IN THE SUPREME COURT OF THE STATE OF NEVADA

MANUEL IGLESIAS and EDWARD MOFFLY,

Petitioners,

v.

EIGHTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA IN AND FOR THE COUNTY OF CLARK and the Honorable NANCY ALLF, District Court Judge,

Respondents,

and

N5HYG, LLC, A MICHIGAN LIMITED LIABILITY COMPANY; AND, NEVADA 5, INC., A NEVADA CORPORATION,

Real Parties in Interest.

Supreme Court No.

Distr. Ct. Case No. A-17-762664-B
Dept. XXVII

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

(VOLUME VIII)

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

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PROOF OF SERVICE

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

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

/s/ Sunny Southworth
An employee of Kaplan Cottner

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“Exhibit 22”

“Exhibit 22”

53. These financial conditions suggest that the company is at or near the point of insolvency, which is consistent with what Plaintiffs have been able to learn about Hygea's finances.

54. The coming days and weeks are pivotal to Hygea's survival. Healthcare companies such as Hygea typically receive substantial public insurance reimbursements from the government (i.e., for Medicare/Medicaid.). These payments come twice a year – the first of which is traditionally early in the calendar year – and are existentially significant for the company. If these funds or other income are mismanaged or, worse, improperly diverted by Moffly or Iglesias, then then Hygea will continue to be unable to make payroll. If it fails to pay its physicians, they will abandon their Hygea-owned practices and Hygea will entirely collapse.

55. The impact of such a collapse would be felt among Hygea doctors and other employees, whose livelihoods would be greatly harmed; patients, whose treatment would suffer from the likely interruption in service; and Hygea's shareholders, including, but not limited to Plaintiffs, whose investments would be jeopardized if Hygea's greatest asset is wasted.

56. Moreover, Hygea has periodically, and again recently, represented to shareholders that one or more "white knight" investors would provide an influx of capital to assist the company. Of course, this has never come to fruition. Moreover, even if true, such an influx of cash would further heighten the need for a receiver to oversee any such transaction, given Hygea, management's demonstrated inability to properly manage its finances.

57. Plaintiff Arellano filed a complaint for damages against Hygea, Iglesias, and another Hygea executive captioned as Filing # 60229406 in the Circuit Court of the 11th Judicial Circuit, Miami-Dade County, Florida on August 10, 2017. However, this action involves different parties, a discreet claim under a Nevada statute which specifically confers jurisdiction on this Court, and seeks a remedy separate, apart, and distinct from the existing action.

58. Plaintiff N5HYG joined in filing a complaint for damages against Hygea, Iglesias, Moffly, and Hygea's Board of Directors captioned as case number A-17-762664-B in this Court on October 5th 2017. It was assigned to Department 25. A default was entered against Hygea, although Hygea has moved to have it set aside. One of the defendants removed it to Federal Court,

where it was assigned case number 2:17-cv-02870-JCM-PAL. The plaintiffs in that action have moved to remand the case to this Court. Further, this action involves different parties, a discreet claim under a Nevada statute which specifically confers jurisdiction on this Court, and seeks a remedy separate, apart, and distinct from the existing action.

COUNT I – APPOINTMENT OF A RECEIVER

59. Plaintiffs restate each allegation as if set forth fully here.

60. Nevada law provides for the appointment of a receiver under the circumstances set forth here.

61. For example, under NRS 78.650, the Court may appoint a receiver for the mismanagement of Hygea.

62. Likewise, a receiver may be appointed under NRS 32.010 *et seq* and NRS 78.630.

63. Plaintiffs have been forced to retain attorneys to prosecute this action and are entitled to recover attorneys fees incurred.

WHEREFORE Plaintiffs pray that this Honorable Court appoint a receiver to manage Hygea Holdings Corp. and such other related relief that the Court deems appropriate.

DATED this 18th day of April, 2018.

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that, on the 18th day of APRIL, 2018, and pursuant to NRCP 5(b), I caused to be delivered by U.S. Mail a true copy of the foregoing document addressed as follows:

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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

FINDINGS OF FACT AND CONCLUSIONS OF LAW

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 2254 LLC; Halevi Enterprises LLC; Halevi SV 1 LLC; Halevi SV 2 LLC; Hillcrest Acquisitions LLC; Hillcrest Center SV I LLC; Ibh Capital LLC; Leonite Capital LLC; N5HYG LLC ("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 January 26, 2018, in the Eighth Judicial District Court of Nevada, in and for Clark County by the filing of an Emergency Complaint (the "Complaint"). On the same day, Plaintiffs filed an Emergency Petition (the "Petition") for Appointment of Receiver, requesting preliminary injunctive relief and the appointment of a temporary receiver.

Hygea opposed that Petition on February 20, 2018. The Eighth Judicial District Court, specifically Department XXVII, heard oral argument on the Petition but reserved decision thereon pending a to-be-set evidentiary hearing. Prior to opposing the Petition, on February 16, 2018, Defendant Hygea filed a Motion for Change of Venue (the "Venue Motion") in the Eighth Judicial District Court. That court heard the Venue Motion on order shortening time on March 7, 2018, and granted the venue change by way of its March 8, 2018, Order. The case was subsequently transferred to this Court.

Upon transfer, this Court scheduled a status hearing for April 6, 2018, and asked the Parties to submit memoranda advising the Court of outstanding motions and any other matters each party wanted to discuss at the status hearing. Among other things, the Company in its memorandum requested that the Court combine the to-be-set evidentiary hearing with the trial on

the merits pursuant to N.R.C.P. 65(a)(2). At the April 6, 2018, status hearing, Hygea reiterated its request and moved orally to advance the trial of the action on the merits and consolidate the same with the hearing of Plaintiffs' Petition under N.R.C.P 65(a)(2) (the "Consolidation Motion"). After hearing argument from the Parties, the Court granted the Consolidation Motion

The Court offered the weeks of April 23, 2018, May 14, 2018, or a week in or after July 2018 for a consolidated trial of the matter. Hygea suggested a week in or after July 2018 so that the Court could first decide the Company's pending Motion to Dismiss, or alternatively, for Summary Judgment, but indicated that it would be prepared to proceed the week of May 14, 2018 if necessary; Plaintiffs requested the week of April 23, 2018. The Court set trial of the matter for five (5) calendar days beginning May 14, 2018.

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

On May 16, 2018, Defendants moved at the close of the evidence offered by Plaintiffs for judgment as a matter of law under N.R.C.P. 50(a) with respect to all claims. After hearing argument from both Parties, the Court denied Plaintiffs' request for a receiver under NRS 32.010 because, based on *State ex re. Nenzel*, 49 Nev. 145, 241 P. 317 (1925), NRS 32.010 requires that there be an action pending other than that for the request for a receivership, and in this case, there were no other claims pending. The Court also denied Plaintiffs' request for a receiver under NRS 78.630 after finding that there was not sufficient evidence that Hygea has been and is being conducted at a great loss and great loss and greatly prejudicial to the interest of its creditors and stockholders. The Court further denied Plaintiffs' request for a receiver in part under NRS 78.650 after finding that there was no evidence that Hygea had willfully violated its charter (NRS 78.650(1)(a)), that Hygea's directors had been guilty of fraud or collusion in its affairs (NRS 78.650(1)(b)), that Hygea abandoned its business (NRS 78.650(1)(f)), that Hygea had become insolvent (NRS 78.650(1)(h)), or that Hygea is not about to resume its business with safety to the public (NRS 78.650(1)(j)).

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

the trial proceeded with Hygea's defense on those issues.

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

II. FINDINGS OF FACT

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

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

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

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

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

5. Hygea has not provided audited financial statements to its stockholders, including

N5HYG, and the last set of audited financial statements Hygea completed was for the year 2013.

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

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

8. At the point that Hygea's Board decided that it would no longer be in the Company's best interests to "go public," the Board decided not to pursue audited financial statements, including those for the years 2014 and 2015.

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

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

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

12. Mr. Dragelin further testified that the combination of incomplete financial statements, lack of supporting documentation required to complete the audits, and significant

discord among management, posed significant impediments to Hygea's profitable operation.

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

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

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

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

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

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

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

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

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

22. Exhibit 41-B, which are minutes memorializing an August 9, 2017, Board meeting (the "August 2017 Minutes"), explains that Mr. Iglesias, then the CEO of Hygea, reported to the Board that the focus would be to maximize the return on Hygea's own system and focus inward, slowing acquisitions and concentrating on Hygea's position in the current political climate.

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

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

25. The August 2017 Minutes also reflect that Mr. Dragelin pointed out that numerous of the Company's processes were not formalized, that acquisitions were not properly and/or timely integrated into Hygea's system, that there was a lack of coordination among the

Company's departments, and that other matters contributed to the result that information flow at Hygea was not what it should be.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

51. Mr. Iglesias testified that the total number of Hygea shares issued and outstanding is approximately 432 million.

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

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

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

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

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

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

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

59. Dr. Keith Collins' education and experience include a term as Chief Medical Officer of an HMO with six smaller plans that evolved into a multibillion dollar, publicly traded organization with operations in sixteen states; Dr. Collins eventually served as a vice president for business development of said HMO, which role included acquisition turnaround and HMO plan start-ups.

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

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

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

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

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

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

66. Dr. Collins testified that Hygea's new management forecasts cash surpluses from operations beginning in July.

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

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

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

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

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

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

73. 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 1(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.

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

time the court considers the application.") (emphasis added).

IV. ANALYSIS

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

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

Plaintiffs have argued that it would be unfair to hold them to their burden of proof on the ten percent stock ownership issue because that information is within the possession of either Hygea or its agent, V Stock Transfer ("V Stock"). That might be a plausible argument if Plaintiffs came to this Court with evidence of their efforts to obtain information from Hygea or V Stpcl Tramsfer as to what the current number of shares issued and outstanding is. There are discovery procedures to obtain that information. The Court acknowledges that this was an expedited process, but notes that—had Plaintiffs moved for such relief—the Court could have ordered production of documents or at least tried to get Hygea to produce information from V Stock, but the Plaintiffs appear to assume that any information they would have received

regarding the number of issued and outstanding shares would be inaccurate. That may or may not be true, but the Court cannot make such a determination because the Plaintiffs did not get or attempt to get issued and outstanding share information from Hygea or V Stock.

The question before the Court is then as follows: "is it fair to hold Plaintiffs to their burden?" In answering that question, the Court considers what Plaintiffs did to try to determine the actual number of shares issued and outstanding as of May 14, 2018 (the start of trial) and through May 18, 2018 (the time at which the Court considered appointment of a receiver), which the Court finds is hardly anything. There is no evidence that Defendants in any way interfered with Plaintiffs' ability to secure that information. Accordingly, Plaintiffs accepted the risk of bearing the burden of not knowing the number of shares issued and outstanding as they proceeded to trial without either obtaining the information or moving for a continuance to provide time to obtain the information. Had Plaintiffs come to Court with evidence that they had tried in good faith to secure the number of shares issued and outstanding and/or showed inaccuracies or an outright refusal or inability of Hygea or V Stock to produce the number, the Court could have made adverse inferences against Hygea and the individual Defendants, precluded Defendants from even arguing that the Plaintiffs owned less than ten percent, or other sanctions. The record, however, is devoid of any evidence of Plaintiffs' efforts.

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

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

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

- Under subsection 1(b), the Court finds that Plaintiffs have failed to establish—by a preponderance of the evidence—that the directors have been guilty of gross mismanagement in the conduct or control of Hygea's affairs;

- Under subsection 1(c), the Court finds that Plaintiffs have failed to establish—by a preponderance of the evidence—that the directors have been guilty of misfeasance or malfeasance; however, the Court *does* find, that Plaintiffs have established by a preponderance of the evidence that the directors have been guilty of nonfeasance;

- Under subsection 1(d), 1(e), and (1)(i), that nonfeasance resulted in Hygea not 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 be able to pay its debts or obligations as they mature except through costly agreements and/or loans.

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

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

The Court considers first and foremost that Hygea's business model is both ingenious and successful and/or can be successful if properly managed going forward. The Court finds that Hygea currently appears to be in trouble because its infrastructure, records, and processes did not keep pace with its rapid acquisition of medical practices. Hygea's Board should have detected these issues earlier than it did and should have addressed the issues related to infrastructure, records, and processes before now. The Court also gives considerable weight in its considerations to the fact that all Parties profess the desire to have Hygea continue to operate. Further, the Court considers the fact that the appointment of a receiver will (in the best case) increase the risk that the HMO's will cancel the contracts they have with Hygea, which could very well cause the death of the Company. If that occurs, all Parties lose.

Finally, the Court finds that in addition to the increased risk of HMO's terminating their contracts with Hygea, the appointment of a receiver would heap additional confusion on the management of Hygea, which has just changed over its C-Suite executives for new leadership. Similarly, the time that would be required for a new receiver or other leader to get acquainted with Hygea and put positive change in motion would likely provide additional stress and detriment to Hygea. Accordingly, and in light of all of the foregoing, the Court concludes that

Dr. Collins, Hygea's new Chief Executive Officer, is at least as qualified to continue to guide Hygea as its CEO as would be the receiver proposed by the Plaintiffs.

V. CONCLUSIONS OF LAW

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

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

Out of an abundance of caution, however, the Court makes the following conclusions on the substantive merits of Plaintiffs' Amended Complaint and Petition for Appointment of a Receiver under subsections (1)(b)–(e) and (i) of NRS 78.650:

3. Hygea's Board is guilty of nonfeasance as a whole under NRS 78.650(1)(c).

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

5. Relatedly, and in light of this conclusion but also because the Court has found the Board generally guilty of nonfeasance.

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

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

Dated this 30 day of May, 2018.

THE HONORABLE JAMES WILSON
DISTRICT COURT JUDGE

CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b), I certify that I am an employee of The First Judicial District Court, and I certify that on this 31 day of May 2018 I deposited for mailing at Carson City, Nevada, or caused to be delivered by messenger service, a true and correct copy of the foregoing order and addressed to the following:

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IN THE FIRST JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

IN AND FOR CARSON CITY

CLAUDIO ARELLANO; CROWN EQUITY'S LLC; FIFTH AVENUE 2254 LLC; HALEVI ENTERPRISES LLC; HALEVI SV 1 LLC; HALEVI SV 2 LLC; HILLCREST ACQUISITIONS LLC; HILLCREST CENTER SV I LLC; 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

PLAINTIFFS' MOTION TO AMEND FINDINGS OF FACT AND CONCLUSIONS OF LAW

MOFFLY, an individual; DANIEL T. MCGOWAN, an individual; FRANK KELLY; 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,

Defendants.

I. INTRODUCTION AND LEGAL STANDARD

The Findings of Fact and Conclusions of Law ("Findings and Conclusions") in this case merit a handful of adjustments. While Plaintiffs obviously disagree with the Court's ultimate disposition of the case, the adjustments proposed in this Motion do not pertain to that disposition. Rather, this Motion is an effort to ensure that the Findings and Conclusions adhere to the record and the Court's findings as articulated from the Bench. The proposed edits are largely the same as Plaintiffs had proposed to the Court during the process of settling the Findings and Conclusions. Thus, respectfully, Plaintiffs ask that the Findings and Conclusions be adjusted as proposed below.

The Court Rules provide for such adjustment. The Nevada Rules of Civil Procedure (NRCP) states that "[i]n all actions tried upon the facts without a jury . . . the court shall find the facts specifically and state separately its conclusions of law thereon and judgment shall be entered pursuant to Rule 58." Nev. R. Civ. P. 52(a). In turn, Rule 58 provides that upon a decision by the court, "the court shall promptly approve the form and sign the judgment, and the judgment shall be filed by the clerk." Nev. R. Civ. P. 58(a)(2). "The findings [in actions tried without a jury] must be sufficient to indicate the factual bases for the court's ultimate conclusions." *Bing Const. Co. of Nevada v. Vasey-Scott Engineering Co., Inc.*, 100 Nev. 72, 73, 674 P.2d 1107, 1107 (1984) (citing *Lagrange Constr. v. Del E. Webb Corp.*, 83 Nev. 524, 435 P.2d 515 (1967)). Findings must be supported by evidence on the record. *Foley v. Morse & Mowbray*, 109 Nev. 116, 124, 848 P.2d

519, 524 (1993) (stating that the Nevada Supreme Court remanded when the trial court made findings of fact and conclusions of law concerning a particular matter that was "questionable because the court did not admit evidence pertaining to the issue.").

Such findings are subject to adjustment. NRCP 52(b) permits a court to "amend its findings or make additional findings and may amend the judgment accordingly" upon the motion of a moving party in cases tried without a jury. Such an amendment is particularly appropriate here, where the Findings and Conclusions almost entirely adopt the language proposed by Defendants. "[A] critical view of a finding is appropriate where the findings of fact and conclusions of law were not the original product of a disinterested mind." *Foley v. Morse & Mowbray*, 109 Nev. 116, 123, 848 P.2d 519, 524 (1993) (citing *Flowers v. Crouch-Walker Corp.*, 552 F.2d 1277, 1284 (7th Cir. 1977)). Here, as in *Foley*, the Court is of course disinterested. But, as in *Foley*, the text proposed by the litigant must be carefully scrutinized to ensure it reflects the record and the Court's decision.

In addition, NRCP 59(e) permits a party to move to alter or amend a judgment. *See* Nev. R. Civ. P. 59(e). Although Rule 59 deals largely with new trials, it also provides a basis for amendment of a judgment where, as here, a party does not seek a new trial but rather clarification of the Court's Findings of Fact and Conclusions of Law stemming from the concluded trial. NRCP 60 also provides a basis for the corrections that Plaintiffs seek. *See* Nev. R. Civ. P. 60. For example, many of the changes Plaintiffs seek amount to adjustments to the Court's language to better reflect the evidentiary record, the Court's findings as articulated from the Bench, or both, thus falling squarely within the provision for such corrections in NRCP 60(a). Nev. R. Civ. P. 60(a) ("Clerical mistakes in judgments, orders or other parts of the record and errors therein arising from oversight or omission may be corrected by the court at any time of its own initiative or on the motion of any party and after such notice, if any, as the court orders.").

II. ADJUSTMENTS THAT THE COURT SHOULD MAKE TO ITS FINDINGS OF FACT AND CONCLUSIONS OF LAW

First Paragraph, Page 1 at 16. Plaintiff Hillcrest Center SV II LLC should be included as one of the Plaintiffs, as Plaintiffs previously proposed. The reference to this Plaintiff seems to have been inadvertently excluded from Defendants' proposal. When the Court adopted Defendants' proposed language, the apparent "scriveners error" in Defendants' proposal made its way into the adopted Findings.

The Last Paragraph of the Procedural Background, Page 5 at 2-6. This paragraph discusses the fact that the purported "V Stock roster" of alleged Hygea shareholders was not introduced into evidence. This recitation should reflect the fact that Defendants themselves withdrew their offer of the exhibit.

As the Court will recall, and as the Findings and Conclusions reflect, after some discussion of the roster and its potential admission, the Court offered the parties a continuance, there was a recess, the parties conferred, and neither party sought a continuance after the recess. What Plaintiffs suggested, and still believe should be included, is reference to the fact that, immediately after the recess, the Defendants withdrew the proposed exhibit:

> Your Honor, I might save you some time. We'll withdraw our motion to admit 17.
> THE COURT: We're back on 18 OC 71, Arellano v. Hygea. All counsel are present. You want to withdraw your offer of 195.
> MR. CARLSON: Correct, Your Honor. Thank you.

May 17 Transcript at 847:20-848:1.

The Findings and Conclusions currently state the following:

> On May 17, 2018, during the fourth day of the trial, after Plaintiffs claimed that they were prejudiced by the late disclosure of a custodian of records affidavit authenticating a previously produced V Stock Transfer List Defendants proposed be admitted to demonstrate the Company's shares issued and outstanding, the Court again asked if the Parties wished to continue the trial. Neither Plaintiffs nor Defendants indicated that they wanted a continuance.

Instead, this paragraph should be corrected to state the following:

> On May 17, 2018, during the fourth day of the trial, after Plaintiffs claimed that they were prejudiced by the late disclosure of a custodian of records affidavit authenticating a previously produced V Stock Transfer List Defendants proposed be admitted to demonstrate the Company's shares issued and outstanding, the Court again asked if the Parties wished to continue the trial. ~~Neither Plaintiffs nor Defendants indicated that they wanted a continuance.~~ The Court went into recess as the Parties conferred regarding the proposal. Immediately upon the end of the recess, Defendants voluntarily withdrew the proposed declaration and, thereby, indicated their intention to forego seeking the admission of the V Stock Transfer List, thus mooting the immediate issue of a continuance.

Paragraph 2, Page 5 at 15-17. As Plaintiffs previously proposed, the term "to N5HYG if Hygea is issuing" should be included. The current text states:

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

Instead, this language should read:

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

Section 6.4(a) of the Stock Purchase Agreement states that Hygea cannot "issue or sell any new equity securities of any kind…unless…it provides [N5HYG] notice of such proposed issuance or transaction…." *See* Stock Purchase Agreement, **Exhibit 1** at p. 33. Plaintiffs' language more accurately reflects the requirement of the Stock Purchase Agreement that Hygea provide prior notice to N5HYG if Hygea "is issuing" stock to allow N5HYG to exercise its anti-dilution rights—not notice that Hygea already "issued" stock.

Paragraph 9, Page 6 at 11-14. As Plaintiffs previously proposed, the term "statutorily protected" should be removed. The current text states the following:

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

Instead, this language should read:

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

Plaintiffs' proposal is proper for multiple reasons. *First*, the issue of whether the decision to forego audited financial statements was "statutorily protected" is a legal conclusion, not a finding of fact. *Second*, even if it were factual in nature, there was no testimony or other evidence to support it. It appears that the only time the word "statutorily" was used at trial was during counsel's argument. *See, e.g.*, May 14 Transcript at 44:11-18 (counsel arguing in her opening statement that "Mr. Iglesias made his decisions . . . pursuant to a statutorily protected business judgment"); May 18 Transcript at 908:10-18 (counsel arguing in her closing statement that management's decision to forego audited financial statements is a "statutorily protected business decision."). *Third*, the finding of statutory protection is not necessary in order to support the Court's conclusions.

Furthermore, the inclusion of the term "statutorily protected" could be unfairly prejudicial to at least one of the Plaintiffs, N5HYG, in its breach of contract case against Hygea. The lack of audits is a material issue in the breach of contract case, because N5HYG's stock purchase agreement with Hygea *required* the provision of audited financial statements. *See* Stock Purchase Agreement, **Exhibit 2** at p. 14-15 (Section 4.6.1. of the agreement providing that Hygea was "in the process of completing" audited financial statements and that "true and correct copies of which shall be provided to [Plaintiff N5HYG] upon completion, but it any event no later than November 30, 2016"). Of course, even if the decision to forego audits was "statutorily protected"—in the

sense that it was not a basis for a breach of fiduciary duty or mismanagement claim against the Board (which Plaintiffs also dispute) —Hygea is still not immune from a *breach of contract* claim. But Defendants will almost certainly use this language to seek dismissal of a component of Plaintiff N5HYG' s contract claim.[1]

Paragraph 35, Page 10 at 14-15. As Plaintiffs previously noted, the Court found that Hygea had previously "used" stock as currency, but not that it had "issued" stock as currency. The Court was explicit about this distinction between using and issuing; the Court explained that while it had found that "Hygea *used* some stock as currency to buy medical practices," the "Treasury stock [was] *not* the *issuance* of new shares, so they would not dilute N5's percentage ownership share." May 18 Transcript at 953:19-22 (emphasis added). The Court was, thus, careful to avoid finding that shares had been "issued" to be used as such currency.

Defendants' proposed language was at odds with the Court's careful language:

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

Accordingly, the Finding should be amended to instead read in the following manner:

> Hygea has ~~issued~~ used stock as "currency" to buy medical practices since October of 2016.

Paragraph 51, Page 12 at 17-18. The Finding's language regarding Mr. Iglesias's testimony as to the number of outstanding shares accurately reflects the Court's statement during

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[1] This risk is especially ironic, given Defendants' frequently expressed (and unfounded) concern that Plaintiffs were using the receivership proceeding as a vehicle to advance their position in the other litigation. *See, e.g.*, May 15 Transcript at 287:20-25 (arguing that Plaintiffs should not be able to call Hygea's former CEO Mr. Iglesias as a witness because "plaintiffs are incredibly interested about the allegations of representations made in the time period leading up to when N5HYG became a shareholder in this lawsuit, which we do not believe is relevant here, and which essentially are the allegations in the securities lawsuit pending before Judge Mayhan in federal court."). Having frequently tendered such protests, Defendants cannot now propose, and seek to retain, this language in order to assist them in the other case.

its recitation of its opinion. However, the Court had previously stricken this testimony, after Plaintiffs objected to it under the hearsay and best evidence rules:

> Q. Mr. Iglesias, do you know how many shares Hygea has issued and outstanding?
> A. Approximately 432 million.
> Q. How do you know that it's 432 million?
> A. That is the latest amount on the VStock Transfer list that is both in the record, and I took the opportunity yesterday to look into the VStock website for Hygea. And the numbers have not changed since the submittal, the January 21 VStock register to plaintiffs.
> MR. KAYE: **Objection, Your Honor. And I would move to strike that answer for a couple of reasons. First of all, that's hearsay. Second of all, I believe it misstates what's in the record. And third of all, best evidence rule.**
> THE COURT: Ms. Gall?
> MS. GALL: Your Honor, with respect to the objection regarding hearsay, I don't believe it's necessarily hearsay. I do believe that Mr. Iglesias testified that he logged in to the VStock account to confirm the number.
> I do agree that he did misstate that the VStock register is in the -- is in the record. It is not. With respect to the best evidence rule, I'm not sure a document merely memorializing the number of shares issued and outstanding falls under the best evidence rule versus the knowledge of the plaintiff.
> THE COURT: How is that not an out-of-court statement? The information that he looked at apparently on the Internet, **how is that not an out-of-court statement that it seems you're trying to offer for the truth of the matter asserted the number of shares?**
> MS. GALL: I'm not sure that the number of shares as reflected on the VStock register is what I'm trying to get in. I'm merely trying to get in Mr. Iglesias' knowledge of how many shares are issued and outstanding.
> THE COURT: Mr. Kaye?
> MR. KAYE: Your Honor, first of all, I think it's very hard to see any sort of difference in that distinction. It seems to me to be two sides of the same coin.
> At the very least, that's what -- the witness I believe led with the number, started talking about the numbering and said he saw it when he went on the Internet and logged in.
> I do believe it falls within the best evidence rule. We've submitted in one of the earlier papers in this case, I believe it was in response to the motion to dismiss, Stephans v. State case, 127 Nev. 712, talks about how the knowledge of a price tag was excluded under -- under NRS 52.225 because in that case, Scott does not appear to have any knowledge of value

> apart from the price tag. His testimony squarely implicated best evidence rule. And that's the same sort of thing here.
>
> THE COURT: **Both objections are sustained.**

May 16 Transcript at 622:19-625:1 (emphasis added). In short, because the Court excluded Mr. Iglesias's testimony as to the number of shares, the Findings and Conclusions should not reflect the excluded testimony.

Moreover, the Court later expressly disavowed having any evidence of the number of shares. The Court concluded that "the Court does not have any evidence of the total number of issued and outstanding shares as of today, this week, or this month, or at any time during the last 88 days since Mr. Moffly made his declaration on February 19th or back to the Stock Purchase Agreement in October of 2016." May 18 Transcript at 963:1-7.

Analysis, Second and Third Paragraphs, 17:16-18:17. As the Court will recall, a key issue in the case was whether the Plaintiffs had "10 percent of the outstanding stock entitled to vote." The parties agreed on the "numerator" – that is, how many shares the Plaintiffs held. They disagreed on the "denominator," or how many shares of outstanding stock entitled to vote were issued. The Court found that:

> Plaintiffs have argued that it would be unfair to hold them to their burden of proof on the ten percent stock ownership issue because that information is within the possession of either Hygea or its agent, V Stock Transfer ('V Stock'). That might be a plausible argument if Plaintiffs came to this Court with evidence of their efforts to obtain information from Hygea or V Stock Transfer[2] as to what the current number of shares issued and outstanding is.

Findings and Conclusions at 17:16-20. It continued:

> [H]ad Plaintiffs moved for such relief the Court could have ordered production of documents or at least tried to get Hygea to produce information from V Stock, but the Plaintiffs appear to assume that any information they would have received regarding the number of issued and outstanding shares would be inaccurate. That may or may not be true, but the Court cannot make such a determination because

[2] This spelling is in the original. Even if the Court declines to accept Plaintiffs' proposed alteration, a correction may be appropriate.

the Plaintiffs did not get or attempt to get issued and outstanding share information from Hygea or V Stock.

Id. at 17:22-18:3.

The Court concluded that Plaintiffs did "hardly anything" to "try to determine the actual number of shares issued, 18:3-8, and that "[t]he record... is devoid of any evidence of Plaintiffs' efforts" to secure such information. *Id.* at 18:17.

In fact, Plaintiffs undertook multiple efforts to secure the information:

- On February 28, before the case was transferred, counsel participated in a telephonic conference with Judge Allf. Plaintiffs requested certain minimal discovery, and Defendants refused because there was no formal motion for discovery before the Court.

- On March 1, Plaintiffs filed a Motion seeking limited discovery, and specifically requesting the V Stock Transfer List for shares issued. Defendants opposed this motion.

- In an Order dated April 23, 2018, this Court ordered that the requested stock-related discovery be produced by April 23, 2018.

- On May 1, 2018, Plaintiffs moved for contempt, explaining that the stock-related materials produced by Defendants were out-of-date, incomplete, and facially inaccurate. The relevant arguments on the issue are attached as **Exhibit 3**.[3]

At trial, Plaintiffs did make proper and sustained objections to the introduction of the V Stock list and to testimony based on its contents. But, as discussed above, it was ultimately Defendants who withdrew the proposed exhibit.

Plaintiffs argued that, in the absence of the V Stock list, the best evidence—and, indeed, the only meaningful evidence—of the number of outstanding shares was management's warranty given when it sold Plaintiff N5HYG its shares in October 2016.[4] The Court did indeed find that

---

[3] The briefing shows that, even if there was not on-the-record "evidence that Defendants in any way interfered with Plaintiffs' ability to secure that information," Findings and Conclusions at 18:8-9, there is material in the case record showing such interference.

[4] This was actually a secondary argument. Plaintiffs primarily argued that Defendants were estopped from arguing that new shares had been issued after N5HYG bought its shares in 2016: the stock purchase agreement warranted that the purchased shares were 8.57 percent of the "issued and outstanding Common Stock," *See* Stock Purchase Agreement at p. 1, **Exhibit 4**; the Agreement had an anti-dilution provision, *See* Stock Purchase Agreement at p. 33, **Exhibit 1**; and N5HYG's representative testified that he never received notice of any dilution until filing the lawsuit. May 14 Transcript at 64:20. The Court implicitly rejected this estoppel argument.

this evidence was insufficient for Plaintiffs to meet their burden.

In the alternative, Plaintiffs could have stipulated to the admission of the V Stock list; argued as they had in the motion-for-contempt briefing that it was unreliable; and argued that the Court should thus infer that the Plaintiffs actually held ten percent of the company's shares.

Plaintiffs believed – and continue to believe – that either approach merits (or would have merited) a finding that they met the ten percent threshold. But in any event, it is simply not accurate that the Plaintiffs never attempted to secure the shareholder information. Moreover, the case record reflected these efforts by virtue of the April 23 Order and the subsequent contempt motion. The Court's analysis should therefore not state that there were no such efforts.

Accordingly, the two paragraphs, which currently read as follows, should be amended:

> Plaintiffs have argued that it would be unfair to hold them to their burden of proof on the ten percent stock ownership issue because that information is within the possession of either Hygea or its agent, V Stock Transfer ("V Stock"). That might be a plausible argument if Plaintiffs came to this Court with evidence of their efforts to obtain information from Hygea or V Stock Transfer as to what the current number of shares issued and outstanding is. There are discovery procedures to obtain that information. The Court acknowledges that this was an expedited process, but notes that-had Plaintiffs moved for such relief-the Court could have ordered production of documents or at least tried to get Hygea to produce information from V Stock, but the Plaintiffs appear to assume that any information they would have received regarding the number of issued and outstanding shares would be inaccurate. That may or may not be true, but the Court cannot make such a determination because the Plaintiffs did not get or attempt to get issued and outstanding share information from Hygea or V Stock.
>
> The question before the Court is then as follows: "is it fair to hold Plaintiffs to their burden?" In answering that question, the Court considers what Plaintiffs did to try to determine the actual number of shares issued and outstanding as of May 14, 2018 (the start of trial) and through May 18, 2018 (the time at which the Court considered appointment of a receiver), which the Court finds is hardly anything. There is no evidence that Defendants in any way interfered with Plaintiffs' ability to secure that information. Accordingly, Plaintiffs accepted the risk of bearing the burden of not knowing the number of shares issued and outstanding as they proceeded to trial without either obtaining the information or moving for a continuance to provide time to obtain the information. Had Plaintiffs come to Court with evidence that they had tried in good faith to secure the number of shares issued and outstanding and/or showed inaccuracies or an outright refusal or inability of Hygea or V Stock to produce the number, the Court could have made adverse inferences against Hygea and the individual Defendants,

precluded Defendants from even arguing that the Plaintiffs owned less than ten percent, or other sanctions. The record, however, is devoid of any evidence of Plaintiffs' efforts.

The above paragraphs should be amended to read as follows:

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

The question before the Court is then as follows: "is it fair to hold Plaintiffs to their burden?" ~~In answering that question, the Court considers what Plaintiffs did to try to determine the actual number of shares issued and outstanding as of May 14, 2018 (the start of trial) and through May 18, 2018 (the time at which the Court considered appointment of a receiver), which the Court finds is hardly anything. There is no evidence that Defendants in any way interfered with Plaintiffs' ability to secure that information. Accordingly,~~ Plaintiffs accepted the risk of bearing the burden of not knowing the number of shares issued and outstanding as they proceeded to trial without either obtaining the information or moving for a continuance to provide time to obtain the information. Had Plaintiffs ~~come to Court with evidence that they had tried in good faith to secure the number of shares issued and outstanding and/or~~ showed inaccuracies or an outright refusal or inability of Hygea or V Stock to produce the number, the Court could have made adverse inferences against Hygea and the individual Defendants, precluded Defendants from even arguing that the Plaintiffs owned less than ten percent, or other sanctions. ~~The record, however, is devoid of any evidence of Plaintiffs' efforts.~~[5]

Conclusion of Law No. 5, Page 21:15-16, and preceding Analysis at Page 20:17-18.

From the Bench, the Court explained that "[t]he Court has considered the remaining portion of 78.506(4) that says if a receiver's going to be appointed, innocent directors have to be preferred,

[5] Plaintiffs propose this amendment while preserving their rights to challenge the Court's conclusion.

but the Court has found that the directors are not innocent, but guilty of nonfeasance. So there's not a preference that any of the directors be appointed." May 18 Transcript at 967:24-968:4. Defendants included this in their proposed Findings of Fact and Conclusions of Law, and Plaintiffs did not object:

> The Court has also given consideration to that portion of NRS 78.650(4) that provides that if a receiver is to be appointed, innocent directors must be preferred. Given the Court's above finding that the Board is, generally, guilty of nonfeasance under NRS 78.650(1)(c), however, the Court finds that there is no preference that Dr. Collins or any of the directors be appointed.

However, the final issued Findings of Fact and Conclusions of Law did not contain this analytical conclusion. Had it been included then, based on the parties' proposals, it would have been found on Page 20 between Lines 17 and 18.

Then, in the Conclusion of Law No. 5, the Defendants proposed a finding of:

> Relatedly, and in light of this conclusion but also because the Court has found the Board generally guilty of nonfeasance, no good cause exists to appoint a Hygea director as a receiver.

Plaintiffs suggested that this be amended to read as follows:

> Relatedly, and in light of this conclusion but also because the Court has found the Board generally guilty of nonfeasance, good cause exists not to appoint a Hygea director as a receiver.

Plaintiffs' proposed language is consistent with the Court's language from the Bench: "Good cause exists not to give a non-officer director of Hygea a preference in appointment" as a Receiver. May 18 Transcript at 969:16-18.

Yet the Conclusion the Court ultimately issued reads: "Relatedly, and in light of this conclusion but also because the Court has found the Board generally guilty of nonfeasance." Findings and Conclusions at 21:15-16. This reads as if the second half of the sentence has been excised. And, indeed, both parties had included a second half, to reflect the Court's conclusion from the Bench that no Hygea director should be appointed receiver in light of the Court's finding

that the Board as a whole was guilty of nonfeasance.

The Court's reasoning expressed from the Bench on this point was sound, and Plaintiffs continue to believe that their proposed Conclusion No. 5 best reflects the Court's decision.

CONCLUSION

For all of the reasons set forth above, the Court should amend its Findings of Fact and Conclusions of Law as proposed by Plaintiffs.

AFFIRMATION

The undersigned does hereby affirm that the preceding **MOTION TO AMEND FINDINGS OF FACT AND CONCLUSIONS OF LAW** does not contain the social security number of any person.

DATED this 18th day of JUNE, 2018.

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that, on the 18th day of June, 2018, and pursuant to NRCP 5(b), I caused to be delivered by U.S. Mail a true copy of the foregoing document addressed as follows:

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IN THE FIRST JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

IN AND FOR CARSON CITY

CLAUDIO ARELLANO; CROWN EQUITY'S LLC; FIFTH AVENUE 2254 LLC; HALEVI ENTERPRISES LLC; HALEVI SV 1 LLC; HALEVI SV 2 LLC; HILLCREST ACQUISITIONS LLC; HILLCREST CENTER SV I LLC; IBH CAPITAL LLC; LEONITE CAPITAL LLC; N5HYG LLC; and RYMSSG GROUP, LLC, Plaintiffs, v. HYGEA HOLDINGS CORP., Defendant.	Case No. 18 OC 00071 1B Dept No. II **NOTICE OF ENTRY OF FINDINGS OF FACT AND CONCLUSIONS OF LAW**

NOTICE OF ENTRY OF ORDER

PLEASE TAKE NOTICE that on May 30, 2018, the Court entered its Findings of Fact and Conclusions of Law in this matter. A copy of the foregoing is attached hereto as **Exhibit 1**.

The undersigned does hereby affirm that the preceding document does not contain the social security number of any person.

DATED this 31st day of May, 2018.

KAEMPFER CROWELL

By: _____

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CERTIFICATE OF SERVICE

Pursuant to N.R.C.P. 5, I hereby certify that on May 31st, 2018, a true and correct copy of **NOTICE OF ENTRY OF FINDINGS OF FACT AND CONCLUSIONS OF LAW** was served on the following counsel of record by U.S. Mail, postage-prepaid:

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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

ORDER GRANTING DEFENDANTS' MOTION FOR ATTORNEYS' FEES

Defendants' Motion for Fees (the "Motion"), filed June 20, 2018, was submitted to this Court for decision on July 20, 2018. The Court, having considered the Motion and the briefing related thereto, as well as all pleadings and papers on file is this matter, is persuaded by the Motion and hereby finds that Motion should be granted.

1. By their Motion, Defendants seek an award of their attorneys' fees and costs under NRS 18.010(2)(b), FJDCR 15(13), and/or N.R.C.P. 68.

a. Pursuant to NRS 18.010(2)(b), the court may award attorneys' fees and costs to a prevailing party if a "claim . . . of the opposing party was brought or maintained without reasonable ground . . . ." The court is directed by NRS 18.010(2)(b) to "liberally construe the provisions of this paragraph in favor of awarding attorneys' fees in all appropriate situations."

b. Pursuant to N.R.C.P. 68, any party may serve an offer of judgment on an opposing party 10 days before trial. If the opposing party does not accept the offer and then "fails to obtain a more favorable judgment," then the court may award post-offer attorneys' fees to the offering party.

2. The Court finds that Defendants are the prevailing parties in this matter because the Court found against Plaintiffs and in favor of Defendants.

3. The Court further finds that Plaintiffs maintained their claims for the appointment of a receiver under NRS 78.650 and 78.630 without reasonable ground because:

a. Plaintiffs failed to present competent evidence that they held ten percent of Hygea's issued and outstanding stock at the time they filed their Complaint or at the time of trial, the latter being the relevant time under *Searchlight Dev. Inc. v. Martello*, 84 Nev. 102, 109, 437 P.2d 86, 90 (1968) for purposes of establishing standing to request appointment of a receiver.

b. Moreover, as set forth in the Court's Findings of Facts and Conclusions of Law, Plaintiffs did "hardly anything" to determine the actual number of shares issued and outstanding at or near the time of trial.

c. Further, Plaintiffs rejected the Court's offers to continue the trial to allow Plaintiffs to either seek further discovery on the number of Hygea shares issued and outstanding.

d. Thus, the fact that Plaintiffs maintained their claims without reasonable ground is evidenced by the lack of competent evidence at trial, and also by their failure to conduct a reasonable investigation to determine whether they owned at least ten percent of Hygea's issued and outstanding stock.

4. The Court concluded Plaintiffs failed to prove the threshold requirement that Plaintiffs owned ten percent of Hygea's issued and outstanding stock. That conclusion resulted in the denial of Plaintiffs' request for appointment of a receiver and judgment for Defendants. Nevertheless, to avoid delay and unnecessary expense, this Court made findings of fact and conclusions of law on Plaintiffs' allegations related to the statutory grounds for appointing a receiver, so that if an appellate court disagreed with this Court's ten-percent-stock-ownership conclusion, the appellate court would be able to resolve issues related to the request to appoint a receiver. The Court based its decision on this motion for attorney's fees based upon Plaintiffs' failure to prove ten percent stock ownership and failure to prove a receiver should be appointed.

5. The denials of Defendants' Motion to Dismiss or, Alternatively, Motion for Summary Judgment does not foreclose an award of attorneys' fees and costs because the survival of Plaintiffs' claims under N.R.C.P. 12(b)(5) "is irrelevant to [this Court's] inquiry as to whether the claims of the complaint were groundless." *Bergmann*, 109 Nev. at 675, 856 P.2d at 563. As set forth above, Plaintiffs' claims that they possessed the requisite ten percent stock ownership at the time they sought appointment of a receiver under NRS 78.650 and NRS 78.630 was not supported by any competent evidence at trial. Similarly, Defendants' alternative motion for summary judgment was denied as premature given the limited discovery that had been conducted at the time the motion was made. Accordingly, the fact that Plaintiffs' claims' survived the motion for summary judgment has no bearing on whether the claims were maintained through trial without reasonable grounds.

6. As to Defendants' offer of judgment and Motion pursuant to N.R.C.P. 68, Defendant offered two forms of consideration in exchange for a judgment in their favor on Plaintiffs' claims for the appointment of a receiver: (I) the filing fees Plaintiffs' incurred by

bringing this case (monetary relief) and (ii) the resignation of Mr. Iglesias and Mr. Moffly as directors of Hygea and an agreement that they not accept a position as an offer or director of Hygea in the future

7. As an initial matter, the Court finds that offers of judgment under N.R.C.P. 68 are available to defendants even when a plaintiff's claim sounds in equity and the compromise offered is equitable in nature. *Cf. Kent v. Kent*, 108 Nev. 398, 404, 835 P.2d 8, 11 (1992).

8. Next, the Court finds and concludes that Defendants are entitled to their post-offer attorneys' fees under N.R.C.P. 68 because, as set forth above, Plaintiffs brought and maintained their claims without competent evidence that they held ten percent of Hygea's issued and outstanding stock which led this Court to conclude the claims were not brought or maintained in good faith. *See Beattie v. Thomas*, 99 Nev. 579, 588, 668 P.2d 268, 274 (1983) (setting forth lack of good faith as one factor the court considers prior to awarding fees to the offering party, along with the good faith and reasonableness of the offering party's offer, the reasonableness of the offeree party's rejection, and the reasonableness of the fees sought). If the moving party presents enough evidence for the court to consider the aforementioned factors, it is not an abuse of discretion for the court to grant the motion and enter the award for reasonable fees and costs.

9. With respect to those factors other than the offeree party's lack of good faith in bringing its claims, the Court finds that Defendants' made their offer of judgment in good faith. Both the original and amended complaint relate primarily to the alleged misconduct of Defendants Manuel Iglesias and Edward Moffly, who at the time of said conduct were Hygea's CEO and CFO, respectively. By the time of the trial, both Messrs. Iglesias and Moffly had resigned from their c-suite positions but remained directors of

Hygea. In addition, Mr. Iglesias and his shareholder group are collectively the largest Hygea shareholder. Accordingly, even if a receiver removed Messrs. Iglesias and Moffly from their directorships during the receivership, when the receivership terminated, Messrs. Iglesias and Moffly could use their voting power to potentially re-associate themselves in the same positions. The only people capable of avoiding that practical result—and thus the only people capable of making such a powerful compromise to Plaintiffs—were Messrs. Iglesias and Moffly themselves. Thus, Defendants' appear to have constructed their offer in good faith and with an eye to address the concerns Plaintiffs set forth in the Amended Complaint.

10. The Court also finds that Plaintiffs unreasonably rejected Defendants' offer because Plaintiffs knew or should have known they did not have competent evidence that they owned ten percent of Hygea's issued and outstanding stock.

11. Finally, the Court finds that Defendants' fees are reasonable. *Brunzell v. Golden Gate Nat'l Bank*, 85 Nev. 345, 349–50, 455 P.2d 31, 33 (1969); FJDCR 15(13)(A)-(E):

a. Defense counsel, and specifically those present at the trial of this matter, appeared to be experienced litigators, whose fees are commensurate with their ability, training, education, experience, and skill, as well as the local legal market.

b. The litigation at hand was at all times complex in nature, requiring counsel to have specific knowledge of Nevada's receivership and corporate laws. Defense counsel litigated this case, under a short time frame, and produced high quality legal work.

c. Defense counsel successfully defended against Plaintiffs' request for a

receivership. The benefits derived from the trial on behalf of Defendants included the denial of the request for a receiver, which, as this Court found, would likely have been the death-knell of the company.

d. Given the foregoing, the attorneys' fees and costs sought by Defendants are reasonable.

12. The Court rejects Plaintiffs' argument that the Motion should be denied because it is unclear to whom any award of fees would be paid. Plaintiffs cite no authority requiring Defendants to identify the ultimate beneficiary of any fee award. Indeed, what happens to any fees collected by Defendants is only Defendants' concern.

13. Plaintiffs argued defendant's counsel's billing records are grossly exaggerated or needless or ill-advised undertakings. Plaintiff's set forth five examples, by way of example only, of such exaggerated, needless or ill-advised undertakings. Considering what was at stake in this case, which the Court finds to be the probable survival of Hygea, and Plaintiffs' lack of competent evidence on the ten-percent-stock issue, the Court concludes the services rendered and fees charged by defendants' counsel are reasonable.

14. Plaintiffs also requested an evidentiary hearing on the fees requested by Defendants. Plaintiffs provided no facts, law, or argument as to specific services or charges, other than the five examples mentioned above. Factual contentions in any post-trial motion must be initially presented and heard upon affidavits. DCR 13(6). Failure of a motion to be supported by points and authorities is consent to the denial of the motion. FJDCR 15(5). Because Plaintiffs failed to provide any factual basis, law, or argument to hold an evidentiary hearing on any specific fees the request for an evidentiary hearing is denied.

IT IS ORDERED:

Defendants' Motion and awards attorneys' fees in the amount of $644,076.50, plus any further reasonable post-judgment attorneys' fees, is granted.

Defendants are directed to file an addendum to their Motion evidencing their additional post-judgment attorneys' fees and costs, along with a proposed judgment consistent with this Order, within ten (10) court days from the entry of this Order.

Plaintiffs' request for an evidentiary hearing is denied.

August 13, 2018

JAMES E. WILSON JR.
District Court Judge

CERTIFICATE OF SERVICE

I certify that I am an employee of the First Judicial District Court of Nevada; that on August 13, 2018, I served a copy of this document by placing a true copy in an envelope addressed to:

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the envelope sealed and then deposited in the Court's central mailing basket in the Court Clerk's Office for delivery to the United States Post Office at 1111 South Roop Street, Carson City, Nevada for mailing.

Susan Greenburg
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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

NOTICE OF ENTRY OF ORDER GRANTING IN PART AND DENYING IN PART PLAINTIFFS' MOTION TO AMEND FINDINGS OF FACT AND CONCLUSIONS OF LAW

NOTICE OF ENTRY OF ORDER GRANTING IN PART AND DENYING IN PART PLAINTIFFS' MOTION TO AMEND FINDINGS OF FACT AND CONCLUSIONS OF LAW

PLEASE TAKE NOTICE that on August 10th, 2018, the Court entered its Order Granting in Part and Denying in Part Plaintiffs' Motion to Amend Findings of Fact and Conclusions of Law in this matter. A copy of the Order is attached hereto as **Exhibit 1**.

The undersigned does hereby affirm that the preceding document does not contain the social security number of any person.

Dated this 14th day of August, 2018.

KAEMPFER CROWELL

By: _____

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CERTIFICATE OF SERVICE

Pursuant to N.R.C.P. 5, I hereby certify that on August 14th, 2018, a true and correct copy of **NOTICE OF ENTRY OF ORDER GRANTING IN PART AND DENYING IN PART PLAINTIFFS' MOTION TO AMEND FINDINGS OF FACT AND CONCLUSIONS OF LAW** was served on the following counsel of record by U.S. Mail, postage-prepaid, with a courtesy copy sent by e-mail:

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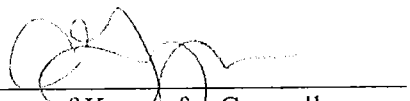

An Employee of Kaempfer Crowell

EXHIBIT INDEX

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EXHIBIT 1

EXHIBIT 1

IN THE FIRST JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

IN AND FOR CARSON CITY

CLAUDIO ARELLANO; CROWN EQUITY'S LLC; FIFTH AVENUE 2254 LLC; HALEVI ENTERPRISES LLC; HALEVI SV 1 LLC; HALEVI SV 2 LLC; HILLCREST ACQUISITIONS LLC; HILLCREST CENTER SV I LLC; 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 MOFFLY, an individual; DANIEL T. MCGOWAN, an individual; FRANK KELLY; 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,

Defendants.

Case No.: 18 OC 00071 1B

Dept. No.: II

ORDER GRANTING IN PART AND DENYING IN PART PLAINTIFFS' MOTION TO AMEND FINDINGS OF FACT AND CONCLUSIONS OF LAW

The Court, having considered Plaintiffs' Motion to Amend Findings of Fact and Conclusions of Law, Defendants' Response thereto, and Plaintiffs' Reply in support thereof, and the Court otherwise being duly advised on the premises, hereby orders as follows:

///

IT IS SO ORDERED:

Plaintiffs' Motion is GRANTED in part and DENIED in part. In order to better reflect the evidence presented and admitted at the May 2018 bench trial of this matter, the trial proceedings as reflected by the record, and the Court's consideration of the issues of fact and law properly before it in this action, the Findings of Facts and Conclusions of Law entered May 30, 2018 are hereby amended as follows:

First Paragraph, Page 1, line 16 is amended to include Plaintiff Hillcrest Center SV II LLC as one of the Plaintiffs.

Findings of Fact ("FOF") Paragraph 2 is amended to state (strikethrough text deleted; underlined text added):

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

FOF Paragraph 9 is amended to state (strikethrough text deleted):

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

FOF Paragraph 51 is deleted in its entirety.

Plaintiff's motion as to all other requested changes is denied.

IT IS FURTHER ORDERED:

Defendant prepare and file within ten days an Amended Findings of Fact and Conclusions of Law consistent with this order.

August 9, 2018

James E. Wilson Jr.
District Judge

CERTIFICATE OF SERVICE

I certify that I am an employee of the First Judicial District Court of Nevada; that on August 9, 2018, I served a copy of this document by placing a true copy in an envelope addressed to:

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the envelope sealed and then deposited in the Court's central mailing basket in the Court Clerk's Office for delivery to the United States Post Office at 1111 South Roop Street, Carson City, Nevada for mailing.

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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

NOTICE OF ENTRY OF ORDER GRANTING DEFENDANTS' MOTION FOR ATTORNEYS' FEES

NOTICE OF ENTRY OF ORDER GRANTING DEFENDANTS' MOTION FOR ATTORNEYS' FEES

PLEASE TAKE NOTICE that on August 13th, 2018, the Court entered its Order Granting Defendants' Motion for Attorneys' Fees in this matter. A copy of the Order is attached hereto as **Exhibit 1**.

The undersigned does hereby affirm that the preceding document does not contain the social security number of any person.

Dated this 20th day of August, 2018.

KAEMPFER CROWELL

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CERTIFICATE OF SERVICE

Pursuant to N.R.C.P. 5, I hereby certify that on August 20th, 2018, a true and correct copy of **NOTICE OF ENTRY OF ORDER GRANTING DEFENDANTS' MOTION FOR ATTORNEYS' FEES** was served on the following counsel of record by U.S. Mail, postage-prepaid, with a courtesy copy sent by e-mail:

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An Employee of Kaempfer Crowell

EXHIBIT INDEX

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EXHIBIT 1

EXHIBIT 1

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

ORDER GRANTING DEFENDANTS' MOTION FOR ATTORNEYS' FEES

Defendants' Motion for Fees (the "Motion"), filed June 20, 2018, was submitted to this Court for decision on July 20, 2018. The Court, having considered the Motion and the briefing related thereto, as well as all pleadings and papers on file is this matter, is persuaded by the Motion and hereby finds that Motion should be granted.

1. By their Motion, Defendants seek an award of their attorneys' fees and costs under NRS 18.010(2)(b), FJDCR 15(13), and/or N.R.C.P. 68.

a. Pursuant to NRS 18.010(2)(b), the court may award attorneys' fees and costs to a prevailing party if a "claim . . . of the opposing party was brought or maintained without reasonable ground . . . ." The court is directed by NRS 18.010(2)(b) to "liberally construe the provisions of this paragraph in favor of awarding attorneys' fees in all appropriate situations."

b. Pursuant to N.R.C.P. 68, any party may serve an offer of judgment on an opposing party 10 days before trial. If the opposing party does not accept the offer and then "fails to obtain a more favorable judgment," then the court may award post-offer attorneys' fees to the offering party.

2. The Court finds that Defendants are the prevailing parties in this matter because the Court found against Plaintiffs and in favor of Defendants.

3. The Court further finds that Plaintiffs maintained their claims for the appointment of a receiver under NRS 78.650 and 78.630 without reasonable ground because:

a. Plaintiffs failed to present competent evidence that they held ten percent of Hygea's issued and outstanding stock at the time they filed their Complaint or at the time of trial, the latter being the relevant time under *Searchlight Dev. Inc. v. Martello*, 84 Nev. 102, 109, 437 P.2d 86, 90 (1968) for purposes of establishing standing to request appointment of a receiver.

b. Moreover, as set forth in the Court's Findings of Facts and Conclusions of Law, Plaintiffs did "hardly anything" to determine the actual number of shares issued and outstanding at or near the time of trial.

c. Further, Plaintiffs rejected the Court's offers to continue the trial to allow Plaintiffs to either seek further discovery on the number of Hygea shares issued and outstanding.

d. Thus, the fact that Plaintiffs maintained their claims without reasonable ground is evidenced by the lack of competent evidence at trial, and also by their failure to conduct a reasonable investigation to determine whether they owned at least ten percent of Hygea's issued and outstanding stock.

4. The Court concluded Plaintiffs failed to prove the threshold requirement that Plaintiffs owned ten percent of Hygea's issued and outstanding stock. That conclusion resulted in the denial of Plaintiffs' request for appointment of a receiver and judgment for Defendants. Nevertheless, to avoid delay and unnecessary expense, this Court made findings of fact and conclusions of law on Plaintiffs' allegations related to the statutory grounds for appointing a receiver, so that if an appellate court disagreed with this Court's ten-percent-stock-ownership conclusion, the appellate court would be able to resolve issues related to the request to appoint a receiver. The Court based its decision on this motion for attorney's fees based upon Plaintiffs' failure to prove ten percent stock ownership and failure to prove a receiver should be appointed.

5. The denials of Defendants' Motion to Dismiss or, Alternatively, Motion for Summary Judgment does not foreclose an award of attorneys' fees and costs because the survival of Plaintiffs' claims under N.R.C.P. 12(b)(5) "is irrelevant to [this Court's] inquiry as to whether the claims of the complaint were groundless." *Bergmann*, 109 Nev. at 675, 856 P.2d at 563. As set forth above, Plaintiffs' claims that they possessed the requisite ten percent stock ownership at the time they sought appointment of a receiver under NRS 78.650 and NRS 78.630 was not supported by any competent evidence at trial. Similarly, Defendants' alternative motion for summary judgment was denied as premature given the limited discovery that had been conducted at the time the motion was made. Accordingly, the fact that Plaintiffs' claims' survived the motion for summary judgment has no bearing on whether the claims were maintained through trial without reasonable grounds.

6. As to Defendants' offer of judgment and Motion pursuant to N.R.C.P. 68, Defendant offered two forms of consideration in exchange for a judgment in their favor on Plaintiffs' claims for the appointment of a receiver: (I) the filing fees Plaintiffs' incurred by

bringing this case (monetary relief) and (ii) the resignation of Mr. Iglesias and Mr. Moffly as directors of Hygea and an agreement that they not accept a position as an offer or director of Hygea in the future

7. As an initial matter, the Court finds that offers of judgment under N.R.C.P. 68 are available to defendants even when a plaintiff's claim sounds in equity and the compromise offered is equitable in nature. *Cf. Kent v. Kent*, 108 Nev. 398, 404, 835 P.2d 8, 11 (1992).

8. Next, the Court finds and concludes that Defendants are entitled to their post-offer attorneys' fees under N.R.C.P. 68 because, as set forth above, Plaintiffs brought and maintained their claims without competent evidence that they held ten percent of Hygea's issued and outstanding stock which led this Court to conclude the claims were not brought or maintained in good faith. *See Beattie v. Thomas*, 99 Nev. 579, 588, 668 P.2d 268, 274 (1983) (setting forth lack of good faith as one factor the court considers prior to awarding fees to the offering party, along with the good faith and reasonableness of the offering party's offer, the reasonableness of the offeree party's rejection, and the reasonableness of the fees sought). If the moving party presents enough evidence for the court to consider the aforementioned factors, it is not an abuse of discretion for the court to grant the motion and enter the award for reasonable fees and costs.

9. With respect to those factors other than the offeree party's lack of good faith in bringing its claims, the Court finds that Defendants' made their offer of judgment in good faith. Both the original and amended complaint relate primarily to the alleged misconduct of Defendants Manuel Iglesias and Edward Moffly, who at the time of said conduct were Hygea's CEO and CFO, respectively. By the time of the trial, both Messrs. Iglesias and Moffly had resigned from their c-suite positions but remained directors of

Hygea. In addition, Mr. Iglesias and his shareholder group are collectively the largest Hygea shareholder. Accordingly, even if a receiver removed Messrs. Iglesias and Moffly from their directorships during the receivership, when the receivership terminated, Messrs. Iglesias and Moffly could use their voting power to potentially re-associate themselves in the same positions. The only people capable of avoiding that practical result—and thus the only people capable of making such a powerful compromise to Plaintiffs—were Messrs. Iglesias and Moffly themselves. Thus, Defendants' appear to have constructed their offer in good faith and with an eye to address the concerns Plaintiffs set forth in the Amended Complaint.

10. The Court also finds that Plaintiffs unreasonably rejected Defendants' offer because Plaintiffs knew or should have known they did not have competent evidence that they owned ten percent of Hygea's issued and outstanding stock.

11. Finally, the Court finds that Defendants' fees are reasonable. *Brunzell v. Golden Gate Nat'l Bank*, 85 Nev. 345, 349–50, 455 P.2d 31, 33 (1969); FJDCR 15(13)(A)-(E):

a. Defense counsel, and specifically those present at the trial of this matter, appeared to be experienced litigators, whose fees are commensurate with their ability, training, education, experience, and skill, as well as the local legal market.

b. The litigation at hand was at all times complex in nature, requiring counsel to have specific knowledge of Nevada's receivership and corporate laws. Defense counsel litigated this case, under a short time frame, and produced high quality legal work.

c. Defense counsel successfully defended against Plaintiffs' request for a

receivership. The benefits derived from the trial on behalf of Defendants included the denial of the request for a receiver, which, as this Court found, would likely have been the death-knell of the company.

d. Given the foregoing, the attorneys' fees and costs sought by Defendants are reasonable.

12. The Court rejects Plaintiffs' argument that the Motion should be denied because it is unclear to whom any award of fees would be paid. Plaintiffs cite no authority requiring Defendants to identify the ultimate beneficiary of any fee award. Indeed, what happens to any fees collected by Defendants is only Defendants' concern.

13. Plaintiffs argued defendant's counsel's billing records are grossly exaggerated or needless or ill-advised undertakings. Plaintiff's set forth five examples, by way of example only, of such exaggerated, needless or ill-advised undertakings. Considering what was at stake in this case, which the Court finds to be the probable survival of Hygea, and Plaintiffs' lack of competent evidence on the ten-percent-stock issue, the Court concludes the services rendered and fees charged by defendants' counsel are reasonable.

14. Plaintiffs also requested an evidentiary hearing on the fees requested by Defendants. Plaintiffs provided no facts, law, or argument as to specific services or charges, other than the five examples mentioned above. Factual contentions in any post-trial motion must be initially presented and heard upon affidavits. DCR 13(6). Failure of a motion to be supported by points and authorities is consent to the denial of the motion. FJDCR 15(5). Because Plaintiffs failed to provide any factual basis, law, or argument to hold an evidentiary hearing on any specific fees the request for an evidentiary hearing is denied.

IT IS ORDERED:

Defendants' Motion and awards attorneys' fees in the amount of $644,076.50, plus any further reasonable post-judgment attorneys' fees, is granted.

Defendants are directed to file an addendum to their Motion evidencing their additional post-judgment attorneys' fees and costs, along with a proposed judgment consistent with this Order, within ten (10) court days from the entry of this Order.

Plaintiffs' request for an evidentiary hearing is denied.

August 13, 2018

JAMES E. WILSON JR.
District Court Judge

CERTIFICATE OF SERVICE

I certify that I am an employee of the First Judicial District Court of Nevada; that on August 13, 2018, I served a copy of this document by placing a true copy in an envelope addressed to:

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Susan Greenburg
Judicial Assistant

IN THE FIRST JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

IN AND FOR CARSON CITY

CLAUDIO ARELLANO; CROWN EQUITY'S LLC; FIFTH AVENUE 2254 LLC; HALEVI ENTERPRISES LLC; HALEVI SV 1 LLC; HALEVI SV 2 LLC; HILLCREST ACQUISITIONS LLC; HILLCREST CENTER SV I LLC; 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 MOFFLY, an individual; DANIEL T. MCGOWAN, an individual; FRANK KELLY; 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,

Defendants.

Case No.: 18 OC 00071 1B

Dept. No.: II

ORDER GRANTING IN PART AND DENYING IN PART PLAINTIFFS' MOTION TO AMEND FINDINGS OF FACT AND CONCLUSIONS OF LAW

The Court, having considered Plaintiffs' Motion to Amend Findings of Fact and Conclusions of Law, Defendants' Response thereto, and Plaintiffs' Reply in support thereof, and the Court otherwise being duly advised on the premises, hereby orders as follows:

///

IT IS SO ORDERED:

Plaintiffs' Motion is GRANTED in part and DENIED in part. In order to better reflect the evidence presented and admitted at the May 2018 bench trial of this matter, the trial proceedings as reflected by the record, and the Court's consideration of the issues of fact and law properly before it in this action, the Findings of Facts and Conclusions of Law entered May 30, 2018 are hereby amended as follows:

First Paragraph, Page 1, line 16 is amended to include Plaintiff Hillcrest Center SV II LLC as one of the Plaintiffs.

Findings of Fact ("FOF") Paragraph 2 is amended to state (strikethrough text deleted; underlined text added):

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

FOF Paragraph 9 is amended to state (strikethrough text deleted):

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

FOF Paragraph 51 is deleted in its entirety.

Plaintiff's motion as to all other requested changes is denied.

IT IS FURTHER ORDERED:

Defendant prepare and file within ten days an Amended Findings of Fact and Conclusions of Law consistent with this order.

August 9, 2018

James E. Wilson Jr.
District Judge

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I certify that I am an employee of the First Judicial District Court of Nevada; that on August 9, 2018, I served a copy of this document by placing a true copy in an envelope addressed to:

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Dan Taylor, Law Clerk
for Susan Greenburg
Judicial Assistant

“Exhibit 2 ”

“Exhibit 2 ”

MOT

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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 **HEARING DATE REQUESTED** **PLAINTIFFS' MOTION FOR RECONSIDERATION REGARDING THE DISMISSAL OF NEVADA 5, INC.**

Plaintiffs, by and through their undersigned counsel, hereby bring this Motion for Reconsideration Regarding the Dismissal of Nevada 5, Inc. ("Motion"). This case stems from a stock transaction. Plaintiffs allege that Defendants misrepresented facts relating to Hygea to Nevada 5, Inc. ("Nevada 5"), and that in response Nevada 5 formed a wholly-owned subsidiary called N5HYG, LLC ("N5HYG") through which to buy Hygea stock. The Court has dismissed Nevada 5 as a Plaintiff with prejudice. The Court found that Nevada 5 lacks standing because any injury was to its subsidiary, N5HYG. *See* FOFCOL at 9:21-27. The Court should reconsider this conclusion because it is contrary to law and raises the potential for future confusion, inconsistent arguments, or inequitable results.

Local Rule 2.24 provides for such reconsideration, providing, in relevant part, at 2.24(b) that "(b) A party seeking reconsideration of a ruling of the court, other than any order which may be addressed by motion pursuant to N.R.C.P. 50(b), 52(b), 59 or 60, must file a motion for such relief within 10 days after service of written notice of the order or judgment unless the time is shortened or enlarged by order."

The Court dismissed Nevada 5 as a Plaintiff based on the premise that the shares at issue were actually bought by its wholly-owned subsidiary N5HYG, and that it lacked standing to sue on behalf of its subsidiary. This is generally correct as a principle. But courts have consistently recognized an exception in securities fraud cases such as here. They have held that a plaintiff has standing if it is the parent of a wholly-owned corporate entity that the parent has created to buy and hold the securities at issue. *See, e.g., Walther v. Maricopa Int'l Inv. Corp.,* No. 97–4816, 1999 WL 64280, at *2 (S.D.N.Y. Feb. 9, 1999) (concluding that plaintiff who invested in securities through an intermediate entity created to facilitate the investment may be considered an "actual purchaser of the securities" and thus have standing to bring federal [securities fraud] claims). A good example is *Grubb v. FDIC,* 868 F.2d 1151, 1161–62 (10th Cir. 1989), in which the plaintiff purchased shares in a bank through a holding company that in turn made the actual purchase of securities. The

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defendant argued that the plaintiff lacked standing because the holding company, not the plaintiff, had purchased the securities at issue. *Id.* at 1161. The Tenth Circuit acknowledged that, generally, a plaintiff must have bought the securities itself in order to bring a statutory securities fraud claim, but nonetheless found standing based on a number of relevant facts: (1) the holding company was essentially a "shell company" created immediately prior to the execution of the securities transaction for the sole purpose of facilitating the purchase of shares in the bank; (2) the alleged misrepresentations were made directly to plaintiff by the entity that ultimately received the invested money; (3) the alleged misrepresentations were made before the holding company was created; (4) the plaintiff, not the intermediate holding company, "was the actual party at risk in the transaction"; and (5) the plaintiff's alleged damages could be easily computed. *Id.* at 1161–62.

While these cases pertain to federal securities law, the principle applies to state securities statutes as well, which are generally interpreted in a manner consistent with their federal counterparts. *See, e.g., In re Stratosphere Corp.*, 1 F. Supp. 2d 1096, 1123 (D. Nev. 1998) ("it is proper to interpret Nevada's securities laws consistently with similar federal law provisions," although heightened federal pleading standards absent from the Nevada statute should not be applied to a claim under the Nevada statute). Similarly, the same principles would permit an entity such as Nevada 5 – which was misled into establishing and funding a subsidiary to acquire shares – to bring common law fraud claims.

However, in the FOFCOL, "[t]he Court … decline[d] Plaintiffs' invitation to expand the meaning of 'buyer' to include a stockholder's parent corporation." FOFCOL at 10:5-6. Respectfully, Plaintiffs were not asking the Court to "expand" that definition. They were asking the Court to apply the meaning of buyer that has already been well-established in the applicable jurisprudence. Nor were they asking the Court to "expand the meaning of 'buyer' to include a stockholder's parent corporation" generally. Rather, they asked the Court to join other courts in recognizing that a parent corporation has standing as a plaintiff under the circumstances here: where it forms the holding

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company for the purpose of making the wrongfully induced investment.

. . .

Plaintiffs do not wish to make work for themselves, the Court, or Defendants. But they bring this Motion because this standing issue could affect the litigation as the case progresses. This is of particular concern because Defendants are apparently unwilling to concede that N5HYG *does* have standing such that, if anyone can plead the elements of Plaintiffs' various claims, *N5HYG can do so*. In fact, in litigating the precise terms of the FOFCOL, Plaintiffs suggested that any dismissal of Nevada 5 should be coupled with an express determination that N5HYG's claims cannot be barred because of "element splitting" between Nevada 5 and N5HYG:

> Plaintiffs expressed concern that, without Nevada 5 as a plaintiff, Defendants would argue that Plaintiffs have failed to state one or more of their claims because, they say, certain conduct constituting a cause of action may have been directed towards Nevada 5 while other such conduct was directed to N5HYG. It does not appear, though, that this could be an issue with any of the causes of action that Plaintiffs sufficiently pled. In the event a future amendment states a cause of action that could be subject to such "element splitting," the Court can address the issue then. In any event, Defendants cannot escape liability in the event that certain elements of any cause of action are found to be met by N5HYG and others are met by its parent.

See Plaintiffs' Proposed FOFCOL at n.6. Defendants resisted and rejected such a cautionary finding. This seems strategic, foreshadowing a future argument from Defendants along the lines of, for example, "the misrepresentations were made to Nevada 5, not N5HYG, and thus N5HYG cannot bring a fraud claim." Cases such as *Grubb* reflect a recognition that such an outcome would be unjust. This Court should likewise protect against such a scenario.

At the very least, any dismissal of Nevada 5 should be without prejudice. A non-prejudicial dismissal would allow Plaintiffs to replead fraud claims, and in particular statutory securities fraud claims, under the *Grubb* framework. Such a non-prejudicial dismissal would also allow the Court to address any future efforts through which Defendants might argue that they should escape liability

[continued on page 5]

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because the elements of certain causes of action are fortuitously split as between related corporate entities.

DATED this 3rd day of June, 2019.

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CERTIFICATE OF SERVICE

I hereby certify that I am an employee of Albright, Stoddard, Warnick & Albright, and that on the 3 day of June, 2019, I served a true and correct copy of the foregoing **PLAINTIFFS' MOTION FOR RECONSIDERATION REGARDING THE DISMISSAL OF NEVADA 5, INC.** upon all counsel of record by electronically serving the document using the Court's electronic filing system.

Barbara Clark

An employee of Albright, Stoddard, Warnick & Albright

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“Exhibit 24”

“Exhibit 24”

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DISTRICT COURT
CLARK COUNTY, NEVADA

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

Plaintiffs,

vs.

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

Defendants.

CASE NO.: A-17-762664-B

DEPT. NO.: 27

PLAINTIFFS' OPPOSITION TO DEFENDANTS' MOTION FOR RECONSIDERATION OR CLARIFICATION

Date of hearing: July 17, 2019
Time of hearing: 10:30 a.m.

MEMORANDUM OF POINTS AND AUTHORITIES

INTRODUCTION AND BACKGROUND

When Defendants were trying to convince Plaintiffs to purchase $30 million of Hygea stock, they presented revenue figures that later proved to be inflated by nearly 300%, and EBITDA figures that proved impossible to reach. An independent consultant determined the figures were a "fabrication." Plaintiffs sued to get their more than $30 million back on October 5, 2017, but Defendants have managed to keep this case at the pleading stage for more than a year and a half. In the meantime, the fortunes of Hygea have plummeted. Its Chief Medical Officer has now separated from the company, and it was just evicted from its headquarters through a default judgment. **Exhibit 1,** Declaration of Norman Gaylis; **Exhibit 2,** Final Judgment of Eviction. This is a dire situation in which spoliation of evidence and dissipation of assets appear imminent.

But Defendants again ask this Court to delay this case. First, they accuse the Court of erring in its refusal to grant them immunity by virtue of having defended a truncated receivership action. In the alternative, they ask the Court to make additional findings that they earlier asked the Court to forego. Then, also in the alternative, they ask the Court to stay the case in order to accommodate a writ petition they claim is justified in light of what they see as this Court's clear mistakes. None of these requests have any merit. The Court got the issue right, and it is time for this case to proceed.

In considering Defendants' extraordinary request, it is worthwhile to consider the extraordinary delay that Plaintiffs have already suffered. Plaintiffs filed this case on October 5, 2017. Defendants joined in a co-Defendant's unfounded motion to remove the case to federal court. Their theories expressly contradicted the plain language of the Securities Act and established United States Supreme Court precedent. The federal court remanded the case, but not before Defendants had wrongfully delayed the case for about six months. On July 13, 2018, Plaintiffs were finally able to file their Amended Complaint with this Court. On August 9, 2018, Defendants moved for 20 additional pages for their Motion to Dismiss, which they filed on August 17. The Court heard oral argument on October 3, 2018 and issued a decision on November 26. At that point, the case was already nearly 14 months old. Then, on December 3, 2018, Defendants moved for clarification, further postponing a Findings of Fact and Conclusions of Law ("FOFCOL") that would allow the case to proceed. On May 10, 2019, the Court entered the FOFCOL. But on June 3, Defendants filed this motion, seeking reconsideration and a stay, and faulting the Court for not including a more comprehensive rationale for rejecting Defendants' claim preclusion argument—the very discussion Plaintiffs proposed for the FOFCOL four months ago, but Defendants refused to include.

Regardless of Defendants' motivations, the effect has been to prejudice Plaintiffs, delaying the post-pleading litigation of their case by 19 months and counting as Hygea spirals downward. It is time for this case to proceed.

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LEGAL ARGUMENT

I. This Court was Correct that the Receiver Court Found that it Lacked Jurisdiction

This Court was correct to reject Defendants' claim preclusion theory. The fact that one of the Plaintiffs here joined with thirteen other Hygea shareholders to seek appointment of a receiver (in the "Receiver Action") is not conclusive as to whether Defendants owe Plaintiffs money. In addition to constituting a patent "about-face" from the arguments Defendants made in the Receiver Action itself, Defendants' argument is wrong on the merits. In order for claim preclusion to apply, they must demonstrate that "(1) there has been a valid, final judgment in a previous action; (2) the subsequent action is based on the same claims or any part of them that were or could have been brought in the first action; and (3) the parties or their privies are the same in the instant lawsuit as they were in the previous lawsuit, or the defendant can demonstrate that he or she should have been included as a defendant in the earlier suit and the plaintiff fails to provide a good reason for not having done so." *Weddell v. Sharp*, 131 Nev. Adv. Op. 28, 350 P.3d 80, 81 (Nev. 2015).

None of these three necessary factors are present here. As the Court found, there is no valid judgment in the previous action for purposes of claim preclusion, because the Receiver Court found that it lacked jurisdiction. As discussed below, Defendants' attacks on the Court's conclusion lack merit. Moreover, the claims in the two actions are distinct; the claims here could not have been brought in the Receiver Action; and the cases do not share the same parties. Indeed, throughout the Receiver Action, Defendants argued that the two cases were—and should be—entirely distinct. They cannot now secure immunity for their conduct by arguing the opposite.

A. *Lynch v. Awada* does not alter the analysis; if anything, it bolsters it

Defendants first fault this Court for "failing to consider" the *unpublished* opinion of *Lynch v. Awada*, 427 P.3d 123 (Table) (Nev. 2018), which they say stands for the proposition that the Receiver Court's decision is a final judgment for claim preclusion purposes. Defs.' Br. at 5-7. But

Defendants' reliance on *Awada* is misplaced for several reasons, and it in no way renders this Court's decision rejecting the claim preclusion argument clearly erroneous or manifestly unjust.[1]

At the threshold, *Awada* is an unpublished opinion and not binding precedent. *Segovia v. Eighth Judicial Dist. Court in & for County of Clark*, 407 P.3d 783, 787 (Nev. 2017). Regardless, it does not even mention, much less overrule, *Johnson v. Steel, Inc.*, 100 Nev. 181, 687 P.2d 676 (1984), a controlling decision of the Nevada Supreme Court. *Johnson* remains the law in Nevada, holding: "an order appointing a receiver or denying a motion to appoint a receiver is not a final judgment on the merits." *Id.* at 183.

Indeed, *Awada* presents no "new law" at all. It is consistent with *Johnson* because it is facially distinguishable and actually illustrates why claim preclusion does not apply here. First, *Awada* does not hold that a decision on a discrete and singular claim for appointment of a receiver has preclusive effect. Rather, in *Awada*, the prior 2013 case was a multifaceted, multi-claim action to *dissolve* the company, appoint a receiver to oversee the dissolution, provide an accounting, and apportion to plaintiffs unpaid royalty payments due under a licensing agreement that the company's owner had diverted (but whom plaintiffs failed to name as a defendant). *Id.* *5 n.1. *Three years later*, after securing a favorable judgment in the 2013 case, the same plaintiffs filed a new 2016 case against the owner, seeking to recover *those same diverted assets*. Thus, claim preclusion applied because the 2013 case—with its multiple claims, one of which happened to include appointment of a dissolution receiver—litigated virtually *everything* the 2016 case sought to accomplish, save one thing: it failed to include the party *actually responsible* for the diversion plaintiffs initially complained about. That, said the Court, was "[t]he sole difference between the matters." *Id.* at *2.

That is a starkly different scenario from *Johnson* and the Receiver Action here, where the appointment of a receiver was a discreet and independent action, with a singular claim, seeking a

[1] Defendants' omission of *Awada* from their prior arguments further confirms that it presents nothing new. The decision was issued before oral argument on the Motion to Dismiss, and Defendants then filed at least two subsequent briefs relating to that Motion, all failing to mention it.

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very specific and targeted objective—to provide stability and to protect shareholders of a tanking company. And unlike *Awada* (which involved the same two plaintiffs in both cases), the Receiver Action was filed not just by N5HYG (or by Nevada 5 at all), but *thirteen other Hygea shareholders*, banding together under a specific statutory framework to try to save Hygea—not to dissolve and collect from it. As Defendants' Trial Statement in the Receiver Action asserted:

> Plaintiffs cannot purport to use any receiver as a mechanism for seeking discovery to support their claims in such [other] litigations[2] when they purport that they seek the receiver only to maintain the status quo and protect Hygea's going concern status, as they have argued was the reason they brought this lawsuit since the outset of the case. **Exhibit 3,** Defs.' Trial Stmt. at 19.

Defendants' Trial Statement also relied on, and expressly and extensively quoted, the holding in *Vila v. Grand Island Elec. Light, Ice & Cold Storage Co,* 68 Neb. 222, 97 N.W. 613, 616 (Neb. 1903):

> "[t]he law of receivership is peculiar in its nature in that it belongs to that class of remedies which are wholly ancillary or provisional, and the appointment of a receiver does not affect, either directly or indirectly, the nature of any primary right, but is simply a means by which primary rights may be more efficiently preserved, protected, and enforced in judicial proceedings. **It adjudicates and determines the right of no party to the proceedings, and grants no final relief, directly or indirectly**." **Exhibit 3** at 13-14 (bold added).

Defendants' own argument thus framed the Receiver Action as a *pendente lite*-style action and echoes precisely the rationale from *Vila* and *Johnson*: "[t]he appointment determines no substantive rights between the parties but is merely a means of preserving the status quo." *Johnson*, 100 Nev. at 183. Defendants' present argument thus falsely distinguishes the Receiver Action and *Johnson* and *pendente lite* receiverships, contradicting their prior arguments and ignoring the reality of the Receiver Action. By design and intent of *all parties*, the Receiver Action only litigated whether a

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[2] That concern was unfounded. The Receiver Action was narrowly-tailored and streamlined. The combined evidentiary hearing and trial, which decided solely whether as of May 2018 a receiver over Hygea was warranted, concluded less than four months after the initial filing. No discovery depositions were taken (only two non-party witnesses provided *de bene esse* depositions). And written discovery consisted only of Defendants' production of a limited set of documents from specific categories relating to Hygea's purportedly then-current financial status and shareholder roster, most of which categories this Court established after the initial hearing in February 2018.

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receiver was warranted during the 3 ½-month pendency of that narrow proceeding to preserve the company and the status quo. The decision was not a final judgment for purposes of claim preclusion.

Further differences from *Awada* abound. The Receiver Action was initiated *after* the present case had already been filed and was pending in federal court. Unlike *Awada*, the present action is not a three-years-later-filed afterthought, brought only when Plaintiffs realized they had failed to name a critical defendant in the Receiver Action. Therefore, the objective of claim preclusion that the *Awada* plaintiffs triggered— "preventing a party from *filing another suit* that is based on the same set of facts that were present in the initial suit"—is not at issue here. The present case came first and has continued throughout and since the Receiver Action. And as the pleadings and arguments demonstrated, at no time during the Receiver Action did Defendants believe that the claims at issue here were finalized by the outcome of that case. Moreover, the *Awada* Court did not determine that it lacked jurisdiction to appoint the dissolution receiver—just the opposite occurred.

Finally, the *Awada* Court found the plaintiffs provided no "good reason" for failing to name the responsible owner as a defendant in the 2013 case or that a "formal barrier prevented their claims in the first action." *Id.* at *6-7. Here, N5HYG was confronted with multiple good reasons and formal barriers which prevented it from litigating its damages-related claims in two courts simultaneously. As discussed below, those include: (a) it would have been claim-splitting; (b) it would still have left Nevada 5's identical claims in federal court; (c) it would have been contrary to the statutory system designed to enable a group of concerned shareholders to band together in seeking a receiver to save the company (unlike the dissolution statute at issue in *Awada*); (d) it would have been a breach of the SPA for N5HYG to file claims outside of Clark County; and (e) it would have been a circular and counterproductive exercise, as Defendants had already improperly removed those claims.

And while Defendants rely on *Awada*'s note that ancillary claims "*may* be raised in dissolution actions" (*id.* at *7, italics added), the Receiver Action was *not* a dissolution action at all. Indeed, while the *Awada* Court further noted that requiring a separate action in that instance would

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"produce additional and unnecessary formalistic practice" (*id.*), the inverse is true here, proving the point. To wit, to require N5HYG to lump its already-pending claims (not to mention co-Plaintiff Arellano's already-pending claims) into the Receiver Action, rather than litigate the discreet receivership issue while the other already-pending cases ran their distinct and separate courses—all to account for a far-fetched claim preclusion argument, and casting aside the aforementioned SPA provision, claim-splitting issues, and the host of other practical and legal concerns—would be a far more "unnecessary formalistic practice." Again, if anything, *Awada* helps to demonstrate why the Receiver Court's decision was not a final judgment for purposes of claim preclusion.

B. This Court did not err in finding that the Receiver Court lacked jurisdiction because that is what the Receiver Court held, as Defendants argued it must.

Defendants next fault this Court for not contriving a distinction between jurisdiction over "claims" and "remedies," accusing this Court of "read[ing] the words 'subject matter' [jurisdiction] into the Receivership Judgment." Defs.' Br. at 9. But Defendants made no such distinction in the Receiver Action and specifically argued the Receiver Court lacked "*subject matter jurisdiction*":

- "Ultimately, [the Receiver] Court has to make a threshold decision. Does it have jurisdiction, **subject matter jurisdiction**, do the plaintiffs hold 10 percent?" **Exhibit 4,** May 17 Trial Tr. at 841:17-19 (bold added).

- "What I would like to say about the 10 percent rule is that that is plaintiffs' burden to demonstrate. They bear the burden of demonstrating standing, which is a part of **subject matter jurisdiction**."; **Exhibit 5,** May 18 Trial Tr. at 922:8-12 (bold added).

- "[T]he district court **does not have jurisdiction** to appoint a corporate receiver unless the applicant or holders of one-tenth of the issued and outstanding stock has legal title at the time the court considers the application." *Id.* at 924:12-16 (bold added).

The Receiver Court agreed with Defendants' argument, holding that "[t]he Court does not have jurisdiction to consider the matter." *id.* at 965:9-10. Defendants' argument is thus barred by judicial estoppel. *See Marcuse v. Del Webb Communities, Inc.*, 123 Nev. 278, 287, 163 P.3d 462, 468-69 (2007) ("Judicial estoppel applies when the following five criteria are met: (1) the same party has

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taken two positions; (2) the positions were taken in judicial or quasi-judicial administrative proceedings; (3) the party was successful in asserting the first position (i.e., the tribunal adopted the position or accepted it as true); (4) the two positions are totally inconsistent; and (5) the first position was not taken as a result of ignorance, fraud, or mistake") (quotation omitted).

Even if judicial estoppel did not apply, this Court was correct to apply the Receiver Court's conclusion as it did. While Defendants argue there is no Nevada law to counter their contrived jurisdictional distinction, they ignore the very case the Receiver Court relied upon and quoted as support for its decision, *Searchlight Dev. v. Martello*, 84 Nev. 102 (1968):

> Thus an order or judgment ... cannot be void on its face or an absolute nullity **if it appears that the court which entered it had jurisdiction** of the parties and **of the subject matter** and had jurisdiction to enter the particular order. ... When the trial commenced ... **the district court was without jurisdiction to consider the matter** and enter its judgment pursuant to NRCP 54(b) because the respondents were not then holders of one-tenth of the issued and outstanding capital stock as required by NRS 78.650(1). ... Finding the district court **without jurisdiction to hear this matter**, the appellant's remaining assignments of error are not here considered or decided. *Searchlight* at 108-09 (internal citations omitted; bold added).

Expressly relying on *Searchlight*, the Receiver Court held that because it found that the ten percent threshold was not met, it lacked subject matter jurisdiction. **Exhibit 6,** Am. Findings of Fact and Conclusions of Law, *Arellano et al. v. Hygea Holdings Corp. et al.*, 18 OC 00071 1B, 1st Judicial Dist. Ct. in & for Carson City at 17, 19.[3] The Court also made clear that any further "consideration" of the matter was simply for the benefit of a reviewing court: "An appellate court may disagree with me on that, and for that reason I'm going to go ahead and analyze the other issues so that if the appellate court does disagree, it will have my findings of fact and conclusions of law to make a determination on whether or not they are correct." **Exhibit 5** at 965:10-16.

The Receiver Court has spoken on this issue. Defendants' bare assertion that "the Receivership Court...decided that it had subject matter jurisdiction" is entirely at odds with their

[3] Defendants in the Receiver Action based their argument on *Med. Device All., Inc. v. Ahr*, 116 Nev. 851, 859 (2000), which, in turn, cited and quoted *Searchlight*. **Exhibit 5** at 924:10-16.

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own repeated, successful efforts to bring about the Receiver Court's conclusion that it "did not have jurisdiction to consider the [Receiver] matter." *Id.* at 965:9-10. There is no claim preclusion.

C. This Court did not err in finding that the Receiver Court lacked jurisdiction despite the directed verdict as to certain components of the receivership petition

1. The Receiver Court did not decide NRS 32.010 components on the merits

As Defendants themselves note, the Receiver Court declined to decide the NRS 32.010 components on the merits. Rather, it found that the jurisprudence "requires that there be an action pending, something other than just a receivership. So, the claims under 32.010 are dismissed as a matter of law." Defs.' Br. at 7 (citing May 16 Tr. Tran. at 609:10-611:14). When a Court declines to consider a request because a necessary predicate claim is lacking, the resulting dismissal is for lack of jurisdiction. *Shelton v. Second Judicial Dist. Court in & for Washoe Cty.*, 64 Nev. 487, 494 (1947). This strongly *supports* this Court's conclusion that there was no claim preclusion—the Receiver Court dismissed the NRS 32.010 request because it deemed the receivership request to be a narrow request untethered to any larger claim or controversy. Indeed, Defendants made this very argument. *See, e.g.,* **Exhibit 3** at 13 ("[T]he appointment of a receiver under NRS 32.010 must be 'ancillary to' or 'in aid of' the action and not the sole claim for relief. Plaintiffs seek no relief other than the appointment of a receiver. Accordingly, the Court has no jurisdiction to appoint a receiver under NRS 32.010.").

2. The jurisdictional analysis applied to NRS 78.650 and NRS 78.630

Whatever conclusions the Court expressed regarding NRS 78.650 at the directed verdict, the Court's ultimate determination was that it lacked jurisdiction to appoint a receiver under that same statute. Thus, even if it *had* found sufficient evidence to proceed on the subparts of the claim which it dismissed, the Court ruled that it was powerless to appoint a receiver because of the perceived jurisdictional deficiency. That jurisdictional ruling was ultimately what controlled the Court's determination of NRS 78.650, as well as NRS 78.630, which was also subject to the ten percent requirement. Again, claim preclusion does not apply.

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II. If the Court Issues Further Findings, Plaintiffs' Findings Should be Adopted

A. Defendants previously argued against such findings

On January 25, 2019, Defendants proposed FOFCOL with minimal analysis of the claim preclusion ruling, addressing only the jurisdictional element. On January 25, 2019, Plaintiffs submitted proposed changes, explaining in their cover letter to the Court, "Plaintiffs propose that the Court articulate additional legal support for its [claim preclusion] determination as a 'backup' in the event an appellate court disagrees with its finding as to the first factor of the three factor test." **Exhibit 7,** Pls.' Letter at 2. Defendants disagreed, arguing that "contrary to Plaintiffs' assertions, it is not necessary for the Court to address these factors or ensure that it has 'backup' in the event an appellate court disagrees with its finding on the first factor." Joint Resp. of Defs.' To Pls.' Obj. to Defs.' Proposed Findings of Fact, Conclusions of Law, and Order at 3.

The Court adopted Defendants' proposal and remained silent on the additional factors. Now, Defendants have changed their position, and say that it *is* necessary for this Court to address the backup factors. Again, having prevailed on their original position, they are judicially estopped from reversing themselves. *See Marcuse*, 123 Nev. at 287. Even if judicial estoppel did not technically apply, all of the principles underlying it adhere: Defendants asked the Court for an outcome; the Court obliged; and now Defendants ask the Court for the opposite outcome. The effect would be particularly pernicious here, given the long delay in initiating this case's actual litigation. Setting aside the issue of whether Defendants' request is intended to further delay the case, it would certainly have that effect. If Defendants are able to consistently reverse their position—even after the Court has ruled for them—and insist that the Court's orders be changed to reflect their new inclinations, the case will never proceed to litigation on the merits.

B. Any findings on the remaining elements should be as proposed by Plaintiffs

Defendants' waffling notwithstanding, to the extent the Court is inclined to further bolster its ruling with additional findings, Plaintiffs reiterate the ample support in the record and caselaw.

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1. The actions are based on different facts, allege different conduct, and were properly separate under the receivership statutory system

The Receiver Action and this case are apples and oranges. Both N5HYG and co-Plaintiff Arellano identified their pending damages cases against Defendants on the face of the Receiver Complaint, but expressly stated that "this action involves different parties, a discreet claim under a Nevada statute which specifically confers jurisdiction on this Court, and seeks a remedy separate, apart, and distinct from the existing action." **Exhibit 8**, Receiver Complaint, ¶¶ 48, 49. And Defendants themselves agreed with the distinction, arguing to this Court: "THIS [Receiver] ACTION DOES NOT ARISE 'IN CONNECTION WITH' THE STOCK PURCHASE AGREEMENT BETWEEN N5HYG AND HYGEA." **Exhibit 9,** Defs.' Reply in Support of its Mot. For Change of Venue at 3 (capitalization in original).

As previously briefed and argued, the Nevada Supreme Court recognized in *Johnson, supra*, a receivership request generally lacks preclusive effect because it is "an ancillary remedy used to preserve the value of assets pending outcome of the principal case." *Johnson*, 100 Nev. at 183. The appointment determines no substantive rights between the parties but is merely a means of preserving the status quo." *Id.* "Accordingly, an order appointing a receiver or denying a motion to appoint a receiver is not a final judgment on the merits," and "[t]he doctrine of *res judicata*" should not be applied. *Id.* (all citations omitted). *See also Frank Settelmeyer & Sons, Inc. v. Smith & Harmer, Ltd.*, 124 Nev. 1206, 1217, 197 P.3d 1051, 1058 (2008) (receivership court's determination lacked preclusive effect). The Receiver Action involved only one claim—the appointment of a receiver—and sought no damages award. *See* **Exhibit 10,** Emerg. Pet. for Appt. of Receiver (Jan. 26, 2018). Again, the rationale of *Johnson* and Defendants' arguments in the Receiver Action show why claim preclusion does not apply here.

Further, this Court did not "misread" *Johnson* as Defendants now allege. *First*, the *Johnson* principle holds across receivership actions that vary in terms of their specific basis or the request's particulars: they are different from damages claims and lack preclusive effect. *Second*, contrary to

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Defendants' present suggestion, the Receiver Action was very much "a[n attempted] means of preserving the status quo." Defs.' Br. at 7. Again, as Defendants pointed out to the Receiver Court, Plaintiffs identified precisely that as "the reason they brought this [Receiver] lawsuit since the outset of the case." **Exhibit 3** at 19.[4] *Third*, the fact that the Receiver Court "pass[ed] on the merits" of the Receiver petition (Defs.' Br. at 7), hardly distinguishes this case from *Johnson*. Whatever the nature of a receivership request, courts will inherently render *some* decision regarding such a request's basis—how else could it make any ruling at all? *Fourth*, the "finality" of the Receiver Court's action here is immaterial for the additional reason that, as discussed throughout, the Receiver Court expressly disavowed subject matter jurisdiction. If anything, the Receiver Court's finding that it lacked jurisdiction over the discrete Receiver Action makes its decision "less final" for claim preclusion purposes than the decision in *Johnson*.

Defendants respond that the issues in this case may have had "some probative value" or overlap in the Receiver Action. But again, that is not what Defendants argued to this Court in the Receiver Action:

> By its plain terms the SPA concerns the sale of stock by Hygea to NY5HG [sic]. This [Receiver] action concerns the appointment of a receiver based on the purported mismanagement and/or insolvency of the corporation. *See generally* Complaint and Emergency Petition. By no sensible interpretation could one say that the case below has "a significant relationship to the contract" or "its origin or genesis in the contract." **Ex. 9** at 5.

Moreover, courts have rejected the argument that such overlap is sufficient for claim preclusion. *See, e.g., Melendres v. Arpaio*, 154 F. Supp. 3d 845, 856 (D. Ariz. 2016) ("some overlap in the facts" insufficient where the new case would require additional showing); *Huffey v. Lea*, 491 N.W.2d 518, 522 (Iowa 1992) ("some overlap" between two proceedings of a different nature is insufficient basis for claim preclusion). *See also Town of Delafield v. Winkelman*, 675 N.W.2d 470, 479 (despite "some overlap in the arguments of … two cases" between the same parties, no

[4] Unfortunately, thirteen receiver-less months after the trial, Hygea's *status quo ante* has collapsed, with its business evicted from its headquarters.

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preclusion because "the claims themselves were separate and distinct"); *Barrileaux v. Hartford Life & Acc. Ins. Co.*, Civil Action No. 12-1542, 2014 WL 3778744, at *3 (E.D. La. July 29, 2014) (plaintiff sued for ERISA and contract benefits related to injury after having lost prior personal injury suit against the same defendant relating to the same injury; while "there might be some overlap between the quantum of damages Plaintiff would be entitled to under either theory," that was insufficient to establish claim preclusion); *Taylor v. Vill. of Montgomery*, No. 15 C 5131, 2016 WL 772853, at *3 (N.D. Ill. Feb. 29, 2016) (allegations regarding another case set forth as context and "not as the basis of additional claims" make "claim preclusion inapplicable"); *Peterson v. sanofi-aventis U.S. LLC*, No. CV-12-202-LRS, 2012 WL 2880883, at *4 (E.D. Wash. July 13, 2012) ("some overlap in evidence" between two actions insufficient for *res judicata* because the second case would "involve evidence different from or in addition to" the issues in the first case).

Meanwhile, under Defendants' theory that Plaintiffs must bring all potential damage claims during a receivership action, courts would be faced with unwieldy litigation that would effectively destroy the NRS 78.650 system. The statute clearly anticipates that multiple shareholders will band together in order to seek a receiver. Yet such shareholders will inevitably also have their own damages claims. If the petitioning shareholders—who could number in the dozens or more—all have to bring their damages claims in order to preserve them, every NRS 78.650 proceeding would turn into a three-ring circus.

Indeed, it is well-established that a "'use or lose' approach [of claim preclusion doctrine] may be unworkable in instances in which the court hearing the initial action does not have jurisdiction to hear certain claims or to award certain types of relief, or the nature of the claims and relief sought is limited by statute." *Holt v. Reg'l Tr. Servs. Corp.*, 127 Nev. 886, 894, 266 P.3d 602, 607 (2011) (quotation marks and citation omitted). "Special features of a statutory scheme also may suggest departure from ordinary rules of claim preclusion." *Boca Park Marketplace Syndications*

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Grp. v. HIGCO, Inc., 407 P.3d 761, 764 (Nev. 2017). In *Boca Park*, the Nevada Supreme Court rejected a claim preclusion theory applied to a statutory declaratory judgment action, holding: "[t]he statutory scheme providing for declaratory relief therefore is 'antithetical' to claim preclusion, justifying an exception to its bar." The Court quoted *Principal Mut. Life Ins. Co. v. Straus*, 863 P.2d 447, 451 (N.M. 1993) ("explaining that when the declaratory relief action is limited to a request for declaratory judgment, '[r]equests for damages may then be pursued by separate litigation as supplement[al] relief'") and Restatement (Second) of Judgments § 33 cmt. c ("When a plaintiff seeks *solely* declaratory relief, the weight of authority does not view him as seeking to enforce a claim against the defendant.") *Boca Park*, 407 P.3d at 765. The Court concluded:

> No doubt Higco could have amended its declaratory judgment complaint to state a claim for damages or other coercive relief. And, the district court could have declined to proceed on the declaratory relief action after Higco suggested that Boca Park had already breached the lease agreement. *See* NRS 30.080 ("The court may refuse to render or enter a declaratory judgment or decree where such judgment or decree, if rendered or entered, would not terminate the uncertainty or controversy giving rise to the proceeding."); *see* Restatement (Second) of Judgments § 33 cmt. c ("[T]he court whose discretion is invoked by a declaratory action has means of preventing abuse. The court should lean toward declining the action if another remedy, such as a coercive action on an existing claim, is plainly available and would have wider [claim preclusive] effects."). **But neither of these eventualities materialized, probably because Boca Park did not include counterclaims in its answer or otherwise seek to expand the declaratory judgment action to address damages. As Higco's original action sought only declaratory relief, the declaratory judgment exception to claim preclusion applies.** *Id.* at 766 (bold added).

Similarly, in *G.C. Wallace, Inc. v. Eighth Judicial Dist. Court*, 127 Nev. 701, 262 P.3d 1135 (2011), the Nevada Supreme Court applied an exception to claim preclusion in the landlord-tenant context:

> If we construed NRS 40.253 to require simultaneous litigation of all claims arising from the tenant's default, we would eviscerate the utility and the very purpose of justice court summary eviction proceedings. Landlords seeking damages in excess of $10,000 would be forced to entirely forego the speedy resolution of possession in justice court or forfeit their claims for damages in excess of $10,000. **Such a result would entirely defeat the purpose of the summary eviction scheme, transforming it into a trap that would snare the very individuals that it was designed to serve.** *Id.* at 710 (bold added).

Again, Defendants here argued repeatedly (and without objection from Plaintiffs) against treating

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the Receivership Action as having anything to do with the damages case. And just like the defendants in *Boca Park*, Defendants here also did not raise counterclaims, despite expressly indicating they anticipated doing so. *See* **Exhibit 11**, Defs.' Resp. to Court's March 28, 2018 Order Setting Conf. under N.R.C.P. 16(a) at 6. This is precisely the sort of scenario where claim preclusion does not apply. Consistent with the statutory scheme, the fourteen Receiver Action Plaintiffs brought an emergency, expedited action with a stand-alone claim. Applying claim preclusion would undermine the statutory purpose of the collective receivership petition.

2. The parties between the two actions are different and not in privity

Similarly, "the parties or their privies are [not] the same in the instant lawsuit as they were in the previous lawsuit." *Weddell*, 350 P.3d at 85. N5HYG was but one of *fourteen petitioners* in the Receiver Action. Although Nevada courts have found that the presence of additional parties does not necessarily preclude a finding of privity, their presence is preclusive here. While, for example, the court in *Mendenhall v. Tassini,* 403 P.3d 364 (Nev. 2017) found that there was privity when there was not a complete difference between the respondents in both actions, the court acknowledged "that privity does not lend itself to a neat definition, thus determining privity for preclusion purposes requires a close examination of the facts and circumstances of each case." 403 P.3d at 369. In this instance, the only "relationship" between N5HYG and the other Receiver Plaintiffs was that they all sought the receiver. And Nevada 5 did not even share that relationship with the other Receiver Plaintiffs. *See, e.g., Conservation Nw. v. Rey*, 674 F. Supp. 2d 1232, 1243 (W.D. Wash. 2009) (despite "some overlap" between parties, no privity where "nine of the eleven Plaintiffs" were parties to one case but not the other).

3. Plaintiffs could not have brought these claims in the Receiver Action and Defendants are estopped from arguing otherwise

Defendants "argu[e] that N5HYG should have brought the claims in this Action in the Receivership Action." Defs.' Br. at 12-13. But Defendants downplay or outright ignore the host of reasons why Plaintiffs could not have done so. First, as this Court will recall, the Stock Purchase

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Agreement has a forum selection clause that requires Plaintiffs to bring their damages claim here. *See* **Exhibit 12** at § 8.11.1. Defendants suggest that the clause might be unenforceable, essentially arguing that N5HYG should have simply disregarded its contractual obligations and assumed Defendants and the Court would have allowed that. But such provisions are presumptively enforceable, as they should be. *See, e.g. Graham Technology Solutions, Inc. v. Thinking Pictures, Inc.*, 949 F. Supp. 1427, 1434 (N.D. Cal. 1997). And "[e]quitable estoppel precludes a party from claiming the benefits of a contract while simultaneously attempting to avoid the burdens that contract imposes." *Nav N Go Kft. v. Mio Tech. USA, Ltd.*, No. 2:08-CV-01384-LRH-LRL, 2009 WL 10693414, at *9 (D. Nev. June 11, 2009) (citing *Mundi*, 555 F.3d 1042, 1045 (9th Cir. 2009)). Defendants here have claimed such benefits, ranging from their receipt of the $30 million payment to its jury waiver provision. Defs' Mot. to Dismiss the First Am. Compl. at 17; FOFCOL at 9. They cannot blithely disavow the forum selection clause.

Second, Defendants now say that N5HYG *should have split its claims*, by litigating the identical damage claims in this case and in the Receiver Action. Defs.' Br. at 13-14. In support, Defendants rely on the inapplicable case of *Sprint Commc'ns, Inc. v. Jacobs*, 134 S. Ct. 584 (2013). But *Sprint* did not involve claim preclusion at all. And even to the extent state and federal courts might entertain similar damage claims simultaneously, the federal court where the present claims were removed *did not have jurisdiction*, as the federal court held shortly after the Receiver Trial. Therefore, even had Plaintiffs been inclined to engage in the wasteful practice of claim-splitting their damage claims, the damage claims would have ended up in two different Nevada state courts—one in Carson City and one here. That scenario would have created complications and waste—not simplicity and efficiency. And it would have been further complicated by the fact that Plaintiff Nevada 5 was not itself a direct shareholder in Hygea and could not, therefore, have joined in the Receiver Action. As a result, even if N5HYG had decided to split its claims, or dismiss its claims in this case only to move them over to the Receiver Action, Nevada 5 would still have been litigating

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its (virtually identical) claims here. Again, Hygea would have been litigating the virtually identical damages cases in two courts—for what?

Further, the Receiver Plaintiffs initially filed in this Court. But Defendants moved for a change of venue to Carson City, citing the strict locality requirements "of NRS 78.630 and 78.650." **Exhibit 13** at 3:5-7. This Court agreed and ordered the Receiver Action transferred. **Exhibit 14** at 2:1-6; Defs.' Br. at 5, n.4. In the meantime, Defendants had improperly removed this case to federal court. Had this case been here, instead of federal court, then when the Receiver Plaintiffs filed their petition, Defendants could have moved to consolidate the two cases. Instead, they moved the Receiver Action to Carson City while wrongfully keeping this case in federal court. Defendants thus effectively severed the two cases.

In doing so, Defendants argued that the Receivership Action had nothing to do with the parties' Stock Purchase Agreement and was otherwise entirely distinct from this case. As this Court will recall, the Receiver Action Plaintiffs argued that this Court could hear the Receiver Action because the Stock Purchase Agreement's forum selection clause provided for litigation here. Defendants argued that "[t]his [receivership] action does not arise *in connection with* the parties' SPA." **Exhibit 13** at 6:8-9 (italics in original). They continued that "Plaintiffs provide no explanation whatsoever as to *how* this action *for the appointment of a receiver* arises *in connection with* the Agreement. Nor can they because it plainly does not." *Id.* at 6:10-12 (italics in original). Their successful argument on that venue issue is diametrically at odds with their position here.

Defendants are thus estopped from arguing that Plaintiffs could have brought their damages claims in the Receiver Action, or vice versa, or that the Receiver Action is meaningfully connected to this case for purposes of claim preclusion. *See, e.g.*, *Marcuse*, 123 Nev. at 287; *Mull v. Motion Picture Industry Health Plan*, No. CV 12-06693-VBF-MAN, 2014 WL 1514812, *17 (C.D. Cal. Feb. 4, 2014). Indeed, this is a textbook case of how and judicial estoppel should apply. If Defendants had acceded to this Court's adjudication of the Receiver Action, then this Court could

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have managed and overseen the interaction between the two cases – the Receiver Action and this damages case – as the Receiver Action proceeded. Instead, because Defendants prevailed on their venue argument, the parties litigated the Receiver Action in Carson City, where the Defendants consistently argued that the Court should avoid the issues in this case. Now, having consistently argued in both courts that the cases are distinct (which they are), Defendants return here, argue that the two cases are actually the same, and complain about having to defend themselves in two courts. Defendants could have avoided all of their purported concerns had they acceded to litigating both cases here. Conversely, having moved the Receiver Action to Carson City based on the argument that the two cases are distinct, Defendants' present posture would impose the most severe prejudice imaginable upon Plaintiffs: that Plaintiffs should lose the opportunity to seek damages because Defendants successfully positioned the Receiver Action and this damage action in different courts.

Moreover, having already brought their damages claims here, Plaintiffs faced a risk that any refiling of them in the Receiver Action would jeopardize the damages claims, or else result in the removal of the Receiver Action to federal court under Defendants' specious removal theory. This would have been at least a tacit ratification of the improper removal, or worse, set the stage for Defendants to argue that the federal court lacked the authority to appoint a receiver under the statute because, on its face, the statute expressly confers jurisdiction only on the state court.[5]

In short, at every step of the way, Defendants have thrown up procedural roadblocks, which is why the parties are still litigating the pleadings nineteen months into the case. They now ask this

[5] Defendants concede they are not arguing that N5HYG should have sought a receiver in this action while it was in federal court but still erroneously cite *Pioche Mines Consol., Inc. v. Dolman,* 333 F.2d 257, 273 (9th Cir. 1964). That court did not appoint a receiver, and specifically concluded that "[w]e need not decide whether" the Court would have jurisdiction. Instead, the Court merely mused in dicta that it could take jurisdiction of claims grounded in NRS 78.650 and 78.630, but never addressed the statute's jurisdictional language. Furthermore, the removal in that case was not a diversity removal. Similarly, the Court in *Backman v. Goggin*, Case No. 2:16-CV-1108, 2017 WL 1015008 (D. Nev. Mar. 15, 2017) did not consider a challenge to that court's jurisdiction over the receiver claim.

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Court to assume that they would have stood aside as Plaintiffs tried to pull off a complex procedural maneuver to avoid the forum selection clause and merge their then-federal court damages claims with the Receiver Action while avoiding another improper removal. Such an assumption is entirely implausible.

4. Hygea acquiesced to any purported claim splitting

As previously briefed, Defendants repeatedly argued in the Receiver Action that the claims in this case are distinct and must only be litigated (and were being litigated) in this separate action:

- **This action does not arise in connection with a stock purchase agreement.** There has been no breach of contract or fraud based on the agreement. There have been no claims brought based on the agreement. (bold added).

- I do know I have in my notes here that he talked about **breach of the -- the SPA. Well, they have a litigation against Hygea for that. It's pending before Judge Mahan.** There's not a claim for breach of the SPA here. And in any event a breach -- a breach of contract isn't even a basis for a receivership. (bold added).

- If Plaintiff N5HYG believes it has a contractual right to an audit, **then it should seek to enforce that purported right in its breach of contract claim [then] pending in federal court.** (bold added).

- Your Honor, what we will see and what we will see as a repeating theme throughout this lawsuit is that if plaintiffs had an issue about the issued and outstanding stock, they have a remedy at law. **They can bring a breach of contract action.** If they, feel that Hygea has violated that antidilution provision, which as plaintiffs' counsel just stated, it merely provides a preemptive right, **then they can bring a lawsuit for breach of contract against Hygea. but a receivership action is not the forum to enforce their contractual rights.** (bold added).

- Well, the stock purchase agreement is a contract, and if they seek to enforce that contract or if they believe that Hygea has violated the contract, **then they should bring a breach of contract claim seeking to enforce that right. But a receivership action** and the extraordinary and harsh remedy of a receivership **is not the proper basis to enforce their rights -- their purported rights under a contract.** (bold added).

- Moreover... we've heard plaintiffs complain about this purported mismanagement of the company. However, again, they have a legal remedy. **They can bring a breach of fiduciary duty action.** (bold added).

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- MS. GALL: I am, Your Honor. I have one point of clarification about a comment, Your Honor, just made about the Court having to determine whether or not there's been a breach of contract.
  THE COURT: I should have just said all legal issues, not -- I understand there's not a breach of contract claim.
  MS. GALL: Understood, Your Honor, because that claim is pending in another litigation, does the Court anticipate it will be making a determination on breach of contract?
  THE COURT: No.
  MS. GALL: Okay. Understood, Your Honor.

- We have heard complaints from plaintiff about the audits, a lot about the audits, which is reflected in a Stock Purchase Agreement between N5HYG and Hygea. But, again, **that is a breach of contract claim, not a basis for the appointment of a receivership.** (bold added).

- Even if Hygea has violated the antidilution provision, which we do not admit that we have **done because that is a claim based in contract, and there is a breach of contract action that N5HYG has brought against us in another Court,** it doesn't matter because NRS 78.650 provides very – I'm going to read here, "Unambiguously provides 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." (bold added).

- Indeed, the vast majority of plaintiffs' complaints stem from the Stock Purchase Agreement between the lead plaintiff, N5HYG, and the company. Plaintiffs -- we have heard much testimony about the 2014 and 2015 audited financial statements. **If plaintiffs believe they have a right to these audits under their Stock Purchase Agreement, plaintiffs can seek to enforce that right through their breach of contract claim in federal court.** (bold added).

- Plaintiffs complain about the corporation not being transparent and about the corporation's books and records. Whether plaintiffs believe they have a right to the books and records either by their position as stockholders or by some contractual right, **then plaintiffs can enforce that right** either through a books and records action or, again, **through their pending breach of contract claim [then] in federal court.** (bold added).

- Plaintiffs complain that Mr. Iglesias made misrepresentations in the form of projections about the company's financials in the time leading up to N5HYG's stock purchase. But, again, **plaintiff N5HYG can then seek damages for such misrepresentations through its securities claim [then] in federal court.** Plaintiffs have a legal remedy for each and every one of their complaints. (bold added).

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(Pls.' Resp. to Mot. to Dismiss the First Am. Compl. and to Strike Suppl. Pleadings and Jury Demand at 14-15, providing specific citations to documents, pages, and lines where Defendants' quoted language can be located).

Defendants cannot reverse course now. "A defendant who expressly asserts that one part of a claim should not be advanced in one action because it is properly the subject of a separate pending action should lose any claim-splitting argument, whether as a matter of express consent or estoppel." § 4404 Sequence of Actions and Judgments, 18 Fed. Prac. & Proc. Juris. § 4404 (3d ed.) (citing *Joleewu, Ltd. v. City of Austin*, 916 F.2d 250, 252–254 (5th Cir. 1990), opinion vacated on a different issue, *Joleewu, Ltd. v. City of Austin*, 934 F.2d 621 (5th Cir. 1991)).

In *Joleewu*, after the property owner brought an inverse condemnation action against a city, the city brought a condemnation proceeding in which it expressly stated that no consideration should be given to losses it caused to the property owner because those losses would be considered in the separate inverse condemnation action. *Id.* Then, just like Defendants here, the City changed course: after the condemnation award, the city argued in the inverse condemnation action that the property owner's failure to seek damages for inverse condemnation in the condemnation action precluded damages. *Id.* The Court found this assertion "devoid of justice, honesty, and fair dealing." *Id.*

Here, nobody – not the Receiver Court, not Plaintiffs, and not Defendants – ever thought that the Receiver Action was intended to resolve or did resolve the monetary claims. For example, the Receiver Court found that Hygea owed N5HYG nearly $2 million under the contract. **Exhibit 6** at ¶ 3. However, the Receiver Court never even suggested that this should be reduced to judgment. Defendants certainly have not shown any inclination to pay it on the basis of the Receiver Court's conclusion. It would be perverse for Hygea to get out of its contractual obligations here through another court's finding that Hygea had breached the contract.

5. Defendants do not need the protection of claim preclusion

Defendants also complain they were "forced to endure a 5-day [Receiver] trial." Defs.' Br. at 4. But the Receiver Action was originally designed to include a three-to-five-day evidentiary

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hearing on a preliminary determination, *followed by a trial*, which Defendants predicted would take place up to a year later. *See* **Exhibit 11** at 6. At Defendants' suggestion, and Plaintiffs' agreement given the expedited and discrete nature of the case, the hearing and trial were merged. But if the Receiver Action had been expanded to include N5HYG's (or other co-Plaintiffs') damages-related claims, that *never would have occurred.* There would still have been a lengthy evidentiary hearing on the receivership claim, followed by full-blown discovery and a later trial, which would have included the damages claims, *as well as further consideration of the receivership claim.* So, Defendants would not have been in a better position than they are now—if anything, that would have been worse. Regardless, there would always have been a second trial, which is precisely the present scenario. Therefore, there is no prejudice to Defendants.

III. The Court Should Not Further Delay This Case Through the Imposition of a Stay

A. A stay would cause further unwarranted delay

Defendants' request for a stay is a request for unwarranted delay. Defendants have already engineered a six-month detour in federal court based on a rationale so flimsy that Court awarded Plaintiffs' attorneys' fees; they received 40 extra pages of briefing on their Motion to Dismiss; and they filed two motions for clarification of the Court's order before the present motion. Regardless of whether there has been a dilatory motive, there has certainly been a dilatory effect. *See* NEV. R. CIV. P. 1 (rules "shall be construed and administered to secure the just, *speedy*, and inexpensive determination of every action") (emphasis added). Moreover, this current bid to further delay the case came *the same week* as the Defendants' business was evicted from its headquarters for nonpayment of rent. A stay is particularly improper where, as here, there is a risk of asset dissipation and evidence spoliation. *See United States v. Stewart*, No. CRIM. A. 96-583, 1999 WL 551891, at

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*5 (E.D. Pa. June 25, 1999) (stay inappropriate when "time is of the essence" given the risk of dissipation of asset value).[6] The Court should allow this case to finally proceed.

B. Defendants are unlikely to succeed on the merits of a writ petition

Defendants' writ petition is unlikely to succeed for multiple reasons. *First*, this Court was correct that claim preclusion does not apply. *Second*, even if an appeal had merit, the chances of the Nevada Supreme Court granting a writ petition are minimal. The Supreme Court grants only about one in ten writ petitions, denying the vast majority out of hand. *Third*, the odds here are even slimmer. The Supreme Court generally declines to consider writ petitions that challenge district court orders denying motions to dismiss. *Beazer Homes Nevada, Inc. v. Dist. Ct.,* 120 Nev. 575, 578–79, 97 P.3d 1132, 1134 (2004). Here, Defendants can appeal any final determination after the conclusion of the case. Moreover, writ petitions are generally granted in cases of exceptional importance to the development or clarification of Nevada law. *International Game Tech. Inc. v. Second Judicial Dist. Ct. of Nevada,* 122 Nev. 132, 142–43, 127 P.3d 1088, 1096 (2006). The issues that Defendants would raise in any writ petition simply do not rise to that level of public significance.

C. Plaintiffs' appeal of the Receiver Action is not a basis for a stay

1. Defendants failed to timely raise this issue

Defendants' request for a stay is, at the threshold, untimely. The Receiver Plaintiffs filed their Notice of Appeal on September 12, 2018. Since then, Defendants moved to dismiss the First Amended Complaint on August 17, 2018 and moved for Reconsideration/Clarification on December 3. Yet they never raised this issue until now. Again, regardless of their motive, the effect is dilatory.

2. There is no risk of inconsistent judgments

[6] Defendants claim that "[i]t is well established that a mere delay in pursuing discovery and litigation does not constitute irreparable or serious harm." Defs.' Br. at 18. But this is hardly a "mere delay": the parties are still litigating the pleadings after nineteen months, and Defendants have been evicted. At best, Defendants' argument seems to reflect denial about the circumstances here.

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Contrary to Defendants' argument, there is nothing the Supreme Court could do with respect to the Receiver Action that would pose the risk of inconsistent findings between the two cases. Matters on appeal—whether the Receiver Plaintiffs owned 10% of Hygea's shares; whether a Receiver was warranted as of May 2018; or whether attorneys' fees were appropriate—will not determine whether N5HYG and/or Nevada 5 is entitled to damages for the breach of contract, securities fraud, and other claims in this case.

Even if the Supreme Court determined that the Receiver Court did have jurisdiction, claim preclusion would still be inappropriate for all the other reasons that Plaintiffs have explained.[7] And while the Supreme Court could "activate" the Receiver Court's factual findings if it overturns on the jurisdictional issue, none of those findings dispose of this case. As discussed throughout, the Receiver Court simply did not address the key issues in this case *because they were two entirely different cases*.[8] Moreover, in that event, there is no guarantee that the Receiver Court's findings would then "spring" into effect. It seems entirely possible that the Supreme Court would vacate the Receiver Court's findings as outdated and remand the case to the Receiver Court for further proceedings based on the present status of Hygea.[9]

3. The parties' competing interests strongly disfavor a stay

Plaintiffs are out well over $30 million and have had to wait 19 months and counting for this case to move beyond the pleading stage. Meanwhile, Hygea has lost its Chief Medical Officer and

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[7] As N5HYG's appellate docketing statement expressly states, but Defendants fail to mention, "The Receivership Action Judgment adjudicated all of the receivership claims involving all of the parties combined 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." **Exhibit 15,** Appellants' Civil Docketing Statement, Attach. at ¶ 24.

[8] Defendants claim that "the Receivership Court has already made findings on some of the facts that N5HYG alleged here," Defs.' Br. at 18, but does not say which ones.

[9] Defendants rely primarily on *Catskill Mountains Chapter of Trout Unlimited, Inc. v. U.S. E.P.A.*, 630 F. Supp. 2d 295 (S.D.N.Y. 2009) for the argument that the Court should stay this case pending the resolution of the Receiver Action's appeal. But the Court stayed *Catskill Mountains* because of an ongoing federal appeal that involved "a direct challenge" to the federal rule at issue in the case. *Id.* at 305. That is not the case here.

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in just the past few weeks, it has been evicted from its headquarters, elevating the likelihood of dissipated assets and spoilated evidence. Thus, this case is like *In re Gardens Reg'l Hosp. & Med. Ctr., Inc.*, No. 2:16-BK-17463-ER, 2018 WL 1229989, at *3 (C.D. Cal. Jan. 19, 2018), in which the court found that the potential for harm to other parties, in the form of dissipation of assets and funds for distribution to creditors, was substantial, and thus denied a requested stay. Likewise, in *Starlight Int'l Inc. v. Herlihy*, 186 F.R.D. 626, 648 (D. Kan. 1999), the court declined to stay an action pending resolution of criminal actions against defendants because "defendants could dissipate their assets and thwart plaintiff's attempts to recover any fraud damages." *See also Ford Motor Credit Co. v. Chiorazzo*, 529 F. Supp. 2d 535, 542 (D.N.J. 2008) (stay denied where it "could prejudice [plaintiff] due to the purported continued dissipation [defendant]'s assets"); *Stewart, supra*, 1999 WL 551891, at *5.

Similarly, here, there is simply no reason to further delay this case based on the chance that something will come up in one of the many other lawsuits that Defendants are defending.[10] The

[10] *See, e.g., CEA Atlantic Advisors, LLC v. Hygea Holdings Corp.*, Case No. 16-CA-11256 in the Thirteenth Judicial Circuit in and for Hillsborough County, Florida (filed Dec. 9, 2016) (alleging that Hygea owes commission fee to plaintiff); *De Lage Landen Financial Services, Inc. v. Hygea Holdings Corp.*, Case No. 2018-039127-CA in the 11th Judicial Circuit Court in and for Miami-Dade County (filed Nov. 21, 2018) (alleging breach of contract for failing to make payments under equipment lease agreement); *Priority Healthcare Distribution, Inc. v. Hygea Holdings Corp.*, Case No. 2018-027546-CA-01 in the 11th Judicial Circuit Court in and for Miami-Dade County (filed Aug. 14, 2018) (alleging Hygea has failed to pay plaintiff for sale and delivery of prescription drugs); *Dahan, et al. v. Hygea Holdings Corp., et al.*, Case No. 2018-000006-CA-01 in the 11th Judicial Circuit Court in and for Miami-Dade County (filed Jan. 3, 2018) (alleging Hygea mislead and misrepresented information to doctors who sold their practices to Hygea); *Espinoza v. Hygea Holdings Corp, LLC*, Case No 1:17-cv-24180-JLK in the Southern District of Florida (filed Nov. 11, 2017) (alleging violations of Florida's employment statutes and default judgment entered); *Palmetto 103 Properties, L.L.C. v. Hygea Health Holdings, Inc.*, Case No. 2019-002312-CC-21 in the County Court in and for Miami-Dade County, Florida (filed June 20, 2019) (alleging Hygea has failed to pay rent and has breached contract).

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most likely result of the lawsuits, and of Hygea's distress more generally, is that assets and evidence will scatter to the wind.

CONCLUSION

Based upon the foregoing, Defendants' Motion should be denied.

DATED this 25th day of June, 2019.

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CERTIFICATE OF SERVICE

I hereby certify that I am an employee of Albright, Stoddard, Warnick & Albright, and that on the 25 day of June, 2019, I served a true and correct copy of the foregoing **PLAINTIFFS' OPPOSITION TO DEFENDANTS' MOTION FOR RECONSIDERATION OR CLARIFICATION** upon all counsel of record by electronically serving the document using the Court's electronic filing system.

Barbara Clark

An employee of Albright, Stoddard,
Warnick & Albright

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EXHIBIT “1”

Declaration of Dr. Norman Gaylis

STATE OF FLORIDA)
) SS
COUNTY OF MIAMI-DADE)

I, Dr. Norman Gaylis, having been first duly sworn on oath, depose and state as follows:

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

2. I am a practicing board certified physician, specializing in rheumatology.

3. Beginning in or around May 31, 2016, effective as of December 1, 2015, I and my medical practice and related entities became a part of the network of medical practices within the Hygea Holdings Corp. ("Hygea") network.

4. On February 1, 2019, my practice and I, along with my related entities, separated from Hygea.

Further declarant sayeth naught.

I declare the foregoing to be true and correct.

Executed on this 21 day of June, 2019 at Miami, Florida.

Dr. Norman Gaylis

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EXHIBIT “2”

CFN: 20190345318 BOOK 31469 PAGE 2160
DATE:06/04/2019 02:12:15 PM
HARVEY RUVIN, CLERK OF COURT, MIA-DADE CTY

IN THE CIRCUIT COURT FOR THE 11TH
JUDICIAL CIRCUIT, IN AND FOR
MIAMI-DADE COUNTY, FLORIDA

CASE NO. 13-2019-CA-010475-000001

RREF III-P DORAL OFFICE, LP,
a Delaware limited partnership,

Plaintiff,

v.

HYGEA HEALTH HOLDINGS, INC.,
a Florida Corporation,

Defendant.
_____/

FINAL JUDGMENT OF EVICTION – COUNT I

THIS CAUSE came before the Court upon RREF III-P Doral Office, LP's *Motion for Default and for Default Final Judgment of Eviction against Hygea Health Holdings, Inc.* (the "Motion"). The Court has reviewed the pertinent court documents; is advised that Hygea Health Holdings, Inc. failed to respond to the Complaint for Commercial Tenant Eviction and Damages (the "Complaint") and failed to deposit any rent into the court registry; and is otherwise fully advised in the premises.

Accordingly, it is **ORDERED AND ADJUDGED** that:

1. The Motion is **GRANTED**.

2. The Court enters a default against Hygea Health Holdings, Inc. for its failure to respond to Count I of the Complaint.

3. RREF III-P Doral Office, LP shall recover from Hygea Health Holdings, Inc., and all others in possession thereof, possession of the premises known as 8750 NW 36th Street, Suites 300, 320, and 340, Doral, Florida 33178.

4. The Clerk of Court is hereby ordered to issue forthwith to RREF III-P Doral Office, LP a *Writ of Possession of Eviction – Count I*, directing the Sheriff of Miami-Dade County to remove Hygea Health Holdings, Inc., and all others in possession thereof, from the location known as 8750 NW 36th Street, Suites 300, 320, and 340, Doral, Florida 33178.

5. The Court hereby retains jurisdiction over this action as to the service of the aforementioned writ of possession; to determine and award compensatory damages against Hygea Health Holdings, Inc. in Count II; and to determine and award attorneys' fees and costs.

DONE AND ORDERED in Miami-Dade County, Florida, this 30 day of May, 2019.

CIRCUIT COURT JUDGE

ORIGINAL

JUDGE PETER R. LOPEZ

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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

DEFENDANTS' TRIAL STATEMENT PURSUANT TO FJDCR 10

DEFENDANTS' TRIAL STATEMENT PURSUANT OT FJDCR 10

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, by and through their counsel of record, hereby provide this Trial Statement Pursuant to FJDCR 10.

A. CONCISE STATEMENT OF THE CLAIMED FACTS SUPPORTING DEFENDANTS' DEFENSES

1. With respect to Hygea's issued and outstanding stock, as of the filing of this Trial Statement, Hygea had at least 432,107,293 issued and outstanding shares, and thus, Plaintiffs, at most, collectively hold 6.79% of Hygea's issued and outstanding stock, broken down as follows for each Plaintiff:

Plaintiff	Shares	%
Arellano	2,313,200	0.54%
Crown Equity's	250,000	0.06%
Fifth Avenue 2254	100,000	0.02%
Halevi Enterprises	500,000	0.12%
Halevi SV1	250,000	0.06%
Halevi SV2	250,000	0.06%
Hillcrest Acquisitions	250,000	0.06%
Hillcrest Center SV I	250,000	0.06%
Hillcrest Center SV II	250,000	0.06%
Hillcrest Center SV III	500,000	0.12%
IBH Capital	250,000	0.06%
Leonite Capital	500,000	0.12%
N5HYG	23,437,500	5.42%
RYMSSG Group	250,000	0.06%

a. Plaintiff N5HYG LLC ("N5HYG") alleges in the First Amended Complaint that it alone holds 8.57% of the Company's shares. To have 8.57% ownership of the Company's issued and outstanding stock *today*, Plaintiff N5HYG would need to hold 37,031,595 shares—8.57% being the non-fully diluted percentage of stock ownership reflected in the Stock

Purchase Agreement between N5HYG and the Company (the "SPA"). Even if N5HYG held 37,031,595 shares today, Plaintiffs would, at most, collectively hold 9.94% of the Company's issued and outstanding shares.

b. Plaintiff N5HYG knew that their shares as purchased in October 2016 were subject to dilution, given the SPA's exception for the issuance of warrants, options, or similar rights to acquire Hygea's common stock, and at least as early as January 2017, N5HYG knew that it held less than 8.57% of Hygea's issued and outstanding shares on a then-diluted basis.

2. With respect to unclean hands and waiver, Plaintiff N5HYG not only knew that its stock was subject to dilution, but N5HYG also relinquished the board seat on Hygea's Board of Directors provided for under the SPA.

3. With respect to management, Hygea is managed by its Board of Directors, the members of which consist of the individual Defendants. The Board of Directors has appointed certain officers, who are responsible for Hygea's day-to-day operations. Keith Collins, M.D. is the Company's interim Chief Executive Officer, Secretary, and Chief Transition Officer. David Hernandez is the Company's Chief Operations Officer. Sergey Savchenko is the Company's acting Chief Financial Officer.

a. Defendant Manuel Iglesias is not the Chief Executive Officer of Hygea, having resigned from that position. Although Mr. Iglesias remains a shareholder and director of the Company, he does not have operational authority over the Company. That said, Mr. Iglesias, as a co-founder of the Company, continues to consult with the Company's current executives on legacy and institutional issues, as well as in connection with the Company's current objective of affecting an asset sale.

b. Defendant Edward Moffly is not the Chief Financial Officer of Hygea,

having resigned from that position. Although Mr. Moffly remains a shareholder and director of the Company, he does not have operational authority over the Company. That said, Mr. Moffly, as a co-founder of the Company, continues to consult with the Company's current executives on legacy and institutional issues, as well as in connection with the Company's current objective of affecting an asset sale.

4. Although Hygea is solvent, the Company acknowledges that it currently faces a cash constraint. However, the Company is managing its debts, including by having entered into forbearances and/or payment plans for those debts that are not currently the subject of any *bona fide* disputes. The Company's remaining debts are the subject of *bona fide* disputes. Moreover, Bridging Finance has provided Hygea with interim financing in order to assist with its short-term cash flow constraints and has committed to provide additional financing, as the Company requires such funds to meet continuing medium-term obligations.

5. With respect to its other obligations, including payroll, Hygea pays its employees on a biweekly basis, every other Friday. Its payroll payments have not ceased, and with the exception of a handful of former C-Suite executives, all of Hygea's approximately 600 employees have always been paid.

6. Hygea has contracts with certain HMO plans, all of whom have a contractual right to terminate their contract with Hygea in the case that a receiver is appointed to manage the Company's affairs. If an HMO cancelled its contract with Hygea, the Medicare Advantage Patient Panel associated with that HMO would be immediately and automatically reassigned to another provider, and Hygea would permanently lose its ability to generate revenue by optimizing capitation for that particular Patient Panel. If the Patient Panel is reassigned, the new medical management service organization to which the Patient Panel would be automatically reassigned will have the right to receive all surpluses going forward, even those properly

attributable to the coding and services provided by Hygea from 2016, 2017, and 2018.

7. Hygea is exploring current financing opportunities with investors, one of whom has issued an outstanding Letter of Intent regarding its intention to invest in Hygea, contingent upon the provision of an audited Quality of Earnings Report for the fiscal year ended 2017. This particular suitor, as well as Hygea's other current financing opportunities, are the most straightforward way to solve Hygea's short-term cash flow challenges.

8. With respect to Plaintiffs' proposed receiver, Fredrick Waid, Esq., does not have any, or has very little, experience with managed care agreements or risk adjustment mechanisms, which constitutes Hygea's core competency. Moreover, Mr. Waid is not a member of the Nevada bar and does not have any, or has very little, experience with the mechanisms of Nevada corporate governance, including as set forth in NRS Chapter 78 and applicable Nevada law.

9. With respect to Hygea's proposed director receiver, Dr. Keith Collins already serves as Hygea's interim CEO. Dr. Collins is a physician, Board Certified in Internal Medicine, and has been the founder and CEO of several successful health care companies. He is the founder and Managing Partner of HealthExcel, an innovative physician-driven medical services company based in Miami, which over the last ten years has incubated a number of successful spinoffs. During his time at HealthExcel, Dr. Collins has been founder and CEO of Better Health, a Florida Medicaid plan that was acquired by Simply Health Care; founder and CEO of Access PSN, which is now Sunshine Health Plan, the second-largest Medicaid HMO in Florida; founder and CEO of PhyTrust of South Carolina, now Absolute Total Care, the second-largest Medicaid HMO in South Carolina; and founder and CEO of DataLoom, a health care data integration company, among others. Prior to starting HealthExcel, Dr. Collins was Senior Vice President at Healthsource, a NYSE-listed health maintenance organization with operations in 16 states, serving as Regional CEO for the health plans in New York, New Jersey, and Connecticut.

B. STATEMENT OF ADMITTED OR UNDISPUTED FACTS

The below represents what Defendants believe to be the parties' agreed-upon facts based on their FJDCR 10 meet and confer. The undersigned counsels understand that the parties are continuing to meet and confer and may be able to agree upon additional facts prior to the trial of the matter.

1. Hygea Holdings Corp. ("Hygea") is a Nevada corporation.

2. Hygea's registered office is in Carson City, Nevada.

3. N5HYG LLC is a stockholder of record of Hygea and holds 23,437,500 shares of Hygea.

4. Fifth Avenue 2254 LLC is a stockholder of record of Hygea and holds 100,000 shares of Hygea.

5. Hillcrest Acquisitions, LLC is a stockholder of record of Hygea and holds 250,000 shares of Hygea.

6. Hillcrest Center SV I is a stockholder of record of Hygea and holds 250,000 shares of Hygea.

7. Hillcrest Center SV II is a stockholder of record of Hygea and holds 250,000 shares of Hygea

8. Hillcrest Center SV III is a stockholder of record of Hygea and holds 500,000 shares of Hygea.

9. Leonite Capital LLC is a stockholder of record of Hygea and holds 500,000 shares of Hygea.

10. Crown Equities (not Crown Equity's) is a stockholder of record of Hygea and holds 250,000 shares of Hygea.

11. Halevi Enterprises, LLC is a stockholder of record of Hygea and holds 500,000 shares of Hygea.

12. Halevi SV I is a stockholder of record of Hygea and holds 250,000 shares of Hygea.

13. Halevi SV2 is a stockholder of record of Hygea and holds 250,000 shares of Hygea.

14. Ibh Capital is a stockholder of record of Hygea and holds 250,000 shares of Hygea.

15. RYMSSG Group is a stockholder of record of Hygea and holds 250,000 shares of Hygea.

C. STATEMENT OF ISSUES OF LAW

1. Do Plaintiffs have standing to maintain their claims for the appointment of a receiver under NRS 78.650 and/or 78.630, and in connection therewith, does the Court have jurisdiction to appoint a receiver under these statutes?

In *Shelton v. Second Judicial Dist. Court in & for Washoe Cty.*, the Nevada Supreme Court held in no uncertain terms that "[w]here the statute provides for the appointment of receivers, the statutory requirements must be met or the appointment is *void and in excess of jurisdiction.*" 64 Nev. 487, 494, 185 P.2d 320, 323 (1947). Among other things, NRS 78.650 and 78.630 demand that the stockholder(s) petitioning for the appointment of a receiver hold 10% of the corporation's issued and outstanding stock. Plaintiffs fail to meet this threshold requirement for standing and jurisdiction.

As of the filing of this Trial Statement, it is undisputed by way of the First Amended Complaint and Defendants' Answer thereto, that Plaintiffs hold 29,350,700 shares. However, also as of the filing of this Trial Statement, the Company has at least 432,107,293 issued and

outstanding shares, and thereby, Plaintiffs hold only 6.79% of the Company's issued and outstanding stock. Plaintiffs, therefore, lack standing to maintain this lawsuit, and the Court lacks jurisdiction to appoint a receiver.

2. Are Defendants estopped from asserting that Plaintiff N5HYG holds less than 8.57% of Hygea's issued and outstanding stock?

Plaintiffs have argued that Defendants are estopped from asserting that Plaintiff N5HYG holds less than 8.57% of Hygea's issued and outstanding stock. Plaintiffs base this argument on two things: (1) Hygea's representation in the SPA that "immediately following such issuance [N5HYG] shall own [23,437,500] shares of Common Stock, constituting 8.57% of all of the issued and outstanding Common Stock;" and (2) the SPA's pre-emptive rights/anti-dilution provision. Although Plaintiffs fail to identify whether they reference equitable or promissory estoppel, the elements to establish either are the same: (1) the party to be estopped must be apprised of the true facts; (2) he must intend that his conduct shall be acted upon, or must so act that the party asserting estoppel has the right to believe it was so intended; (3) the party asserting the estoppel must be ignorant of the true state of facts; he must have relied to his detriment on the conduct of the party to be estopped. *NGA # 2 Ltd. Liab. Co. v. Rains*, 946 P.2d 163, 169, 113 Nev. 1151, 1160 (1997) (stating elements for a claim of equitable estoppel); *Pink v. Busch*, 691 P.2d 456, 459, 100 Nev. 684, 689 (1984) (setting forth identical elements for a claim of promissory estoppel). Plaintiffs, however, cannot establish any of these elements, including reliance, with respect to which Plaintiffs have notably failed to claim that they relied on the 8.57% representation to maintain their ability to bring an action for a receiver, nor could they, given that this would be insufficient without joining other stockholders.

Moreover, Plaintiff N5HYG knew that its 8.57% ownership was on a non-fully-diluted

basis, and that such ownership was subject to dilution by way of the warrants, options, and similar rights to acquire Hygea's common stock. Indeed, N5HYG explicitly acknowledged that a fully diluted Hygea capital structure as represented to N5HYG would feature nearly 400,000,000 shares (not 273,483,081). That being the case, if anyone is estopped from making their argument, it is Plaintiffs, the largest stockholder of which explicitly represented that it received notice of and had been provided to its satisfaction with complete and correct copies of the warrants outstanding prior to execution of the SPA.

Finally, even if Hygea has violated the SPA's pre-emptive rights/anti-dilution provision—which Hygea *does not* admit that it has done—it matters not. NRS 78.650 and 78.630 say *nothing* about dilution, permissible or not. Thus, Defendants submit that they could have issued up to the entirety of Hygea's authorized shares for the express purpose of diluting Plaintiffs (which Defendants *did not do*), and the 10% standing requirement of NRS 78.650 and 78.630 would still apply.

3. For purposes of their claims under NRS 78.650(b), (c), (d), and (e), have Plaintiffs established by a preponderance of the evidence that the Company's directors (i) are guilty of fraud or collusion or gross mismanagement in the conduct or control of its affairs, (ii) are guilty of misfeasance, malfeasance or nonfeasance, (iii) have caused the Company to be unable to conduct its business or conserve its assets, or, (iv) have caused waste, sacrifice, or loss of the Company's assets? *See* NRS 78.650 & 78.630.

NRS 78.650(b)-(e) speak to breach of the directors' fiduciary duty, and in Nevada, the threshold for breach of fiduciary duty is significantly higher than negligence. *See Bedore v. Familian*, 122 Nev. 5, 12, 125 P.3d 1168, 1172 (2006) (analyzing violations of NRS 78.650(b) in terms of breach of fiduciary duty). Indeed, Nevada demands proof of intentional misconduct, fraud, or a knowing violation of the law before any breach of fiduciary duty may be found. NRS

78.138(7) (stating that directors and officers are not liable for any breach of fiduciary duty unless it is proven that "[t]he breach of those duties involved intentional misconduct, fraud or a knowing violation of the law"). Here, there are no allegations—let alone evidence—that the Company's directors breached their fiduciary duties by engaging in intentional misconduct, fraud, or a knowing violation of the law.

Indeed, the First Amended Complaint does not even speak to director negligence. Rather, Plaintiffs' First Amended Complaint speaks to alleged misconduct by Defendant Manuel Iglesias, the Company's *former* CEO, while acting in his capacity as CEO, and Defendant Edward Moffly, the Company's *former* CFO, while acting in his capacity as CFO, and even these allegations cannot be substantiated. Plaintiffs can only speculate that Messrs. Iglesias and Moffly will "likely" mismanage or divert the "substantial government reimbursements" the Company expects to receive.

In addition, to the extent Plaintiffs intend to make "surprise" allegations of breach of fiduciary duty *against the directors* at the trial of this matter, such should not be allowed as neither the Company nor the directors have notice of such allegations. Even if the Court allowed such allegations to go forward, the directors are entitled to a presumption that they acted in good faith and in the best interests of the Company pursuant to the business judgment rule. NRS 78.138(3); *Shoen v. SAC Holding Corp.*, 122 Nev. 621, 632, 137 P.3d 1171, 1178-79 (2006). Under the business judgment rule, courts will not second guess the directors' decisions, unless it is shown that the directors are incapable of invoking its protections (e.g., because the directors are financially or otherwise interested in the challenged transaction.) *See* 122 Nev. at 635-36, 137 P.3d at 1181. Here, there are no allegations—let alone evidence—that Hygea's directors are not entitled to protections of the business judgment rule.

/././.

4. For purposes of their claim under NRS 78.650, have Plaintiffs established by a preponderance of the evidence that the Company (a) is insolvent, or (b) although not insolvent, is for any cause not able to pay its debts or other obligations as they mature? NRS 78.650(h) & (i).

NRS Chapter 78 does not define insolvency; however, the Court can find instruction from NRS 112.160, which states that "a debtor is insolvent if the sum of the debtor's debts is greater than all of the debtor's assets at a fair valuation." This is consistent with the Federal Bankruptcy Code's definition of "insolvent." *See* 11 USC § 101(32)(A) (defining "insolvent" for entities such as corporations as the "financial condition such that the sum of such entity's debts is greater than all of such entity's property, at fair valuation.") Hygea is not insolvent—and indeed, Plaintiffs have not alleged insolvency other than to argue that Hygea is purportedly *presumed* insolvent because it allegedly is not paying its debts as they become due. However—even if it was true that Hygea is not paying its debts as they become due—the Court cannot appoint a receiver on the *presumption* of insolvency.

Further, Hygea is managing its debts and is able to pay its *bona fide* debts and obligations as they mature. As an initial matter, Hygea has only one large, non-insider lender, Bridging Finance ("Bridging"). Hygea is not in default to Bridging. Further, Bridging has provided Hygea with interim financing in order to assist with Hygea's short-term cash flow constraints and has committed to provide additional financing as Hygea requires such funds to meet continuing medium-term obligations, including the legal fees and other costs associated with defending this action. Indeed, contrary to Plaintiffs' allegations, with the exception of a handful of *former* C-suite executives who have voluntarily foregone timely payment or with whom Hygea is negotiating a separation or attempting to bring current, Hygea has made all payroll payments to its approximately 600 employees.

Moreover, with respect to the payroll taxes, Hygea acknowledges that it continues to owe back-payroll taxes for the fourth quarter of 2017 and is incurring payroll tax liabilities for 2018. However, it is not unusual for a solvent company to voluntarily forego paying taxes temporarily during a period of tight cash flows, knowingly incurring a penalty to ensure that its employees and other creditors are timely paid. This is a strategic decision for management in its statutorily protected business judgment. *See* NRS 78.138(3); *Shoen*, 122 Nev. at 632, 137 P.3d at 1178-79. Moreover, Hygea expects, based on its 2018 cash flow analysis, to be cash flow positive by the end of the second quarter of 2018.

5. For purposes of their claim under NRS 78.630, have Plaintiffs established by a preponderance of the evidence that the Company is insolvent and is not about to resume its business in a short time thereafter? *See* NRS 78.630.

With respect to insolvency, Defendants refer the Court to the above. With respect to whether Hygea "is not about to resume its business in a short time thereafter," if Hygea is not insolvent, then it matters not whether Hygea is not about to resume its business. If, however, Hygea is insolvent, then Plaintiffs must demonstrate not only insolvency but also that Hygea "is not about to resume its business in a short time [after insolvency.]" Plaintiffs cannot make this showing because Hygea has not suspended its business and, *in fact*, continues to operate, including with the financing commitment provided by Bridging. If Hygea is *in fact operating* (which it is), then there is no business for it to resume.

6. For purposes of their claim under NRS 78.630, have Plaintiffs established by a preponderance of the evidence that the Company's business is being conducted at a great loss and greatly prejudicial to the interests of its creditors or stockholders, so that its business cannot be conducted with safety to the public?

Although Hygea has experienced negative cash-flow through growth related operating

activity, it is not at a "great loss . . . prejudicial to the interest of its creditors and shareholders." Indeed, experiencing negative cash-flow is not unusual for a young company during its growth phase because even though a company may be generating healthy streams of revenue and cash flows, it is expending an even greater amount on cash capital expenditures to fuel its growth. This is exactly the case with Hygea, whose EBITDA for 2017 will demonstrate that Hygea is in fact financially healthy.

For a Court to appoint a receiver under NRS 78.630, the Court must find that the corporation's "business cannot be conducted with safety to the public." NRS 78.630(3). It is unclear from Plaintiffs' Complaint why Hygea's "business cannot be conducted with safety to the public" in the absence of a receiver. To the extent Plaintiffs mean to argue that Hygea is jeopardizing patient care because doctors will abandon their Hygea-owned practices due to non-payment of payroll, Hygea has already addressed the fact that it has made all payroll payments to its physicians and other administrative staff.

7. Is there a "pending action" within the meaning of NRS 32.010 in which the Court could appoint a receiver?

NRS 32.010 demands the existence of a pending action in which to appoint a receiver. Stated differently, the appointment of a receiver under NRS 32.010 must be "ancillary to" or "in aid of" the action and not the sole claim for relief. *See Int'l Life Underwriters v. Second Judicial Dist. Court in & for Washoe Cty.*, 61 Nev. 42, 113 P.2d 616, 619 (1941) ("The *Nenzel* and *French Bank* and other cases cited by counsel for petitioners state that under [the identical predecessor to NRS 32.010] and similar statutes there must be an action pending before a receiver can be appointed"); *State ex rel. Nenzel* 49 Nev. 145, 241 P. 317, 320-21 (1925) (denying an application for a receiver because the complaint sought no relief other than the appointment and citing approvingly to *Vila v. Grand Island Elec. Light, Ice & Cold Storage Co.*,

68 Neb. 222, 97 N.W. 613, 616 (Neb. 1903)); *Vila*, 97 N.W. at 616 (1903) ("The law of receivership is peculiar in its nature in that it belongs to that class of remedies which are wholly ancillary or provisional, and the appointment of a receiver does not affect, either directly or indirectly, the nature of any primary right, but is simply a means by which primary rights may be more efficiently preserved, protected, and enforced in judicial proceedings. It adjudicates and determines the right of no party to the proceedings, and grants no final relief, directly or indirectly.") Here, Plaintiffs seek no relief other than the appointment of a receiver. Accordingly, the Court has no jurisdiction to appoint a receiver under NRS 32.010.

8. Does the affirmative defense of waiver and/or unclean hands bar Plaintiff N5HYG from seeking appointment of a receiver through the Court's equitable powers?

"A waiver is an intentional relinquishment of a known right. . . . To be effective, a waiver must occur with full knowledge of all material facts." *State v. Sutton*, 120 Nev. 972, 987, 103 P.3d 8, 18 (2004) (quoting *Thompson v. City of North Las Vegas*, 108 Nev. 435, 439, 833 P.2d 1132, 1134 (1992)). Meanwhile, "the doctrine of unclean hands derives from the equitable maxim that 'he who comes into equity must come with clean hands." *Truck Ins. Exch. v. Swanson*, 124 Nev. 629, 637-638, 189 P.3d 656, 662 (2008) (internal quotations and citations omitted). "The doctrine bars relief to a party who has engaged in improper conduct in the matter in which that party is seeking relief." *Id.* "[T]he unclean hands doctrine precludes a party from attaining an equitable remedy when that party's connection with the subject-matter or transaction in litigation has been unconscientious, unjust, or marked by the want of good faith." *Las Vegas Fetish & Fantasy Halloween Ball, Inc. v. Ahern Rentals, Inc.*, 124 Nev. 272, 276, 182 P.3d 764, 767 (2008) (internal quotations and citations omitted). "In determining whether a party's connection with an action is sufficiently offensive to bar equitable relief, two factors must be considered: (1) the egregiousness of the misconduct at issue, and (2) the seriousness of the harm

caused by the misconduct." *Id.*

Plaintiff N5HYG seeks to come into equity with unclean hands and having waived its right to complain of the things it now alleges. N5HYG systematically fails to acknowledge its role (or lack thereof) in the management it complains of, including by relinquishing the board seat provided for under the SPA. Stated differently, N5HYG had every opportunity to influence the management of the Company. Yet, N5HYG purposefully chose to not participate. Moreover, N5HYG knew as early as January 2017 that Hygea had issued enough stock that Plaintiffs' herein held less than 10% of Hygea's issued and outstanding stock. Accordingly, Plaintiffs' filing of a Complaint that pleads 10% stock ownership was in bad faith from the outset of this action.

Relatedly, when N5HYG feigned surprise when Hygea pointed out that Plaintiffs did not own 10% of Hygea's issued and outstanding stock and further feigned ignorance of the warrants that caused the issuance of additional stock, N5HYG was engaging in theatrics lacking any good faith. These theatrics were last ditch efforts to stretch these proceedings out for as long as possible, distracting Hygea's management, causing the management attrition Plaintiffs' declarants decried in a self-fulfilling prophecy, and causing Hygea to incur hundreds of thousands of dollars in legal fees to stave off a predatory investor and its legal team, all while knowing well that Plaintiffs do not hold the requisite shares to maintain this action.

9. Does ultimate justice require the appointment of a receiver, or, can the desired outcome be achieved by some other method?

As to the appointment of a receiver generally, the Nevada Supreme Court stated as follows:

> The appointment of a receiver *pendente lite* is a harsh and extreme remedy which should be used sparingly and only when the securing of ultimate justice requires it A corollary of this rule is that if the desired outcome may be achieved by some method other

> than appointing a receiver, then this course should be followed. The reasons for the above rules are fundamental: appointing a receiver to supervise the affairs of a business is potentially costly, as the receiver typically must be paid for his or her services. A receivership also significantly impinges on the right of individuals or corporations to conduct their business affairs as they see fit, and may endanger the viability of a business. The existence of a receivership can also impose a substantial administrative burden on the court.

Hines v. Plante, 99 Nev. 259, 261, 661 P.2d 880, 881-82 (1983) (citing, among other cases, *Bowler v. Leonard*, 70 Nev. 370, 269 P.2d 833 (1954)).

Justice, here, does not ultimately demand the appointment of a receiver. As set forth above, Hygea is solvent, managing its debts, and operating under the direction of its Board of Directors through a new slate of C-Suite executives. Indeed, the appointment of a receiver would not only add to Hygea's expenses during a time of cash-constraint, but it would almost certainly render an otherwise solvent corporation insolvent, achieving the exact opposite result that the Plaintiffs purport to seek. In short, if a receiver is appointed, Hygea would stand to risk losing its contracts with HMO plans, all of whom have a contractual right to terminate their contract with Hygea in the case that a receiver is appointed to manage the Company's affairs. If an HMO cancelled its contract with Hygea, the Medicare Advantage Patient Panel associated with that HMO would be immediately and automatically reassigned to another provider, and Hygea would permanently lose its ability to generate revenue by optimizing capitation for that particular Patient Panel.

Even more alarming, if the Patient Panel was reassigned, the new medical management service organization to which the Patient Panel would be automatically reassigned will have the right to receive all surpluses going forward, even those properly attributable to the coding and services provided by Hygea from 2016, 2017, and 2018. In other words, the free cash flows associated with revenue and accounts receivable already booked by Hygea would be

immediately and irrevocably assigned to a third-party—the money follows the Patient Panel.

In addition, Hygea would stand to lose current financing opportunities with non-RIN investors, one of whom has issued an outstanding Letter of Intent regarding its intention to invest in Hygea, contingent upon the provision of an audited Quality of Earnings Report for the fiscal year ended 2017 (the "2017 QOE Report")). This particular suitor, as well as Hygea's other current financing opportunities, are the most straightforward way to solve Hygea's short-term cash flow challenges, which are the only allegations in Plaintiffs' Complaint that have been substantiated by any party's admissible evidence. Appointment of a receiver would explode all negotiations.

Even if the Court determines that the interests of justice demand some remedy, the Court must first consider whether there exists an alternative and equally efficient method of achieving the purpose for which the receivership is sought. For instance, if the Court determines that certain of Hygea's *directors* have engaged in the misconduct contemplated by NRS 78.650, then the Court should first provide those directors an opportunity to resign. The point being that the appointment of a receiver is "harsh" and "extreme" remedy, and should be "used sparingly" and only if and as the ends of justice so require. *See Bowler v. Leonard*, 70 Nev. 370, 383, 269 P.2d 833 (1954).

10. Does Plaintiffs' proposed order appointing a receiver exceed a receiver's powers?

A receiver has broad but not unlimited powers. *See Fullerton v. Second Jud. Dist. Ct.*, 111 Nev. 391, 400, 892 P.2d 935, 941 (1995). The receiver's powers are derived from the purpose of the appointment, and he or she must act for the benefit of all persons interested in the property. *Id.* In these regards, Plaintiffs' proposed order appointing a receiver is problematic, including, without limitation, for the following reasons (and for the avoidance doubt, this list is

not exhaustive):

First, Plaintiffs' request that the "receiver oversee Hygea in place of Hygea's board of directors and to do all things that Hygea's Board is authorized to do in the absence of a receiver" but at the same time allowing the Board "to remain in place [but in an] inferior [position] to that of the Receiver, whose authority shall prevail over the Board's," is non-sensical, gives the receiver unfettered power, and purports to essentially enslave the Board of Directors. If a receiver is appointed, his or her authority must be specifically defined and be tied to the purpose of the appointment.

Second, Plaintiffs' request that the receiver "manage Hygea in the place of its officers; to do all things that Hygea's officers are authorized to do in the absence of a receiver; and to direct the officers as their superior," is likewise non-sensical, gives the receiver unfettered power, and purports to essentially enslave the Company's officers. Again, if a receiver is appointed, his or her authority must be specifically defined and tied to the purpose of the appointment. Moreover, the receiver cannot at the same time "manage Hygea in the place of its officers" and "direct the [displaced] officers as their superior."

Third, while it would not be unusual for a receiver "[t]o access all of Hygea's books, records, documents, and other materials, including all financial records," subject to the purpose of the receivership, an order requiring a receiver to "make the materials available to the shareholders" would exceed any basis for the appointment of a receiver." Plaintiffs request for this power demonstrates at least a part of their true intent in bringing this lawsuit. Plaintiffs are clearly upset that Hygea is not providing to them the unfettered access to the records Plaintiffs believe they entitled to review. However, this lawsuit is not the mechanism by which Plaintiffs should seek to enforce their purported rights to access such information.

Fourth, Plaintiffs' again reveal part of their true intent in bringing this lawsuit when they

request that the receiver "oversee, conduct, review, and verify audits for all periods of time from 2014 to the present, inclusive, so that there is a seamless period of time as to which audits have been conducted from the last audit in 2013 through the present and going forward." Hygea is not a public company and is not required by any state or federal law to conduct an audit. If Plaintiff N5HYG believes it has a contractual right to an audit, then it should seek to enforce that purported right through its breach of contract claim pending in federal court.

Fifth, while a receiver could be empowered to "otherwise investigate the past and current affairs of Hygea," Plaintiffs do not explain the purpose of this power. At least two Plaintiffs—N5HYG and Claudio Arellano—have separate lawsuits pending against Hygea and its former and current officers and directors. Plaintiffs cannot purport to use any receiver as a mechanism for seeking discovery to support their claims in such litigations when they purport that they seek the receiver only to maintain the status quo and protect Hygea's going concern status, as they have argued was the reason they brought this lawsuit since the outset of the case.

Sixth, and finally, Plaintiffs do not identify the cost of the receivership, and contrary to their representations at the first hearing in this lawsuit, Plaintiffs seek to impose these unidentified costs on Hygea. Thus, Defendants are left to speculate on the financial burden, although Defendants submit that it is not unreasonable to presume that the burden would be high. For instance, given that that proposed receiver will apparently be running the entirety of Hygea, it would not be unreasonable to assume that he or she will work at least 60 hours per week. At a rate of $500/hour, the receiver alone would cost $30,000/week. In addition, the receiver will undoubtedly be represented by counsel, which would impose yet another cost on the receivership.

/./././

/./././

11. If the Court determines that the appointment of a receiver is appropriate under NRS 78.650, must the Court give preference to a non-negligent director in such appointment? NRS 78.650(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.") *See also Peri-Gil Corp. v. Sutton*, 84 Nev. 406, 411, 442 P.2d 35, 38 (1968) ("By the terms of [NRS 78.650(4)] a non-negligent director is entitled to preferential consideration.")

Hygea submits that if the Court decides to appoint a receiver, that Dr. Keith Collins, its *interim CEO and a current director*, be so appointed, and requests an opportunity to present Dr. Collins's qualifications to the Court either at or after the trial of this matter (should the Court determine that it will bifurcate the trial from a proceeding to appoint a receiver.)

12. If the Court determines the appointment of a receiver is appropriate, must it require Plaintiffs to post a bond?

Should the Court appoint a temporary receiver and enjoin the corporation and its management from exercising their ordinary powers, the Court must require Plaintiffs to post a bond. See N.R.C.P. 65(c); *Shelton*, 185 P.2d at 323–24. Here, Hygea requests a bond in the amount between $350 million and $450 million, which represents the approximate, present value of Hygea. As set forth above, a receivership, in and of itself, would materially damage Hygea's ability to continue as a "going concern," including, without limitation, because (1) Hygea would stand to risk losing its contracts with HMO plans, and (2) if an HMO cancelled its contract with Hygea, the Medicare Advantage Patient Panel associated with that HMO would be immediately and automatically reassigned to another provider and Hygea would permanently lose its ability to generate revenue by optimizing capitation for that particular Patient Panel. Thus, if Hygea and its management are wrongfully enjoined from exercising their ordinary powers in favor of a

receiver, Hygea and its shareholders would stand to lose the entire value of Hygea. Thus, a bond securing its present value is appropriate.

D. LIST OF SUMMARIES OR SCHEDULES REFERRING TO ATTACHED ITEMIZED EXHIBITS CONCERNING THE DATA AND REASONS UPON WHICH THE EXPERT BASES HIS OPINION

Give the uniquely postured nature of this lawsuit, Defendants have not yet made a Rule 16.1 disclosure of their identified expert, Craig Greene. On May 4, 2018, the Court ordered Defendants to provide the disclosure by May 9, 2018. Plaintiffs will update and supplement this Trial Statement, if any supplement is necessary, subsequent to providing that disclosure.

E. NAMES AND ADDRESSES OF ALL WITNESSES, EXCEPT IMPEACHING WITNESSES

1. Dr. Keith Collins, 16430 NE 27th Place, North Miami Beach, FL 33160
2. Dr. Jack Mann, 27 Birchwood Lane, Kings Point, NY, 11024
3. Craig Greene, McGovern & Greene, 2831 St. Rose Pkwy., Suite 227, Henderson NV 89052
4. Sergey Savchenko, 3580 NW 85th Court, Apt 452, Doral, FL 33122
5. Kevin Moreau, Bridging Finance, 77 King St W, Suite 2925, Toronto, ON, M5K 1K7, Canada
6. Manuel Iglesias, 1408 Brickell Bay Drive, Unit 415, Miami, FL 33131
7. Edward Moffly, 185 SW 7th St, Apt 3301, Miami, FL 33130

F. OTHER COMMENTS, SUGGESTIONS, OR INFORMATION WHICH MAY ASSIST THE COURT IN THE TRIAL OR DISPOSITION OF THE CASE

None at this time.

[continued on the next page]

AFFIRMATION

Pursuant to NRS 239B.030, the undersigned hereby affirms this document does not contain the social security number of any person.

CERTIFICATION

Pursuant to FJDCR 10, the undersigned herby certifies that counsel for all parties met and stipulated to as many facts and issues as possible.

Dated this 7th day of May, 2018.

KAEMPFER CROWELL

By: _____

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Las Vegas, Nevada 89135

Attorneys for Defendants

CERTIFICATE OF SERVICE

Pursuant to N.R.C.P. 5, I hereby certify that on May 7, 2018, a true and correct copy of DEFENDANTS' TRIAL STATEMENT was served on the following counsel of record by U.S. Mail, postage-prepaid, with a courtesy copy sent by e-mail:

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An Employee of Kaempfer Crowell

EXHIBIT “4”

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 IV

PAGES 649 - 893

DATE: Thursday, May 17, 2018

TIME: 9:00 a.m.

LOCATION: Carson City District Court
885 E. Musser Street
Carson City, Nevada

REPORTER: Daren Bloxham RPR/CSR-685

lieu of affidavit.

We've also heard again from Dr. Collins about the regular communication from the corporation to its agent of transmitting information, stockholder names, addresses, number of shares, value for the shares paid.

So really we're looking at VStock Transfer as a secretarial function in a lot of respects. If I transcribe a letter, Your Honor, to my secretary, tell her what I want written, she gives it back to me. I review it for accuracy, and I sign off on it.

Here, Hygea regularly communicates with VStock Transfer. We don't have third parties communicating with VStock Transfer as to what shares are being issued back, whatever that transaction may be. VStock is serving as that secretarial agent for the company.

Ultimately, this Court has to make a threshold decision. Does it have jurisdiction, subject matter jurisdiction, do the plaintiffs hold 10 percent? We think that outweighs whatever burden the plaintiffs may suffer from the declaration arriving this afternoon when, in fact, the exhibits the declaration is talking about have been considered joint exhibits offered by both parties for purposes of this trial.

THE COURT: Mr. Kaye?

COUNTY OF CLARK)

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

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

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

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

Daren Bloxham

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

EXHIBIT “5”

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 V

PAGES 894 - 975

DATE: Friday, May 18, 2018

TIME: 1:00 p.m.

LOCATION: Carson City District Court
885 E. Musser Street
Carson City, Nevada

REPORTER: Daren Bloxham RPR/CSR-685

appointment of a receiver under 78.650. And we would ask that the Court find in favor of defendants. Thank you.

THE COURT: I didn't yesterday want to again have -- have any argument about the 10 percent. If there's anything else you want to tell me about that, I'm -- I heard what you said yesterday, but --

MS. GALL: What I would like to say about the 10 percent rule is that that is plaintiffs' burden to demonstrate. They bear the burden of demonstrating standing, which is a part of subject matter jurisdiction.

I would like to also say they bear that burden not by a preponderance of the evidence, but by clear and convincing evidence, with "clear and convincing" meaning under Nevada law it must be so clear as to leave no substantial doubt.

Plaintiffs, Your Honor --

THE COURT: Where does that standard come from?

MS. GALL: In Re: Discipline of Drakulich, 111 Nev. 1556, 908 P.2d 709.

THE COURT: And that says what? What's the holding with that case?

MS. GALL: That case sets forth the standing

So, Your Honor, I submit there is evidence in the record at least as of the filing of the complaint as to the denominator that the Court has to consider when determining whether plaintiffs have met the 10 percent threshold.

THE COURT: And you think that -- I thought that you had argued or your side, not necessarily you specifically, but that the key time for the 10 percent was when the Court was looking at the application?

MS. GALL: I agree, Your Honor. I agree that under Medical Device Alliance v. AHR, that it clearly says that the district court does not have jurisdiction to appoint a corporate receiver unless the applicant or holders of one-tenth of the issued and outstanding stock has legal title at the time the court considers the application.

I do agree with that, Your Honor, but what I would state is defendants do not bear that burden, plaintiffs bear that burden. They have not presented and have actively tried to keep out today's VStock Transfer list.

We are happy even as of today to provide that list. And they do not want it admitted, Your Honor. They have requested it, and they do want to submit it to this Court. And I do not know how they can meet any

10 percent, and probably other ways that I haven't thought of as I sit here today.

But none of that -- there's none of that in the record. The Court does not know what the number of issued and outstanding shares are. Therefore, it cannot make the calculation of whether plaintiffs own one-tenth of the issued and outstanding stock.

So under the Searchlight Development case, the court -- that court used jurisdiction. The Court does not have jurisdiction to consider the matter. An appellate court may disagree with me on that, and for that reason I'm going to go ahead and analyze the other issues so that if the appellate court does disagree, it will have my findings of fact and conclusions of law to make a determination on whether or not they are correct.

So turning to the NRS 78.650 factors, the Court finds that the subsection 1(B) factors, that the directors were guilty of fraud or collusion, there's not a preponderance of evidence to show that or gross mismanagement.

Under Subsection (C), that the directors have been guilty of misfeasance, malfeasance, the Court finds there's not a preponderance of evidence to show that the directors are guilty of either of those.

C E R T I F I C A T E

STATE OF NEVADA)

COUNTY OF CLARK)

I, Daren S. Bloxham, a Certified Shorthand Reporter and Registered Professional Reporter, do hereby certify: That I reported the proceedings commencing on the 18th of May, 2018.

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

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

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

Daren Bloxham

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

EXHIBIT “6”

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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

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

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

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

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

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

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

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

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

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

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II. FINDINGS OF FACT

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

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

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

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

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

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

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

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

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

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statements, including those for the years 2014 and 2015.

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

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

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

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

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

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

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

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which it declined to accept.

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

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

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

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

20. Mr. Dragelin witnessed an intentional misstatement of financial information by Mr. Iglesias when Mr. Ige1sias told Mr. Dragelin that a loan-type transaction would be otherwise structured.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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operations beginning in July.

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

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

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

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

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

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

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

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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.

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

IV. ANALYSIS

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

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

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

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

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

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

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

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

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

- Under subsection 1 (b), the Court finds that Plaintiffs have failed to establish by a preponderance of the evidence—that the directors have been guilty of gross mismanagement in the conduct or control of Hygea's affairs;
- Under subsection 1 (c), the Court finds that Plaintiffs have failed to establish by a preponderance of the evidence—that the directors have been guilty of misfeasance or malfeasance; however, the Court does find, that Plaintiffs have established by a preponderance of the evidence that the directors have been guilty of nonfeasance;
- Under subsection l(d), l(e), and (l)(i), that nonfeasance resulted in Hygea not 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 be able to pay its debts or obligations as they mature except through costly agreements and/or loans.

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

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

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

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

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

V. CONCLUSIONS OF LAW

1. Plaintiffs have failed to establish by a preponderance of the evidence that they hold one-tenth of the issued and outstanding stock of Hygea and have thus failed to establish that this Court has jurisdiction to appoint a receiver under NRS 78.650(1) and the Nevada Supreme Court's decision in *Searchlight*. 84 Nev. at !09, 437 P.2d at 90.

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

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

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

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

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

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Board generally guilty of nonfeasance.

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

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

Dated this 29 day of October, 2018.

James Wilson

THE HONORABLE JAMES WILSON
DISTRICT COURT JUDGE

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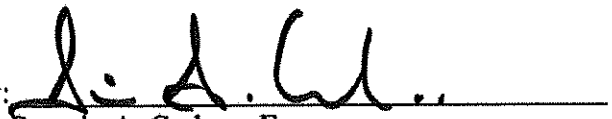
Respectfully submitted by:

KAEMPFER CROWELL

By: 

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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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EXHIBIT “7”

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January 25, 2019

The Honorable Nancy L. Allf
Department 27, Courtroom 3A
Eighth Judicial District Court
200 Lewis Avenue
Las Vegas, Nevada 89155

Re: N5HYG, LLC v Hygea Holdings Corp.

Dear Judge Allf:

Enclosed is Plaintiffs' proposed Findings of Fact and Conclusions of Law ("FOFCOL"). It is redlined against Defendants' proposal that Defendants submitted to Plaintiffs on January 23, 2019. It is Plaintiffs' understanding that Defendants intend on submitting that document to the Court. Plaintiffs do not approve of Defendants' FOFCOL. Although the parties have conferred extensively in an effort to resolve their disagreements about the document, issues remain outstanding that we believe merit the Court's consideration.

Plaintiffs acknowledge that Plaintiffs and Defendants have agreed on some changes to the Findings of Fact and Conclusions of Law, including that (1) the Court utilized the claim preclusion standard set forth in *Weddell v. Sharp*; (2) Plaintiffs presented certain documents pertaining to this Court's jurisdiction over Defendant Gonzalez; (3) the Court may consider evidence outside of the complaint, as well as supporting legal authority; and (4) the legal test for control person liability is conjunctive. However, Plaintiffs were unable to otherwise agree to Defendants' proposal, which has led Plaintiffs to submit their proposal with their changes redlined for the Court.

A few primary considerations underlie Plaintiffs' changes. Defendants' initial proposal goes well beyond the scope of the Court's Decision and Order in a manner that seems intended to unfairly enlarge the scope of the conclusions. But on the issues on which Plaintiffs prevailed, Defendants propose that the Court's findings be strictly limited in scope and reasoning. The result

is inappropriately one-sided: the Decision and Order and subsequent Journal Entry were between themselves ten pages, albeit single spaced; the Defendants' FOFCOL was 22 substantive pages, without meaningful elaboration of the Court's pro-Plaintiff conclusions.

Ultimately, the Court might prefer that the FOFCOL be limited to the Decision and Order's reasoning. Or it might prefer a more robust opinion that explicitly addresses the parties' various arguments. But in either event, Defendants' proposal was too one sided.

Additionally, Plaintiffs are mindful that, in some sense, it is better for them if the Court remains silent as to certain arguments they raised, or that the Court adopt some of Defendants' proposed flawed reasoning. Any weakness in the FOFCOL could only help Plaintiffs in the event of an appeal. But Plaintiffs have nonetheless endeavored in good faith to produce the best FOFCOL possible.

Many of the proposed changes are verbiage changes that Plaintiffs believe best reflects the Court's disposition and the most supportable reasoning behind it. This letter will not discuss each of them in detail. But certain key issues and significant edits are discussed below.

Claim Preclusion, Pages 1-4. Defendants have proposed some additions, focusing primarily on procedural history, to elaborate on the Court's findings pertaining to claim preclusion. Plaintiffs propose that the Court articulate additional legal support for its determination as a "backup" in the event an appellate court disagrees with its finding as to the first factor of the three-factor test.

Long Arm Jurisdiction and NRS 75.160, Page 6. Plaintiffs argued that Nevada can exercise personal jurisdiction over all of Hygea's current and former directors, including Mr. Gonzalez, under the director consent statute found at NRS 75.160. The Court appeared to disagree, concluding that it could not exercise jurisdiction over Mr. Gonzalez and finding in the Journal Entry that "Defendant Gonzalez has not, merely through his service as a director, purposefully availed himself of the privilege of serving the market in Nevada or established the necessary minimum contacts there." But Defendants' proposed FOFCOL did not address Plaintiffs' NRS 75.160 argument at all.

It seems to Plaintiffs that the FOFCOL would be stronger if it addressed NRS 75.160, although, again, any weakness could ultimately inure to Plaintiffs' benefit. It seems that there are two possible ways for the Court to address it. One is to conclude that the statute depends upon certain formalities in service and does not vest the state with jurisdiction otherwise. Such a

conclusion would be consistent with some of the Court's questions at oral argument. But it is inconsistent with at least one court's conclusion that the statute generally establishes personal jurisdiction. *Advanced Vision Sols., Inc. v. Lehman*, No. 2:14-CV-01597, 2015 WL 316951, at *2 (D. Nev. Jan. 26, 2015) (such statutes "create personal jurisdiction in the forum for any claims related to the directorship"). It also seems inconsistent with the Journal Entry, which found that "mere… service as a director" is insufficient in the context of applying the general test for long-arm jurisdiction. This strongly suggests that the Court concluded that NRS 75.160 is not enough, and that directorship in a Nevada corporation must instead be evaluated in the context of the more general jurisdiction analysis. Plaintiffs adjusted the proposed FOFCOL accordingly.

Long Arm Jurisdiction and Control Person Liability, Page 6. The Decision and Order did not explicitly address Plaintiffs' argument that their claims for control person liability under state and federal securities laws inherently vests this Court with jurisdiction over the director defendants, including Mr. Gonzalez. Defendants' proposed FOFCOL does not address the issue. Plaintiffs added language concluding that, because none of the statutory securities claims survived the motion, the issue is moot. This seems to the Court's implicit reasoning, and setting it forth seems to fortify the opinion.

Personal Jurisdiction Over the Non-Gonzalez Director Defendants, Pages 2-5. All of the director defendants moved for dismissal based on the argument that the Court lacks jurisdiction over them. The Court granted only Mr. Gonzalez's motion and thus implicitly denied the other directors' motion on this issue. Although the Court did not directly address it in its Decision and Order or in the Journal Entry, it did uphold multiple counts against the Non-Gonzalez Director Defendants.

The distinction between Mr. Gonzalez and his fellow defendants seems clear: Mr. Gonzalez left the board shortly after Plaintiffs acquired their shares. Meanwhile, the Court has discussed the claims relating to pre-transaction conduct, and upheld claims relating to post-transaction conduct such as the alleged breaches of the parties' agreement. Thus, the Plaintiffs supplemented Defendants' proposed FOFCOL to explain that this post-transaction conduct brought the directors within the state's jurisdiction. Particularly if the Opinion is otherwise extensively reasoned, it would be strengthened if this issue followed suit.

Plaintiffs' Evidentiary Jurisdictional Submissions, Page 9. Defendants' proposed FOFCOL would have the Court adopt the extraordinary statement that Mr. Gonzalez's affidavit was "unrebutted" and that Plaintiffs did not seek jurisdictional discovery. These statements would be extraordinary because they are flat-out wrong.

First, Plaintiffs submitted a declaration in response to the jurisdictional argument, setting forth in more detail the email discussed at Paragraph 41(k) of the First Amended Complaint, in which Plaintiffs were told that the board had approved the faulty financial figures. Pls' Opp. To Mot. to Dismiss on Behalf of Def. Ray Gonzalez at Exhibit 2. They also submitted, under the declaration, the instrument through which the directors approved the transaction, which also referenced the disputed valuation figures. *Id.* During the parties' meet-and-confer, Defendants argued that this is irrelevant, because Plaintiffs are bound by their complaint in making their jurisdictional argument. If this is indeed the case, then the FOFCOL should say so. In fact, though, it is not the case – just as Mr. Gonzalez can go outside the pleadings on the jurisdictional issue, so can Plaintiffs. *Viega GmbH v. Eighth Jud. Dist. Ct.*, 130 Nev. 368, 374 (2014) (in deciding personal jurisdiction issues, courts "may consider evidence presented in affidavits to assist in its determination.") (citation omitted).

Second, Plaintiffs did request jurisdictional discovery in the event that the Court did not find the present record to be sufficient to justify the exercise of jurisdiction over any of the directors. Resp. to Mot. to Dismiss on Behalf of Def. Ray Gonzales at 10. During the meet-and-confer, Defendants suggested that this request to the Court was insufficient, and that, in order to have "requested" jurisdictional discovery, Plaintiffs should have propounded discovery requests. But Plaintiffs were unable to do so without leave of Court. Nev. R. Civ. P. 16.1(d); 15 U.S.C. § 78u-4(b)(3)(B). Indeed, the usual practice is for Plaintiffs to seek jurisdictional discovery from the Court as Plaintiffs did here. Serving a discovery request without leave in order to "paper the record" would have been, at best, a futile gesture.

The Dismissal of Nevada 5, Page 15-16. Nevada 5 formed N5HYG, LLC just before the transaction at issue in order to buy and hold the Plaintiffs' shares of Hygea. Plaintiffs argued that Nevada 5 was a proper plaintiff for multiple reasons. One of them was that, under the expanded definition of "buyer" in statutory securities fraud jurisprudence, Nevada 5 was a proper plaintiff.

The Court dismissed all of the statutory securities claims and dismissed Nevada 5. Its Decision and Order did not address Plaintiffs' "expanded buyer" argument. Implicitly, the argument was moot because the Court held there was no sufficiently pled statutory securities claim.

Nonetheless, Defendants would have the Court "decline[] Plaintiffs' invitation to expand the meaning of 'buyer' to include a stockholder's parent corporation." Such language would weaken the Opinion: an appellate court would likely realize that "Plaintiffs' invitation" is not to "expand the meaning of 'buyer'" but rather to recognize how courts have consistently addressed

this issue. See, e.g., *Grubb v. FDIC*, 868 F.2d 1151, 1161–62 (10th Cir. 1989) (parent corporation that created holding company to consummate disputed transaction, just like Nevada 5 here, had standing to bring securities fraud claim); *Walther v. Maricopa Int'l Inv. Corp.*, No. 97–4816, 1999 WL 64280, at *2 (S.D.N.Y. Feb. 9, 1999) (plaintiff who invested in securities through an intermediate entity created to facilitate the investment may be considered an "actual purchaser of the securities" and thus have standing to bring federal [securities fraud] claim).

Far better is for the FOFCOL to make clear what the Decision and Order implicitly found: the Court need not address the securities fraud jurisprudence because there is not currently a statutory securities claim.

In addition, Plaintiffs expressed the concern during briefing and argument that Defendants were ultimately trying to set a trap: argue now that Nevada 5 should be dismissed because it has nothing to do with the case other than corporate parentage; and then argue down the line that one or more claims should be dismissed because only Nevada 5, and not N5HYG, can plead or prove certain elements. It seems implicit in the Court's decision that it finds these concerns to be unfounded. But it also seems wise to clarify that Defendants cannot employ such an "element splitting" strategy down the line.

Securities Act of 1933 Claims, Page 19-21. Plaintiffs' removed the Defendants' proposed embellishments.

Breach of Contract and Rescission Claims, Page 21-22. Defendants did not challenge these causes of action except through the rejected claim preclusion defense. Plaintiffs believe that this is worth noting in the FOFCOL.

Breach of Fiduciary Duty, Page 26. Defendants argued in their Motion that Plaintiffs needed to overcome both Nevada's exculpation statute and its business judgment rule. Plaintiffs argued that for multiple reasons these defenses either did not apply, were premature to address, or were overcome. The Court found the claim barred by the exculpation statute. Its Decision and Order does not, and need not, address the business judgment rule.

Defendants nonetheless embellished the Court's reasoning with a finding under the business judgment rule. If this was indeed the Court's conclusion, then a "belt and suspender" approach might make the FOFCOL stronger. But Plaintiffs submit that, on this issue, the analysis weakens the Opinion. For example, Defendants would have the Court conclude that Plaintiffs have

failed to rebut the presumption because they have failed to sufficiently allege a breach of fiduciary duty. Such a tautology seems unpersuasive.

Pleading Fraud with Particularity, Page 27-29. Defendants' proposed language on this issue suffered from multiple serious deficiencies.

First, it misstated the First Amended Complaint's meaning and plain text. Defendants want the Court to conclude that "[e]ven if [the] allegations met the heightened pleading standard of Rule 9(b), they are belied by Plaintiffs' admission that the representations made by Hygea, Iglesias, and Moffly encompassed numbers that were subject to ongoing adjustment and that the last financial report Plaintiffs received only *could have* been inaccurate. The Court need not accept contradictory allegations as true." This is misleading. The First Amended Complaint alleges that the faulty numbers had ongoing adjustments – all within a misleading range: the figures provided "encompassed numbers that (even if subject to apparently-reasonable ongoing adjustment) always fell within a relatively-narrow range, and which overall reflected a purportedly healthy company…" First Amended Complaint, ¶ 41. Defendants are obviously not immune from a potential fraud claim because they changed their false numbers throughout the process. And Plaintiffs did not allege that the figures "could have been inaccurate" in the sense that, "maybe they were inaccurate, but maybe they weren't." Rather, Plaintiffs alleged that a consultant told them that the inaccuracy "could have been" due to certain misconduct. *Id.* at ¶ 64 (he "explained in August 2017 that the reason for the [financial information]' s blatant inaccuracy could have been because Defendants imposed constraints on the earnings review or otherwise manipulated the process").

Second, it ignored Plaintiffs' argument that Rule 9(b)'s requirements should be relaxed because critical information is exclusively within Defendants' possession and control. The FOFCOL would be stronger if it addressed this issue. Plaintiffs' text addresses it squarely, noting that, while some information may be within Defendants' control, Plaintiffs admitted to having information that they nonetheless did not include in their complaint.

Third, it would be appropriate to note that Plaintiffs excluded the detailed financial information because they felt compelled to under their confidentiality obligations. It would be unfair for Defendants to demand such details at the same time as they insist upon such confidentiality. Accordingly, it would be appropriate to make clear that the pleading requirement excuses any confidentiality obligation.

Fourth, Defendants propose that the Court find the Director Defendants' role to have been insufficiently alleged. As discussed above, this rests on a faulty reading of Rule 9(b) that ignores its express provision for general averment of knowledge. Even beyond this, it is not necessary for the Court to reach the issue given its finding that fraud has not been pled in sufficient detail.

Negligent Misrepresentation, Page 29-30. The Court dismissed this claim as to the directors based on Nevada's director exculpation statute, but allowed the claim to proceed against Hygea itself. Defendants' proposed FOFCOL took a different approach, distinguishing Hygea from the other defendants based on the nature of its relationship with Plaintiffs. The FOFCOL should reflect the Court's reasoning as explained in the Decision and Order.

Tortious Interference, Page 31-32. Defendants would have the Court "agree that it is the law" that directors cannot tortiously interfere with their corporation's contracts when they act in their capacity as directors. But this significantly overstates the case they would cite, *Bartsas Realty, Inc. v. Nash*, 81 Nev. 325, 402 P.2d 650, 651 (1965). There is no reason for the Court to go out on such a limb.

Plaintiffs hope that their proposed edits to the draft FOFCOL and this correspondence are helpful. They remain available to further address these issues at the Court's convenience.

Very truly yours,

ALBRIGHT, STODDARD, WARNICIK & ALBRIGHT

G. Mark Albright, Esq.

Enclosures

Copy to: All Counsel

EXHIBIT “8”

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DISTRICT COURT

CLARK COUNTY, NEVADA

CLAUDIO ARELLANO; CROWN EQUITY'S LLC; FIFTH AVENUE 2254 LLC; HALEVI ENTERPRISES LLC; HALEVI SV 1 LLC; HALEVI SV 2 LLC; HILLCREST ACQUISITIONS LLC; HILLCREST CENTER SV I LLC; IBH CAPITAL LLC; LEONITE CAPITAL LLC; N5HYG LLC; and RYMSSG GROUP, LLC, Plaintiffs, vs. HYGEA HOLDINGS CORP., Defendant	CASE NO.: A-18-768510-B DEPT. NO.: Department 13

COMPLAINT FOR EMERGENCY APPOINTMENT OF RECEIVER

Plaintiffs Claudio Arellano, Crown Equity's LLC, Fifth Avenue 2254 LLC, Halevi Enterprises LLC, Halevi SV1 LLC, Halevi SV2 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 state for their Complaint as follows:

1. Defendant Hygea Holdings Corp. ("Hygea") is a Nevada corporation. Its business is acquiring and managing physician practices and similar medical providers.

2. Plaintiff Claudio Arellano ("Arellano") is an individual residing in the State of Florida.

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

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

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

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

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

8. Plaintiff Fifth Avenue is a registered shareholder of Hygea possessing 100,000 shares. **Exhibit "C,"** p. 1.

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

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

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

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

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

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

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

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

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

18. Plaintiff Leonite is a registered shareholder of Hygea possessing 500,000 shares, for which it paid $125,000. **Exhibit "C,"** p. 6.

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

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

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

22. Plaintiff Halevi Enterprises is a registered shareholder of Hygea possessing 500,000 shares.

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

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

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

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

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

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

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

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

31. 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.

32. 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.

33. 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.

34. Hygea has well more than 30 shareholders.

35. Venue and jurisdiction are proper in this Court.

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

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

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

39. Hygea is failing and running out of cash.

40. Apparently, Hygea paid its payroll through its American Express account for some time until it was apparently poised to fail to "make payroll" this past fall, until it ultimately was

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LAS VEGAS, NEVADA 89106

apparently able to do so. Upon information and belief, Hygea owes approximately $10 million to American Express. **Exhibit "D."**.

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

42. This is consistent with Plaintiffs' experience with Hygea.

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

44. These financial conditions suggest that the company is at or near the point of insolvency, which is consistent with what Plaintiffs have been able to learn about Hygea's finances.

45. The coming days and weeks are pivotal to Hygea's survival. Healthcare companies such as Hygea typically receive substantial public insurance reimbursements from the government (i.e. for Medicaid). These payments come twice a year – the first of which is traditionally early in the calendar year – and are existentially significant for the company. If these funds or other income are mismanaged or, worse, improperly diverted by Moffly or Iglesias, then then Hygea will continue to be unable to make payroll. If it fails to pay its physicians, they will abandon their Hygea-owned practices and Hygea will entirely collapse.

46. The impact of such a collapse would be felt among Hygea doctors and other employees, whose livelihoods would be greatly harmed; patients, whose treatment would suffer

from the likely interruption in service; and Hygea's shareholders, including, but not limited to Plaintiffs, whose investments would be jeopardized if Hygea's greatest asset is wasted.

47. Moreover, Hygea has periodically, and again recently, represented to shareholders that one or more "white knight" investors would provide an influx of capital to assist the company. Of course, this has never come to fruition. Moreover, even if true, such an influx of cash would further heighten the need for a receiver to oversee any such transaction, given Hygea management's demonstrated inability to properly manage its finances.

48. Plaintiff Arellano filed a complaint for damages against Hygea, Iglesias, and another Hygea executive captioned as Filing # 60229406 in the Circuit Court of the 11th Judicial Circuit, Miami-Dade County, Florida on August 10, 2017. However, this action involves different parties, a discreet claim under a Nevada statute which specifically confers jurisdiction on this Court, and seeks a remedy separate, apart, and distinct from the existing action.

49. Plaintiff N5HYG joined in filing a complaint for damages against Hygea, Iglesias, Moffly, and Hygea's Board of Directors captioned as case number A-17-762664-B in this Court on October 5th 2017. It was assigned to Department 25. A default was entered against Hygea, although Hygea has moved to have it set aside. One of the defendants removed it to Federal Court, where it was assigned case number 2:17-cv-02870-JCM-PAL. The plaintiffs in that action have moved to remand the case to this Court. Further, this action involves different parties, a discreet claim under a Nevada statute which specifically confers jurisdiction on this Court, and seeks a remedy separate, apart, and distinct from the existing action.

COUNT I – APPOINTMENT OF A RECEIVER

50. Plaintiffs restate each allegation as if set forth fully here.

51. Nevada law provides for the appointment of a receiver under the circumstances set forth here.

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52. For example, under NRS 78.650, the Court may appoint a receiver for the mismanagement of Hygea.

53. Likewise, a receiver may be appointed under NRS 32.010 *et seq* and NRS 78.630.

54. Plaintiffs have been forced to retain attorneys to prosecute this action and are entitled to recover attorneys fees incurred.

WHEREFORE Plaintiffs pray that this Honorable Court appoint a receiver to manage Hygea Holdings Corp. and such other related relief that the Court deems appropriate.

DATED this 26th day of January, 2018.

ALBRIGHT, STODDARD, WARNICK & ALBRIGHT

By _____
G. MARK ALBRIGHT, ESQ.
Nevada Bar No. 1394
D. CHRIS ALBRIGHT., ESQ.
Nevada Bar No. 14466
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EXHIBIT "A"

Execution Copy

Plaintiff's Exhibit "A"

ALL CARE MANAGEMENT SERVICES, INC.

and

CLAUDIO ARELLANO

concerning the sale of stock of

ALL CARE MANAGEMENT SERVICES, INC.

to

HYGEA HOLDINGS CORP.

December 2, 2014

48390/0001 JFH jh

STOCK PURCHASE AGREEMENT

THIS STOCK PURCHASE AGREEMENT (the "Agreement") is made and entered into as of the 2nd day of December, 2014, by and among **Hygea Holdings Corp.**, a Nevada corporation (the "Buyer"), **All Care Management Services, Inc., a Florida corporation, d/b/a All Care Health Networks** (the "Company"), and **Claudio Arellano** (the "Seller"). The Buyer, the Company and the Seller may, for the purposes of this Agreement, be referred to, individually, as "party," and collectively, as "parties."

RECITALS:

WHEREAS, the Company is a management services organization ("MSO") that manages Medicare Advantage Plan Contracts and Medicaid Contracts, and in each case subcontracts with physicians and other healthcare providers that perform services under those contracts. The Company currently operates out of 13335 SW 124th Street, Suite 115, Miami, FL 33186 ("Business Location").

WHEREAS, the Seller owns, beneficially and of record, one thousand (1,000) issued and outstanding shares of common stock of the Company, representing 100% of the total issued and outstanding shares of capital stock of the Company on a fully diluted basis (collectively, the "Shares").

WHEREAS, upon the terms and subject to the conditions in this Agreement, the Seller desires to sell to the Buyer, and the Buyer desires to purchase from the Seller, the Shares.

TERMS:

ARTICLE 1
DEFINITIONS

1.1 **"Accounts Receivable/Payable"** means, as of November 30, 2014, all of the Company's rights, title, interest and obligations in and to any and all accounts receivable, notes receivable, and other receivables and payables arising out of, related to, or connected with the Company's operation of the MSO, as disclosed in **Schedule 3.1 (nn)**.

1.2 **"Additional Lives"** means any and all additional lives associated with physicians or providers associated with a Plan Contract (as identified on **Schedule 1.2**) that join any such Plan Contract during the period commencing on the Closing Date through the Holdback Cut-off Date less any Life that may have voluntarily withdrawn from such Plan Contracts during the same period.

1.3 **"Affiliate"** of a party means (a) a person or entity controlling, controlled by, or under common control with such party, and (b) persons or entities which control, are controlled by, or are under common control with any entity described in the foregoing clause (a).

1.4 **"Agreement"** shall have the meaning set forth in the introductory paragraph to this Agreement.

1.5 **"Associated Company"** shall have the meaning set forth in **Section 7.1(n)**.

1.6 "**Associated Companies**" shall have the meaning set forth in **Section 7.1(n)**.

1.7 "**Balance Sheet**" and "**Balance Sheet Date**" shall have the respective meanings set forth in **Section 3.1(h)(i)**.

1.8 "**Books and Records**" means the books and records of the Company including those relating to the development, business and operation of the MSO, including, without limitation, all accounting records, Plan Member information, files, invoices, customer lists, and supply lists, as applicable.

1.9 "**Business Activities**" means the administration, management, and operation of independent physicians who provide services to Medicare and Medicaid beneficiaries under Plan Contracts or MSO Risk Contracts.

1.10 "**Business Location**" shall have the meaning set forth in the Recitals to this Agreement.

1.11 "**Buyer**" shall have the meaning set forth in the introductory paragraph to this Agreement.

1.12 "**Buyer Stock**" shall have the meaning set forth in **Section 2.1(b)(ii)**.

1.13 "**Claim**" means a claim pursuant to **Article 5** that a party is entitled, or may become entitled, to indemnification under this Agreement.

1.14 "**Claim Notice**" shall have the meaning set forth in **Section 5.8(a)**.

1.15 "**Closing**" shall have the meaning set forth in **Section 4.1**.

1.16 "**Closing Date**" shall have the meaning set forth in **Section 4.2**.

1.17 "**CMS**" shall have the meaning set forth in **Section 3.1(r)(ii)**.

1.18 "**COBRA**" shall have the meaning set forth in **Section 3.1(ff)(ii)**.

1.19 "**Common Stock**" means the common stock, US$.0001 par value, of the Buyer.

1.20 "**Company**" shall have the meaning set forth in the introductory paragraph to this Agreement.

1.21 "**Contract**" means a contract, commitment, lease, MSO Risk Contract, Plan Contract, Real Property Lease, agreement with any physician or other agreement or instrument.

1.22 "**Earn-Out**" shall have the meaning set forth in **Section 2.1(b)(iii)**.

1.23 "**Employee Benefit Liability**" means any liability or obligation of the Company (a) that is an accrued but unpaid monetary obligation to make a contribution under any Employee Benefit Plan; (b) that relates in any way to or arises under any Employee Benefit Plan; (c) for accrued vacation pay, accrued sick pay, and/or other accrued paid time off of any kind; (d) for

accrued employee wages and other compensation of any kind payable in the ordinary course of business and payroll taxes with respect thereto; (e) that is due and owing to independent contractors (including owner specialists); or (f) for other employee fringe benefits of any kind, including without limitation, insurance programs (which include, without limitation, COBRA obligations), expense reimbursement obligations, continuing education stipends, and automobile allowances.

1.24 "**Employee Benefit Plans**" shall have the meaning set forth in **Section 3.1(ff)(i)**.

1.25 "**Employees**" means employees of the Company, including employees who are not actively at work on the Closing Date due to temporary (including pregnancy or parental) leave, disability, layoff or severance arrangements.

1.26 "**Employment Agreement**" means that certain employment agreement, dated as of the date hereof, by and between the Company and the Seller.

1.27 "**Encumbrance**" means any lien, mortgage, pledge, claim, security interest, title defect, charge, condition, right of another, or other restriction or encumbrance, legal or equitable, or of any other kind whatsoever.

1.28 "**Environmental Laws**" means the federal, state, regional, county, or local environmental, health, or safety laws, regulations, ordinances, rules, and policies and common law in effect on the Closing Date relating to the use, refinement, handling, treatment, removal, storage, production, manufacture, transportation or disposal, emissions, discharges, releases, or threatened releases of Hazardous Substances, or otherwise relating to protection of human health or the environment (including without limitation ambient air, surface water, ground water, land surface, or subsurface strata), as the same may be amended or modified to the Closing Date.

1.29 "**Equipment**" means the machinery, office equipment, third-party computer equipment, and other equipment, tools, spare parts, furniture, and other items of tangible personal property of any kind (other than Inventory) owned by the Company which are used or useful in the business or operation of the MSO.

1.30 "**Escrow Account**" shall have the meaning set forth in **Section 2.1(c)**.

1.31 "**ERISA**" shall have the meaning set forth in **Section 3.1(ff)(i)**.

1.32 "**Financial Statements**" shall have the meaning set forth in **Section 3.1(h)**.

1.33 "**Final Stock Amount Installment**" shall have the meaning set forth in **Section 2.1(b)(ii)**.

1.34 "**First Stock Amount Installment**" shall have the meaning set forth **Section 2.1(b)(ii)**.

1.35 "**Flow Through Entity**" means an entity which the Company owned an interest on the Closing Date that is treated as a partnership for purposes of Subchapter K of the Tax Code, a "controlled foreign corporation" within the meaning of Tax Code Section 957, a "passive foreign investment company" within the meaning of Tax Code Section 1297 for which

a "qualified electing fund" election has been made, or any other entity that under the Tax Code allocates items of income, gain, deduction and expense among its owners whether or not distributed.

1.36 "**GAAP**" means generally accepted accounting principles in the United States, consistently applied.

1.37 "**Hazardous Substances**" means any toxic or hazardous waste, pollutants, or substances, including, without, limitation medical wastes, asbestos containing materials or substances, any substance defined or listed as a "hazardous substance," "toxic substance," "toxic pollutant," or similarly identified substances or mixture, in or pursuant to any Environmental Law, and medical or infectious wastes.

1.38 "**Healthcare Laws**" shall have the meaning set forth in **Section 3.1(r)(i)**.

1.39 "**HIPAA**" shall have the meaning set forth in **Section 3.1(r)(viii)**.

1.40 "**HIPAA Compliance Plan**" shall have the meaning set forth in **Section 3.1(r)(viii)**.

1.41 "**HIPAA Compliant**" shall have the meaning set forth in **Section 3.1(r)(viii)**.

1.42 "**HITECH Act**" shall have the meaning set forth in **Section 3.1(r)(viii)**.

1.43 "**Holdback Payment**" shall have the meaning set forth in **Section 2.1(c)**.

1.44 "**Holdback Cut-off Date**" shall have the meaning set forth in **Section 2.1(b)(ii)**.

1.45 "**Indebtedness**" means, at a particular time, without duplication, to the extent required to be reflected as a liability on a balance sheet prepared in accordance with GAAP, (i) any indebtedness for borrowed money or issued in substitution for or exchange of indebtedness for borrowed money, (ii) any indebtedness evidenced by any note, bond, debenture or other debt security, (iii) any indebtedness for the deferred purchase price of property or services with respect to which a Person is liable, contingently or otherwise, as obligor or otherwise (other than trade payables and other current liabilities incurred in the Ordinary Course which are not more than ninety (90) days past due), (iv) any obligations under capitalized leases with respect to which a Person is liable as obligor, (v) any indebtedness secured by a Encumbrance on a Person's assets, (vi) any distributions payable or loans/advances payable to any related parties or partners as of the Closing, (vii) any non-compete payments, earn-out obligations and other obligations to former owners of businesses acquired by the Company, (viii) any other liabilities recorded in accordance with GAAP on the balance sheet of the Company (applied on a basis consistent with the annual Financial Statements) as of the Closing, which are not due within one (1) year of the Closing, including any unfunded employee or retiree obligations and any environmental liabilities, (ix) all guaranties in connection with the foregoing, and (x) any accrued interest, penalties, fees and expenses on any of the foregoing.

1.46 "**Indemnified Party**" shall have the meaning set forth in **Section 5.3**.

1.47 "**Indemnifying Party**" shall have the meaning set forth in **Section 5.3**.

1.48 "**Insurance Policies**" shall have the meaning set forth in **Section 3.1(ee)**.

1.49 "**Inventory**" means supplies, including but not limited to, office materials.

1.50 "**Law**" means any law, statute, ordinance, code, rule, order, or regulation of any governmental unit, court, or administrative or regulatory agency.

1.51 "**Lives**" means Plan Members.

1.52 "**Loss**" means any claim, liability, loss, damage, cost, or expense (including, without limitation, diminution in value, lost profits, attorneys' fees, and costs of investigation and litigation).

1.53 "**Market Price**" shall have the meaning set forth in **Section 2.1(b)(ii)**.

1.54 "**Material Adverse Effect**" means a material adverse effect on the business, assets, liabilities, condition (financial or otherwise), prospects, operations, operating results or earnings of the Company or the Buyer (as applicable).

1.55 "**Medicaid**" shall have the meaning set forth in **Section 3.1(r)(i)**.

1.56 "**Medicare**" shall have the meaning set forth in **Section 3.1(r)(i)**.

1.57 "**Medicare Advantage Plan**" means a type of Medicare health plan offered by a private company that contracts with Medicare to provide Medicare beneficiaries with all of their Part A and Part B benefits in return for receipt of a set amount from Medicare per enrolled Medicare beneficiary and any deductibles/copays due from the Medicare beneficiaries.

1.58 "**MSO**" shall mean the business in which the Company conducts its Business Activities at or from the Real Property.

1.59 "**MSO Employees**" shall have the meaning set forth in **Section 3.1(o)**.

1.60 "**MSO Physician**" shall mean a physician who is currently engaged in an MSO Physician Contract to provide medical services to Plan Members.

1.61 "**MSO Plan**" shall mean any Plan with whom the Company has a MSO Risk Contract.

1.62 "**MSO Provider**" shall mean a physician or any other type of healthcare provider who is currently engaged in an MSO Physician Contract to provide medical services to Plan Members.

1.63 "**MSO Risk Contract**" means a full-risk contract between the Company and Plan in which the Company is paid a capitation payment and assumes the full financial risk for a Plan Member's care.

1.64 "**Names**" means all of the Company's right, title, and interest in and to the Company's names, including fictitious names, as set forth in the introductory paragraph to the Agreement, and any derivative or variation of such Names.

1.65 "**Neutral Arbiter**" means an independent auditing or actuarial firm, as applicable, of nationally or regionally recognized standing selected by the mutual agreement of the parties within 15 days of the date on which the parties determine to appoint a Neutral Arbiter or, if parties don't agree to a Neutral Arbiter within such period, an independent auditing or actuarial firm, as applicable, of nationally or regionally recognized standing selected jointly by two other such firms, one of which shall be specified by Buyer and one of which shall be specified by Seller, within 15 days after the expiration of such period.

1.66 "**Objection Period**" shall have the meaning set forth in **Section 5.3**.

1.67 "**Order**" means any award, civil investigative demand, decision, injunction, decree, judgment, order, ruling, charge, subpoena, verdict, non-Ordinary Course information demand or other restriction entered, issued or made by any Governmental Authority.

1.68 "**Ordinary Course**" shall mean the ordinary course of business of the Company, consistent with past custom and practice (including as applicable, with respect to quantity and frequency).

1.69 "**Patient Medical Records**" means the written notes, documents, medical charts, plans of care, diagnoses, and other documentation addressing the medical history, illnesses, injuries, treatments, procedures, prognosis and other pertinent health-related information prepared or maintained for each patient or Plan Member for whom MSO Physicians perform medical services in connection with the treatment of such patient by such MSO Physicians or any other professional pursuant to a Plan Contract or MSO Risk Contract.

1.70 "**Permit**" means any permit, license, franchise, certificate of occupancy, operating certificate, accreditation, approval or other Governmental Authorization (including OSHA ratings) of any Governmental Authority.

1.71 "**Personal Property**" means all of the tangible personal property owned by the Company and located at, comprising, and/or used or useful in or relating to the operation of the MSO, including, without limitation, all office furniture, fixtures, computer software and licenses, leasehold improvements, supplies, Inventory, Equipment, Books and Records, medical instruments, materials, and consumables, together with any and all warranties thereon (to the extent same are assignable), including without limitation those described on **Schedule 1.71** attached to this Agreement.

1.72 "**Personal Property Leases**" shall have the meaning set forth in **Section 3.1(y)**.

1.73 "**Plan**" means a Medicare Advantage Plan or Medicaid plan offered by a private payor that contracts with Medicare or Medicaid to provide its Plan Members with Medicare Part A and Part B Benefits or Medicaid benefits.

1.74 "**Plan Contract**" means a contract between the Company and a Plan.

1.75 "Plan Member" means an individual eligible to receive covered medical services from MSO Physicians under a contract with a Plan or MSO Plan. Plan Members may also be referred to as "Lives."

1.76 "Privacy and Security Rules" shall have the meaning set forth in Section 3.1(r)(viii).

1.77 "Proceeding" means any action, arbitration, audit, hearing, investigation, litigation or suit whether civil, criminal, administrative, investigative or informal brought, conducted, commenced or heard by or before any Governmental Authority or arbitrator.

1.78 "Purchase Price" shall have the meaning set forth in Section 2.1(b).

1.79 "Purchase Price Formula" shall have the meaning set forth in Section 2.1(b).

1.80 "Purchase Price Calculations" shall mean the calculation of the Purchase Price using the Purchase Price Formula.

1.81 "Real Property" means the leasehold interest in the Business Location and any other real property described in the Real Property Leases.

1.82 "Real Property Leases" shall have the meaning set forth in Section 3.1(x).

1.83 "Registration Expenses" shall have the meaning set forth in Section 2.2(d).

1.84 "Resolution Period" shall have the meaning set forth in Section 5.4.

1.85 "Restricted Period" shall have the meaning set forth in Section 7.1(n).

1.86 "Restricted Territory" shall have the meaning set forth in Section 7.1(n).

1.87 "Second Stock Amount Installments" shall have the meaning set forth in Section 2.1(b)(ii).

1.88 "the Seller's Knowledge" shall mean actual knowledge of the Seller after reasonable inquiry.

1.89 "Shares" shall have the meaning set forth in the Recitals to this Agreement.

1.90 "Similar Business" shall have the meaning set forth in Section 7.1(n).

1.91 "Subsidiary" means, with respect to any Person, any corporation, limited liability company, partnership, association or other business entity of which (i) if a corporation, a majority of the total voting power of shares of stock entitled (without regard to the occurrence of any contingency) to vote in the election of directors, managers or trustees thereof is at the time owned or controlled, directly or indirectly, by that Person or one or more of the other Subsidiaries of that Person or a combination thereof or (ii) if a limited liability company, partnership, association or other business entity (other than a corporation), a majority of partnership or other similar ownership interest thereof is at the time owned or controlled, directly

or indirectly, by that Person or one or more Subsidiaries of that Person or a combination thereof and for this purpose, a Person or Persons owns a majority ownership interest in such a business entity (other than a corporation) if such Person or Persons shall be allocated a majority of such business entity's gains or losses or shall be or control any managing director or general partner of such business entity (other than a corporation). The term "Subsidiary" shall include all Subsidiaries of such Subsidiary.

1.92 **"Tax"** means (i) any income, value added and other taxes, levies, imposts, deductions, charges and withholdings in the nature of taxes whatsoever (including, without limitation, taxes concerning income, capital gains, sales, value added, franchise, withholding, payroll, employment, social security, severance, stamp or property tax and estimated taxes, customs duties, fees, assessments and charges of any kind), (ii) all interest, penalties, fines, additions to tax or additional amounts imposed by any taxing authority in connection with any item described in clause (i) and (iii) any transferee liability in respect of any items described in clauses (i) or (ii) payable by reason of Contract, assumption, transferee liability, operation of Law, Treasury Regulation Section 1.1502-6(a) (or any predecessor or successor thereof and any analogous or similar provision under Law) or otherwise.

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

1.94 **"Tax Return"** means any return, report or statement required to be filed with respect to any Tax (including any elections, declarations, schedules or attachments thereto, and any amendment thereof) including any information return, claim for refund, amended return or declaration of estimated Tax, and including, where permitted or required, combined, consolidated or unitary returns for any group of entities that includes the Company or any of its Affiliates.

1.95 **"Third-Party Suit"** means a suit or proceeding by a third party with respect to which a Claim is made.

1.96 **"Third Stock Amount Installment"** shall have the meaning set forth in **Section 2.1(b)(ii)**.

1.97 **"Trade Accounts Payable"** means recurring trade obligations (a) that arise from the acquisition of merchandise, materials, supplies, and services used in the provision of goods and services in connection with the MSO, and (b) which are directly related to the continuing operation of the MSO. Trade Accounts Payable shall be limited to amounts due third parties for goods and services and shall not include any indebtedness or any Employee Benefit Liabilities, accrued but unpaid interest of any kind, or real estate taxes.

1.98 **"Transactions Rule"** shall have the meaning set forth in **Section 3.1(r)(viii)**.

1.99 **"Transfer Taxes"** shall have the meaning set forth in **Section 6.4**.

1.100 **"Tricare"** means the healthcare program of the United States Department of Defense Military Health System, which provides civilian health benefits for military personnel, military retirees and their dependents, including some members of the Reserve Component (as defined therein).

ARTICLE 2
PURCHASE OF STOCK

2.1 **Stock Purchase; Transaction Value.**

(a) Stock Purchase. On the Closing Date, subject to the terms and conditions of this Agreement, the Buyer agrees to purchase from the Seller, and the Seller agrees to sell, convey, assign, transfer and deliver to the Buyer, free and clear of all Encumbrances, the Shares, by delivering to the Buyer stock certificates evidencing the Shares (the "Share Certificates"), duly endorsed in blank or accompanied by stock powers duly executed in blank, and proper forms for transfer, with all required stock transfer stamps affixed or provided, for the consideration specified in this **Article 2**.

(b) Purchase Price. As full and complete consideration for the sale, assignment, conveyance, transfer, and delivery to the Buyer of the Shares, as determined by the formula set forth in **Schedule 2.1(b)** ("Purchase Price Formula"), the Buyer shall pay Three Million Three Hundred Thirteen Thousand Two Hundred United States Dollars (US$3,313,200.00), subject to adjustment pursuant to the provisions of **Section 2.1(d)** (the "Purchase Price"), to the Seller as follows:

(i) Cash Purchase Amount. The Buyer shall pay Five Hundred Thousand United States Dollars (US$500,000.00) in cash to the Seller ("Cash Purchase Amount") in the following manner:

A. On the Closing Date, the Buyer shall pay three hundred Thousand United States Dollars (US$300,000.00) by wire transfer of immediately available funds in accordance with the wire transfer instructions in **Schedule 2.1(b)(i)(A)**; and

B. On or before March 5, 2015, and on the fifth (5^{th}) calendar day of each of the following eight (8) fiscal quarters thereafter, the Buyer shall pay Twenty Five Thousand United States Dollars (US$25,000.00) to the Seller, by wire transfer of immediately available funds in accordance with the wire transfer instructions given by the Seller to the Buyer no later than two (2) business days prior to each fiscal quarter, until the Buyer has paid the entire Cash Purchase Amount;

(ii) Stock Purchase Amount. In addition to the Cash Purchase Amount, the Buyer shall pay to the Seller Two Million Eight Hundred Thirteen Thousand Two Hundred United States Dollars (US$2,813,200.00) (the "Stock Purchase Amount") in common stock of the Buyer (the "Buyer Stock") in the manner described in this **Section 2.1(b)(ii)**. Subject to the Buyer's rights of offset pursuant to this Section and **Section 2.1(c)**, on the business day immediately following the expiration of three hundred sixty-five (365) days after the Closing Date (the "Holdback Cut-off Date"), Buyer shall issue to Seller that amount of Buyer Stock equal in value to the Stock Purchase Amount of each of the four installments set forth below based upon a valuation equal to the greater of (i) US$1.00, or (ii) if the Buyer Stock is publicly listed on an established exchange, the then current market share price as reflected at the close of the trading day on such exchange on the date of the issuance of the subject installment of the Stock Purchase Amount (the "Market Price"). The Buyer Stock will be issued in four (4) annual installments as follows: (1) Six Hundred Ninety Three Thousand Nine Hundred and Sixty United

States Dollars (US$693,960.00) of the Stock Purchase Amount will be issued to the Seller on the first (1st) anniversary of the Closing Date (the "First Stock Amount Installment"); (2) Six Hundred Ninety Three Thousand Nine Hundred and Sixty United States Dollars (US$693,960.00) of the Stock Purchase Amount will be issued to the Seller on the second (2nd) anniversary of the Closing Date (the "Second Stock Amount Installment"); (3) Nine Hundred Twenty Five Thousand Two Hundred And Eighty United States Dollars ($925,280.00) of the Stock Purchase Amount will be issued to the Seller on the third (3rd) anniversary of the Closing Date (the "Third Stock Amount Installment"); and (4) for the remaining Five Hundred Thousand United States Dollars ($500,000.00) on the fourth (4th) anniversary of the Closing Date (the "Final Stock Amount Installment"). Notwithstanding any of the foregoing, each of the Buyer and the Seller hereby agrees and acknowledges that Buyer may offset any Losses incurred by the Company with respect to the period commencing on July 31, 2014 through and including November 30, 2014, relating solely and directly to the Company's Medicaid operations, up to a maximum amount not to exceed Seven Hundred Fifty Thousand United States Dollars (US$750,000.00), against each of the First Stock Amount Installment and the Second Stock Amount Installment (as applicable). In the event that the Company recovers such offset Losses prior and up to the expiration of twelve (12) months after the Closing Date, then any Stock Purchase Amounts that were clawed back pursuant to the immediately proceeding sentence shall be reinstated and paid to the Buyer at the time of and in addition to the immediately preceding stock installment, in accordance with the installment schedule set forth in this paragraph. Seller's continued right to receive the shares of Buyer Stock contemplated by this Agreement shall cease if (1) is in default or breach under this Agreement or the Employment Agreement, (2) shall have voluntarily terminated his Employment Agreement, or (3) is terminated for Cause (as such term is defined in the Employment Agreement).

(iii) Put Option. Upon the issuance of each installment of Buyer Stock to the Seller, the Seller shall have a put option (the "Put Option") to cause all (but not part) of his Buyer Stock to be redeemed by the Company based upon an valuation equal to the greater of (i) US$ 1.00 per share, or (ii) the then current Market Price. Each Put Option shall expire sixty (60) days after the issuance of each installment of Buyer Stock described in Clause (ii) immediately above. The cash settlement of the Put Option of Buyer Stock shall be paid to the Seller within (60) days of the related installment of Buyer Stock. For the avoidance of doubt, the Seller will retain his right to freely hold or sell his Buyer Stock after the expiration of any Put Option, to the extent permitted by applicable federal and state securities laws.

(iv) Earn-Out. In addition to the Purchase Price:

A. Within forty five (45) calendar days after the Holdback Cut-off Date, the Buyer will pay the Seller an earn-out ("Earn-Out") for any and all Additional Lives. The amount the Seller will receive for the Earn-Out for each Additional Life will be calculated at fifty percent (50%) of the rates paid in accordance with the Purchase Price Formula attached as **Schedule 2.1(b)** (the "Earn-out Amount"). For purposes of calculation of the Earn-Out, one (1) Additional Life will need to join a Plan Contract for each Life that may have voluntarily withdrawn from a Plan Contract during the period commencing on the Closing Date through the Holdback Cut-off Date. For the avoidance of doubt, any Life withdrawn as a result

of any action or inaction directly attributable to the Buyer, including the termination of a Plan Contract (unless terminated due to any action or inaction by Seller prior to Closing) by the Buyer, will not be calculated as a withdrawn Life for purposes of calculating the Earn-out Amount.

B. If the Parties cannot agree on the Earn-Out Amounts within forty-five (45) days of the Holdback Cut-off Date, unless the parties mutually agree in writing to continue their efforts to resolve such differences, the Neutral Arbiter shall resolve such differences, pursuant to an engagement agreement among the Parties and the Neutral Arbiter (which parties agree to execute promptly), in the manner provided below. Buyer and Seller shall each be entitled to make a presentation to the Neutral Arbiter, pursuant to procedures to be agreed to among Buyer, Seller and the Neutral Arbiter (or, if they cannot agree on such procedures, pursuant to procedures determined by the Neutral Arbiter), regarding such party's determination of the Earn-Out Amounts and the Neutral Arbiter shall be required to resolve the differences within 20 days after the engagement of the Neutral Arbiter based solely on such presentations. Such determination by the Neutral Arbiter shall be conclusive and binding upon the parties, absent fraud or manifest error. Nothing in this Section shall be construed to authorize or permit the Neutral Arbiter to determine any questions or matters whatsoever under or in connection with this Agreement except for the resolution of differences on the Earn-Out Amounts. The fees and expenses of the Neutral Arbiter shall be paid by the party whose calculation of the Earn-Out Amounts is farther from the Neutral Arbiter's calculation thereof.

C. The entirety of the Earn-Out Amount shall be paid to Seller no later than forty five (45) calendar days after the Holdback Cut-off Date, or no later than thirty (30) days after the Neutral Arbiter's determination thereof (if applicable).

(c) The Seller expressly understands and agrees that the Buyer shall be entitled to offset, against the Buyer Stock otherwise payable by the Buyer to the Seller pursuant to **Section 2.1(b)(ii)**, the amount of any Loss of the Buyer in connection with any Claim that is undisputed, as that term is used in **Section 5.3**. In the event that the Buyer asserts a Claim under **Section 5.3** on or before the date that any outstanding Stock Purchase Amounts may be due for payment hereunder, the Buyer shall (1) pay the Seller the First Stock Amount Installment less the amount of the disputed Claim (the "Holdback Payment"), and (2) pay the amount of the disputed Claim into an escrow account with an escrow agent to be mutually agreed upon by the parties (the "Escrow Account"). The Buyer and the Seller shall continue to attempt to resolve any disputed Claim pursuant to **Section 5.4**. To the extent that the amount of the disputed or undisputed Claim(s) exceed the First Stock Amount Installment, then the Buyer may (1) continue to offset any undisputed Claim(s) against future installments for the Stock Purchase Amount, and (2) pay any disputed Claim amounts into the Escrow Account until resolution pursuant to **Section 5.4**.

2.2 Piggy-back Registration Rights.

(a) Subject to the terms and conditions set forth herein, the Seller shall have the right to participate in the registration of the Buyer's common stock after the completion of the Buyer's initial public offering under the Securities Act of 1933, as amended, on a nationally recognized exchange (the "IPO").

(b) After the IPO, if the Buyer elects to register additional shares of common stock, then the Buyer shall notify Seller in writing of such proposed filing no later than 30 business days before the anticipated filing date, and such notice shall offer the Seller the opportunity to register such number of shares of Seller's Buyer Stock as Seller may request. The Seller shall advise the Buyer in writing within 20 business days after the date on which the Buyer's notice is received, setting forth the number of shares of Seller's Buyer Stock for which registration is requested. Accordingly Buyer shall (i) do any and all acts and things which may be reasonably necessary or advisable to enable Seller to consummate the registration in the relevant jurisdiction, (ii) use commercially reasonable efforts to cause Seller's Buyer Stock to be registered with or approved by such other governmental agencies or authorities as may be necessary to enable the Sellers thereof to consummate the disposition or registration of Seller's Buyer Stock and cooperate with the Seller and each underwriter or agent participating in the registration and their respective counsel in connection with any filings required to be made with the FINRA or the Securities and Exchange Commission. If the Buyer's offering is to be an underwritten offering, the Buyer shall use its commercially reasonable efforts to cause the managing underwriter or underwriters to permit the Seller's Buyer Stock to be included in the registration for such offering, on the same terms and conditions as any similar securities of the Buyer included therein. The right of the Seller to registration pursuant to this Section shall, unless the Buyer otherwise assents, be conditioned upon the Seller's participation as a seller in such underwritten offering and Seller's execution of an underwriting agreement with the managing underwriter or underwriters selected by the Buyer.

(c) Notwithstanding the foregoing, if the managing underwriter or underwriters of such offering delivers a written opinion to the Buyer either because of (a) the kind of securities that the Buyer intends to include in such offering or (b) the size of the offering that the Buyer intends to make, the success of the offering would be materially and adversely affected by inclusion of the Seller's Buyer Stock requested to be included, then (i) in the event that the size of the offering is the basis of such managing underwriter's opinion, the number of shares of Seller's Buyer Stock to be registered and offered shall be reduced pro rata on the basis of the number of securities requested by the Seller to be registered and offered to the extent necessary to reduce the total amount of securities to be included in such offering to the amount recommended by such managing underwriter or underwriters and (ii) in the event that the combination of securities to be offered is the basis of such managing underwriters opinion, (x) the Seller's Buyer Stock to be included in such registration and offering shall be reduced as described in clause (i) above or (y) if such actions would, in the reasonable judgment of the managing underwriter, be insufficient to substantially eliminate the adverse effect that inclusion of the Seller's Buyer Stock requested to be included would have on such offering, such Seller's Buyer Stock will be excluded entirely from such registration and offering. Any of Seller's Buyer Stock excluded from an underwriting shall, if applicable, be withdrawn from registration and shall not, without the consent of the Buyer, be transferred in a public distribution prior to the earlier of ninety (90) days (or such other shorter period of time as the managing underwriter may

require) after the effective date of the registration statement or ninety (90) days after the date the Seller is notified of such exclusion.

(d) All expenses incident to the registration and the terms of this **Section 2.2**, and to the Buyer's performance of or compliance with this Section (all such expenses being herein called ("Registration Expenses") will be borne or paid by the Buyer, including, without limitation, all registration and filing fees, fees and expenses of compliance with securities or blue sky laws, printing expenses, messenger and delivery expenses, fees and disbursements of custodians, fees and disbursements of counsel for the Seller, and all independent certified public accountants, underwriters (excluding discounts and commissions), and other persons retained by the Seller.

2.3 **Fair Market Value.** The parties agree that the Purchase Price represents the fair market value of the Shares in an arm's length transaction and has not been determined in a manner that takes into account the volume or value of any referrals or business otherwise generated or to be generated between the parties or any of their affiliates for which payment may be made, in whole or in part, under Medicare or any state health care program, as defined under Section 1128B of the Social Security Act.

ARTICLE 3
REPRESENTATIONS, WARRANTIES, AND CERTAIN COVENANTS

3.1 **Representations, Warranties, and Covenants by the Seller.** The Seller represents and warrants to the Buyer that the statements in this **Article 3** are true, correct and complete as of the Closing Date (unless otherwise specified herein), except as set forth in the schedules accompanying this Agreement (each, a "Schedule" and, collectively, the "Disclosure Schedule"). Capitalized terms used in the Disclosure Schedule and not otherwise defined therein have the meanings given to them in this Agreement. As a material inducement for the Buyer to enter into this Agreement and to consummate the transactions contemplated pursuant to this Agreement, the Seller hereby makes the following representations, warranties, and covenants as of the Closing Date (unless otherwise specified herein):

(a) **Organization, Standing, etc.** The Company is a Florida corporation, with full power and authority to carry on its business as presently conducted. The Seller is an individual and owns one hundred percent (100%) of the total issued and outstanding capital stock of the Company on a fully diluted basis. The Seller has sole legal and beneficial ownership of all of the outstanding shares of and all other equitable interests in the Company. The Company has all requisite corporate power and authority to own, lease and operate the properties now owned, leased or operated by it and to carry on its business as presently conducted. The Company is duly qualified to do business in the State of Florida, and the Company is not required to qualify to do business in any other jurisdiction. The Seller has made available to the Buyer a true and complete copy of the Company's articles of incorporation and bylaws, as amended and as in effect on the date of this Agreement. The Company is not in default under or in violation of any provision of its articles of incorporation or bylaws.

(b) **Capitalization of the Company.** The Shares represent 100% of the total issued and outstanding capital stock of the company on a fully diluted basis. The Seller owns 100% of the Shares. All of the issued and outstanding shares of the Company's capital stock are

duly and validly authorized and issued, fully paid and non-assessable and have not been issued in violation of any Law or any charter or other provision regarding pre-emptive, anti-dilution or similar rights of stockholders. There are no outstanding or authorized subscriptions, options, rights, warrants, puts, calls or Contracts of any type (1) obligating the Seller or the Company to issue, sell or transfer any shares of the Company's capital stock, any securities convertible into shares of capital stock of the Company, or any other rights to acquire capital stock of the Company, (2) obligating the Seller or the Company to grant, offer or enter into any of the foregoing, (3) relating to the voting or control of any shares of capital stock of the Company, or (4) obligating the Seller or the Company to repurchase or otherwise acquire or retire any shares of capital stock of the Company.

(c) **Ownership of the Shares; Purpose of the Company.** The Seller owns, beneficially and of record, and has valid title to, the Shares, free and clear of all Encumbrances. At the Closing, the Buyer will acquire good and marketable title to the Shares, free and clear of all Encumbrances.

(d) **Subsidiaries.** The Company does not have, and has never had, any direct or indirect Subsidiaries, and does not presently own, of record or beneficially, or control, directly or indirectly, any capital stock, securities convertible into capital stock or any other equity interest in any Person, whether active or dormant, nor is the Company or any Subsidiary, directly or indirectly, a participant in any joint venture, partnership, limited liability company, trust, association or any other non-corporate entity.

(e) **Authorization; Enforceability.**

(i) The Company and the Seller have the full and unrestricted legal right, power and authority to enter into and deliver this Agreement and the agreements contemplated hereby to which he or it is a party, to carry out the transactions contemplated hereby and thereby and to perform his or its obligations hereunder and thereunder. All necessary and appropriate action has been taken by the Company and the Seller with respect to the execution and delivery of this Agreement and the performance of his or its obligations hereunder. This Agreement has been, and each of the agreements contemplated hereby to which the Company and the Seller is a party will be, duly and validly executed and delivered by the Company or the Seller. This Agreement constitutes, and each agreement contemplated hereby to which the Company or the Seller is a party, when executed and delivered by the Company and the Seller, will constitute, a valid and binding obligation of the Company and the Seller, as applicable, enforceable against such party in accordance with its terms.

(ii) Except as set forth in **Schedule 3.1(e)(ii)**, no authorization, consent or approval of, or filing with, any Governmental Authority is necessary for (a) the execution of this Agreement or the agreements contemplated hereby or the consummation by the Company or the Seller of the transactions contemplated hereby or thereby and (b) the Company to carry on the business of the Company after the Closing in substantially the same manner as presently conducted and as presently proposed by the Company to be conducted. Except for the consents and notice requirements specifically listed and described in **Schedule 3.1(e)(ii)**, the execution and delivery of this Agreement and the consummation of the transactions provided in this Agreement will not require the consent of any party to any Contract or other agreement or

instrument to which the Company is a party or by which any of its assets is subject or may be bound, involving amounts in excess of US$5,000.00.

(iii) **Schedule 3.1(e)(iii)** sets forth all of the material Contracts for which consent or notice is required to be obtained or made by the Buyer prior to the Closing Date but for which Seller has not sent, delivered, sought nor obtained any such notice or consent, as expressly agreed to and understood by the Buyer.

(f) Compliance with Instruments and Agreements. The execution, delivery, and performance of this Agreement, and the consummation of the transactions contemplated pursuant to this Agreement, will not (1) violate any provision of the certificate of incorporation or bylaws of the Company; (2) constitute a breach of any applicable Law; (3) aside from (A) the insurance requirements set forth in the Plan Contracts in **Schedule 3.1(f)**, and (B) the consents required as set forth in **Schedule 3.1(e)(iii)**, violate, conflict with, or result in any breach of, result in any modification of the effect of, otherwise give any contracting party the right to terminate, or constitute (or with notice or lapse of time or both constitute) a default under any Contract, MSO Risk Contract, or other agreement, instrument, or commitment to which the Seller or the Company are a party, by which the Seller or the Company are bound, or to which any of the Seller's or the Company's other property or assets are subject; (4) aside from (A) the insurance requirements set forth in the Plan Contracts in **Schedule 3.1(f)**, and (B) the consents required as set forth in **Schedule 3.1(e)(iii)**, violate, conflict with, or result in any breach of, result in any modification of the effect of, otherwise give any contracting party the right to terminate, or constitute (or with notice or lapse of time or both constitute) a default under, any mortgage, contract, agreement, indenture, trust, or other instrument which is either binding upon or enforceable against the Seller or the Company or any of their respective assets; (5) aside from (A) the insurance requirements set forth in the Plan Contracts in **Schedule 3.1(f)**, and (B) the consents required as set forth in **Schedule 3.1(e)(iii)**, violate any legally protected right of any individual or entity or give to any individual or entity a right or claim against the Buyer, the Company or any of their respective assets; or (6) result in the imposition or creation of any Encumbrance on any of the Shares or accelerate any indebtedness of the Seller or the Company or to which their respective assets may be bound.

(g) Indebtedness for Borrowed Monies. The Company does not have any outstanding Indebtedness for borrowed monies involving amounts exceeding US$ 10,000 (in the aggregate) with respect to the MSO except as reflected in the Balance Sheet included in **Schedule 3.1(h)**. True and complete copies of every instrument, agreement and other document relating to any such Indebtedness have been delivered to the Buyer. Immediately following the Closing, the Company will not be indebted to or have any obligation to any Affiliate of the Company with respect to the MSO.

(h) Financial Statements. The statements attached as **Schedule 3.1(h)** are true, correct, and complete copies of the following financial statements of the Company with respect to the MSO on a cash accounting basis (collectively, the "Financial Statements"):

(i) an unaudited balance sheet (the "Balance Sheet") for the period ended June 30, 2014 (the "Balance Sheet Date"), and the related consolidated statement of income for the months then ended; and

(ii) unaudited balance sheets of the Seller and the related consolidated statements of income for the fiscal years ended December 31, 2013, and December 31, 2012, including in each case the notes thereto (collectively, the "Annual Financial Statements"), with respect to a cash accounting method.

The Financial Statements (1) are true, correct, and complete in all material respects, (2) are in accordance with the Books and Records of the Company, and (3) fairly present the financial condition and results of operations of the MSO at the respective dates and for the periods specified in each Financial Statement.

(i) **Liabilities of the Company.** As of October 1, 2014, except for the liabilities reflected in the Balance Sheet, as otherwise set forth herein or in the Schedules, and obligations incurred in the ordinary course of business since the Balance Sheet Date, the Company does not have and is not subject to any liability of any nature, whether accrued, absolute, contingent, or otherwise, other than liabilities or obligations of the Company which are subject to indemnification by the Seller pursuant to **Section 5.2**. To the best of the Seller's Knowledge, there are no facts in existence that might reasonably serve as the basis for any liability or obligation of the Company that is not fully disclosed in this Agreement and the Schedules attached to this Agreement. As of October 1, 2014, the Company is current in all payment obligations to which it is subject. All of the Company's Trade Accounts Payable are described and set forth on **Schedule 3.1(i)** as of the Closing Date.

(j) **Taxes.**

(i) The Company has complied with all Laws relating to Taxes and each Tax Return required to be filed by, or with respect to, the Company has been timely filed (taking into account applicable extensions) in accordance with applicable Laws. All such Tax Returns were true, correct and complete. All Taxes due and payable with respect to each such Tax Return (whether or not shown as due on a Tax Return), or otherwise due and payable by, or with respect to, the Company, have been timely paid. There are no unpaid assessments for additional Taxes of the Company.

(ii) The aggregate unpaid Taxes of the Company do not exceed the reserves for current Taxes (excluding any reserve established to reflect timing differences between book and Tax items) set forth on the Balance Sheet (without regard to any notes thereto), as adjusted for the passage of time. Since the date of the Balance Sheet, the Company has not incurred Taxes outside of the Ordinary Course.

(iii) The Seller has provided to the Buyer (i) true, correct and complete copies of all material Tax Returns filed by the Company in the last five (5) years, and (ii) true, correct, and complete copies of all notices of deficiencies, notices of proposed adjustments, notices of assessments, revenue agent reports, closing agreements, settlement agreements, information document requests, protests, and any other similar documents, notices, and correspondence, in each case, that the Company (or a representative of the Company) has received from, sent to, or entered into with the Internal Revenue Service or other Governmental Authority in the last five (5) years or that relates to any Taxes or Tax Return which is not closed by the applicable statute of limitations. No claim has been made by any Governmental Authority

in the last five (5) years that the Company has not properly paid Taxes or filed Tax Returns in a jurisdiction in which the Company does not file a Tax Return.

(iv) There are no Encumbrances for Taxes on any assets of the Company, other than Encumbrances for Taxes not yet due and payable.

(v) The Company has never been a member of any consolidated, combined or unitary group for federal, state, local, or foreign Tax purposes (other than a group the common parent of which is the Company). The Company is not liable for, nor has potential liability, for Taxes of any other Person (other than the Company) as a result of transferee liability, successor liability, joint or several liability (including, without limitation, pursuant to Treasury Regulation Section 1.1502-6 or similar provision of state, local, or foreign Law), contractual liability (other than pass throughs under leases), or otherwise.

(vi) The Company has (i) withheld all required amounts from its employees, agents, contractors, nonresidents, and other persons and timely remitted such amounts to the proper Governmental Authority in accordance with all applicable Laws; (ii) timely paid all employer contributions and premiums required under applicable Laws; and (iii) timely filed in accordance with all applicable Laws all Tax Returns with respect to employee income Tax withholding, social security Taxes and withholdings; and unemployment Taxes and withholdings.

(vii) No federal, state, local or foreign Tax audits or other Proceedings are presently in progress or pending or threatened with regard to any Taxes or Tax Returns of the Company. No private letter ruling, technical advice, application for a change of any method of accounting, or other similar requests made by, or with respect to the Company, are presently pending with any Governmental Authority.

(viii) The Company is not (and has never been) a "United States real property holding corporation" within the meaning of Tax Code Section 897(c).

(ix) The Company has not been, in the last five (5) years, a party to a transaction (i) reported or intended to qualify as a reorganization under Tax Code Section 368 or (ii) reported or intended to qualify as a distribution governed by Tax Code Sections 355 or 356.

(x) The Company has not engaged in any transaction that could affect its income Tax liability for any taxable year not closed by the statute of limitations which is a "listed transaction" within the meaning of Treasury Regulation Sections 1.6011, 301.6011-4, or 301.6112 (irrespective of the effective date).

(xi) The Company is not required to include an item of income, or exclude an item of deduction, for any period after the Closing Date as a result of (1) amounts received on or prior to the Closing Date that are not to be Taxed under the Company's method of accounting until after the Closing Date; (2) a change in method of accounting other than one resulting from this Agreement; (3) an agreement (including a "closing agreement" within the meaning of Tax Code Section 7121) entered into with any Governmental Authority on or prior to the Closing Date; (4) any transaction for which gain or loss was deferred under Treasury Regulation Section 1.1502-13 (or similar provision of state, local, or foreign law); or (5) an

"excess loss account" within the meaning of Treasury Regulation Section 1.1502-19. The Company uses the cash method of accounting for income Tax purposes. The Company has not made an election under Tax Code Section 108(i) to defer any income.

(xii) There is no contract, agreement, plan or arrangement covering any employee or former employee or independent contractor or former independent contractor of the Company that, individually or collectively, could give rise to a (or already has resulted in a) payment (or the provision of any other benefit such as accelerated vesting) by the Company that would not be deductible by reason of Tax Code Section 280G or subject to an excise Tax under Tax Code Section 4999. The Company's "nonqualified deferred compensation plans" within the meaning of Tax Code Section 409A are in compliance with Tax Code Section 409A and no such plan is anticipated to result in a participant's incurring income acceleration or penalties under Tax Code Section 409A. The Company has no obligation, or potential obligation, to indemnify for, gross-up for or otherwise pay, any Taxes imposed on any employee of independent contractor, including Taxes imposed under Tax Code Section 409A or Tax Code Section 4999.

(xiii) The Company does not own any stock or other interest in any entity that is a Flow Through Entity.

(xiv) The Company has duly elected to be treated as an S corporation pursuant to Tax Code Section 1362(a) and the Laws of each state in which the Company conducts business, effective as of February 19, 2004. This election is currently effective. No event has occurred (or fact has existed) that would cause the Company not to initially qualify as an S corporation under Tax Code Section 1361(a) or which would terminate the Company's S corporation status (other than the transaction contemplated by this Agreement). No Governmental Authority has challenged the effectiveness of this election. The Company has not incurred (and have no potential for) any liability for income Taxes under Tax Code Section 1374 or for any income Taxes in any state or local jurisdiction on the sale or other disposition of its assets (whether actual or deemed and including any assets of any Subsidiary that is disregarded for income Tax purposes). The Company has no liability for Taxes under Tax Code Section 1363(d) that are payable after the Closing Date. The Company has not made an election under Tax Code Section 444.

(k) Absence of Undisclosed Liabilities. As of October 1, 2014, there are no facts in existence that might reasonably serve as the basis for any liability or obligation of the Company that were not fully disclosed to the Buyer or in this Agreement and the Schedules attached to this Agreement. Except as disclosed to the Buyer in this Agreement and its Schedules for respective dates attributed herein and therein, the Company does not have any material liabilities, whether currently due, accrued, absolute, contingent, unliquidated or otherwise, whether due or to become due and regardless of when asserted, other than the following (x) liabilities fully and adequately reflected or reserved against in the Balance Sheet, (y) current liabilities incurred in the Ordinary Course since the date of the Balance Sheet, none of which are material and none of which constitute a breach of any other representation or warranty of the Seller contained in this Agreement and (z) obligations under Contracts with respect to which the Company is not in default, in each instance, as of October 1, 2014.

(l) **Absence of Certain Changes or Events.** As of October 1, 2014, except as disclosed in **Schedule 3.1(l)** or as specifically contemplated by this Agreement, since the date of the Balance Sheet:

(i) there has been no Material Adverse Effect, nor has there occurred any event, which, individually or in the aggregate, could reasonably be expected to result in a Material Adverse Effect;

(ii) the Company has been operating only in the Ordinary Course, and there has been no change in accounting methods, policies or practices (including business practices or manner of dealing with any client, supplier, distributor, subcontractor or sales representative);

(iii) the Company has not incurred any Indebtedness or been delinquent in the payment of any such Indebtedness;

(iv) the Company has not (i) sold, leased or disposed of, or subjected to any Encumbrance, any of its tangible or intangible assets, other than the sale, lease or disposition in the Ordinary Course of inventory, miscellaneous items of machinery and equipment and assets no longer necessary to the operation of its business, or (ii) canceled or released any debt or claim held by it other than in the Ordinary Course;

(v) there has been no theft of, or damage, destruction or loss to, (i) any asset of the Company necessary to the operation of its business, the value of which individually or in the aggregate exceeds US$5,000, whether or not covered by insurance, or (ii) any of the books and records of the Company;

(vi) the Company has not, except as set forth on **Schedule 3.1(l)**, entered into, modified or terminated any Material Contract;

(vii) the Company has not incurred undischarged obligations or commitments for capital expenditures of US$5,000 or more;

(viii) the Company has not issued (or agreed to issue) any notes, bonds or other debt securities or any of its capital stock or other equity securities, any securities convertible, exchangeable or exercisable into shares of its capital stock or any other equity securities, or any warrants, options or other rights to acquire shares of its capital stock or other equity securities;

(ix) the Company has not redeemed or repurchased, directly or indirectly, any shares of its capital stock or other equity securities;

(x) the Company has not declared, set aside or paid any cash or stock dividend or other constructive or deemed distribution in respect of any shares of the Company, or otherwise made any payment to any of its stockholders in their capacities as stockholders;

(xi) the Company has not discharged or satisfied any Encumbrance or paid any obligation or liability, other than in the Ordinary Course;

(xii) the Company has not mortgaged, pledged or subjected to any Encumbrance any portion of their respective properties or assets;

(xiii) the Company has not suffered any extraordinary losses or waived any rights of material value, whether or not in the Ordinary Course;

(xiv) within the six months before the Closing Date, the Company has not made or granted any bonus or any wage, salary or compensation increase in excess of US$10,000 per year to any director, officer, employee, group of employees, sales representative or consultant, or made or granted any increase in any Employee Benefit Plan or arrangement, amended or terminated any existing Employee Benefit Plan or arrangement or adopted any new Employee Benefit Plan or arrangement;

(xv) the Company has not encountered any labor union organizing activity, had any actual or, to the Seller's Knowledge, threatened employee strikes, work stoppages, slowdowns or lockouts, or had any material change in its relations with its employees, agents, customers or suppliers;

(xvi) the Company has not conducted its cash management customs and practices other than in the Ordinary Course, including with respect to maintenance of working capital balances, collection of accounts receivable and payment of accounts payable;

(xvii) the Company has not made any loans or advances to, or guarantees for the benefit of, any Persons;

(xviii) within the six months preceding the Closing Date, the Company has not made any charitable contributions or paid any association fees or dues in excess of US$5,000;

(xix) the Company has not made any pledges;

(xx) the Company has not entered into any lease of capital equipment or real estate involving rental payments in excess of US$5,000 per annum;

(xxi) the Company has not entered into any transaction with any Affiliate;

(xxii) the Company has not undertaken any layoff of employees to which the WARN Act or the Older Workers Benefits Protection Act, as amended, could apply;

(xxiii) the Company has not instituted, settled, agreed to settle any litigation or Action before any Governmental Authority other than in the Ordinary Course consistent with past practices but not in any case involving amounts in excess of US$5,000;

(xxiv) the Company has not taken steps to create or organize any subsidiary; and

(xxv) there has been no authorization, approval, agreement or commitment to do any of the foregoing.

(m) Intellectual Property.

(i) The Company does not own or have the right to use pursuant to a valid and enforceable license, sublicense, agreement or permission any patents, trademarks, service marks, trade names, copyrights, trade secrets, licenses (software or otherwise), information, or processes (together, "Intellectual Property") and does not need or desire for the operation of its business as currently conducted, any such right to use Intellectual Property, except as set forth in **Section 3.1(m)(i)**.

(ii) The Company has not interfered with, infringed upon, misappropriated or otherwise come into conflict in any material respect with any Intellectual Property rights of any third party. The Company has not received any written charge, complaint, claim, demand or notice alleging any such interference, infringement, misappropriation or violation (including any claim that the Company must license or refrain from using any Intellectual Property rights of any Person).

(iii) The Company is not a party to any license, sublicense, agreement or permission pursuant to which any item of Intellectual Property is used by the Company in its business (except for "shrink-wrap" or "click-through" license agreements pertaining to software licensed to the Company that are available in consumer retail stores or are otherwise commercially available).

(iv) The Company is not a party to any license, sublicense, agreement or permission pursuant to which any item of Intellectual Property is used by the Company in its business (except for "shrink-wrap" or "click-through" license agreements pertaining to software licensed to the Company that are available in consumer retail stores or are otherwise commercially available).

(n) Material Contracts.

(i) Seller has provided copies of all Material Contracts to Buyer and has described to Buyer the existence and terms of any oral contracts that bind the Company.

(ii) Except as set forth in **Schedule 3.1(n)**, neither the Company nor any of its assets is bound by any of the following Contracts that, where applicable, involve payments yet to be made during the next twelve (12) months of more than US$5,000 in the aggregate (or such other amount specified below) or are not terminable by the Company without liability, premium or penalty on ninety (90) days' notice or less (collectively, the "Material Contracts"):

(1) (A) any Contract for the employment of any person who, for the fiscal year ended December 31, 2013 for the payment of any cash or other compensation or benefits upon the consummation of the transactions contemplated hereby or (B) any Contract with any labor union or any severance Contracts, programs, policies or arrangements;

(2) (A) any Contract with an independent contractor or consultant (or similar arrangement) and (B) any Contract with an independent

contractor or consultant (or similar arrangement) that is a referral source or an officer, director, manager, or employee of a referral source no matter the amount of the compensation;

(3) any guarantee or other contingent liability in respect of any indebtedness or obligation of any other Person (other than the endorsement of negotiable instruments for collection in the Ordinary Course);

(4) any loan or advance to, or investment in, any Person, or any Contract relating to the making of any such loan, advance or investment (other than extensions of credit to clients in the Ordinary Course);

(5) any Contract under or pursuant to which the Company has borrowed money, guaranteed indebtedness for borrowed money, mortgaged, pledged or otherwise placed an Encumbrance on any asset or group of assets or entered into any letter of credit arrangements;

(6) any Contract relating to capital expenditures;

(7) any Contract limiting the freedom of the Company to engage in any line of business or to compete with any other Person;

(8) any sales representative, manufacturer's representative, or distribution Contract;

(9) any Contract (other than purchase orders received in the Ordinary Course) for the committed future sale or purchase of any products or services;

(10) any Contract relating to any royalty arrangements or the assignment, license, indemnification or other agreement with respect to any Intellectual Property, including all agreements pursuant to which the Company has licensed or received a license to any computer software;

(11) any service or maintenance Contract;

(12) any Contract between the Company and the Seller or his or its respective Affiliates;

(13) any lease or agreement under which the Company is lessor of or permits any third party to hold or operate any property, real or personal, owned or controlled by the Company;

(14) any nondisclosure or confidentiality agreements (other than those entered into in the Ordinary Course with clients, suppliers and employees);

(15) any power of attorney or other similar agreement or grant of agency;

(16) any Contract with any Person whereby the Company or the management or Board of Directors of the Company has agreed to do anything beyond the requirements of any formal written contracts executed by the Company, including any Contract with any Person who is a referral source for the Company's products, no matter the amount of the payment;

(17) any warranty agreement with respect to services rendered

(18) any agreement with a health care facility; any joint venture agreement with a health care entity or other Person involved in health care; any employment agreement, independent contractor agreement, or consulting agreement with a physician or physician-owned entity; and any other Contract or agreement with any Person that is a referral source for the Company or Person for whom the Company is a referral source (including physicians, hospitals, skilled nursing facilities and insurers);

(19) any other Contract not entered into in the Ordinary Course or that could reasonably be expected to have a Material Adverse Effect; and

(20) All Material Contracts are in full force and effect and are valid, binding and enforceable in accordance with their respective terms (subject to the effects of bankruptcy, insolvency, reorganization, moratorium, fraudulent conveyance or other laws now or hereafter in effect relating to creditors' rights generally and general principles of equity) and will continue as such following the consummation of the transactions contemplated hereby, except subject to those items disclosed in **Schedule 3.1(e)(iii)** and **Schedule 3.1(f)**. Except as disclosed in **Schedule 3.1(e)(iii)**, **Schedule 3.1(f)** and **Schedule 3.1(n)(13)**, (x) neither the Company nor, to the Seller's Knowledge, is any other party in material breach of, or in material default under, any Material Contract, (y) to the Seller's Knowledge, the Company does not have any present expectation or intention of not fully performing any obligation pursuant to any of the Material Contracts, and (z) to the Seller's Knowledge, no other party to any Material Contract. The Seller has made available to the Buyer true, correct and complete copies of all written Material Contracts, in each case together with all amendments, waivers or other changes thereto.

(o) Employees; Labor and Employment Matters.

(i) Attached as **Schedule 3.1(o)(i)** is a complete and accurate list setting forth the following information regarding all current employees, independent contractors, and consultants of the Company and/or the Company's Affiliates who provide services at or for

the MSO as of the Closing Date ("MSO Employees"): name, date of hire, rate of compensation, bonus/incentive compensation programs, vacation time and pay, severance pay, owner malpractice insurance programs, incentive compensation programs, sick time and pay, and group insurance and other benefit plans, policies, and arrangements (whether such benefits are provided pursuant to contract, policy, custom, or informal understanding), as applicable. The Seller has delivered to the Buyer true and complete copies of the Company's written employee policies and practices (including, without limitation, any employee handbook) with respect to the MSO. The Company does not have any collective bargaining agreement with any labor union and is not currently negotiating with a labor union. No MSO Employee of the Company has ever petitioned for a representation election. No MSO Employee has ever filed with any court or other governmental authority any claim asserting wrongful termination, sexual harassment, age, gender, or racial discrimination, or violation of OSHA by the Company or any officer, director, employee, or agent of the Company or the Seller. The Company has not made any promises for the payment of any bonuses, back pay or other remuneration to any employees, contractors or other Persons. No executive, key employee, group of employees, consultant or independent contractor has given notice to the Company and, to the Seller's Knowledge, no plans exist to terminate his, her or its employment or engagement with the Company.

(ii) There are no controversies pending or, to the Seller's Knowledge, threatened, between the Company and any of its employees, which controversies have resulted in or could reasonably be expected to result in a Proceeding.

(p) **Affiliate Transactions.** No officer, director, officer, employee, stockholder or Affiliate of the Company (each, an "Affiliated Person" and, collectively, "Affiliated Persons"), or any individual related by blood, marriage or adoption to any such Affiliated Person, or any entity in which any such Affiliated Person owns any beneficial interest, is a party to any agreement, contract, commitment or transaction with the Company (other than at will employment arrangements) or has any material interest in any property or asset used by the Company.

(q) **Directors and Officers; Bank Accounts.** The Seller is the sole director and officer of the Company. **Schedule 3.1(q)** lists all of the bank accounts, safety deposit boxes and lock boxes (designating all authorized signatories with respect thereto) of the Company. Seller hereby agrees to cooperate with seller to change signatories to all of the bank accounts identified in **Schedule 3.1(q).**

(r) **Health Care Compliance.**

(i) As of October 1, 2014, the Company is in compliance in all material respects with all applicable Laws of any federal, state or local Governmental Authority with respect to regulatory matters primarily relating to regulation, provision or administration of, or payment for, healthcare products or services (whether applicable to relationships with Government Health Care Programs, commercial third-party payors, or individuals), including, without limitation, patient care, health plan, and provider and supplier licensure; Title XVIII of the Social Security Act, as amended, governing health insurance for the aged and persons with end-stage renal disease and certain disabilities ("Medicare") and regulations pertaining thereto; all federal Laws affecting the medical assistance program established by Title XIX ("Medicaid") and Titles V, XX, and XXI of the Social Security Act (and together with Medicare, Medicaid"

and "Tricare, "Government Health Care Programs"); all state Laws for Government Health Care Programs enacted in connection with the federal laws and regulations; Section 1128B(b) of the Social Security Act, as amended, and 42 U.S.C. Section 1320a-7(b), commonly referred to as the "Federal Anti-Kickback Statute;" Section 1877 of the Social Security Act, as amended; 42 U.S.C. Section 1395nn (Ethics in Patient Referrals Act) and regulations pertaining thereto, commonly referred to as the "Stark Statute;" 31 U.S.C. §3729 *et seq.* commonly known as the "False Claims Act", applicable State laws, including but not limited to Florida Statutes Secs. 456.053 (Florida Patient in Self-Referrals Act), 456.054 (Kick-Back) and 817.505 (Patient Brokering), and regulations pertaining thereto; federal and state laws and regulations regarding the submission of false claims, false billing, false coding, and similar state laws and regulations; federal and state Laws applicable to reimbursement and reassignment; state Laws regarding insurance and health maintenance organization licensure and insurance fraud; federal and state provider, third party administrator and utilization review licensing and certification Laws; Laws administered by the federal Food and Drug Administration; Laws administered by the federal Drug Enforcement Administration and analogous state agencies; state certificate of need laws; and prohibitions against fee splitting and laws with respect to the sale, brokerage or distribution of pharmaceuticals (collectively, "Health Care Laws").

(ii) As of October 1, 2014, the Company is not a supplier or provider under a Contract with the Centers for Medicare and Medicaid Services ("CMS"), or a Party to any Contract with a state Medicaid agency. Other than as disclosed in **Schedule 3.1(r)(ii)**, the Company is not a party to a Contract with a Medicare Advantage Plan or delegated entity of such a plan.

(iii) As of October 1, 2014, all Contracts of the Company with third-party payors, their delegated entities, health care providers, suppliers and facilities were entered into by the Company in the Ordinary Course. All Contracts are for items and services actually rendered or received and the payment for such items and services are and were made in material compliance with all Health Care Laws. No payment is received for formulary placement or recommendation of pharmaceutical agents. The Company is in material compliance with each of its respective third-party payor Contracts (whether Government Health Care Program agreements or commercial agreements and whether directly with the third party-payor or with a subcontractor of such a payor).

(iv) As of October 1, 2014, there are no Proceedings or Orders pending or, to the Seller's Knowledge, threatened or scheduled, by or before any Governmental Authority, including any intermediary or carrier, CMS, or any other state or federal agency with respect to any claim filed by the Company, or program compliance matters, which individually or in the aggregate have had or would reasonably be expected to have a Material Adverse Effect.

(v) As of October 1, 2014, except for any routinely scheduled reviews, no valid review, audit or program integrity review related to the Company has been conducted by any Governmental Authority (or any carrier or other entity acting on behalf of a Governmental Authority) in connection with any Government Health Care Program or by any other third-party payor and, to the Seller's Knowledge, no such review is scheduled, pending or threatened against or affecting the Company.

(vi) As of October 1, 2014, no person who has a financial relationship with the Company also refers patients or enrollees to or receives referrals from the Company.

(vii) As of October 1, 2014, neither the Company nor any of its respective officers, directors, employees, contractors, or agents, is or was excluded from participation in any Government Health Care Program and, to the Seller's Knowledge, none of them is threatened with exclusion.

(viii) As of October 1, 2014, to the extent that (1) the Company under the Health Insurance Portability and Accountability Act of 1996 and the regulations promulgated thereto, including the amendments to HIPAA in the Health Information Technology for Economic and Clinical Health Act of 2009 (the "HITECH Act"), signed into law as part of the American Recovery and Reinvestment Act of 2009 (collectively, "HIPAA"), is a "covered entity" as defined in 45 C.F.R. § 160.103, or (2) the Company is a "business associate" as defined under HIPAA, to the extent applicable to it as a Covered Entity Business Associate, it is in compliance in all material respects with the HIPAA administrative requirements codified at 45 C.F.R. Parts 160 and 162 (the "Transactions Rule"), the HIPAA security and privacy requirements codified at 45 C.F.R. Parts 160 and 164 (the "Privacy and Security Rules"), and the amendments to HIPAA in the HITECH Act, and (A) has completed the surveys, audits, inventories, reviews, analyses and/or assessments, including risk assessments, of all areas of the Company's business and operations subject to HIPAA as are required for the Company to be HIPAA Compliant, (B) has developed, implemented, and maintains in full force and effect a detailed plan for the Company to be HIPAA Compliant (a "HIPAA Compliance Plan"); and (3) as part of the Company's HIPAA Compliance Plan has in effect a "business associate agreement" (as defined under HIPAA) with each Person that is a HIPAA Compliant "business associate (as defined under HIPAA). For purposes of this Agreement, "HIPAA Compliant" shall mean that the Company (1) is in compliance in all material respects with all of the applicable requirements of HIPAA, including all requirements of the Transactions Rule and the Privacy and Security Rules and the HITECH Act amendments and (2) is not subject to, and could not reasonably be expected to become subject to, any civil or criminal penalty or any investigation, claim or process that could reasonably be expected to have a Material Adverse Effect.

(ix) As of October 1, 2014, neither the Seller, the Company, any Affiliate of the Seller or the Company, nor any authorized agent of the Seller or the Company, and, no other person or entity, has, at any time, directly or indirectly, (1) paid, delivered, or received or agreed to pay, deliver, or receive any fee, commission, or other sum of money, item of property, or remuneration of any kind, however characterized, to or from any person, government official, or other party which is in any manner related to the Company's operation of the MSO which is illegal under any applicable federal, state, or local anti-kickback or fee splitting Law, or (2) submitted any claim for reimbursement to any third party payor, including any governmental payors, in connection with any referrals that violated any applicable federal, state, or local self-referral Law, Civil Monetary Penalty Laws, or any other similar Federal or state law.

(s) **Books and Records.** The Books and Records of the Company accurately reflect in all material respects the assets, liabilities, business, financial condition and results of operations of the Company and have been maintained in accordance with good business and bookkeeping practices.

(t) **No Illegal Payments.** Neither the Company nor, to the Seller's Knowledge, any of its directors, officers, employees or agents have (1) directly or indirectly given or agreed to give any illegal gift, contribution, payment or similar benefit to any supplier, client, governmental official or employee or other Person who was, is or may be in a position to help or hinder the Company (or assist in connection with any actual or proposed transaction) or (2) made or agreed to make any illegal contribution, or (3) reimbursed any illegal political gift or contribution made by any other person, to any candidate for federal, state, local or foreign public office.

(u) **No Guarantees.** None of the liabilities and obligations of the Company incurred in connection with the conduct of its business are guaranteed by or subject to a similar contingent obligation of any other Person, nor has the Company guaranteed or become subject to a similar contingent obligation in respect of the liabilities or obligations of any customer, supplier or other Person to whom the Company sell goods or provides services in the conduct of their respective businesses or with whom the Company otherwise has significant business relationships in the conduct of their respective businesses.

(v) **Seller Investment Representations.** The Seller hereby represents (1) that he is aware that the offering of the Buyer Stock is not registered under the Securities Act of 1933, as amended, or under any state securities Law, (2) that he is acquiring the Buyer Stock for investment only, for his own account and not with a view to resale in connection with any distribution of such securities, except in compliance with the Securities Act of 1933, as amended, and all other applicable Laws, (3) that he is an "accredited investor," a sophisticated investor or an excluded purchaser for the purposes of applicable U.S. federal and state securities Laws and regulations, (4) that the Buyer Stock was not offered to him by any means of general solicitation or general advertising, (5) that the Seller believes that the Seller has such knowledge and experience in financial and business matters that he is capable of evaluating the merits and risks of an investment in the Buyer, and (6) that the Seller is able to bear the economic risks of an investment in the Buyer Stock and could afford a complete loss of such investment.

(w) **Non-Competition Covenants.** Neither the Seller nor, to the Seller's Knowledge, any employee or independent contractor who provides services at, for, or in connection with the MSO is subject to any non-competition covenant or other similar agreement restricting the Seller's, the Company's, or such employee's or independent contractor's ability to engage in the Business Activities, except as will be waived or released by the enforcing party prior to the Closing, and, following the Closing, none of the Buyer, the Buyer Affiliates or the Company will be subject to any such non-competition covenant or restrictive agreement by virtue of the Buyer's purchase of the Shares.

(x) **Real Property Leases.**

(i) **Schedule 3.1(x)** lists the real property (including the Business Location) leased to the Seller (the "Real Property Leases"). With respect to the Real Property Leases and the facilities covered pursuant to such Real Property Leases: (1) the Real Property Leases are legal, valid, binding, enforceable, and in full force and effect; (2) neither the Seller, the Company, nor any other party to the Real Property Leases is in breach or default, and no event has occurred which, with notice or lapse of time, would constitute such a breach or default or permit termination, modification or acceleration under any Real Property Lease; (3) no party

to any of the Real Property Leases has repudiated any of its provisions; (4) there are no disputes, oral agreements or forbearance programs in effect as to any of the Real Property Leases; (5) neither the Company nor the Seller has assigned, transferred, conveyed, mortgaged, deeded in trust or encumbered any interest in any leasehold; (6) the facilities have received all approvals of governmental authorities, including all licenses and Permits, required in connection with the operation of such facilities and the MSO; (7) each facility is supplied with all utilities and other services necessary for the operation of such facility, all of which services are adequate and appropriate for the operation of the MSO as presently conducted; (8) the facilities do not violate any applicable zoning laws and ordinances and building codes; (9) neither the Seller nor the Company has received any outstanding written notices or orders from any governmental body, or any board of fire underwriters or similar fire and safety rating body; (10) no such notice or order is or, has been threatened, concerning any violations of laws, ordinances, fire regulations, insurance regulations, applicable regulations of any other governmental, administrative or regulatory body or requirements of law which affect the facilities leased by the Seller or the Company (as applicable); (11) the premises occupied by the Seller and the Company, including all utility systems, roofs and equipment, are free from leaks and other material defects and are in good condition and repair; and (12) the consummation of the transactions contemplated by this Agreement will not cause a breach, or default or the termination of any Real Property Lease.

(ii) Other than the Real Property Leases, the Company does not hold any interests in any Real Property.

(y) **Personal Property Leases.** **Schedule 3.1(y)** lists all personal property leased to the Seller or the Company (as applicable) (collectively, the Personal Property Leases"). With respect to each Personal Property Lease: (1) the Personal Property Lease is legal, valid, binding, enforceable and in full force and effect and does not require notice or consent of this Agreement to continue to remain in effect;; (2) neither the Seller, the Company nor, any other party to the Personal Property Lease is in breach or default, and no event has occurred which, with written notice or lapse of time, would constitute such a breach or default or permit termination, modification or acceleration under the provisions of such Personal Property Lease; (3) no party to the Personal Property Lease has repudiated any of its provisions; (4) there are no disputes, oral agreements or forbearance programs in effect as to the Personal Property Lease; and (5) neither the Seller nor the Company has assigned, transferred, conveyed, mortgaged or encumbered any interest in the Personal Property Lease or the Personal Property.

(z) **Litigation and Proceedings.** There are no outstanding legal claims, actions, suits, arbitrations, investigations, or other legal, administrative, or governmental proceedings pending or, to the Seller's Knowledge, threatened, against the Seller, the Company, or any person at any time employed, engaged, or otherwise associated by the Company in the business or operation of the MSO with respect to the services provided or period of such employment, engagement, or association. Neither the Company nor the Seller is subject to any judgment, order, or decree of any court, governmental agency, or instrumentality, and, except for normal collection efforts relating to Accounts Receivable, neither the Company nor the Seller is engaged in any legal action to recover money due to or damages sustained by the Seller.

(aa) **MSO Risk Contract Reserves.** With respect to each of the MSO Risk Contracts to which the Company is a party, the Company has maintained and continues to maintain any reserves that may be required under such MSO Risk Contracts (as applicable) with

Regions Bank (on behalf of Wellcare of Florida, Inc.), Freedom Health, Inc. and Simply Healthcare Plans, Inc., Seller hereby agrees not to assert a claim against any of the reserves referred to herein after October 1, 2014.

(bb) Compliance with Laws and Instruments.

(i) As of October 1, 2014, the business and operation of the MSO has been and is being conducted in compliance in all material respects with all applicable Laws, including, but not limited to, Laws relating to governmental and/or third party reimbursement, occupational safety, health care, zoning, or environmental matters, and neither the Seller nor the Company has ever received any written or oral notification claiming or asserting any violation of any Law with respect to the business and operation of the MSO. Any certificates of need or other Permits or approvals required for the construction or operation of the MSO were duly obtained, and such certificates of need, Permits, and approvals, if any, will remain in full force and effect immediately after the consummation of the transactions provided for in this Agreement, except as set forth in **Schedule 3.1 (bb)**. Neither the U.S. Department of Health and Human Services nor any state agency has conducted or has given the Seller or the Company any notice that it intends to conduct any audit or other review of the Seller's business, operations, or participation in the Medicare or Medicaid programs, and no such audit or review would result in any material liability by the Seller. To the Seller's Knowledge, there is no reason why the business and operations of the MSO, as presently conducted, will not or may not be able to continue after the Closing. The Seller and the Company have complied with all applicable federal, state and local security and privacy Laws regarding protected health information, including the Health Insurance Portability and Accountability Act of 1996.

(ii) As of October 1, 2014, **Schedule 3.1(bb)(ii)** lists each and every Permit, license, approval, and Governmental Authorization that the Company and or any of its Affiliates (if any) hold in connection with its business and the operation of the MSO. Except as otherwise set forth in **Schedule 3.1(bb)(ii)**, to the Seller's Knowledge, no other Permit, license, approval, or Governmental Authorization of any governmental unit or administrative or regulatory agency is necessary for the lawful conduct of the Company's business and the operation of the MSO. The Seller has delivered to the Buyer copies of all Permits, licenses, approvals, and Governmental Authorizations listed on **Schedule 3.1(bb)(ii)**, as well as copies of all licenses and Permits held by all licensed employees and independent contractors of the Seller who are as of the date hereof employed or engaged in the operation of the MSO.

(cc) Investigations. To the Seller's Knowledge, neither the Seller nor the Company are the subject or target of any civil, criminal or administrative investigation or a defendant, respondent, or any of their equivalents in any federal, Florida or local investigation, criminal prosecution, civil complaint or administrative action. Further, neither the Seller nor the Company are aware of any basis for him or it to become the subject or target of any civil, criminal or administrative investigation, or a defendant, respondent, or any of their equivalents in any federal, Florida or local investigation, criminal prosecution, civil complaint or administrative action. The Seller and the Company are currently in compliance with all Florida and federal healthcare Laws and regulations.

(dd) Health Care Program Participation. As of October 1, 2014, except as disclosed in **Schedule 3.1(dd)**, the Company has never: (1) been excluded or terminated from

participation in any Federal health care program including, but not limited to, the Medicare or Medicaid program; (2) had a contract with a Florida Medicaid program suspended or terminated, with or without cause; (3) been terminated from participation in any benefit program or plan offered by any health maintenance organization, indemnity insurer or other third party payer, with or without cause; or (4) been barred or prohibited from contracting with the federal government, any state government, any local government, or any of their agents or subcontractors.

(ee) Insurance Policies. Attached as **Schedule 3.1(ee)** is a complete list of the insurance policies which the Company maintains with respect to the business and operation of the MSO (collectively, the "Insurance Policies"), the premiums paid for the Insurance Policies in the current and prior fiscal years, and the coverage limits and deductibles applicable to such insurance policies. The Insurance Policies are in full force and effect. The Company is not in default with respect to any provision contained in any of the Insurance Policies and has not failed to give any notice or present any claim under any of such Insurance Policies in a due and timely fashion. Except as disclosed in **Schedule 3.1(ee)**, there has not been any material adverse change in the Company's relationship with its insurers or in the premiums payable pursuant to the Insurance Policies with respect to the business and operation of the MSO, for the current and prior fiscal year. The Seller has not received any notification from any insurance carrier denying or disputing any claim made by the Company, denying or disputing the coverage for any claim, denying or disputing the amount of any claim, or regarding the possible cancellation of any policies.

(ff) Employee Benefit Plans.

(i) Except as described in **Schedule 3.1(ff)**, the Company does not maintain, contribute to, or participate in, and has never maintained, contributed to, or participated in, any pension, profit sharing, or other retirement plan, any multi-employer plan as defined in Section 4001(a)(3) of the Employee Retirement Income Security Act of 1974 ("ERISA"), or any other employee benefit, health, welfare, medical, disability, life insurance, stock, stock purchase, or stock option plan, program, agreement, arrangement, or policy of any kind (collectively, the "Employee Benefit Plans"). The written terms of the Employee Benefit Plans are, and each Employee Benefit Plan has been administered, in compliance with the requirements of ERISA and, where applicable, the Tax Code.

(gg) No Brokers or Finders. No person or entity has, as a result of any act or failure to act by the Company or any Affiliate of the Company (if any), or the Seller, nor as a result of the transactions contemplated pursuant to this Agreement, will any person or entity have, as a result of any act or failure to act by the Company, any Affiliate of the Company (if any), or the Seller any right, interest, or claim for any commission, fee, or other compensation as a broker, finder, or in any similar capacity in connection with the transactions contemplated by this Agreement.

(hh) Use of Names. The only names under which the Company or the MSO have ever conducted business are the Names. The Company owns the entire right, title, and interest in and to each and every Name, together with all derivatives of the Names, and no third party has ever notified the Company that the use of any Name is in violation of the rights of any third party.

(ii) **Tangible Assets.** The tangible Personal Property used for the MSO is adequate to fully equip and operate the MSO at its present level of operation, and each material item of tangible Personal Property is in good operating condition, normal wear and tear excepted.

(jj) **Inventory.** The entire Inventory that is still held by the Company on the Closing Date is of a quality and quantity usable in the ordinary course of business of the Company. Inventory is fairly and accurately reflected on the Balance Sheet.

(kk) **Environmental Matters.** The Company, the Seller and the MSO are and at all times have been in compliance with all Environmental Laws.

(ll) **Patient Medical Records.** The Company does not own or maintain any Patient Medical Records.

(mm) **Full Disclosure.** None of the representations, warranties, or disclosures made to the Buyer by the Seller under this Agreement, or in any exhibit, schedule, list, certificate, or memorandum furnished or to be furnished to the Buyer by the Seller or the Company in connection with this Agreement, contains or will contain any untrue statement of a material fact or omits or will omit any material fact, the omission of which would tend to make the statements made under this Agreement or in any such exhibit, schedule, list certificate, or memorandum, misleading in any material respect.

(nn) **Accounts Payable; Accounts Receivable.**

(i) The list of Accounts Receivable/Payable, as attached to this Agreement as **Schedule 3.1(nn)**, is complete and there are no other receivables or payables due and owing by or to the Company as of November 30, 2014.

(ii) To the Seller's Knowledge, the Accounts Receivable/Payable, to the extent uncollected, are collectible in the ordinary course of its business, and are valid, existing, and represent monies arising from bona fide and arm's length transactions in the ordinary course of the lawful conduct of the Company's operation of the MSO. To the Seller's Knowledge, the Accounts Receivable/Payable and any other receivables owed to the Company as of the Closing Date, including, without limitation, those currently outstanding Accounts Receivable/Payable and any other receivables reflected on the Financial Statements and/or **Schedule 3.1(nn)** (i) are valid obligations owed to the Company by third parties, (ii) result from the operation and lawful conduct of the Company's business and the operation of the MSO in the usual and ordinary course, and (iii) are not disputed or otherwise subject to any refund, discount, counterclaim or right of setoff except as reflected on the Financial Statements and/or in **Schedule 3.1(nn)**, in each case as of November 30, 2014. To the Seller's Knowledge, the Accounts Receivable/Payable have been billed and collected by the Company consistent with its ordinary and historical course of business, as and when due. With respect to Accounts Receivable/Payable relating to Medicaid operations (i.e., Accounts Receivable/Payable for the Medicaid programs), such operations are (in the aggregate) without deficit as of the Closing Date, and the related Medicaid revenues are equal to or exceed the expenses and liabilities relating to the Company's Medicaid operations. For purposes of clarification, Buyer agrees and acknowledges that any offset, earn-out, true-up or other adjustment performed in connection with **Section 2.1(b)(iv)**

shall not be deemed a breach by the Seller of the representation and warranty contained in this **Section 3.1(nn).**

3.2 **Representations and Warranties by the Buyer.** As a material inducement for the Seller and the Company to enter into this Agreement and to consummate the transactions contemplated by this Agreement, the Buyer makes the following representations and warranties as of the Closing Date, each of which is relied upon by the Seller and the Company regardless of any investigation made or information obtained by the Seller or the Company:

(a) **Organization and Good Standing.** The Buyer is a corporation duly organized, validly existing, and its status is active under the laws of Nevada and is qualified to do business in every jurisdiction in which the failure to so qualify might reasonably be expected to have a Material Adverse Effect. The Buyer has all requisite power and authority and all material licenses, permits, and authorizations necessary to carry on its businesses as now conducted and presently proposed to be conducted, and to carry out the transactions as contemplated under this Agreement and the agreements and documents contemplated in connection therewith, except where the failure to secure any license, permit or authorization cannot be reasonable expected to Material Adverse Effect.

(b) **Due Authorization.** The execution of, delivery of, and performance under, this Agreement and all other agreements, instruments, certificates, and documents executed and delivered by or on behalf of the Buyer and the consummation of the transactions contemplated by this Agreement by the Buyer have been duly authorized, and no other approvals or Governmental Authorizations are necessary in connection with the Buyer's execution of, delivery of, and performance under, this Agreement. This Agreement and all other agreements, instruments, certificates, and documents executed and delivered by or on behalf of the Buyer are the valid and binding obligations of the Buyer, enforceable against the Buyer in accordance with their respective terms, subject as to enforcement only to applicable bankruptcy, insolvency, reorganization, or other laws affecting the rights of creditors generally, or to equitable principles.

(c) **Compliance with Instruments and Agreements.** The execution, delivery, and performance of this Agreement, all other agreements contemplated hereby to which the Buyer is or may be from time to time a party, have been duly authorized by the Buyer. This Agreement and all other agreements contemplated hereby from time to time to which the Buyer is a party each constitute a valid and binding obligation of the parties thereto, enforceable in accordance with its terms, except as may be limited by bankruptcy and similar laws affecting creditors' right generally. The execution and delivery by the Buyer of this Agreement and all other agreements contemplated hereby to which the Buyer is a party, and the fulfillment of and compliance with the respective terms hereof and thereof by the Buyer do not and will not conflict with or result in a breach of the terms, conditions, or provisions of, constitute a default under, result in any Encumbrance upon the Buyer's shares or assets, in each case where the same could not reasonably be expected to give rise to Material Adverse Effect. The execution, delivery, and performance of this Agreement would not give any third party the right to modify, terminate, or accelerate any obligation under, result in a violation of, or require any authorization, consent, approval, exemption, or other action by or notice to any court or administrative or governmental body pursuant to: (i) the Articles of Incorporation or Bylaws of the Buyer, (ii) any law, statute, rule, or regulation to which the Buyer or any of its Affiliates or any of their respective assets are subject, or (iii) any agreement, instrument, order, judgment, or decree to which the Buyer or any

of its Affiliates is a party or by which it or any of the foregoing persons or their assets is bound, except where such rights, violation, failure to obtain any authorization, consent, approval exemption or other action could not reasonably be expected to give rise to a Material Adverse Effect. In addition, no other action contemplated by this Agreement will contravene or give rights to any person pursuant to any right of first refusal or preemptive right granted by the Buyer or cause any person's anti-dilution rights to be applicable.

(d) **No Consent Required.** No authorization or consent of any federal or state administrative or regulatory agency or other third party is required for the execution, delivery, and performance of this Agreement by the Buyer or for the performance by the Buyer of the transactions contemplated by this Agreement.

(e) **No Finders or Brokers.** No person or entity has, as a result of any act or failure to act by the Buyer or any of its Affiliates, nor as a result of the transactions contemplated by this Agreement, will any person or entity have, as a result of any act or failure to act by the Buyer or any of its Affiliates, any right, interest, or claim upon the Seller for any commission, fee, or other compensation as a finder, broker, or in any similar capacity in connection with the transactions contemplated by this Agreement.

3.2

(f) **Full Disclosure.** None of the representations, warranties, or disclosures made to the Seller and the Company by the Buyer in this Agreement, or in any exhibit, schedule, list, certificate, or memorandum furnished or to be furnished to the Seller and the Company by the Buyer in connection with this Agreement, contains or will contain any untrue statement of a material fact or omits or will omit any material fact, the omission of which would tend to make the statements made in this Agreement, or in such exhibit, schedule, list, certificate, or memorandum misleading in any material respect.

(g) **Capitalization.** The authorized capital stock of the Buyer consists of 500,000,000 shares of common stock, par value US$0.0001. The capital stock (i) has been duly and validly issued, (ii) is fully paid and nonassessable, and (iii) is all held of record by the Buyer and its respective shareholders as accurately reflected in the record books of the Buyer.

(h) **Litigation and Proceedings.** There are no outstanding legal claims, actions, suits, arbitrations, investigations, or other legal, administrative, or governmental proceedings pending or, to the Buyer's actual knowledge after due inquiry, or threatened or against the Buyer, or any person at any time employed, engaged, or otherwise associated by the Buyer in the course of its business or operation of its business. The Buyer is not subject to any judgment, order, or decree of any court, governmental agency, or instrumentality, and, except for normal collection efforts relating to receivables, and the Buyer is not engaged in any legal action to recover money due to or damages sustained by the Seller.

3.2

(i) **Compliance with Laws and Instruments.** The Buyers business and operation has been and is being conducted in compliance with all applicable Laws, including, but not limited to, Laws relating to governmental and/or third party reimbursement, occupational safety, health care, zoning, or environmental matters, except where failure to comply could not reasonably be expected to give rise to a Material Adverse Effect. The Buyer has never received any written or oral notification claiming or asserting any violation of any Law with respect to its business and operation. Any certificates of need or other Permits or approvals required for the

business or operation thereof were duly obtained, and such certificates of need, Permits, and approvals, if any, will remain in full force and effect immediately after the consummation of the transactions provided for in this Agreement. Neither the U.S. Department of Health and Human Services nor any state agency has conducted or has given the Buyer any notice that it intends to conduct any audit or other review of the Buyer's business, operations and no such audit or review would result in any material liability by the Buyer.

(j) **Tax Matters**. Except as disclosed on **Schedule 3.2(j)**, Buyer has filed all Tax Returns that it has been required to file. All such Tax Returns were correct and complete in all respects. All Taxes owed by the Buyer (whether or not shown on any Tax Return and whether or not any Tax Return was required) have been paid. The Buyer is not currently the beneficiary of any extension of time within which to file any Tax Return. No claim has ever been made by a taxing authority in a jurisdiction where the Buyer does not file Tax Returns that it is or may be subject to taxation by that jurisdiction. There are no liens on any Buyer property that arose in connection with any failure (or alleged failure) to pay any Tax, except for liens for Taxes not yet due. There is no dispute or claim concerning any Tax Liability of the Buyer either (i) claimed or raised by any taxing authority in writing, or (ii) as to which any of the Buyer's directors or officers (or employees responsible for Tax matters) have actual knowledge (after reasonable investigation) based upon personal contact with any agent of such taxing authority. No issue relating to Taxes has been raised in writing by a taxing authority during any pending audit or examination, and no issue relating to Taxes was raised in writing by a taxing authority in any completed audit or examination, that reasonably can be expected to recur in a later taxable period. No federal, state, local or non-U.S. tax audit or administrative or judicial Tax proceeding is pending or being conducted with respect to the Buyer. The Buyer has not waived any statute of limitations in respect of Taxes or agreed to any extension of time with respect to a Tax assessment or deficiency.

ARTICLE 4
CLOSING; CONDITIONS PRECEDENT TO CLOSING; CLOSING

4.1 Closing. The closing of the transactions contemplated by this Agreement (the "Closing") shall take place at the offices of Broad and Cassel, 2 South Biscayne Blvd., 21st Floor, Miami, Florida 33131 at 10:00 a.m. local time, on the Closing Date, or such other location, date and/or time as agreed to in writing by the Buyer and the Seller. Except as otherwise provided herein, all proceedings to be taken and all documents to be executed and delivered by the parties at the Closing shall be deemed to have been taken and executed simultaneously, and no proceedings shall be deemed to have been taken nor documents executed or delivered until all have been taken, executed and delivered.

4.2 Closing Date. The Closing shall be deemed to occur on the date of the closing of the transactions contemplated by this Agreement (the "Closing Date").

4.3 Conditions Precedent to Obligations of the Buyer. The obligations of the Buyer under this Agreement are subject to the satisfaction, on or prior to the Closing Date, of the following conditions:

(a) **Consents, Approvals, and Authorizations**. The Buyer shall have confirmed to its reasonable satisfaction that all consents, approvals, and authorizations required

in connection with the transactions provided for in this Agreement, including, without limitation, all required consents and notices described in **Schedule 3.1(e)**. For the avoidance of doubt, Buyer also shall have confirmed its assumption of all Loss, liability, obligation, termination, default or acceleration of the Contracts or items in **Schedule 3.1(e)(iii)** as a result of the nonfulfillment of any notice or consent requirements therein, prior to Closing.

(b) **Employment Agreement**. The Seller will have entered into the Employment Agreement with the Company to perform services for the MSO.

(c) **Due Diligence**. The Buyer shall be satisfied in its sole and absolute discretion with the results of the Buyer's due diligence review of the MSO and the Company. If any representative of the Buyer has information or knowledge that any of the representations and warranties of the Seller contained in this Agreement are not true and correct in any material respect, then the Buyer shall promptly provide the Seller with written notice of such false or incorrect information.

4.4 **Closing Deliveries of the Seller**. At the Closing, the Seller shall execute and/or deliver, or cause to be executed and/or delivered, to the Buyer the following items:

(a) the Share Certificates duly endorsed in blank or accompanied by stock powers duly executed in blank, and proper forms for transfer, with all required stock transfer stamps affixed or provided;

(b) the articles of incorporation of the Company certified as of the most recent practicable date (no more than seven (7) days before the Closing Date) by the Secretary of State of the jurisdiction of the Company's incorporation, and a certificate of the Secretary of the Company certifying as to the bylaws of the Company;

(c) a certificate of the Secretary of State of the jurisdiction of incorporation of the Company as to the good standing of the Company as of the most recent practicable date (no more than seven (7) days before the Closing Date) in such jurisdiction;

(d) resignations of members of the Board of Directors of the Company as requested by the Buyer prior to the Closing;

(e) all corporate seals, minute books, stock ledgers and other similar records pertaining to the Company in the possession of the Seller;

(f) Copies of resolutions duly adopted by the board of directors and members/board of managers, as the case may be, of the Company authorizing and approving the Company's performance of the transactions contemplated by this Agreement and the execution and delivery of this Agreement and the documents to be executed and delivered by the Company as described in this Agreement, certified as true, correct, and complete and of full force as of the Closing Date by an appropriate officer of the Company, in form and substance reasonably satisfactory to the Buyer;

(g) Certificates of incumbency for the officers of the Seller executing this Agreement or making certifications pursuant to the execution of this Agreement, dated as of the Closing Date, in form and substance reasonably satisfactory to the Buyer;

(h) a duly completed and executed IRS Form W-9 from the Seller;

(i) a duly executed copy of the Employment Agreement;

(j) a duly executed organizational resolution in form and substance reasonably acceptable to the Buyer; and

(k) such other duly executed documents and certificates as may be reasonably requested by the Buyer.

4.5 **Closing Deliveries of the Buyer.** At the Closing, the Buyer shall execute and/or deliver, or cause to be executed and/or delivered, to the Seller the following items:

(a) the Purchase Price (pursuant to the terms set forth in **Section 2.1**);

(b) **RESERVED**;

(c) a copy of the certificate of incorporation of the Buyer certified by the Secretary of State of Nevada as of the most recent practicable date;

(d) a certificate of the Secretary of the Buyer in form and substance reasonably satisfactory to the Seller as to (1) no amendments to the certificate of incorporation of the Buyer, (2) the bylaws of the Buyer and (3) the resolutions of the Buyer's Board of Directors authorizing the execution of this Agreement and the consummation of the transactions contemplated hereby;

(e) a certificate or certificates, signed by an appropriate officer of the Buyer and dated as of the Closing Date, in form and substance reasonably satisfactory to the Buyer, certifying that (1) the representations and warranties of the Buyer set forth in this Agreement are true and correct as of the Closing Date, and (2) the Buyer has performed all of the obligations under this Agreement that were required to be performed by the Buyer prior to or at the Closing;

(f) certificates of incumbency for the respective officers of the Buyer executing this Agreement or making certifications pursuant hereto, dated as of the Closing, in form and substance reasonably satisfactory to the Seller;

(g) certificates of existence and good standing of the Buyer from the State of Florida, dated within thirty (30) days prior to the Closing Date; and

(h) such other duly executed documents and certificates as may be reasonably requested by the Seller.

4.6 **Further Documents or Necessary Action.** The Buyer and the Seller agree to take all further actions on or after the Closing Date that may be necessary, desirable or appropriate to confirm or effectuate the transactions contemplated by this Agreement.

ARTICLE 5
INDEMNIFICATION

5.1 Indemnification by the Buyer. The Buyer covenants and agrees to indemnify hold harmless, defend and reimburse the Seller and the Company and their successors and assigns and their respective officers, directors, shareholders, employees, and agents at all times harmless from and against any Loss caused by or arising out of or in any way related to (a) a breach of, or inaccuracy in, any of the representations or warranties made by the Buyer in this Agreement or in any certificate or instruments delivered in connection with the transactions contemplated hereby, (b) a breach or default in performance by the Buyer of any covenant or agreement of the Buyer contained in this Agreement, (c) any claim or suit brought against Seller or Company at any time after October 1, 2014 relating to actions taken by Buyer, (d) any breach by the Buyer of its covenants or obligations contained in this Agreement, and (e) the Buyer's obligations under **Section 6.7** with respect to those certain financial institution and credit card liabilities of the Seller described in **Schedule 5.1**.

5.2 Indemnification by the Seller. The Seller covenants and agrees to indemnify and hold the Buyer and its successors and assigns and its Affiliates, officers, directors, shareholders, employees, and agents at all times harmless from and against any Loss caused by or arising out of or in connection with (a) any misrepresentation, breach, or nonfulfillment of any representation, warranty, covenant, or agreement on the part of the Seller or the Company under this Agreement (including, without limitation, the covenants of the Seller and the Company set forth in Article 6), (b) all Taxes imposed on or asserted against the Company or operations of the Company for all periods prior to the Closing Date and any Tax liability of the Company arising in connection with the transactions contemplated under this Agreement, and (c) all Transfer Taxes (if any). For the avoidance of doubt, Seller shall have no indemnification obligations with respect to any deficit, liability, Loss or obligation otherwise incurred in connection with the Plan Contracts or MSO Risk Contracts after the Closing Date, except as expressly set forth herein.

5.3 Undisputed Claims. A party (the "Indemnified Party") may assert a Claim that it is entitled to, or may become entitled to, indemnification under this Agreement by giving notice of its Claim to the party or parties that are, or may become, required to indemnify the Indemnified Party (the "Indemnifying Party," whether one or more), providing reasonable details of the facts giving rise to the Claim and a statement of the Indemnified Party's Loss in connection with the Claim, to the extent such Loss is then known to the Indemnified Party and, otherwise, an estimate of the amount of the Loss that it reasonably anticipates that it will incur or suffer. If the Indemnifying Party does not object to the Claim during the twenty (20) day period following the date of delivery of the Indemnified Party's notice of its Claim (the "Objection Period"), the Claim shall be considered undisputed and the Indemnified Party shall be entitled to recover the amount of its Loss. The fact that a Claim is not disputed by the Indemnifying Party shall not constitute an admission or create any inference that the asserted Claim is valid for any purpose other than the indemnity obligation of the Indemnifying Party as to such Claim pursuant to this **Article 5**.

5.4 Disputed Claims. If the Indemnifying Party gives notice to the Indemnified Party within the Objection Period that the Indemnifying Party objects to the Claim, then (a) the parties shall attempt in good faith to resolve their differences during the thirty (30) day period following the date of delivery of the Indemnifying Party's notice of its objection (the "Resolution

Period"), and (b) if the parties fail to resolve their disagreement during the Resolution Period, either party may unilaterally submit the disputed Claim for binding arbitration in Miami-Dade County, Florida, in accordance with the American Health Lawyers Association's rules for commercial arbitration in effect at the time. The award of the arbitrator or panel of arbitrators shall include reasonable attorneys' fees to the prevailing party and may be entered in any appropriate court in Miami-Dade County, Florida.

5.5 Third Party Suits. In the case of any law suit by a third party against an Indemnified Party ("Third Party Suit"), the Indemnified Party shall control the defense of the Third Party Suit, and the Indemnifying Party may, at its own expense, participate in (but not control) the defense and employ counsel separate from the counsel employed by the Indemnified Party. However, the Indemnified Party may demand that the Indemnifying Party assume control of the defense of the Third Party Suit at any time during the course of the suit. If the Indemnifying Party assumes control of the defense of a Third Party Suit, (a) the Indemnifying Party shall consult with the Indemnified Party with respect to the Third Party Suit upon the Indemnified Party's reasonable request for consultation, and (b) the Indemnified Party may, at its expense, participate in (but not control) the defense and employ counsel separate from the counsel employed by the Indemnifying Party. Regardless of whether the Indemnifying Party assumes the defense of the Third Party Suit, all parties shall cooperate in its defense. Notwithstanding the foregoing, in the event of an examination by a Governmental Authority of an S Corporation income Tax Return of the Company, the Seller shall control the defense thereof, and the Buyer shall cooperate with the Seller and may otherwise participate in the defense thereof in any manner otherwise set forth in this **Section 5.5**.

5.6 Settlement or Compromise. If the Indemnified Party is conducting the defense of a Third Party Suit, the Indemnified Party shall give the Indemnifying Party at least fifteen (15) days prior written notice of any proposed settlement or compromise, during which time the Indemnifying Party may assume the defense of the Third Party Suit and, if it does so (or if the Indemnifying Party has already assumed control of such Third Party Suit), the proposed settlement or compromise may not be made without the Indemnified Party's consent, which shall not be unreasonably withheld, conditioned, or delayed. If the Indemnifying Party does not so assume the defense of the Third Party Suit, the Indemnified Party may enter into the proposed settlement. Any settlement or compromise of any Third Party Suit by either the Indemnifying Party or the Indemnified Party entered into in compliance with this **Section 5.6** shall also be binding on the other party in the same manner as if a final judgment or decree had been entered by a court of competent jurisdiction in the amount of the settlement or compromise.

5.7 Failure to Act by Indemnified Party. Any failure by the Indemnified Party to defend a Third Party Suit shall not relieve the Indemnifying Party of its indemnification obligations if the Indemnified Party gives the Indemnifying Party at least thirty (30) days prior written notice of the Indemnified Party's intention not to defend and affords the Indemnifying Party the opportunity to assume the defense.

5.8 Limitation on Remedies. Notwithstanding anything to the contrary in this Agreement, the liability of the parties under this Agreement shall be limited as follows:

(a) In no event shall any amounts be recovered from a party for any matter for which a written notice of Claim specifying in reasonable detail the specific nature of the Losses and the estimated amount of such Losses ("Claim Notice") is not delivered to the opposite party.

(b) The representations and warranties of each of the parties set forth in this Agreement shall survive the Closing.

(c) **Characterization of Indemnity Payment for Tax Purposes.** All amounts payable under **Sections 5.1** or **5.2** shall be treated for all Tax purposes as adjustments to the Purchase Price, except as otherwise required by Law. If, notwithstanding the treatment required by the preceding sentence, any indemnification payment under this **Article 5** is determined to be taxable to the party receiving such payment by any taxing authority, the paying party shall also indemnify the party receiving such payment for any Taxes incurred by reason of the receipt of such payment and any Losses incurred by the party receiving such payment in connection with such Taxes (or any asserted deficiency, claim, demand, action, suit, proceeding, judgment or assessment, including the defense or settlement of this Agreement, relating to such Taxes).

ARTICLE 6
POST-CLOSING COVENANTS

6.1 Certain Employee Matters. The Seller understands that the Buyer shall have the sole right with respect to, and be solely responsible for, establishing all terms and conditions relating to the employment or engagement of any identified employee or independent contractor. Immediately prior to the Closing Date, the Seller shall cause the Company to pay all accrued and unpaid vacation, sick leave, and/or paid time off payable to the Company's and its employees, officers, and/or directors employed or engaged in the operation of the MSO.

6.2 Books and Records; Personnel.

(a) For a period of four years after the Closing Date, the Buyer shall not dispose of or destroy any of the material Books and Records of the Company (excluding health information, as defined under 45 C.F.R. §160.103 (such as any patient-related documentation as required under HIPAA), which shall be retained by the Company and Buyer on behalf of the Seller for a minimum of seven years after the treatment date, or such other time period as may be required by applicable federal and state laws) relating to periods prior to the Closing Date without first offering to turn over possession thereof to the Seller by written notice to the Seller at least thirty (30) days prior to the proposed date of such disposition or destruction.

(b) For a period of four years after the Closing Date, the Buyer shall allow the Seller and its agents access to all Books and Records during normal working hours at the Buyer's principal place of business or at any location where any Books and Records are stored, and the Seller shall have the right, at its expense, to make copies of any Books and Records; *provided, however,* that any such access or copying shall be had or done in such a manner so as not to interfere with the normal conduct of the Buyer's business.

(c) The Seller shall reimburse the Buyer for the reasonable costs and expenses to the Buyer in performing the covenants contained in this **Section 6.2**.

6.3 **Post-Closing Insurance Coverage.** Following the Closing Date, the Company shall continue to maintain any and all insurance coverage previously in place with respect to all periods prior to and after the Closing Date. Furthermore, in the event such insurance is cancelled or lapses for any reason, the Seller and the Company shall give the Buyer thirty (30) days advance written notice of such event.

6.4 **Transfer Taxes and Payment of Other Taxes.** The Seller shall (i) to the extent applicable, be responsible for any and all sales, use, stamp, documentary, filing, recording, transfer, real estate transfer, stock transfer, gross receipts, registration, duty, securities transactions or similar fees or Taxes or governmental charges (together with any interest or penalty, addition to tax or additional amount imposed) as levied by any taxing authority in connection with the transactions contemplated by this Agreement (collectively, "Transfer Taxes"), regardless of the Person liable for such Transfer Taxes under applicable Law; and (ii) timely file or caused to be filed all necessary documents (including all Tax Returns) with respect to Transfer Taxes.

6.5 **Tax Clearance Certificates.** At the Buyer's request, the Seller, with the full cooperation of the Buyer, shall notify all of the taxing authorities of the transactions contemplated by this Agreement in the form and manner required by such taxing authorities, if the failure to make such notifications or receive any available tax clearance certificate ("Tax Clearance Certificate") could subject the Buyer to any Taxes of the Seller. If, in respect to any application for Tax Clearances made pursuant to this **Section 6.5**, any governmental entity asserts that the Seller is liable for any Tax, the Seller shall promptly pay or contest in good faith any and all such amounts and shall provide evidence to the Buyer that such liabilities have been paid in full or otherwise satisfied or contested in good faith.

6.6 **Tax Matters.** The Seller (with the cooperation of the Buyer) will prepare or cause to be prepared and timely file or cause to be timely filed all corporation income Tax Returns of the Company for periods ending prior to the Closing Date which are filed after the Closing Date. The Buyer shall be responsible for the filing of all other Tax returns of the Company which are due after the Closing Date.

6.7 **Assumption of Liabilities.** Within thirty (30) days after the Closing Date, the Buyer hereby agrees to pay off those certain credit card obligations of the Seller attached as **Schedule 5.1**. The Buyer shall assume those certain financial obligations of the Seller attached in **Schedule 5.1**.

ARTICLE 7

RESTRICTIVE COVENANT OF SELLER

7.1 **Restrictive Covenant of Seller.** For the Restricted Period within the Restricted Territory (as both terms are defined in **Section 7.1(n)** below), the Seller shall not, directly or indirectly (as said phrase is fully described in **Section 7.1(n)** below), engage in any of the following activities or actions:

(a) Own, manage, operate, control, render, arrange for, provide, or otherwise engage in any professional or administrative services for the benefit of a management

services organization or any other entity which has as its primary business purpose the operation of a network of healthcare providers who provide medical services to members of health plans (other than an Associated Company as the term is defined in **Section 7.1(n)** below); provided, however, that this Section 7.1(a) shall not restrict Seller from engaging in any professional or administrative services for the benefit of any health plan, including, without limitation, any of the health plans with which the Company currently has Contracts as set forth on **Schedule 7.1(h)**;

(b) Directly or indirectly, solicit or attempt to solicit a customer, client or provider of services of an Associated Company to modify, reduce or terminate his, her, or its relationship with the Associated Company;

(c) Divert or attempt to divert from an Associated Company, any Similar Business whatsoever;

(d) Directly or indirectly, solicit, recruit, hire, retain, or otherwise engage the services of any individual who was an employee, independent contractor or agent of an Associated Company, or any other shareholder or member of an Associated Company at any time during the twenty-four (24) month period immediately preceding the Closing Date through the end of the Restricted Period;

(e) Directly or indirectly, solicit, recruit, hire, retain, or otherwise engage the services of any individual who was an employee, independent contractor or agent of the Company, or any of its Affiliates, at any time during the twenty-four (24) month period immediately preceding the Closing Date through the end of the Restricted Period.

(f) Directly or indirectly, compete with the Business Activities of the Company or work for a Management Services Organization or attempt to divert business away from the Company to another party.

(g) Contract with or otherwise engage any individual or entity (other than an Associated Company) to perform administrative or management services for a Similar Business;

(h) Directly or indirectly, contract with any of the health plans with which the Company currently has Contracts as set forth on **Schedule 7.1(h)**, or otherwise solicit the providers servicing patients covered by such Contracts;

(i) It is understood by and between the Buyer and the Seller that the foregoing restrictive covenants set forth in this **Article 7** are legitimate business interests and are essential elements of the Agreement, and that, but for the agreement of the Seller to comply with such promises and covenants, the Buyer would not have agreed to enter into the Agreement, and the Seller acknowledges and agrees that the Buyer's investment of significant resources in the Company and its employees is an interest entitled to protection. Further, any breach of such promises or covenants by the Seller shall cause the Buyer irreparable harm to its reputation

and the Business, the amount of such damage is not possible to quantify or assign a monetary value. As a result the parties agree that the Buyer shall be entitled to obtain an injunction from a court of competent jurisdiction located in Miami-Dade County, Florida enjoining the Seller from violating the terms of this **Article 7** without the need of posting of a bond or proof of monetary injury. The Buyer shall be entitled to recover its attorneys' fees and costs incurred with relation to the enforcement of this provision.

(j) The promises and covenants by the Seller set forth in this **Article 7** shall be construed as agreements independent of any other provision in the Agreement or any other agreements executed by the Seller in conjunction with the transactions contemplated in the Agreement. The existence of any claim or cause of action, whether predicated on this Agreement or otherwise, shall not constitute a defense to the enforcement by the Buyer of this **Article 7**.

(k) The Buyer and the Seller agree that, if any court of competent jurisdiction determines the specified time period or the specified geographical area applicable to **Article 7**, to be unreasonable, arbitrary or against public policy, then a lesser time period or geographical area which is determined to be reasonable, non-arbitrary and not against public policy may be enforced against the Seller. The Buyer and the Seller all agree that the foregoing covenants are appropriate and reasonable.

(l) The Seller affirms that, except in connection with the Employment Agreement, the Seller has no interest in continuing to work in his profession within the Restricted Territory other than as an employee of the Seller while the Seller is a party to the Employment Agreement.

(m) The Buyer and the Seller all covenant and agree not to make any disparaging comments against any of the other parties or any of their officers, directors, employees or independent contractors both during the Restricted Period or any time thereafter.

(n) For purposes of this Restrictive Covenant Agreement: (1) **"Restricted Period"** shall mean the period commencing with the Closing Date and continuing for a period ending five years from the Closing Date; (2) **"Restricted Territory"** shall mean the State of Florida; (3) the use of the phrase **"directly"** or **"indirectly"** when used to describe the actions of the Seller, shall mean, individually or in concert, acting in their own name and right (being "direct") or through and/or on behalf of a principal, partner, stockholder, member, office employer, employee, agent, consultant, independent contractor, or director of any natural or fictitious person (any or all of being "indirect"); (4) **"Associated Company"** shall mean individually the Buyer, the Buyer's Affiliate and/or the subsidiaries, affiliates and related companies of the Buyer and/or the Buyer's Affiliate that are engaged in Similar Business activities, (5) **"Associated Companies"** shall mean collectively the Buyer, the Buyer's Affiliate and/or the subsidiaries, affiliates and related companies of the Buyer and/or the Buyer's Affiliate, which are engaged in Similar Business activities. A related company of the Buyer or the Buyer's

Affiliate shall mean an entity that is a party to a management agreement with the Buyer or the Buyer's Affiliate, and/or an entity that has granted to the Buyer and/or the Buyer's Affiliate an option to acquire all of its stock or membership units/interests and/or with respect to which the Buyer or the Buyer's Affiliate has the right to designate or replace the sole shareholder or member or other owner (or, if more than one, a controlling majority of the shareholders or members or other owners); and (6) **"Similar Business"** means any business related to the management of medical providers, including, but not limited to their provision of services to beneficiaries of third party contracts.

ARTICLE 8
MISCELLANEOUS

8.1 Confidentiality. Subject to **Section 8.2**, prior to the Closing, the parties shall keep confidential all information relating to the other that it obtains pursuant to this Agreement and shall use such information only for the purposes contemplated by this Agreement. In the event the Closing does not occur by reason of failure of one of the conditions to the Closing, the Buyer and the Seller agree (a) to return to the other party all documents, financial statements, and other information furnished or copied in connection with the transactions contemplated by this Agreement, and (b) not to disclose without the prior written consent of the other party any information obtained with respect to the business or operations of the other party or any Affiliate of such party. In addition, information which is not capable of being returned or destroyed shall remain subject to the confidentiality and non-disclosure obligations of this Agreement for two years from the Closing Date.

8.2 Publicity. Prior to the Closing, no public announcement or other publicity regarding the transactions contemplated by this Agreement shall be made by any party without the prior written approval of all parties as to form, timing, and manner of distribution or publication. Nothing in this **Section 8.2** or in **Section 8.1** shall be considered to prohibit any party from making any disclosure required by any Law, including, without limitation, any federal or state securities law, rule, or regulation, or any court order.

8.3 Notices. All notices, requests, demands, and other communications required or permitted to be given under this Agreement shall be in writing and shall be deemed to have been duly given when received if delivered personally; mailed by first class mail, postage prepaid, registered or certified mail, return receipt requested; delivered by Federal Express or other overnight courier service; or sent by facsimile or other online transmission system with written confirmation of delivery, as follows:

If to the Buyer: Hygea Holdings Corp.
8026 NW 12th Street
Miami, FL 33126
Attention: Manuel Iglesias, CEO

With a copy to: Broad and Cassel
2 South Biscayne Blvd, 21st Floor
Miami, Florida 33131
Attention: Mike Segal, Esq.

If to the Company: All Care Management Services, Inc.
d/b/a All Care Health Network
13335 SW 124th Street, Suite 115
Miami, FL 33186
Attention: Claudio Arellano, CEO

If to the Seller: Claudio Arellano
13335 SW 124th Street, Suite 115
Miami, FL 33186

With a copy to: Holland & Knight LLP
701 Brickell Avenue, Suite 3300
Miami, Florida 33131
Attention: Maria Currier, Esq.

8.4 Governing Law; Interpretation; Section Headings. This Agreement shall be governed by, and construed and enforced in accordance with, the laws of the State of Florida. Each party irrevocably submits to the jurisdiction of any federal or state court located in Miami-Dade County, Florida in any action arising out of or relating to this Agreement and that any action shall be resolved exclusively in the federal and state courts located in Miami-Dade County, Florida. The Section headings contained in this Agreement are for purposes of convenience only and shall not be deemed to constitute a part of this Agreement or to affect the meaning or interpretation of this Agreement in any way.

8.5 Entire Agreement. This Agreement (including the Schedules and Exhibits referred to in this Agreement) sets forth the entire agreement and understanding of the parties with respect to the transactions contemplated by this Agreement and supersedes all prior agreements, arrangements, and understandings, whether written or oral, related to the subject matter of this Agreement. No representation, promise, inducement, or statement of intention has been made by any party hereto which is not embodied in this Agreement, or in the Exhibits or Schedules attached to this Agreement or the written statements, certificates, or other documents delivered pursuant to this Agreement.

8.6 Survival; Limitation on Actions. The terms, provisions, covenants, representations, warranties, and conditions of this Agreement shall survive the Closing. All of the terms, provisions, covenants, representations, warranties, and conditions of this Agreement shall be binding upon and inure to the benefit of and be enforceable by the parties to this Agreement and their respective successors and assigns.

8.7 Amendment; No Waiver. This Agreement may be amended, modified, superseded, or canceled, and any of the terms, provisions, covenants, representations, warranties, or conditions hereof may be waived, only by a written instrument executed by all parties hereto, or, in the case of a waiver, by the party waiving compliance. The failure of any party at any time or times to require performance of any provision of this Agreement shall in no manner affect the right to enforce the same. No waiver by any party of any condition, or of the breach of any term, provision, covenant, representation, or warranty contained in this Agreement, whether by

conduct or otherwise, in any one or more instances, shall be deemed to be or construed as a further or continuing waiver of any such condition or breach or a waiver of any other condition or of the breach of any other term, provision, covenant, representation, or warranty.

8.8 Severability. In the event that any one or more of the provisions of this Agreement shall be held or otherwise found to be invalid, illegal, or unenforceable, all other provisions hereof shall be given effect separately therefrom and shall not be affected thereby.

8.9 Assignment; No Third Party Beneficiary. None of the parties shall assign any of his or its rights or obligations under this Agreement without the prior written consent of the other parties. Notwithstanding any such assignment by the Buyer, however, the Buyer shall remain primarily liable to the Seller for the performance of all of the Buyer's covenants and obligations pursuant to this Agreement. Except for any such valid assignment, this Agreement is for the sole benefit of the undersigned parties to this Agreement and is not for the benefit of any third party.

8.10 Further Assurances. The parties shall execute and deliver such other documents and instruments, and take such other actions, as either party may reasonably request in order more fully to vest and perfect in the Buyer all right, title, and interest in and to the Shares, free and clear of all Encumbrances and otherwise to effectuate the transactions contemplated by this Agreement. In addition to the foregoing, the Seller shall fully cooperate and assist Buyer with the transfer of any Contracts, including without limitation, any Plan Contracts and MSO Risk Contracts, the transfer of any bank accounts and lock boxes and any other matter reasonably requested by Buyer in connection with the transfer of the Shares of the Company to the Buyer.

8.11 Counterparts. Separate copies of this Agreement may be signed by the parties to this Agreement, with the same effect as though all of the parties had signed one copy of this Agreement. Signatures sent by facsimile or electronic transmission shall be deemed to be originals for all purposes of this Agreement.

8.12 Attorneys' Fees. In any action at law or in equity to enforce any of the provisions or rights under this Agreement, the unsuccessful party to such litigation, as determined by the court in any final judgment or decree, shall pay the successful party or parties all costs, expenses, and reasonable attorneys' fees incurred therein by such party or parties (including, without limitation, such costs, expenses, and fees on any appeal or in connection with any bankruptcy proceeding), and if the successful party recovers judgment in any such action or proceeding, such costs, expenses, and attorneys' fees shall be included in and as a part of such judgment.

8.13 Costs and Expenses. Except as otherwise provided in this Agreement, each Party shall pay its own costs and expenses relating to this Agreement no matter when such costs are incurred.

8.14 Interpretation of Agreement. The parties acknowledge and agree that this Agreement has been negotiated at arm's length and between parties equally sophisticated and knowledgeable in the matters dealt with in this Agreement. Accordingly, any rule of law or legal decision that would require interpretation of any ambiguities in this Agreement against the party that has drafted it is not applicable and is waived. The provisions of this Agreement shall be

interpreted in a reasonable manner to affect the intent of the parties as set forth in this Agreement.

(SIGNATURE PAGE ON FOLLOWING PAGE.)

IN WITNESS WHEREOF, the parties have executed Agreement as of the Closing Date.

BUYER:

HYGEA HOLDINGS CORP.

By:_____
Edward Mottly, CFO

COMPANY:

ALL CARE MANAGEMENT SERVICES, INC.
D/B/A ALL CARE HEALTH NETWORK

By:_____
Claudio Arellano, President

SELLER:

CLAUDIO ARELLANO

_____
Claudio Arellano

SCHEDULE 2.1(b)

PURCHASE PRICE FORMULA

The Purchase Price will be determined by the number of Lives under the Plan Contracts approved by the Buyer ("Approved Lives") on the Closing Date. The Purchase Price Formula is as follows:

_____ The Purchase Price will equal:

(a) (The total number of Approved Lives that are Medicare beneficiaries) multiplied by US$1,000

plus

(b) The total number of Approved Lives that are Medicaid beneficiaries multiplied by US$200

EXHIBIT "B"

MARK G. TRATOS, ESQ.
Nevada Bar No. 1086
DONALD L. PRUNTY, ESQ.
Nevada Bar No. 8230
GREENBERG TRAURIG, LLP
3773 Howard Hughes Pkwy.
Suite 400N
Las Vegas, Nevada 89169
Telephone: (702) 792-3773
Facsimile: (702) 792-9002
Email: tratosm@gtlaw.com;
pruntyd@gtlaw.com

Counsel for Defendants
Hygea Holdings Corp., Manuel Iglesias,
Edward Moffly, Daniel T. McGowan,
Frank Kelly, Martha Mairena Castillo,
Lacy Loar, Richard Williams,
Glenn Marrichi, Keith Collins,
Jack Mann, Joseph Campanella,
and Carl Rosenkrantz

UNITED STATES DISTRICT COURT

DISTRICT OF 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. : 2:17-cv-02870-JCM-PAL

MOTION TO DISMISS CERTAIN DEFENDANTS AND CLAIMS PURSUANT TO RULES 12(b)(2) AND 12(b)(6)

Defendants Hygea Holdings Corp., Manual Iglesias, Edward Moffley, Daniel T. McGowan, Frank Kelly, Martha Mairena Castillo, Lacy Loar, Richard Williams Esq., Glenn

STRICTLY CONFIDENTIAL
EXECUTION VERSION

STOCK PURCHASE AGREEMENT

by and among

N5HYG LLC,

HYGEA HOLDINGS CORP.,

and

THE SELLER PRINCIPALS NAMED HEREIN,

Dated as of October 5, 2016

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EXHIBITS

STOCK PURCHASE AGREEMENT

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

RECITALS

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

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

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

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

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

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

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

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

AGREEMENT

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

1. **DEFINITIONS**.

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

"1934 Act" is defined in Section 4.26.

"2013 Yearly Financials" is defined in Section 4.6.1.

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

"409A Plan" is defined in Section 4.17.8.

"Acquired Stock" is defined in the Recitals.

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

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

"Agreement" is defined in the Preamble.

"AJCA" is defined in Section 4.17.8.

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

"Business" is defined in the Recitals.

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

"Business Employee" is defined in Section 4.21.3.

"Buyer" is defined in the Preamble.

"Buyer Indemnified Persons" is defined in Section 7.1.

"Buyer Investor Protections" is defined in Section 6.4.

"Center" is defined in Section 4.15.1.

"Closing" is defined in Section 3.2.

"Closing Date" is defined in Section 3.2.

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

"Common Stock" is defined in the Recitals.

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

"Consideration" is defined in Section 3.3.

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

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

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

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

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

"Direct Owners" is defined in Section 4.5.1.

"Disclosed Contract" is defined in Section 4.19.2.

"Disclosure Schedules" is defined in Section 2.2.

"Effective Date" is defined in the Recitals.

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

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

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

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

ERISA" is defined in Section 4.17.1.

"ERISA Affiliate" is defined in Section 4.17.1.

"ERISA Employer" is defined in Section 4.17.1.

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

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

"Financials" is defined in Section 4.6.1.

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

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

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

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

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

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

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