being filed as a protective notice of appeal under *Fernandez v. Infusaid Corp.*, 110 Nev. 187, 192-93, 871 P.2d 29 (1994).

**21(b). Explanation of appealability**

The order entered on May 30, 2018, was the final order [judgment] in the receivership action, and is therefore an appealable final judgment under NRAP 3A(b)(1) **and** an appealable order refusing to appoint a receiver under NRAP 3A(b)(4). The order awarding attorneys' fees is an appealable special order after final judgment under NRAP 3A(b)(8). *Winston Products v. DeBoer*, 122 Nev. 517, 525, 124 P.3d 726, 731 (2006).

**22(a). List all parties involved in the action or consolidated actions in the district court:**

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  
LEONITE CAPITAL LLC  
IBH CAPITAL LLC  
N5HYG LLC  
RYMSSB GROUP, LLC

Defendants:

HYGEA HOLDINGS CORP.  
MANUEL IGLESIA  
EDWARD MOFFLY  
DANIEL T. MCGOWAN  
FRANK KELLY  
MARTHA MAIRENA CASTILLO  
GLENN MARRICHI, M.D.  
KEITH COLLINS, M.D.  
JACK MANN M.D.  
JOSEPH CAMPANELLA

**24. Did the judgment or order appealed from adjudicate ALL the claims alleged below and the rights and liabilities of ALL the parties to the action or consolidated action below?**

The Receivership Action Judgment adjudicated all of the receivership claims involving all of the parties cabined within that distinct claim. But it does not – and was never intended to – adjudicate any claims, rights, or liabilities beyond the distinct question of whether a receivership was warranted. The court found that it lacked jurisdiction to consider appointment of a receiver on May 18, 2018.

**27. Attached List of documents:**

- First Amended Complaint for Appointment of Receiver
- Findings of Fact and Conclusions of Law; and Notice of Entry of Findings of Fact and Conclusions of Law
- Order Granting Defendants' Motion for Attorneys' Fees; and Notice of Entry of Order Granting Defendants' Motion for Attorneys' Fees
- Order Granting in Part and Denying in Part Plaintiffs' Motion to Amend Findings of Fact and Conclusions of Law; and Notice of Entry of Entry of Order Granting in Part and Denying in Part Plaintiff's Motion to Amend Findings of Fact and Conclusions of Law (not stamped)
- Amended Order Granting Defendants' Motion for Attorneys' Fees; Notice of Entry of Amended Order Granting Defendants' Motion for Attorneys' Fees

**ATTACHMENTS TO NO. 27**

**ATTACHMENTS TO NO. 27**

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Telephone: 248-841-2200  
*Attorneys for Plaintiff N5HYG, LLC*

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 I 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,

Plaintiffs,

v.

HYGEA HOLDINGS CORP.; MANUEL  
IGLESIAS, an individual; EDWARD

Case No.: 18 OC 00071 1B

Dept. No.: II

**FIRST AMENDED COMPLAINT FOR  
APPOINTMENT OF RECEIVER**

RECD & FILED  
2018 APR 19 AM 11:06  
SUSAN NEWMETTER  
CLERK  
BY \_\_\_\_\_

1 MOFFLY, an individual; DANIEL T.  
2 MCGOWAN, an individual; FRANK KELLY;  
3 MARTHA MAIRENA CASTILLO, an  
4 individual; GLENN MARRICHI, M.D., an  
5 individual; KEITH COLLINS, M.D., an  
6 individual; JACK MANN, M.D., an individual;  
7 and JOSEPH CAMPANELLA, an individual,

Defendants.

8 Plaintiffs CLAUDIO ARELLANO; CROWN EQUITY'S LLC; FIFTH AVENUE 2254  
9 LLC; HALEVI ENTERPRISES LLC; HALEVI SV 1 LLC; HALEVI SV 2 LLC; HILLCREST  
10 ACQUISITIONS LLC; HILLCREST CENTER SV I LLC; HILLCREST CENTER SV II LLC;  
11 HILLCREST CENTER SV III LLC; IBH CAPITAL LLC; LEONITE CAPITAL LLC; N5HYG  
12 LLC; and RYMSSG GROUP, LLC, state for their Complaint as follows:

13 1. Defendant HYGEA HOLDINGS CORP. ("Hygea") is a Nevada corporation. Its  
14 business is acquiring and managing physician practices and similar medical providers.

15 2. Defendant MANUEL IGLESIAS ("Iglesias") is a citizen and resident of the State  
16 of Florida. He is a member of Hygea's Board of Directors.

17 3. Defendant EDWARD MOFFLY ("Moffly") is a citizen and resident of the State of  
18 Florida. He is a member of Hygea's Board of Directors.

19 4. Defendant DANIEL T. MCGOWAN ("McGowan") is a citizen and resident of the  
20 State of New York. He is a member of Hygea's Board of Directors.

21 5. Defendant FRANK KELLY ("Kelly") is a citizen and resident of the State of  
22 Georgia. He is a member of Hygea's Board of Directors.

23 6. Defendant MARTHA MAIRENA CASTILLO ("Castillo") is a citizen and resident  
24 of the State of Florida. She is a member of Hygea's Board of Directors.

25 7. Defendant GLENN MARRICHI, M.D. ("Marrichi") is a citizen and resident of the  
26 State of Georgia. He is a member of Hygea's Board of Directors.

27 8. Defendant KEITH COLLINS, M.D. ("Collins") is a citizen and resident of the State  
28 of Florida. He is a member of Hygea's Board of Directors.

1           9. Defendant JACK MANN, M.D. ("Mann") is a citizen and resident of the State of  
2 New York. He is a member of Hygea's Board of Directors.

3           10. Defendant JOSEPH CAMPANELLA ("Campanella") is a citizen and resident of  
4 the State of California. He is a member of Hygea's Board of Directors.

5           11. Plaintiff CLAUDIO ARELLANO ("Arellano") is an individual residing in the State  
6 of Florida.

7           12. Plaintiff Arellano paid \$2,813,200 for his 2,813,200 shares of Hygea pursuant to a  
8 December 2014 Stock Purchase Agreement (the "Arellano Stock Purchase Agreement"). **Exhibit**  
9 **"1,"** pp. 10-11. Pursuant to the terms of the Arellano Stock Purchase Agreement, Arellano holds  
10 2,313,200 shares in Hygea as of the date of this filing; the balance of 500,000 shares is due to be  
11 issued to him in December 2018.

12           13. N5HYG paid \$30 million for its shares of Hygea in an October 2016 Stock  
13 Purchase Agreement (the "N5HYG Stock Purchase Agreement"). Hygea represented the  
14 23,437,500 shares that N5HYG bought to represent 8.57 percent of the shares of Hygea.

15           14. All Plaintiffs are aware of an action that was initially filed in this Court on October  
16 5<sup>th</sup>, 2017. It was assigned to Department 25 and received case number A-17-762664-B. One of the  
17 defendants removed the case to Federal District Court of Nevada, where it is currently pending at  
18 *N5HYG, LLC, et al v. Hygea Holdings Corp., et al*, No. 2:17-cv-02870-JCM-PAL, Judge James  
19 C. Mahan.

20           15. In that action, Defendant Hygea filed a motion to dismiss the plaintiffs' complaint  
21 [Dkt. # 11], to which Hygea attached as Exhibit A the aforesaid Stock Purchase Agreement  
22 stating that Hygea sold to N5HYG "Twenty-Three Million Four Hundred Thirty-Seven Thousand  
23 Five Hundred (23,437,500) shares of Common Stock, constituting 8.57% of all of the issued and  
24 outstanding Common Stock . . . ." **Exhibit "2,"** p. 1.

25           16. Plaintiff Fifth Avenue 2254, LLC ("Fifth Avenue") is a limited liability company  
26 organized under the laws of the State of New York.

27           17. Plaintiff Fifth Avenue is a registered shareholder of Hygea possessing 100,000  
28 shares. **Exhibit "3,"** p. 1.

1 18. Plaintiff Hillcrest Acquisitions, LLC ("Hillcrest Acquisitions") is a limited liability  
2 company organized under the laws of the State of New York.

3 19. Plaintiff Hillcrest Acquisitions is a registered shareholder of Hygea possessing  
4 250,000 shares. **Exhibit "3,"** p. 2.

5 20. Plaintiff Hillcrest Center SV I, LLC ("Hillcrest SV I") is a limited liability company  
6 organized under the laws of the State of New York.

7 21. Plaintiff Hillcrest Center SV I is a registered shareholder of Hygea possessing  
8 250,000 shares, for which it paid \$125,000. **Exhibit "3,"** p. 3.

9 22. Plaintiff Hillcrest Center SV II, LLC ("Hillcrest SV II") is a limited liability  
10 company organized under the laws of the State of New York.

11 23. Plaintiff Hillcrest Center SV II is a registered shareholder of Hygea possessing  
12 250,000 shares, for which it paid \$125,000. **Exhibit "3,"** p. 4.

13 24. Plaintiff Hillcrest Center SV III, LLC ("Hillcrest SV III") is a limited liability  
14 company organized under the laws of the State of New York.

15 25. Plaintiff Hillcrest Center SV III is a registered shareholder of Hygea possessing  
16 500,000 shares, for which it paid \$125,000. **Exhibit "3,"** p. 5.

17 26. Plaintiff Leonite Capital, LLC ("Leonite") is a limited liability company organized  
18 under the laws of the State of Delaware.

19 27. Plaintiff Leonite is a registered shareholder of Hygea possessing 500,000 shares,  
20 for which it paid \$125,000. **Exhibit "3,"** p. 6.

21 28. Plaintiff Crown Equity's LLC ("Crown") is a limited liability company organized  
22 under the laws of the State of Delaware.

23 29. Plaintiff Crown is a registered shareholder of Hygea possessing 250,000 shares.

24 30. Plaintiff Halevi Enterprises, LLC ("Halevi Enterprises") is a limited liability  
25 company organized under the laws of the State of Delaware.

26 31. Plaintiff Halevi Enterprises is a registered shareholder of Hygea possessing  
27 500,000 shares.  
28

32. Plaintiff Halevi SV1, LLC ("Halevi SV1") is a limited liability company organized under the laws of the State of Delaware.

33. Plaintiff Halevi SV1 is a registered shareholder of Hygea possessing 250,000 shares.

34. Plaintiff Halevi SV2, LLC ("Halevi SV2") is a limited liability company organized under the laws of the State of Delaware.

35. Plaintiff Halevi SV2 is a registered shareholder of Hygea possessing 250,000 shares.

36. Plaintiff Ibh Capital LLC ("Ibh") is a limited liability company organized under the laws of the State of Delaware.

37. Plaintiff Ibh is a registered shareholder of Hygea possessing 250,000 shares.

38. Plaintiff RYMSSG Group, LLC ("RYMSSG") is a limited liability company organized under the laws of the State of Delaware.

39. Plaintiff RYMSSG is a registered shareholder of Hygea possessing 250,000 shares for which it paid \$100,000.

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

41. Based on the N5HYG Stock Purchase Agreement's calculations, Plaintiff Arellano, Crown, Fifth Avenue, Halevi Enterprises, Halevi SV1, Halevi SV2, Hillcrest Acquisitions, Hillcrest SV I, Hillcrest SV II, Hillcrest SV III, Ibh, Leonite, and RYMSSG thus collectively own 5,663,200 shares – approximately 2.07 percent of the shares of Hygea.

42. Together, 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.

43. Hygea has well more than 30 shareholders.

44. Venue and jurisdiction are proper in this Court.

1           45. Hygea is managed by a Board of Directors. Its top executives are CEO Manuel  
2 Iglesias ("Iglesias") and CFO Ted Moffly ("Moffly").

3           46. Hygea's business model is that it acquires and manages independent medical  
4 practices, primarily doctors' practices, focusing on the Southeastern United States and Florida in  
5 particular. It acquires practices from their doctor owners; the doctors go from being owners to  
6 employees, paid a salary by Hygea or its subsidiary medical practice. Hygea's fundamental value  
7 proposition is: let the doctors focus on medical care, while Hygea uses its economies of scale and  
8 operational expertise to effectively operate the practices from a business perspective.

9           47. Hygea's opportunity to service its substantial network of patients, which Hygea has  
10 represented to be in excess of 100,000, is perhaps its greatest asset.

11           48. Hygea is failing and running out of cash.

12           49. Apparently, Hygea paid its payroll through its American Express account for some  
13 time until it was apparently poised to fail to "make payroll" this past fall, until it ultimately was  
14 apparently able to do so. Upon information and belief, Hygea owes approximately \$10 million to  
15 American Express. **Exhibit "4."**

16           50. Given Hygea's apparent troubles, Hygea hired an outside consultant, FTI, to review  
17 its financial performance. FTI has met with constant "roadblocks," as Moffly and Iglesias have  
18 refused to share information. Nonetheless, FTI has concluded that certain financial information  
19 provided by Hygea's management to its shareholders was "fabricated"; determined that Hygea's  
20 performance was negatively impacted by severe operational deficiencies; and was told by Iglesias  
21 that Iglesias had "cooked the books" to avoid problems with a previous lender. **Exhibit "4."**

22           51. This is consistent with Plaintiffs' experience with Hygea.

23           52. Based on the recent representations of Hygea representatives, Plaintiffs have since  
24 learned that the payroll payments have again ceased, including payments owed to physicians and  
25 some management-level and other administrative staff. Further, Hygea has failed to pay payroll  
26 taxes and is delinquent in payments to one or more large lenders. **Exhibit "4."**