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 XI)

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

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

PROOF OF SERVICE

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

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

/s/ Sunny Southworth
An employee of Kaplan Cottner

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“Exhibit 34”

“Exhibit 34”

ANS
KAPLAN COTTNER
KORY L. KAPLAN, ESQ.
Nevada Bar No. 13164
Email: kory@kaplancottner.com
KYLE P. COTTNER, ESQ.
Nevada Bar No. 12722
Email: kyle@kaplancottner.com
850 E. Bonneville Ave.
Las Vegas, Nevada 89101
Telephone: (702) 381-8888
Facsimile: (702) 832-5559
Attorneys for Defendants Manuel Iglesias and Edward Moffly

KAPLAN COTTNER
850 E. Bonneville Ave.
Las Vegas, Nevada 89101
Tel: (702) 381-8888 Fax: (702) 832-5559

DISTRICT COURT

CLARK COUNTY, NEVADA

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, Plaintiffs, vs. HYGEA HOLDINGS CORP., a Nevada corporation; MANUEL IGLESIAS; EDWARD MOFFLY, and DOES I through X, inclusive, and ROES I-XXX, inclusive, Defendants.	CASE NO. A-17-762664-B DEPT. XXVII **DEFENDANTS MANUEL IGLESIAS AND EDWARD MOFFLY'S ANSWER TO SECOND AMENDED COMPLAINT**

Defendants, Manuel Iglesias ("Iglesias") and Edward Moffly ("Moffly," collectively with Iglesias, the "Defendants"), by and through their attorneys, Kory L. Kaplan, Esq. and Kyle P. Cottner, Esq., of the law firm of Kaplan Cottner, hereby file this Answer to the Second Amended Complaint, and state as follows:

THE PARTIES

1. Answering Paragraph 1 of the Complaint, Defendants state that they do not have sufficient knowledge or information upon which to base a belief as to the truth of the allegations contained therein and upon such ground deny each and every allegation contained therein.

2. Answering Paragraph 2 of the Complaint, Defendants admit that Hygea Holdings

Corp. was part of a network of medical practices. As to the remainder of the Paragraph, Defendants state that they do not have sufficient knowledge or information upon which to base a belief as to the truth of the allegations contained therein, including given that Hygea Holdings Corp. filed for Chapter 11 protection earlier this year, has since reorganized, and neither Defendants are involved in the reorganized debtor, and upon such ground deny each and every allegation contained therein.

3. Answering Paragraph 3 of the Complaint, Defendants admit each and every allegation contained therein.

4. Answering Paragraph 4 of the Complaint, Defendants admit that Iglesias became co-chair of the Board of Directors around May 2018. As to the remainder of the Paragraph, Defendants deny each and every allegation contained therein.

5. Answering Paragraph 5 of the Complaint, Defendants deny each and every allegation contained therein.

6. Answering Paragraph 6 of the Complaint, Defendants deny each and every allegation contained therein, except admit that Moffly was a member of Hygea Holdings Corp.'s Board of Directors.

7. Answering Paragraph 7 of the Complaint, Defendants deny each and every allegation contained therein.

8. Answering Paragraph 8 of the Complaint, Defendants deny each and every allegation contained therein

9. Answering Paragraph 9 of the Complaint, Defendants state that they do not have sufficient knowledge or information upon which to base a belief as to the truth of the allegations contained therein and upon such ground deny each and every allegation contained therein.

10. Answering Paragraph 10 of the Complaint, Defendants state that they do not have sufficient knowledge or information upon which to base a belief as to the truth of the allegations contained therein and upon such ground deny each and every allegation contained therein.

11. Answering Paragraph 11 of the Complaint, Defendants admit only that the amount in controversy exceeds $15,000; Defendants deny that venue and jurisdiction are proper in this Court, including based on the doctrines of claim and issue preclusion.

KAPLAN COTTNER
850 E. Bonneville Ave.
Las Vegas, Nevada 89101
Tel: (702) 381-8888 Fax: (702) 832-5559

KAPLAN COTTNER
850 E. Bonneville Ave.
Las Vegas, Nevada 89101
Tel: (702) 381-8888 Fax: (702) 832-5559

GENERAL ALLEGATIONS

12. Answering Paragraph 12 of the Complaint, Defendants admit the allegations contained in the first sentence. As for the remaining allegations, Defendants state that the referenced legal documents speak for themselves, and Defendants admit only that the documents state what Plaintiffs allege them to say, and state that they do not have sufficient knowledge or information upon which to base a belief as to the truth of the other allegations contained therein and upon such ground deny each and every allegation contained therein.

13. Answering Paragraph 13 of the Complaint, Defendants state that the referenced legal documents and transcripts speak for themselves, and Defendants admit only that the documents state what Plaintiffs allege them to say, and state that they do not have sufficient knowledge or information upon which to base a belief as to the truth of the other allegations contained therein and upon such ground deny each and every allegation contained therein.

14. Answering Paragraph 14 of the Complaint, Defendants deny each and every allegation contained therein.

15. Answering Paragraph 15 of the Complaint, Defendants deny each and every allegation contained therein.

16. Answering Paragraph 16 of the Complaint, Defendants deny each and every allegation contained therein.

17. Answering Paragraph 17 of the Complaint, Defendants do not have sufficient knowledge or information upon which to base a belief as to the truth of the other allegations contained therein and upon such ground deny each and every allegation contained therein.

18. Answering Paragraph 18 of the Complaint, Defendants admit only the Nevada 5 was not a stockholder of record in Hygea Holdings Corp. For the remaining allegations, Defendants state that the SPA speaks for itself, and Defendants admit only that the document states what Plaintiffs allege it to say, and state that they do not have sufficient knowledge or information upon which to base a belief as to the truth of the other allegations contained therein and upon such ground deny each and every allegation contained therein.

19. Answering Paragraph 19 of the Complaint, Defendants admit only that Nevada 5

was not a named party to the Receivership Action. Defendants deny the remaining allegations of this Paragraph.

20. Answering Paragraph 20 of the Complaint, Defendants admit only that Nevada 5 was not a stockholder of record in Hygea Holdings Corp. Defendants deny the remaining allegations in this Paragraph.

21. Answering Paragraph 21 of the Complaint, Defendants deny each and every allegation contained therein.

22. Answering Paragraph 22 of the Complaint, Defendants deny each and every allegation contained therein.

23. Answering Paragraph 23 of the Complaint, Defendants deny each and every allegation contained therein.

24. Answering Paragraph 24 of the Complaint, Defendants deny each and every allegation contained therein.

25. Answering Paragraph 25 of the Complaint, Defendants deny each and every allegation contained therein.

26. Answering Paragraph 26 of the Complaint, Defendants deny each and every allegation contained therein.

27. Answering Paragraph 27 of the Complaint, Defendants deny each and every allegation contained therein.

28. Answering Paragraph 28 of the Complaint, Defendants deny each and every allegation contained therein.

29. Answering Paragraph 29 of the Complaint, Defendants deny each and every allegation contained therein.

30. Answering Paragraph 30 of the Complaint, Defendants deny each and every allegation contained therein.

31. Answering Paragraph 31 of the Complaint, Defendants deny each and every allegation contained therein.

32. Answering Paragraph 32 of the Complaint, Defendants admit each and every

KAPLAN COTTNER
850 E. Bonneville Ave.
Las Vegas, Nevada 89101
Tel: (702) 381-8888 Fax: (702) 832-5559

allegation contained therein.

33. Answering Paragraph 33 of the Complaint, Defendants admit each and every allegation contained therein.

34. Answering Paragraph 34 of the Complaint, Defendants admit that they communicated that Hygea was profitable. As to the remainder of the Paragraph, Defendants state that the documents speak for themselves, and Defendants admit only that the documents state what Plaintiffs allege them to say, and state that they do not have sufficient knowledge or information upon which to base a belief as to the truth of the other allegations contained therein and upon such ground deny each and every allegation contained therein.

35. Answering Paragraph 35 of the Complaint, Defendants deny the first sentence of the Paragraph. Defendants state that they do not have sufficient knowledge or information upon which to base a belief as to the truth of the other allegations contained therein, as the referenced communications likely occurred through their former Hygea.net email accounts to which they do not have access, and thus Defendants deny the allegations.

36. Answering Paragraph 36 of the Complaint, Defendants state that the documents speak for themselves, and Defendants admit only that the documents state what Plaintiffs allege them to say, and state that they do not have sufficient knowledge or information upon which to base a belief as to the truth of the other allegations contained therein and upon such ground deny each and every allegation contained therein.

37. Answering Paragraph 37 of the Complaint, Defendants state that the documents speak for themselves, and Defendants admit only that the documents state what Plaintiffs allege them to say, and state that they do not have sufficient knowledge or information upon which to base a belief as to the truth of the other allegations contained therein and upon such ground deny each and every allegation contained therein.

38. Answering Paragraph 38 of the Complaint, Defendants deny each and every allegation contained therein.

39. Answering Paragraph 39 of the Complaint, Defendants admit only that Nevada 5 transferred approximately $30 million by way of a wire transfer on or around October 5, 2016, to

KAPLAN COTTNER
850 E. Bonneville Ave.
Las Vegas, Nevada 89101
Tel: (702) 381-8888 Fax: (702) 832-5559

a trust account held by Akerman LLP. Defendants deny the remaining allegations of this Paragraph.

40. Answering Paragraph 40 of the Complaint, Defendants state that the SPA speaks for itself, and Defendants admit only that the document states what Plaintiffs allege it to say, and state that they do not have sufficient knowledge or information upon which to base a belief as to the truth of the other allegations contained therein and upon such ground deny each and every allegation contained therein.

41. Answering Paragraph 41 of the Complaint, Defendants state that the documents speak for themselves, and Defendants admit only that the documents state what Plaintiffs allege them to say, and state that they do not have sufficient knowledge or information upon which to base a belief as to the truth of the other allegations contained therein and upon such ground deny each and every allegation contained therein.

42. Answering Paragraph 42 of the Complaint, Defendants deny each and every allegation contained therein.

43. Answering Paragraph 43 of the Complaint, Defendants state that the documents speak for themselves, and Defendants admit only that the documents state what Plaintiffs allege them to say, and state that they do not have sufficient knowledge or information upon which to base a belief as to the truth of the other allegations contained therein and upon such ground deny each and every allegation contained therein.

44. Answering Paragraph 44 of the Complaint, Defendants state that the documents speak for themselves, and Defendants admit only that the documents state what Plaintiffs allege them to say, and state that they do not have sufficient knowledge or information upon which to base a belief as to the truth of the other allegations contained therein and upon such ground deny each and every allegation contained therein.

45. Answering Paragraph 45 of the Complaint, Defendants state that the documents speak for themselves, and Defendants admit only that the documents state what Plaintiffs allege them to say, and state that they do not have sufficient knowledge or information upon which to base a belief as to the truth of the other allegations contained therein and upon such ground deny

KAPLAN COTTNER
850 E. Bonneville Ave.
Las Vegas, Nevada 89101
Tel: (702) 381-8888 Fax: (702) 832-5559

each and every allegation contained therein.

46. Answering Paragraph 46 of the Complaint, Defendants deny each and every allegation contained therein.

47. Answering Paragraph 47 of the Complaint, Defendants admit that the RTO never occurred. As to the remainder of the Paragraph, Defendants deny each and every allegation contained therein.

48. Answering Paragraph 48 of the Complaint, Defendants deny each and every allegation contained therein.

49. Answering Paragraph 49 of the Complaint, Defendants deny each and every allegation contained therein.

50. Answering Paragraph 50 of the Complaint, Defendants deny each and every allegation contained therein.

51. Answering Paragraph 51 of the Complaint, Defendants deny each and every allegation contained therein.

52. Answering Paragraph 52 of the Complaint, Defendants deny each and every allegation contained therein.

53. Answering Paragraph 53 of the Complaint, Defendants deny each and every allegation contained therein.

54. Answering Paragraph 54 of the Complaint, Defendants deny each and every allegation contained therein.

55. Answering Paragraph 55 of the Complaint, Defendants deny any misrepresentations. As to the remainder of the Paragraph, Defendants state that the documents speak for themselves, and Defendants admit only that the documents state what Plaintiffs allege them to say, and state that they do not have sufficient knowledge or information upon which to base a belief as to the truth of the other allegations contained therein and upon such ground deny each and every allegation contained therein.

56. Answering Paragraph 56 of the Complaint, Defendants state that the documents speak for themselves, and Defendants admit only that the documents state what Plaintiffs allege

KAPLAN COTTNER
850 E. Bonneville Ave.
Las Vegas, Nevada 89101
Tel: (702) 381-8888 Fax: (702) 832-5559

them to say, and state that they do not have sufficient knowledge or information upon which to base a belief as to the truth of the other allegations contained therein and upon such ground deny each and every allegation contained therein.

57. Answering Paragraph 57 of the Complaint, Defendants admit only that Hygea Holdings Corp. has not gone public. Defendants deny the remaining allegations of this Paragraph.

58. Answering Paragraph 58 of the Complaint, Defendants admit only that in or around August 1, 2017, Hygea Holdings Corp. ceased making Post-Closing Monthly Payments to N5HYG. Defendants deny the remaining allegations of this Paragraph.

59. Answering Paragraph 59 of the Complaint, the allegation is a legal conclusion to which no response is required.

FIRST CAUSE OF ACTION

Florida Statutory Securities Fraud

(Nevada 5 against Defendants)

60. Answering Paragraph 60 of the Complaint, Defendants repeat and re-allege their answers previously set forth herein and incorporate the same by reference as if fully set forth herein.

61. Answering Paragraph 61 of the Complaint, the allegation is a legal conclusion to which no response is required.

62. Answering Paragraph 62 of the Complaint, the allegation is a legal conclusion to which no response is required.

63. Answering Paragraph 63 of the Complaint, the allegation is a legal conclusion to which no response is required.

64. Answering Paragraph 64 of the Complaint, the allegation is a legal conclusion to which no response is required.

65. Answering Paragraph 65 of the Complaint, the allegation is a legal conclusion to which no response is required.

66. Answering Paragraph 66 of the Complaint, Defendants deny each and every allegation contained therein.

KAPLAN COTTNER
850 E. Bonneville Ave.
Las Vegas, Nevada 89101
Tel: (702) 381-8888 Fax: (702) 832-5559

67. Answering Paragraph 67 of the Complaint, Defendants deny each and every allegation contained therein.

68. Answering Paragraph 68 of the Complaint, the allegation is a legal conclusion to which no response is required.

69. Answering Paragraph 69 of the Complaint, the allegation is a legal conclusion to which no response is required.

70. Answering Paragraph 70 of the Complaint, Defendants deny each and every allegation contained therein.

71. Answering Paragraph 71 of the Complaint, Defendants deny each and every allegation contained therein.

72. Answering Paragraph 72 of the Complaint, Defendants deny each and every allegation contained therein.

SECOND CAUSE OF ACTION

Control Person Liability under the Florida Act

(Nevada 5 against Defendants)

73. Answering Paragraph 73 of the Complaint, Defendants repeat and re-allege their answers previously set forth herein and incorporate the same by reference as if fully set forth herein.

74. Answering Paragraph 74 of the Complaint, the allegation is a legal conclusion to which no response is required.

75. Answering Paragraph 75 of the Complaint, Defendants deny each and every allegation contained therein.

76. Answering Paragraph 76 of the Complaint, Defendants deny each and every allegation contained therein.

77. Answering Paragraph 77 of the Complaint, the allegation is a legal conclusion to which no response is required.

78. Answering Paragraph 78 of the Complaint, the allegation is a legal conclusion to which no response is required.

KAPLAN COTTNER
850 E. Bonneville Ave.
Las Vegas, Nevada 89101
Tel: (702) 381-8888 Fax: (702) 832-5559

79. Answering Paragraph 79 of the Complaint, Defendants deny each and every allegation contained therein.

80. Answering Paragraph 80 of the Complaint, Defendants deny each and every allegation contained therein.

81. Answering Paragraph 81 of the Complaint, Defendants deny each and every allegation contained therein.

THIRD CAUSE OF ACTION

Michigan Statutory Securities Fraud

(Nevada 5 against Defendants)

82. Answering Paragraph 82 of the Complaint, Defendants repeat and re-allege their answers previously set forth herein and incorporate the same by reference as if fully set forth herein.

83. Answering Paragraph 83 of the Complaint, the allegation is a legal conclusion to which no response is required.

84. Answering Paragraph 84 of the Complaint, the allegation is a legal conclusion to which no response is required.

85. Answering Paragraph 85 of the Complaint, the allegation is a legal conclusion to which no response is required.

86. Answering Paragraph 86 of the Complaint, Defendants deny each and every allegation contained therein.

87. Answering Paragraph 87 of the Complaint, Defendants deny each and every allegation contained therein.

88. Answering Paragraph 88 of the Complaint, Defendants deny each and every allegation contained therein.

89. Answering Paragraph 89 of the Complaint, Defendants deny each and every allegation contained therein.

90. Answering Paragraph 90 of the Complaint, Defendants deny each and every allegation contained therein.

KAPLAN COTTNER
850 E. Bonneville Ave.
Las Vegas, Nevada 89101
Tel: (702) 381-8888 Fax: (702) 832-5559

91. Answering Paragraph 91 of the Complaint, Defendants deny each and every allegation contained therein.

92. Answering Paragraph 92 of the Complaint, Defendants deny each and every allegation contained therein.

93. Answering Paragraph 93 of the Complaint, Defendants deny each and every allegation contained therein.

FOURTH CAUSE OF ACTION

Control Person Liability under the Michigan Act

(Nevada 5 against Defendants)

94. Answering Paragraph 94 of the Complaint, Defendants repeat and re-allege their answers previously set forth herein and incorporate the same by reference as if fully set forth herein.

95. Answering Paragraph 95 of the Complaint, the allegation is a legal conclusion to which no response is required.

96. Answering Paragraph 96 of the Complaint, Defendants deny each and every allegation contained therein.

97. Answering Paragraph 97 of the Complaint, Defendants deny each and every allegation contained therein.

98. Answering Paragraph 98 of the Complaint, Defendants deny each and every allegation contained therein.

99. Answering Paragraph 99 of the Complaint, Defendants deny each and every allegation contained therein.

100. Answering Paragraph 100 of the Complaint, Defendants deny each and every allegation contained therein.

101. Answering Paragraph 101 of the Complaint, Defendants admit each and every allegation contained therein.

102. Answering Paragraph 102 of the Complaint, Defendants deny each and every allegation contained therein.

KAPLAN COTTNER
850 E. Bonneville Ave.
Las Vegas, Nevada 89101
Tel: (702) 381-8888 Fax: (702) 832-5559

103. Answering Paragraph 103 of the Complaint, Defendants deny each and every allegation contained therein.

104. Answering Paragraph 104 of the Complaint, the allegation is a legal conclusion to which no response is required.

105. Answering Paragraph 105 of the Complaint, Defendants deny each and every allegation contained therein.

106. Answering Paragraph 106 of the Complaint, Defendants deny each and every allegation contained therein.

107. Answering Paragraph 107 of the Complaint, Defendants deny each and every allegation contained therein.

FIFTH CAUSE OF ACTION

Common Law Fraud

(Nevada 5 against Defendants and Roes and Does)

108. Answering Paragraph 108 of the Complaint, Defendants repeat and re-allege their answers previously set forth herein and incorporate the same by reference as if fully set forth herein.

109. Answering Paragraph 109 of the Complaint, Defendants deny each and every allegation contained therein.

110. Answering Paragraph 110 of the Complaint, Defendants deny each and every allegation contained therein.

111. Answering Paragraph 111 of the Complaint, Defendants deny each and every allegation contained therein.

112. Answering Paragraph 112 of the Complaint, Defendants deny each and every allegation contained therein.

113. Answering Paragraph 113 of the Complaint, Defendants deny each and every allegation contained therein.

114. Answering Paragraph 114 of the Complaint, Defendants deny each and every allegation contained therein.

KAPLAN COTTNER
850 E. Bonneville Ave.
Las Vegas, Nevada 89101
Tel: (702) 381-8888 Fax: (702) 832-5559

115. Answering Paragraph 115 of the Complaint, Defendants deny each and every allegation contained therein.

SIXTH CAUSE OF ACTION

Negligent Misrepresentation

(Nevada 5 against Defendants and Roes and Does)

116. Answering Paragraph 116 of the Complaint, Defendants repeat and re-allege their answers previously set forth herein and incorporate the same by reference as if fully set forth herein.

117. Answering Paragraph 117 of the Complaint, Defendants deny each and every allegation contained therein.

118. Answering Paragraph 118 of the Complaint, Defendants deny each and every allegation contained therein.

119. Answering Paragraph 119 of the Complaint, Defendants deny each and every allegation contained therein.

120. Answering Paragraph 120 of the Complaint, Defendants deny each and every allegation contained therein.

121. Answering Paragraph 121 of the Complaint, Defendants deny each and every allegation contained therein.

122. Answering Paragraph 122 of the Complaint, Defendants deny each and every allegation contained therein.

SEVENTH CAUSE OF ACTION

Silent Fraud/Material Omissions

(Nevada 5 against Defendants and Roes and Does)

123. Answering Paragraph 123 of the Complaint, Defendants repeat and re-allege their answers previously set forth herein and incorporate the same by reference as if fully set forth herein.

124. Answering Paragraph 124 of the Complaint, Defendants deny each and every allegation contained therein.

KAPLAN COTTNER
850 E. Bonneville Ave.
Las Vegas, Nevada 89101
Tel: (702) 381-8888 Fax: (702) 832-5559

125. Answering Paragraph 125 of the Complaint, Defendants deny each and every allegation contained therein.

126. Answering Paragraph 126 of the Complaint, Defendants state that they do not have sufficient knowledge or information upon which to base a belief as to the truth of the allegations contained therein and upon such ground deny each and every allegation contained therein.

127. Answering Paragraph 127 of the Complaint, Defendants deny each and every allegation contained therein.

128. Answering Paragraph 128 of the Complaint, Defendants deny each and every allegation contained therein.

129. Answering Paragraph 129 of the Complaint, Defendants deny each and every allegation contained therein.

EIGHTH CAUSE OF ACTION

Breaches of Contract

(N5HYG against Defendants)

130. Answering Paragraph 130 of the Complaint, Defendants repeat and re-allege their answers previously set forth herein and incorporate the same by reference as if fully set forth herein.

131. Answering Paragraph 131 of the Complaint, the allegation is a legal conclusion to which no response is required.

132. Answering Paragraph 132 of the Complaint, Defendants deny each and every allegation contained therein.

133. Answering Paragraph 133 of the Complaint, Defendants deny each and every allegation contained therein.

134. Answering Paragraph 134 of the Complaint, Defendants deny each and every allegation contained therein.

135. Answering Paragraph 135 of the Complaint, Defendants deny each and every allegation contained therein.

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KAPLAN COTTNER
850 E. Bonneville Ave.
Las Vegas, Nevada 89101
Tel: (702) 381-8888 Fax: (702) 832-5559

NINTH CAUSE OF ACTION

Civil Conspiracy

(Plaintiffs against Defendants and Roes and Does)

136. Answering Paragraph 136 of the Complaint, Defendants repeat and re-allege their answers previously set forth herein and incorporate the same by reference as if fully set forth herein.

137. Answering Paragraph 137 of the Complaint, Defendants deny each and every allegation contained therein.

138. Answering Paragraph 138 of the Complaint, Defendants deny each and every allegation contained therein.

139. Answering Paragraph 139 of the Complaint, Defendants deny each and every allegation contained therein.

140. Answering Paragraph 140 of the Complaint, Defendants deny each and every allegation contained therein.

141. Answering Paragraph 141 of the Complaint, Defendants deny each and every allegation contained therein.

142. Answering Paragraph 142 of the Complaint, Defendants deny each and every allegation contained therein.

143. Answering Paragraph 143 of the Complaint, Defendants deny each and every allegation contained therein.

144. Answering Paragraph 144 of the Complaint, Defendants deny each and every allegation contained therein.

145. Answering Paragraph 145 of the Complaint, Defendants deny each and every allegation contained therein.

TENTH CAUSE OF ACTION

Concert of Action

(Plaintiffs against Defendants and Roes and Does)

146. Answering Paragraph 146 of the Complaint, Defendants repeat and re-allege their

KAPLAN COTTNER
850 E. Bonneville Ave.
Las Vegas, Nevada 89101
Tel: (702) 381-8888 Fax: (702) 832-5559

answers previously set forth herein and incorporate the same by reference as if fully set forth herein.

147. Answering Paragraph 147 of the Complaint, Defendants deny each and every allegation contained therein.

148. Answering Paragraph 148 of the Complaint, Defendants deny each and every allegation contained therein.

149. Answering Paragraph 149 of the Complaint, Defendants deny each and every allegation contained therein.

150. Answering Paragraph 150 of the Complaint, Defendants deny each and every allegation contained therein.

151. Answering Paragraph 151 of the Complaint, Defendants deny each and every allegation contained therein.

152. Answering Paragraph 152 of the Complaint, Defendants deny each and every allegation contained therein.

153. Answering Paragraph 153 of the Complaint, Defendants deny each and every allegation contained therein.

ELEVENTH CAUSE OF ACTION

Claim for Books and Records

(Plaintiffs against Defendants and Roes and Does)

154. Answering Paragraphs 154-161 of the Complaint, the cause of action was dismissed as moot by Plaintiffs.

AFFIRMATIVE DEFENSES

1. Plaintiffs have failed to state a claim against Defendants upon which relief can be granted.

2. Defendants are not the real party in interest.

3. The claims, and each of them, are barred by the failure of the Plaintiffs to plead those claims with particularity.

4. Plaintiffs' claims and/or entitlement(s) to relief, if any, is cut off by its failure to act in

KAPLAN COTTNER
850 E. Bonneville Ave.
Las Vegas, Nevada 89101
Tel: (702) 381-8888 Fax: (702) 832-5559

good faith.

5. Plaintiffs' claims and/or entitlement(s) to relief are barred, in whole or in part, due to its failure to satisfy a condition precedent.

6. Plaintiffs' claims and/or entitlement(s) to relief are barred, in whole or in part, due to the negligence of Plaintiff.

7. Plaintiffs' claims and/or entitlement(s) to relief are barred as it has not suffered any damages.

8. Damages and/or injuries, if any, suffered by Plaintiffs are not attributable to any act, conduct, or omission on the part of Defendants.

9. At all times material hereto, Defendants acted reasonably and in good faith.

10. Plaintiffs' claims are barred in whole or in part due to the failure to join a necessary party.

11. Plaintiffs' claims are barred in whole or in part by the doctrine of in pari delicto.

12. Plaintiffs' claims for relief as set forth in the Complaint are barred by the statute of limitations as contained in Chapter 11 of the Nevada Revised Statutes.

13. Plaintiffs' claims and/or entitlement(s) to relief, if any, are barred or reduced under the doctrines of recoupment and/or setoff.

14. Plaintiffs' claims and/or entitlement(s) to relief are barred, in whole or in part, due to Plaintiff's misconduct.

15. Plaintiffs are not entitled to punitive damages as Plaintiffs have not pled facts sufficient to support such an award.

16. Plaintiffs are not entitled to recover any punitive or exemplary damages as prayed for in the Complaint: any such award as applied to the facts in this case would violate Defendants' constitutional rights under provisions of the United States and Nevada State Constitutions, including, but not limited to, the due process clauses of the Fifth and Fourteenth Amendments to the United States Constitution, and the excessive fines and cruel and unusual punishment clauses of the Eighth Amendment to the United States Constitution.

17. Plaintiffs are not entitled to recover any punitive or exemplary damages as Defendants

KAPLAN COTTNER
850 E. Bonneville Ave.
Las Vegas, Nevada 89101
Tel: (702) 381-8888 Fax: (702) 832-5559

acted in good faith at all times relevant herein.

18. Plaintiffs are barred from recovery in whole or in part, in proportion to the fault attributed to Plaintiffs.

19. Plaintiffs, by their acts and conduct, have waived any and all claims alleged herein against Defendants.

20. To the extent that Plaintiffs have suffered any damages, such damages should be set-off in an amount to be proven.

21. The damages, if any, suffered by Plaintiffs, were caused in whole or in part by their own actions and/or omissions.

22. Plaintiffs are barred from recovery on her claims pursuant to the equitable doctrines of waiver and estoppel.

23. Any and all damages sustained by Plaintiffs are the result of negligence of a third-party over whom Defendants have no control.

24. Plaintiffs' claims are barred by the doctrine of unclean hands.

25. Plaintiffs' claims are barred in whole or in part by the doctrine of estoppel, laches, and/or waiver.

26. Plaintiffs have failed to mitigate damages.

27. There has been payment and/or satisfaction in reference to the cause of action which is the subject matter of the Complaint herein.

28. Defendants were justified and privileged to engage in the conduct in question that is alleged to have caused injury or damage.

29. Plaintiffs have failed to timely plead this matter and have thereby delayed the investigation and litigation of this claim to the prejudice of Defendants, and accordingly this action should be dismissed.

30. The Court's Claim Preclusion Order on the same claims as set forth in the Complaint is res judicata as to those claims.

31. The Omnibus Order on Defendants' Motion to Dismiss Plaintiff's Second Amended Complaint in *Nevada 5, Inc. v. Daniel T. McGowan, et al*, Case No. 19-014926 CA 44 is issue

KAPLAN COTTNER
850 E. Bonneville Ave.
Las Vegas, Nevada 89101
Tel: (702) 381-8888 Fax: (702) 832-5559

preclusion and claim preclusion as to the claims set forth in the Complaint.

32. The performance of the contract(s) at issue has been rendered impossible and/or impracticable.

33. The performance of the contract(s) is excused under the doctrine of frustration of purpose.

34. The claims set forth in the Complaint have been discharged through the Chapter 11 Voluntary Petition of Hygea Holdings Corp. filed in the U.S. Bankruptcy Court for the District of Delaware, Case No. 20-10361-KBO and confirmed by the Delaware Bankruptcy Court in an Order confirming the Second Amended Plan of Reorganization.

35. The claims set forth in the Complaint are barred by the doctrine of privity.

36. It has been necessary for the Defendants to retain the services of an attorney to defend this action and a reasonable sum should be allowed Defendants as and for attorney's fees, together with their costs expended in this action.

37. Pursuant to NRCP 11, all possible affirmative defenses may not have been alleged herein insofar as sufficient facts were not available after reasonable inquiry upon the filing of this Answer, and therefore, Defendants reserve the right to amend this Answer to allege additional affirmative defenses if subsequent investigation warrants.

38. Some affirmative defenses may have been pled for purposes of non-waiver. Defendants reserve the right to amend the affirmative defenses as discovery progresses.

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KAPLAN COTTNER
850 E. Bonneville Ave.
Las Vegas, Nevada 89101
Tel: (702) 381-8888 Fax: (702) 832-5559

WHEREFORE, Defendants pray as follows:

1. That Plaintiffs take nothing by way of their Complaint on file herein;

2. That Defendants be awarded reasonable attorney's fees and costs; and

3. For such other and further relief as the Court may deem just and proper for having to defend this action.

Dated this 4th day of January, 2021.

KAPLAN COTTNER

By: /s/ Kory L. Kaplan
KORY L. KAPLAN, ESQ.
Nevada Bar No. 13164
KYLE P. COTTNER, ESQ.
Nevada Bar No. 12722
850 E. Bonneville Ave.
Las Vegas, Nevada 89101
Attorneys for Defendants Manuel Iglesias and Edward Moffly

KAPLAN COTTNER
850 E. Bonneville Ave.
Las Vegas, Nevada 89101
Tel: (702) 381-8888 Fax: (702) 832-5559

KAPLAN COTTNER
850 E. Bonneville Ave.
Las Vegas, Nevada 89101
Tel: (702) 381-8888 Fax: (702) 832-5559

CERTIFICATE OF SERVICE

I hereby certify that the *Defendants Manuel Iglesias and Edward Moffly's Answer to Second Amended Complaint* submitted electronically for filing and/or service with the Eighth Judicial District Court on the 4th day of January, 2021. Electronic service of the foregoing document shall be made in accordance with the E-Service List as follows[1]:

Attorneys for Plaintiffs NYHYG, LLC and Nevada 5, Inc.
Ogonna M. Brown, Esq. (OBrown@lrrc.com)

LEWIS ROCA ROTHGERBER CHRISTIE LLP
G. Mark Albright, Esq. (gma@albrightstoddard.com)
D. Chris Albright, Esq. (dca@albrightstoddard.com)

ALBRIGHT, STODDARD, WARNICK & ALBRIGHT
E. Powell Miller, Esq. (epm@millerlawpc.com)
Christopher Kaye, Esq. (cdk@millerlawpc.com)

/s/ Sunny Southworth
An Employee of Kaplan Cottner

[1] Pursuant to EDCR 8.05(a), each party who submits an E-Filed document through the E-Filing System consents to electronic service in accordance with NRCP 5(b)(2)(D).

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

Julian W. Friedman
New York Registration No. 1110220
BALLARD SPAHR LLP
919 3rd Avenue, Floor 37
New York, New York 10022
Telephone: (212) 223-0200
Facsimile: (212) 223-1942
friedmanj@ballardspahr.com

Attorneys for Defendants Hygea Holdings Corp., Manuel Iglesias, Edward Moffly, Daniel T. McGowan, Martha Mairena Castillo, Lacy Loar, Glenn Marrichi, Keith Collins, M.D., Jack Mann, M.D., Joseph Campanella, and Carl Rosenkrantz

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

DISTRICT COURT

CLARK COUNTY, NEVADA

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

NOTICE OF ENTRY OF FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER GRANTING DEFENDANTS' MOTION FOR RECONSIDERATION RE: CLAIM PRECLUSION

The Findings of Fact, Conclusions of Law, and Order on Defendants' Motion for Reconsideration Re: Claim Preclusion, was filed in the above-entitled matter on December 3, 2019, a copy of which is attached as Exhibit A.

Dated: December 3, 2019

BALLARD SPAHR LLP

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

Attorneys for Defendants Hygea Holdings Corp., Manuel Iglesias, Edward Moffly, Daniel T. McGowan, Martha Mairena Castillo, Lacy Loar, Glenn Marrichi, Keith Collins, M.D., Jack Mann, M.D., Joseph Campanella, and Carl Rosenkrantz

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

CERTIFICATE OF SERVICE

I certify that on December 3, 2019, a true and correct copy of the foregoing **NOTICE OF ENTRY OF FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER GRANTING DEFENDANTS' MOTION FOR RECONSIDERATION RE: CLAIM PRECLUSION** was served on the following parties through the Court's e-service system:

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

Attorneys for Plaintiffs

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

Attorneys for Plaintiffs

Robert Cassity, Esq.
Sydney R. Gambee, Esq.
HOLLAND & HART LLP
9555 Hillwood Drive, 2nd Floor
Las Vegas, Nevada 89134

Attorneys for Defendant Ray Gonzalez

Stavroula Lambrakopoulos, Esq.
Theodore Kornobis, Esq.
K&L GATES LLP
1601 K Street, NW
Washington, D.C. 20006

Attorneys for Defendant Ray Gonzalez

Richard Williams Esq.
8110 SW 78th Street
Miami, Florida 33143

Defendant Pro Per

/s/ Adam Crawford
An Employee of BALLARD SPAHR LLP

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

EXHIBIT A

EXHIBIT A

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

Julian W. Friedman
(admitted *pro hac vice*)
New York Registration No. 1110220
1675 Broadway, 19th Floor
New York, New York 10019
Telephone: (212) 223-0200
Facsimile: (212) 223-1942
friedmanj@ballardspahr.com

Attorneys for Defendants Hygea Holdings Corp., Manuel Iglesias, and Edward Moffly

DISTRICT COURT

CLARK COUNTY, NEVADA

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

FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER GRANTING DEFENDANTS' MOTION FOR RECONSIDERATION RE: CLAIM PRECLUSION

On May 10, 2019, the Court entered its Findings of Facts, Conclusions of Law, and Order on the Hygea Defendants' Motion to Dismiss. The Hygea Defendants had asked this Court to dismiss the Amended Complaint, as a threshold matter, on the basis of claim preclusion. They premised their argument on the case styled *Claudio Arellano, et al. v. Hygea Holdings Corp., et al.*, Case No. 18-OC-00071-1B, which Plaintiff N5HYG, LLC, initially filed in this Court, asking for the appointment of a receiver over Hygea pursuant to NRS 78.650, 78.630 and/or 32.010 (the "Receiver Action"). This Court transferred the Receiver Action to the First Judicial District Court of the State of Nevada in and for Carson City (the "Receiver Court.") N5HYG was the lead plaintiff in in the Receiver Action, and Hygea and most of the named defendants to this Action were defendants in the Receiver Action.

N5HYG asked for the appointment of a receiver for several reasons, including based on alleged director mismanagement. As discussed further in the Court's Findings and Conclusions, below, N5HYG argued that the directors had mismanaged Hygea because they misrepresented Hygea's financial position, inducing N5HYG to purchase stock in the company, and then allowed Hygea to breach the stock purchase agreement by failing to provide contractually required audits, post-closing payments, and a board and observer seat.

On May 14, 2018, the Receiver Action proceeded to a trial on the merits. At the end of trial, the Receiver Court denied the appointment of a receiver after concluding that it did not have jurisdiction to appoint a receiver because N5HYG had failed to show that it and its co-plaintiffs held 10% of Hygea's stock issued and outstanding. *See* Receiver Action, Amended Findings of Fact and Conclusions of Law (the "Receiver Judgment") (issued Oct. 29, 2018), p. 21:13–18. The Receiver Court also made substantive findings on the merits of N5HYG's claims and ultimately determined that there was not good cause for a receiver, even if the Receiver Court had the power to provide that remedy. *See id.* at p. 21:19–22:6.

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

Based on the Receiver Judgment, the Hygea Defendants moved to dismiss this case for claim preclusion, arguing that the claims in this case arise from the same nucleus of operative facts at issue in the Receiver Action. The Court initially denied the motion to dismiss based on the first element of claim preclusion alone. Specifically, the Court found that "a court's decision whether or not to appoint a receiver is not a final decision for purposes of claim preclusion," and also that, "based on the Receivership Court's finding that it lacked jurisdiction to appoint a receiver under NRS 78.650(1) ... that Receivership Court did not render a final judgment for purposes of determining claim preclusion." Findings of Fact, Conclusions of Law, and Order ("FFCO") (issued May 10, 2019), pp. 3:27–28 & 4:1–3. Hygea timely moved for reconsideration of these findings and asked for clarification on the remaining elements of claim preclusion.

On July 17, 2019, Hygea's Motion for Reconsideration came before the Court for hearing. Maria A. Gall and Kyle A. Ewing of the law firm Ballard Spahr LLP appeared on behalf of Hygea. Stavroula E. Lambrakopoulos of the law firm K&L Gates LLP and Jon Pearson of Holland & Hart LLP appeared on behalf of former Defendant Ray Gonzalez. Christopher D. Kaye of the Miller Law Firm, G. Mark Albright of the law firm Albright, Stoddard, Warnick & Albright, Ogonna M. Brown of the law firm Lewis Roca Rothberger Christie LLP, and Robert L. Eisenberg of the law firm Lemon, Grundy & Eisenberg, appeared on behalf of Plaintiffs N5HYG, LLC and Nevada 5, Inc.

The Court is persuaded that the Reconsideration Motion presents complex factual and legal issues that warrant reconsideration and clarification of the Court's FFCO denying the claim preclusion argument. Now having reconsidered those issues, the Court is persuaded that it should revisit its decision, vacate the FFCO with regard to claim preclusion, and enter a new decision and order for that ground granting dismissal of the Amended Complaint based on claim preclusion. Thus, after considering the Reconsideration Motion, its Opposition and Reply, the other

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

pleadings and papers on file, and the oral argument of counsel, the Court hereby VACATES the FFCO and GRANTS the Reconsideration Motion, consistent with the following:

FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. Typically for claim preclusion to apply, a defendant must demonstrate three things: 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 would 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, 82 (Nev. 2015), *reh'g denied* (July 23, 2015).

2. The first element of claim preclusion requires a judgment that is both (1) final and (2) on the merits. *Id.* In its FFCO, this Court found that (1) "a court's decision whether or not to appoint a receiver is not a final decision for purposes of claim preclusion," and that (2) "based on the Receivership Court's finding that it lacked jurisdiction to appoint a receiver, the Receivership Court did not render a final judgment for purposes of claim preclusion." FFCO, 3:27–4:4. With regard to the latter finding, the Court takes this opportunity to clarify that it meant to say: "the Receivership Court did not render a *judgment on the merits* for purposes of claim preclusion." This clarification and distinction is relevant to the Court's analysis, below.

3. In its Reconsideration Motion, Hygea argued that the Court's finding that "a court's decision whether or not to appoint a receiver is not a final decision," FFCO, 3:27–28, contravenes the Supreme Court's decision in *Lynch v. Awada*, 2018 Nev. Unpub. LEXIS 882, 427 P.3d 123 (Sept. 28, 2018). After reviewing *Awada* and its related litigations, the Court agrees and finds *Awada* highly persuasive to its

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

decision to grant reconsideration and dismiss the Amended Complaint based on claim preclusion.

4. In *Awada*, John Lynch successfully brought a first action seeking the equitable remedies of dissolution of an LLC and appointment of a receiver to wind up its affairs. *See id.* at *1. Mr. Lynch sought dissolution and appointment of a receiver because the LLC members were misappropriating and diverting royalty payments that belonged to the LLC. *Id.* at 5. *See also Lynch v. Awada*, District Court Case No. A-16-744849-C, 2017 Nev. Dist. LEXIS 1639, ¶¶ 1A & 1B (Nov. 4, 2017) (Delaney, J.). Mr. Lynch took the receiver action to trial, after which the district court entered its findings of facts and conclusions of law. *See id.* ¶¶ 10 & 11.

5. Mr. Lynch then brought a second action seeking damages based on the same facts. Judge Delaney, writing for the "damages" court, granted summary judgment based on claim preclusion after finding that the receiver action barred further claims based on the same facts. *See Awada*, 2018 Nev. Unpub. LEXIS 882, at *1–2. Mr. Lynch appealed, arguing that he could not have brought his "damages" claims in the receiver action—the same argument N5HYG makes here. The Nevada Supreme Court, however, said such argument "lacks merit." *Awada*, 2018 Nev. Unpub. LEXIS 882, at *7.

6. Instead, the Nevada Supreme Court affirmed Judge Delaney, holding that "ancillary claims may be raised in dissolution actions" seeking the appointment of a receiver, because "barring a petitioner from asserting supplemental claims in a special proceeding and requiring a separate [damages] action would produce additional and unnecessarily formalistic practice." *Id.* (internal quotations omitted.)

7. This Court is thus persuaded that *Awada* confirms two things: (1) N5HYG could have brought the damages claims it pursues in this Action in the Receiver Action; and (2) an order *disposing of* a receiver action by granting or denying the appointment of a receiver *is* a final judgment for purposes of claim preclusion.

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

8. In Opposition, N5HYG argued that *Awada* is unpublished, not binding, and in any event, cannot be squared with *Johnson v. Steel, Inc.*, 100 Nev. 181, 678 P.2d 676 (1984), which this Court cited in support of its earlier decision to deny claim preclusion. The Court has reread *Johnson* and is persuaded that it previously overlooked pertinent facts that distinguishes *Johnson* from this Action. Also, *Awada* may be unpublished, but it is highly persuasive given that it is the only Nevada Supreme Court case to address the very issue before the Court.

9. The Court agrees with Hygea that *Johnson* is inapposite because it concerned an *interlocutory* order denying the appointment of a temporary receiver. A careful reading of *Johnson* demonstrates that the plaintiff there brought a derivative claim for breach of fiduciary duty and asked for a receiver *pendente lite*—i.e., while the action was pending. As explained by the *Johnson* court, "[t]he use of a receiver *pendente lite* is an ancillary remedy used to preserve the value of assets pending outcome of the principal case. The appointment determines no substantive rights between the parties but is merely a means of preserving the status quo. Accordingly, an order appointing a receiver or denying a motion to appoint a receiver [pendente lite] is not a final judgment on the merits." *Johnson*, 100 Nev. at 183, 678 P.2d at 678.

10. In contrast to the plaintiff in *Johnson*, N5HYG did not seek a receiver *pendente lite*. N5HYG sought a management receiver to take the stead of Hygea's officer and directors based on their alleged mis-, mal-, and nonfeasance and gross mismanagement. Further, the Receiver Judgment was not an interlocutory order; it was a final order denying N5HYG's claims.

11. The Receiver Judgment was also a judgment on the merits. The Court agrees with Hygea that a distinction exists between a court's jurisdiction to hear a party's claims and a court's jurisdiction to grant a remedy on those claims, where only a lack of the former renders a court without *subject matter* jurisdiction to enter a judgment on the merits.

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

12. Although there is not a Nevada Supreme Court case addressing this distinction, the Court finds the California Supreme Court's decision in *Abelleira v. Dist. Court of Appeal*, 109 P.2d 942 (1941), persuasive. The Nevada Supreme Court cited approvingly to *Abelleira* in *Landreth v. Malik*, 125 Nev. Adv. Rep. 61, 221 P.3d 1265, 1269–70 (2009).

13. In *Abelleira*, the California Supreme Court explained that "jurisdiction" has multiple meanings and that a court may have "jurisdiction over the subject matter and the parties in the fundamental sense, [but] no 'jurisdiction' ... to give certain kinds of relief." 109 P.2d 942, 947–48 (1941) (emphasis added). The California Supreme Court provided a couple salient examples where this distinction may be applied: (1) "a probate court, with jurisdiction of an estate, and therefore over the appointment of an administrator, nevertheless acts in excess of jurisdiction if it fails to follow the statutory provisions governing such appointment"; and (2) "[a] court with jurisdiction over a cause may hear and determine it and give judgment, but it cannot award costs in a situation not provided by statute." *Id.* Just like these examples, the Receiver Court heard, determined, and rendered judgment on N5HYG's receiver claims, but it could not appoint a receiver because N5HYG failed to show it held the statutory prerequisite of 10% of Hygea stock issued and outstanding.

14. N5HYG did not meaningfully dispute this distinction. N5HYG instead argued that the Receiver Court disavowed subject matter jurisdiction when it relied on *Searchlight Dev. v. Martello*, 84 Nev. 102 (1968), in rendering its decision. The Receiver Court, however, did not rely on *Searchlight* for the proposition that it lacked subject matter jurisdiction; in fact, the term "subject matter" is entirely absent from the Receiver Judgment. The Receiver Court relied on *Searchlight* only for the proposition that "the time at which the Court must determine whether Plaintiffs hold the requisite one-tenth of the Company's shares issued and outstanding is at the time at which the Court is considering the stockholders'

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

application for the appointment of a receiver." Receiver Judgment, 17:14–17. *See also id.* at 17:6–11.

15. This Court also cannot discount the fact that the Receivership Court exercised substantial jurisdiction over N5HYG's claims, including through a week-long trial. By entering judgment at the conclusion of trial, the Receiver Court itself decided it had subject matter jurisdiction. Stated differently, the Receiver Court could not have entered judgment in Hygea's favor without at least implicitly finding that it had jurisdiction to hear and decide N5HYG's claims. This principle is well-settled. In *Stoll v. Gottlieb* the U.S. Supreme Court explained that "[e]very court in rendering a judgment, tacitly, if not expressly, determines its jurisdiction over the parties and the subject matter." 305 U.S. 165, 171–72 (1938).

16. Notably, had the Receiver Court found that it lacked subject matter jurisdiction to hear and determine N5HYG's claims, it would have had to dismiss—not deny—the claims under Rule 12(h), which demands that "[i]f the court determines *at any time* that it lacks subject matter jurisdiction, the court *must dismiss* the action." N.R.C.P. 12(h). The Rule's use of the word "must" expresses a requirement and leaves no discretion. *See* NRS 0.025(c).

17. For these reasons, the Court finds that the Receiver Judgment is a final judgment, on the merits. The Court also finds that the Receiver Court's judgment as a matter of law, or more aptly a judgment on partial findings, rendered after N5HYG's case-in-chief, was also a final judgment, on the merits. This judgment disposed of N5HYG's claims under NRS 78.630 in total and NRS 78.650, in part, without mentioning jurisdiction.

18. The Court now addresses the second element of claim preclusion, which asks whether this Action is based on the same claims or any part of them that were or could have been brought in the Receiver Action. *Weddell*, 350 P.3d at 82. Courts often employ the term "common nucleus of operative facts" when analyzing this element. In fact, Judge Delaney used this term in the *Awada* district court

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

proceedings, explaining that allegations underlying John Lynch's "damages" case "involve[d] the same common nucleus of operative facts contained in the [Receivership] Action—that royalty payments were unaccounted for or were being diverted by managers (Awada) from Tyche." *Lynch v. Awada*, District Court Case No. A-16-744849-C, 2017 Nev. Dist. LEXIS 1639, ¶¶ 14 (Nov. 4, 2017) (Delaney, J.) The Nevada Supreme Court, however, has not yet had occasion to directly address what "nucleus of operative facts" means in the context of claim preclusion, and so the Court also reviews guidance from other courts on how this standard has been applied.

19. As the U.S. Court of Appeals for the Seventh Circuit explained, "[U]nder well-established claim-preclusion doctrine, [] common nucleus of operative facts means the claims are the same even though they involve different legal theories." *Matrix IV, Inc. v. Am. Nat'l Bank & Tr. Co.*, 649 F.3d 539, 548 (7th Cir. 2011). Citing to another Seventh Circuit case, the court further explained that "a 'claim' consists of the underlying factual events rather than the legal theories advanced." *Id.*

20. Other federal circuits are in accord. For instance, the Second Circuit, quoting from the Restatement (Second) of Judgments § 24, has held that "[t]o ascertain whether two actions spring from the same 'transaction' or 'claim,' we look to whether the underlying facts are 'related in time, space, origin, or motivation, whether they form a convenient trial unit, and whether their treatment as a unit conforms to the parties' expectations ....'" *Waldman v. Vill. of Kiryas Joel*, 207 F.3d 105, 108 (2d Cir. 2000).

21. The comments and illustrations to the Restatement also explain that "[t]hough no single factor is determinative, the relevance of trial convenience makes it appropriate to ask how far the witnesses or proofs in the second action would tend to overlap the witnesses or proofs relevant to the first. If there is a substantial overlap, the second action should ordinarily be held precluded. But the opposite does

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not hold true; even when there is not a substantial overlap, the second action may be precluded if it stems from the same transaction or series." Restat 2d of Judgments, § 24.

22. N5HYG argued in Opposition that this Action and the Receiver Action are based on different facts because it said so on the face of its Receiver Complaint. This argument is not well taken. The mere fact that N5HYG stamped a "disclaimer" onto the face of its Receiver Complaint cannot alter the reality that both actions arose from the same core allegations of fact: in 2016, N5HYG purchased Hygea stock and memorialized that purchase in a stock purchase agreement; N5HYG alleges Hygea, through the misconduct of its officers and directors, misrepresented Hygea's value; N5HYG further alleges that Hygea failed to provide contractually obligated audits of Hygea's financial statements and to make monthly post-closing payments. In the Receiver Action, N5HYG petitioned for the appointment of a receiver based on these alleged wrongdoings. In this Action, N5HYG seeks damages and rescission of the stock purchase agreement based on the same allegations. Although the remedies N5HYG sought differed in the two actions, the dispositive point for purposes of the claim preclusion inquiry is that the core facts underlying both actions are the same.

23. In fact, based on the Receiver Trial Transcript, it appears that N5HYG's attorney admitted during the Receiver Trial that the Receiver Action was based, at least in part, on the same facts that form the basis for N5HYG's damages claims in this Action: the communications between N5HYG (or its agents) and Hygea, as well as the information provided to Hygea prior to N5HYG's stock purchase. In response to Hygea's objection that N5HYG not be permitted to elicit testimony on matters in dispute in this Action, N5HYG's counsel explained as follows: "I do think that the fact of the representations and the information provided in 2016 does have some probative value here [in the Receiver Action] because if there were inaccuracies or if there was anything misleading about that information, that

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gets to misfeasance, malfeasance, and nonfeasance criteria." Receiver Tr. Transcr., p. 289:2–7.

24. The Court now addresses the third element for claim preclusion, which asks whether (i) the parties or their privies are the same in the instant lawsuit as they were in the previous lawsuit, or (ii) the defendant can demonstrate he or she should have been included as a defendant in the earlier suit and the plaintiff fails to provide a good reason for not having done so. *Weddell*, 350 P.3d at 82.

25. There is no dispute that N5HYG was a plaintiff in the Receiver Action. There is also no dispute that Hygea, Iglesias, and Moffly, and most of their original co-defendants, were defendants to the Receiver Action.

26. N5HYG argued in Opposition that the plaintiffs between the two actions are not the same because N5HYG "banded together" with thirteen other stockholders in the Receiver Action, all of whom are absent here. N5HYG cited *Conservation Nw. v. Rey*, 674 F. Supp. 2d 1232, 1243 (W.D. Wash. 2009), in support of its argument. *Rey*, however, is inapposite. There, it was the presence of additional and non-related plaintiffs in a *second* lawsuit based on *entirely different facts* that resulted in the Washington court's denial of claim preclusion. N5HYG offers no authority for the proposition that it can bring a second lawsuit based on the same facts as the first and escape the consequences of claim preclusion because its former co-plaintiffs are not present in the later lawsuit.

27. For these reasons, the Court finds that the parties and/or their privies are the same in this Action as they were in the Receiver Action, including all named co-defendants who, as current and/or former officers and/or directors, stand in privity with Hygea (even if they were not named in the Receiver Action, although most were).

28. N5HYG also asserted a number of defenses to claim preclusion that the Court addresses and rejects.

29. First, N5HYG argued that Hygea is estopped from asserting claim

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(702) 471-7000 FAX (702) 471-7070

preclusion because N5HYG could not have brought its damages claims in the Receiver Action due to the parties' stock purchase agreement, which has a forum selection clause for Clark County, Nevada. N5HYG points out that under NRS 78.650, the Receivership Action had to proceed in Carson City, Nevada (where Hygea's Nevada registered agent sits). N5HYG says that Hygea is equitably estopped from arguing otherwise because it reaped the benefits of the stock purchase agreement by accepting its contract price.

30. The Court is not persuaded by this argument. Forum selection clauses are presumptively enforceable, but if they lead to an unreasonable result, *such as claim-splitting*, a court can decline to enforce the clause. *See Tandy Comput. Leasing, Div. of Tandy Elecs. v. Terina's Pizza*, 105 Nev. 841, 844, 784 P.2d 7, 8 (1989). N5HYG did not even try to bring all its claims in one forum.

31. N5HYG also misapplies equitable estoppel. In *Teriano v. Nev. State Bank (In re Harrison Living Tr.)*, the Nevada Supreme Court explained that "[e]quitable estoppel functions to prevent the assertion of legal rights that in equity and good conscience should not be available due to a party's conduct." 121 Nev. 217, 223, 112 P.3d 1058, 1061–62 (2005). The Supreme Court then set forth four elements for equitable estoppel: "(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; (4) he must have relied to his detriment on the conduct of the party to be estopped."

32. N5HYG provides no explanation about how the foregoing elements support its argument that Hygea should be equitably estopped from arguing that N5HYG should have brought its "damages" claims in the Receivership Action. Certainly N5HYG fails to show that it was "ignorant of the true state of facts" or "relied to [its] detriment" on Hygea's conduct when it was fully apprised of its own claims and was the party that moved the Receiver Action forward. *Cf. id.*

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33. N5HYG also argues that Hygea is judicially estopped from arguing claim preclusion because it took the position that the Receivership Action had nothing to do with the parties' stock purchase agreement; won a transfer of venue based on this argument; and so cannot say differently now. As an initial matter, the Court transferred venue of the Receiver Action to Carson City because of the mandatory venue provision found in NRS 78.650 and 78.630. Even if the stock purchase agreement affected the Court's decision to transfer venue, it is not clear how Hygea obtained an advantage from the venue change, and N5HYG identifies none. As the Nevada Supreme Court explained in *NOLM, Ltd. Liab. Co. v. Cty. of Clark*, "judicial estoppel should be applied only when a party's inconsistent position [arises] from intentional wrongdoing or an attempt to obtain an unfair advantage. Judicial estoppel does not preclude changes in position that are not intended to sabotage the judicial process." 120 Nev. 736, 743, 100 P.3d 658, 663 (2004) (bracket in original) (internal quotations omitted).

34. N5HYG also argued that it could not have brought its receivership claims while this Action was removed to federal court. N5HYG provides no support for this argument. Also, there is no case that says federal courts are prohibited from exercising diversity or supplemental jurisdiction over claims grounded in NRS 78.650 and 78.630, or cannot, at the very least, appoint equity receivers.

35. N5HYG next argued that Hygea acquiesced to claim splitting when Hygea argued that N5HYG should not be allowed to advance its contract and misrepresentation theories in the Receiver Action. The Court is not persuaded by this argument for several reasons.

36. First, there was nothing for Hygea to acquiesce to, because a party is always free to split its claims between a federal and state court. The rule that permits simultaneous litigation in state and federal court of overlapping, and even identical cases, is deeply rooted in the federalist system. As the U.S. Supreme Court wrote in *Atlantic Coast Line Railroad v. Brotherhood of Locomotive Engineers*,

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LAS VEGAS, NEVADA 89135
(702) 471-7000 FAX (702) 471-7070

"[t]he state and federal courts had concurrent jurisdiction in this case, and neither court was free to prevent either party from simultaneously pursuing claims in both courts." 398 U.S. 281, 295 (1970). N5HYG, however, proceeded at the risk of claim preclusion.

37. Second, N5HYG misconstrues what constitutes "acquiescence" in the context of claim-splitting. As the comments to the Restatement indicate, "acquiescence" means a defendant's *failure to object* to the claim-splitting. Restatement (Second) of Judgments § 26 cmt. a (1982) ("The failure of the defendant to object to the splitting of the plaintiff's claim is effective as an acquiescence in the splitting of the claim."). The Court's examination of the Receiver record reveals that Hygea repeatedly objected to N5HYG simultaneously proceeding on the same facts in two different fora. In fact, at pages 19 and 20 of its Opposition brief, N5HYG provided a list of statements Hygea made during the course of the Receiver Action that show Hygea objecting over-and-over to N5HYG bringing the Receiver Action in one forum while its contract and misrepresentation claims pended in this Action. In addition, Hygea pleaded claim-splitting as a defense in its Receiver Answer.

38. N5HYG also tried to direct this Court's attention to the fact that it did not seek damages in the Receiver Action and so would be prejudiced if it cannot do so here. But N5HYG's failure to ask for money—*because it chose to split its claims*—is not Hygea's fault. The relevant question for claim preclusion is whether N5HYG *could have* brought a cause of action for breach of contract or misrepresentation in the Receivership Action? It could have, but chose not to.

39. N5HYG's final defensive argument is that forcing stockholders who band together for purposes of standing to seek a receiver to bring all potential damages claims would lead to unwieldy litigation. This is not a cognizable defense, and N5HYG does not cite to any authority for the proposition that "unwieldy" litigation is a defense to claim preclusion. Also, what N5HYG proposes cuts directly against the doctrine of claim preclusion, which proposes that litigants must bring all

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

claims that *arise from the same nucleus of operative facts* in the same action or face dismissal of the later action. Its argument is also in direct tension with Nevada's liberal joinder rules. *See* N.R.C.P. 18(a) & (b).

ORDER

Based on the foregoing findings of fact and conclusions of law, the Court hereby ORDERS as follows:

1. The Court's May 8, 2019, Findings of Fact, Conclusions of Law, and Order regarding claim preclusion is VACATED in its entirety.

2. Hygea's Motion for Reconsideration, Clarification, and alternatively, a Stay is GRANTED, in part, consistent with the foregoing findings of facts and conclusions of law, and DENIED, in part, as moot to the extent Hygea alternatively asked for a stay.

3. The Amended Complaint is DISMISSED WITH PREJUDICE on the basis of claim preclusion.

4. Any second amended complaint filed by N5HYG and/or Nevada 5, Inc., must, therefore, be based on a different nucleus of operative facts from that presented in the Amended Complaint.

Dated this 27 day of NOV., 2019.

Nancy L. Allf

HONORABLE NANCY L. ALLF
DISTRICT COURT JUDGE

TD

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

Submitted by:

BALLARD SPAHR LLP

By: _____

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

Julian W. Friedman
(admitted pro hac vice)
New York Registration No. 1110220
1675 Broadway, 19th Floor
New York, New York 10019

Attorneys for Defendants Hygea Holdings Corp., Manuel Iglesias, and Edward Moffly

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

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IN THE CIRCUIT COURT OF THE
ELEVENTH JUDICIAL CIRCUIT IN AND
FOR MIAMI-DADE COUNTY, FLORIDA

COMPLEX BUSINESS LITIGATION
DIVISION

Case No. 19-014926 CA 44

NEVADA 5, INC., a Nevada corporation,

Plaintiff,

v.

DANIEL T. MCGOWAN; FRANK KELLY; MARTHA MAIRENA CASTILLO; LACY LOAR; RICHARD WILLIAMS, ESQ.; GLENN MARRICHI; KEITH COLLINS, M.D.; JACK MANN, M.D.; MARC G. SUSSMAN, AS PERSONAL REPRESENTATIVE OF THE ESTATE OF HOWARD SUSSMAN, M.D.; JOSEPH CAMPANELLA; CARL ROSENKRANTZ; RAY GONZALEZ; HYGEA HEALTH HOLDINGS, INC.; and BRIDGING FINANCE INC.,

Defendants.
_____/

SECOND AMENDED COMPLAINT AND JURY DEMAND

Plaintiff, Nevada 5, Inc. ("Nevada 5"), sues Defendants, Daniel T. McGowan, Frank Kelly, Martha Mairena Castillo, Lacy Loar, Richard Williams, Esq., Glenn Marrichi, Keith Collins, M.D., Jack Mann, M.D., the Estate of Howard Sussman, M.D., Joseph Campanella, Carl Rosenkrantz, and Ray Gonzalez (the "Individual Defendants"), Hygea Health Holdings, Inc. ("Hygea Health"), and Bridging Finance Inc. ("Bridging Finance") and alleges:[1]

[1] This is the Second Amended Complaint as it relates to the Individual Defendants. It is the First Amended Complaint as it relates to Hygea Health and Bridging Finance, who were not parties to the original Complaint.

THE PARTIES

1. Nevada 5 brings this action against the Individual Defendants for, among other things, fraud, unjust enrichment, disgorgement and violations of Florida's securities laws for inducing it to pay $30 million on or about October 5, 2016 for the purchase of shares of stock in non-party Hygea Holdings Corp., Inc. ("Hygea"), which shares were worth only a fraction of that amount.

2. Nevada 5 brings this action against Hygea Health for, among other things, unjust enrichment, aiding and abetting a fraud, and receiving a fraudulent transfer of a portion of the $30 million paid by Nevada 5 to Hygea.[2]

3. Nevada 5 brings this action against Bridging Finance for, among other things, unjust enrichment, aiding and abetting a fraud, and receiving a fraudulent transfer of a portion of the $30 million paid by Nevada 5 to Hygea.

4. Hygea is a Nevada corporation with its principal place of business in Miami, Florida. It purports to be engaged in the business of acquiring and managing physician practices and similar medical providers.

5. Nevada 5 is a corporation organized under the laws of the State of Nevada.

6. Non-party RIN Capital is a private investment firm that served as Nevada 5's authorized agent in connection with its $30 million payment to Hygea for the purchase of shares of stock in Hygea.

7. The Individual Defendants are current and former directors of Hygea.

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[2] Nevada 5 has not added new claims against Hygea Health in this Second Amended Complaint, and will not pursue its causes of action against Hygea Health during the automatic stay imposed by Hygea Health's pending bankruptcy proceeding in Delaware without leave of court.

8. Hygea Health is a Florida corporation with its principal place of business in Doral, Florida.

9. Bridging Finance is a Canadian corporation with its principal place of business in Toronto, Ontario, Canada. Based on information and belief, and as described further herein, Bridging Finance is a party to one or more agreements with Hygea, has loaned money to Hygea, has met and conducted business with Hygea in one or more of Hygea's Florida offices on multiple occasions, and has otherwise had continuous and systematic business contacts in Florida rendering it essentially at home in Florida.

10. Defendant Daniel T. McGowan is a citizen and resident of the State of New York. He is Co-Chairman of Hygea's Board of Directors (the "Board").

11. Defendant Frank Kelly was a citizen and resident of the State of Georgia. He was Vice Chairman of Hygea's Board and a member of its Audit Committee. Upon information and belief, he is deceased.

12. Defendant Martha Mairena Castillo is a citizen and resident of the State of Florida. She is the Chief Analytics Officer of Hygea, is a member of Hygea's Board, and was a member of its Steering Committee to prepare Hygea for "going public."

13. Defendant Lacy Loar ("Loar") is a citizen and resident of the State of Florida. She is a member of Hygea's Board.

14. Defendant Richard L. Williams, Esq. is a citizen and resident of the State of Florida. Upon information and belief, until approximately February 2018, he was the Chief Legal Officer ("CLO") of Hygea and a member of Hygea's Board.

15. Defendant Glenn Marrichi is a citizen and resident of the State of Georgia. He is a member of Hygea's Board and Audit Committee.

16. Defendant Stanton "Keith" Collins, M.D. is a citizen and resident of the State of Florida. Upon information and belief, as of approximately May 2018, Collins was named CEO of Hygea. Prior to that time, he served as a member of Hygea's Board.

17. Defendant Jack Mann, M.D., is a citizen and resident of the State of New York. He is a member of Hygea's Board.

18. Howard Sussman, M.D. ("Sussman"), who is deceased, was a citizen and resident of the State of Florida. He was, at all relevant times, a member of Hygea's Board. Marc G. Sussman has been appointed by Florida's Seventeenth Judicial Circuit Court Probate Division to be the Personal Representative of Sussman's estate and to administer his assets and liabilities.

19. Defendant Joseph Campanella is a citizen and resident of the State of California. He is a member of Hygea's Board.

20. Defendant Carl Rosenkrantz is a citizen and resident of the State of Florida. He is a member of Hygea's Board.

21. Defendant Ray Gonzalez is a citizen and resident of the State of Florida. He was formerly a member of Hygea's Board.

22. Non-Party Manuel Iglesias ("Iglesias") was the Chief Executive Officer of Hygea until approximately May 2018. Prior to that time and, based on information and belief, at least until February 2020, he was a member of Hygea's Board, and served as Co-Chairman of the Board for at least part of that time. Iglesias is, along with his family, one of the largest shareholders in Hygea.

23. Non-Party Edward Moffly ("Moffly") was the Chief Financial Officer of Hygea until departing at some point after Nevada 5's investment. Prior to that time and to the present, he was and is a member of Hygea's Board.

24. Iglesias was at all material times the CEO of Hygea Health.

25. Moffly was at all material times the CFO and Treasurer of Hygea Health.

26. Mairena Castillo was at all material times the Secretary of Hygea Health.

27. Loar was at all material times the Registered Agent of Hygea Health.

28. At all material times, Iglesias and Moffly acted with the knowledge, direction, consent, and authorization of the Individual Defendants and served as their agents.

29. Iglesias and Moffly accepted their role as the Individual Defendants' agents when they were negotiating and conferring with Nevada 5 with respect to the investment in Hygea.

30. The Individual Defendants were beneficiaries of Iglesias's and Moffly's actions, and had control over their actions.

31. The Individual Defendants acknowledged, accepted and ratified Iglesias and Moffly's representations and statements as being on their individual behalves.

32. The amount in controversy exceeds $15,000.00, and venue and jurisdiction are proper in this Court because the Defendants' unlawful actions occurred in Miami-Dade County, Florida.

ADDITIONAL JURISDICTIONAL ALLEGATIONS REGARDING BRIDGING FINANCE

33. Based on information and belief, Bridging Finance, as the Manager of one of its affiliate companies, Sprott Bridging Income Fund LP ("Sprott"), refinanced an existing loan to Hygea from Macquarie U.S. Trading LLC and Capital Southwest in the amount of approximately $70 million (the "Bridging Loan").

34. Based on information and belief, Bridging Finance exercised significant control over Sprott, including with respect to managing, servicing, and decision-making on the Bridging

Loan. At all material times, Sprott accepted its role, and acted as, Bridging Finance's agent in connection with the Bridging Loan.

35. Bridging marketed its $70 million Bridging Loan as originating in, or otherwise having a connection to, Florida, including by advertising the loan on its website. Bridging's website[3] boasts that "Bridging Finance . . . has completed over $185,000,000 in new commitments to mid-market companies throughout Canada and the United States."[4] A linked page of sample deals since Q4 2016 specifically advertises the Bridging Loan in Florida:

36. Bridging Finance, apparently in its capacity as Manager of the Bridging Loan, is currently listed in the Florida Secured Transaction Registry as a secured party in at least ten filings since 2016 for properties and assets in Doral, Florida, that are related to Hygea. Based on information and belief, prior to the Bridging Loan, Bridging Finance conducted due diligence in Florida, which included site visits to Hygea's offices in Florida, as well as other substantial communications with Hygea representatives in Florida.

37. Based on information and belief, Natasha Sharpe ("Ms. Sharpe") is Bridging Finance's Chief Investment Officer.

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[3] https://www.bridgingfinance.ca/bridging-finance-announces-recent-transactions/

[4] A May 26, 2017 news release on Bridging's website also mentions same commitment line "throughout Canada and the United States."

38. Ms. Sharpe has attended meetings regarding Hygea in Miami, Florida, on multiple occasions. For example:

a. On August 9, 2017, Ms. Sharpe attended a meeting of Hygea's Board at Hygea's offices in Miami. Nevada 5's representatives, including Chris Fowler of RIN Capital, were also in attendance. Among the topics discussed at that meeting were Hygea's inability to provide audited financial statements supporting the company's financial position that had previously been represented to Nevada 5.

b. On March 14, 2018, Nevada 5's agents, including Mr. Fowler, met with Ms. Sharpe, along with Michael Muchnicki (Hygea's former interim President), and Dr. Norman Gaylis (Hygea's former Chief Medical Officer) at a hotel in Miami. Once again, among the topics discussed at the meeting was Hygea's inability to provide audited financial statements supporting the company's financial position that had previously been represented to Nevada 5.

c. Based on information and belief, Ms. Sharpe also attended a September 20, 2017 meeting of Hygea's Board at Hygea's offices in Florida.

39. Among the topics discussed at the September 20, 2017 meeting was a September 15, 2017 letter, which she sent to Hygea's offices in Miami. Mr. Fowler also received a copy of that letter.

40. In her September 15, 2017 letter and otherwise in communications with Hygea, Ms. Sharpe gave, or purported to give, directives to Hygea and required various deliverables, ranging from staffing of Hygea's managerial personnel to Hygea's financial reporting and cash management.

41. Ms. Sharpe also purported to exert significant influence over Hygea's Board by, for example, advising the Board against appointing a particular candidate to an open position because she believed his firm was known as a consultant for failed or failing companies.

42. Ms. Sharpe also emailed Hygea's management in Florida, some of which were also sent to Mr. Fowler. Based on information and belief, such communications to Hygea have been frequent.

43. On March 12, 2018, Ms. Sharpe indicated in an email to Mr. Fowler that "Bridging is the senior secured lender to Hygea."

44. In a July 13, 2018 letter to Plaintiff's counsel representing Plaintiff dated July 13, 2018, Kevin Moreau claimed to be "in-house counsel to Bridging Finance, Inc.," and referred to Bridging as the "senior lender" to Hygea.

45. Concurrent with the filing of this Second Amended Complaint, Nevada 5 will be serving jurisdictional discovery upon Bridging Finance. Based on information and belief, such discovery will yield further support for this Court's personal jurisdiction over Bridging Finance.

GENERAL ALLEGATIONS

46. In 2016, the Individual Defendants, along with Iglesias, Moffly, and Hygea, undertook an offering of stock in Hygea. As Board members, each Individual Defendant was knowledgeable of, and involved in, the solicitation and procurement of new investments as part of the strategy for Hygea to purportedly "go public." Moreover, the magnitude of Plaintiff's payment to Hygea was such that the Individual Directors must have been closely involved in its procurement, if they were at all discharging their obligations as directors. This is especially the case in light of the undisclosed distress facing Hygea at the time the investment was procured.

47. The strategy to solicit and procure new investments in order for Hygea to purportedly "go public" was discussed, approved, initiated, and reaffirmed by the Individual Defendants at, among other times:

a. the October 14, 2015 Board meeting when the Individual Defendants—other than Gonzalez (who was not yet on the Board), as well as Williams, Mann, and Campanella (who were nominated to the Board at this meeting)—discussed the goal of raising short term and long term capital, as well as taking Hygea public "as early as possible next year";

b. the March 24, 2016 Board meeting, reconvened April 11, 2016, when the Individual Defendants discussed a capital raise and a public listing on the Toronto Stock Exchange, as well as the goal of "going public this year." The Board—including the Individual Defendants other than Gonzalez (who was not yet on the Board) and Kelly (who abstained)—unanimously approved a motion to "sanction management's negotiations for the Toronto opportunity" and further resolved to authorize Iglesias to "take, or cause to be taken, such further actions, and to execute and deliver or cause to be delivered, for and in the name and on behalf of the Company, all such agreements, instruments and documents as he, in his discretion, deems appropriate" in order to carry out the strategy;

c. the May 20, 2016 Board meeting when Defendant McGowan called for a motion that the Board was aware and in agreement that the company would continue to work on capital raises. The Board—including each of the Individual Defendants—unanimously approved the motion. The

Board also resolved that "the Board authorizes management to continue to seek opportunities for infusion of capital, through debt or equity" and further resolved to authorize Iglesias to "take, or cause to be taken, such further actions, and to execute and deliver or cause to be delivered, for and in the name and on behalf of the Company, all such agreements, instruments and documents as he, in his discretion, deems appropriate" in order to carry out the strategy.

48. In 2016, as part of the stock offering and "go public" strategy, Nevada 5's agent, RIN Capital, was approached about the possibility of Nevada 5 investing in Hygea.

49. On June 1, 2016, a RIN Capital representative, Dan Miller, discussed the potential investment with the Individual Defendants' authorized agents, Iglesias and Moffly. Carrying out the strategy the Individual Defendants had approved, Iglesias and Moffly represented to Miller that Hygea was planning on "going public."

50. On July 5, 2016, RIN Capital representatives Miller and Sean Darin had dinner in Miami with Iglesias, Moffly, and others to discuss Nevada 5's investment. The next day, July 6, 2016, they all met at Hygea's office in Miami, Florida.

The representations inducing Nevada 5 to invest $30 million in Hygea

51. At the July 6, 2016 meeting at Hygea's office, Iglesias and Moffly—on behalf of the Individual Defendants, and consistent with the strategy of which the Individual Defendants had knowledge and had approved—represented to Miller and Darin that:

a. Hygea was a successful business that was poised for continued growth and a public-exchange offering of its stock;

b. Hygea's business consisted of acquiring medical practices – primarily physicians' practices – in Florida and surrounding states;

c. by acquiring and consolidating such practices' non-medical operations, Hygea could realize value through economies of scale, improvements to billing and insurance coding practices, and more efficient business practices; and

d. such a system would allow the doctors to concentrate on their medical practices while Hygea ran and improved the medical providers' business operations.

52. At this meeting and in ensuing communications, Iglesias and Moffly—with the Individual Defendants' knowledge and authority, and again consistent with the strategy of which the Individual Defendants had knowledge and had approved—further represented that:

e. Hygea was profitable;

f. Hygea was growing;

g. Hygea's financial statements showed a high-performing company;

h. Hygea's audited financial statements showing the represented growth and success were being prepared and would be available soon; and

i. Hygea was poised for its RTO (Reverse Take Over) – by which it would be "going public".

53. Defendant Collins later admitted in ¶ 30 his Declaration to the Bankruptcy Court in which Hygea filed for Chapter 11 bankruptcy on February 19, 2020 that Hygea was "never profitable on a cash basis."

54. The explicit representations and implicit suggestions were that the planned RTO would be very remunerative to the shareholders.

55. Nevada 5 engaged in a due diligence process to decide whether to make the substantial capital investment that the Individual Defendants sought. On July 26, 2016, RIN Capital sent, on Nevada 5's behalf, a due diligence list to Iglesias and Moffly, requesting certain documentation and information.

56. In addition to making numerous representations as to Hygea's financial condition, the Individual Defendants, through their agents and representatives, provided documents and financial information on which they intended Nevada 5 would rely in making its decision as to whether to pay the $30 million to Hygea, including:

a. On or around June 27, 2016, Darin sent Fowler a Confidential Information Memorandum, or "CIM," apparently prepared on Hygea's behalf. Nevada 5's agents obtained the CIM through a "data room" to which Hygea and its agents gave RIN Capital access as part of the negotiations and in furtherance of the investment procurement and RTO strategy approved by the Individual Defendants. The CIM represented favorable financial performance numbers for 2014 and 2015, including a 2014 earnings before interest, tax, depreciation, and amortization ("EBITDA")[5] of $3,692,173 based on $52,897,640 in revenue, and a 2015 EBITDA of

[5] EBITDA is an accounting metric that gauges a company's overall financial performance and is particularly useful for determining how much cash a company generates before servicing its debts. By excluding variables such as taxes and interest, which can vary by company, it can be a useful metric of a business's "all else being equal" performance, and is therefore frequently emphasized in business valuation.

$28,003,053 based on $239,053,726 in revenue. It projected a 2016 EBITDA of $46,489,715.

b. On August 2, 2016, Moffly, in furtherance of the investment procurement and RTO strategy approved by the Individual Defendants, provided Miller with a final quarterly work file being used by third party financial analysts to perform a Quality of Earnings Report ("QoE") and a purported audit of Hygea's finances.

c. RIN Capital, on behalf of Nevada 5, was provided access to additional materials in the purported transaction "data room" on approximately August 9, 2016. This consisted of a computer folder, or set of computer folders, into which the Individual Defendants, Hygea or their agents would put financial documents, and from which Nevada 5's agents could and did access such documents. Between August 9 and the ensuing Stock Purchase Agreement, such accessing was ubiquitous. The financial representations set forth in the data room files were consistent with the financial representations set forth in detail here.

d. On September 14, 2016, in response to a request from Miller, Moffly, and in furtherance of the investment procurement and RTO strategy approved by the Individual Defendants, formally transmitted the CIM, containing information pertinent to a potential investment deal, including updated unaudited financials to Miller. It showed favorable financial performance figures for 2013 through 2015, including a 2014 EBITDA of $3.7 million

based on $52.9 million in revenue and a 2015 EBITDA of $27.1 million based on $239.1 in revenue.

e. On or about September 16, 2016, in furtherance of the investment procurement and RTO strategy approved by the Individual Defendants, Moffly sent to Miller a proposed deal structure, representing a purported valuation of Hygea at a very high level, and claimed that the company was actually ahead of the very favorable projections underlying the figure. It included, in part:

> We have an enterprise valuation done by Cormark in Canada (who you can speak with if you like) of approximately $560MM, which is based on a 10x multiple of 2016 (T9M+F3M – approximately) EBITDA of $56.9MM (BTW we are ahead of that number and are pushing for $60MM).
>
> Subtracting out all debt of a little less than $50MM we have a net value of $510MM.

f. In multiple emails on September 20-21, 2016, in furtherance of the investment procurement and RTO strategy approved by the Individual Defendants, Moffly stated to Miller that the final trial balances for June 30, 2016 would be finished in a matter of hours with the "consolidation done by [outside accountants] CLA (Clifton Larson Allen, LLP) [. . .] but assembled by our accounting team."

g. On September 20, 2016, in furtherance of the investment procurement and RTO strategy approved by the Individual Defendants, Moffly sent to Miller a copy of financials, containing balance sheets, income statements, and a statement of cash flows, purportedly done by CPA firm Rodriguez,

Trueba & Co. They once again showed a favorable financial performance over the 2013 through 2015 period, with a 2014 EBITDA of $3,692,172 and a 2015 EBITDA of $27,093,697.

h. In response to Nevada 5's questions about Hygea's physician compensation structure and agreement issues, employee benefits, possible claims for unpaid bonuses, and Hygea's potential compliance issues, Hygea's representatives, including Individual Defendant Williams, in furtherance of the investment procurement and RTO strategy approved by the Individual Defendants, addressed Nevada 5's questions via phone and email on or about September 21, 2016.

i. On or about September 22, 2016, Tom Herrmann, Hygea's Chief Compliance Officer, provided information via a telephone call with Nevada 5's agents to address Nevada 5's compliance questions. On September 22 and 25, 2016, Nevada 5's agents, including Miller, received emails from Defendant Williams, Hygea's corporate counsel, copying Iglesias and Moffly, providing information regarding existing physician contracts, incentive plans, bonus provisions, and other service agreements.

j. On or around September 27, 2016, in furtherance of the investment procurement and RTO strategy approved by the Individual Defendants, Moffly provided Miller with an Offering Memorandum with additional, and once again favorable, representations as to Hygea's financial situation, including a 2014 EBITDA of $3.7 million on $52,897,000 in revenue, and a 2015 EBITDA of $27.1 million on $246,129,000 in revenue.

k. On September 29, 2016, in furtherance of the investment procurement and RTO strategy approved by the Individual Defendants, Moffly sent to Miller an email attaching a capital table structure analysis. It indicated a favorable 2016 EBITDA, indicating on the spreadsheet, "Hygea 2016 FYE EBITDA – Low: $54.5 [million] – High: $65.0 [million] – Expected: $57.5 [million]," and claimed that "EBITDA Is (*sic*) ahead of schedule used 4 months ago with Cormark" when in fact the actual EBIDTA fell far short of all of the indicated figures; and reflected additional misleading valuation information as well. The email expressly indicated that the Board—i.e. the Individual Defendants—had approved the information.

l. On October 4, 2016, in furtherance of the investment procurement and RTO strategy approved by the Individual Defendants, Moffly sent to Miller a copy of Hygea's Quality of Earnings Report ("QoE") dated October 3, 2016, which was purportedly prepared by third party CLA, showing once again very favorable performance figures, including: a 2014 EBITDA of $4,542,000 on $52,897,000 in revenue, and a 2015 EBITDA of $20,449,000 million on $185,411,000 in revenue.

m. The October 3, 2016 QoE also showed for Hygea in the "trailing twelve months" from June 30, 2015 through June 30, 2016 continued healthy performance, with an adjusted EBITDA of $39,091,000 over that period on $291,276,000 in revenue.

n. On October 5, 2016, Iglesias and Moffly, in furtherance of the investment procurement and RTO strategy approved by the Individual Defendants,

provided to Miller and others a verification of Hygea's QoE at the following figures: a 2014 EBITDA of $4,542,000 on $52,897,000 in revenue, and a 2015 EBITDA of $20,449,000 based on $185,411,000 in revenue.

57. Taken together, Defendants' representations to Nevada 5 with respect to Hygea's financial performance were as follows, rounded to the nearest $100,000:

a. For 2014, between $3.7 and $4.5 million in EBITDA based on revenue of about $52.9 million.

b. For 2015, between $20 and $28 million in EBITDA based on revenue between $185 and $246 million.

c. For 2016, EBITDA between $46.5 and $65 million, with additional specifications that it was at least $56.9 million; that $54 million was the "low" amount; and that $57.5 million was "expected." These latter representations were made in September, after much of the year had already transpired; based on information and belief incorporated the QoE analysis for the first six months of 2016; and were supposedly based on ongoing monitoring, as shown by Moffly's indication that Hygea was "running ahead" of the figure underlying Cormark's valuation.

58. At no time during these communications did any Individual Defendant or anyone else inform any representative of Nevada 5 that the purported forthcoming "growth" of Hygea would actually come from new investors, as opposed to earnings, or from non-standard, non-GAAP (Generally Accepted Accounting Principles) accounting methods applied to new medical

practice acquisitions; or that the RTO would be impossible in light of Hygea's manifold deficiencies.

In reliance upon Defendants' representations, Nevada 5 pays Hygea $30 million

59. Nevada 5, in reliance upon the Individual Defendants' representations and omissions, paid $30 million to Hygea to purchase shares in Hygea. Nevada 5 paid this $30 million by way of an October 5, 2016 wire transfer to Hygea's lawyers'—Akerman LLP—trust account, as instructed.

60. Nevada 5 created N5HYG, LLC to hold the 23,437,500 purchased shares of Hygea's Common Stock, or 8.57% of the outstanding shares.

61. Each Individual Defendant approved Nevada 5's investment, and ratified the acts and representations of Moffly and Iglesias as their own.

62. At a meeting of Hygea's Board on October 4, 2016, each Individual Defendant officially voted to approve the $30 million stock purchase and authorize "the executive management" of Hygea to "negotiate, finalize, and execute agreements" for the purchase.

Nevada 5 discovers that the representations upon which it relied to make the $30 million investment were false

63. Nevada 5 discovered that the representations as to Hygea's financial value and performance upon which Nevada 5 relied to make its $30 million investment were false.

64. For example, Nevada 5 learned that the RTO process never happened. Instead, because of the mismanagement of financial records, failure to provide support for its financial statements, and/or its intentional misrepresentations in various iterations of its financial statements, the Individual Defendants elected not to complete the audited 2014, 2015 or 2016 financial statements, and also elected to not "go public" with the RTO.

65. At the time of Nevada 5's investment, the Individual Defendants either knew or should have known that a timely RTO was, given Hygea's financial distress, unlikely or impossible.

66. The Individual Defendants have publicly held themselves out to be well-educated, sophisticated, and experienced in matters of business. For example:

a. Kelly attended Harvard Business School MBA program and had a B.S. in Accounting and Finance from Bentley University;

b. Mairena Castillo was described as having "[e]xtensive background in accounting, having served for nine years as an accountant prior to joining Hygea." She holds degrees in accounting and business administration;

c. Collins helped take an HMO public;

d. Loar upon information and belief obtained a Juris Doctor; and

e. Williams is an attorney.

67. Nevada 5 also discovered that, far from enjoying robust growth, Hygea was running out of cash; indeed, Defendant Collins later admitted that Hygea was never profitable on a cash basis and Hygea filed for bankruptcy. Upon information and belief, Hygea was and remains deeply indebted to numerous other creditors, incurring substantial interest on tens of millions of dollars of debt.

68. On or about June 29, 2017, Fowler learned that the Individual Defendants and their cohorts had begun to backtrack on their prior representations, purporting to disclose a "corrected" EBITDA figure for 2016, which was far less than what they previously claimed.

69. However, one outside consultant—FTI Consulting, Inc. ("FTI")–having reviewed Hygea's financials, reported to Fowler that Hygea's actual revenue was closer to $90 million than the $300 million figure that the Individual Defendants' and their cohorts' $50-$60 million

EBITDA representations were based upon. Therefore, it would be virtually impossible for its EBITDA to reach $50 or $60 million in EBITDA.

70. Further, for 2014, the supportable revenue number was roughly $32 million, or $17 million according to the more restrictive International Financial Reporting Standards ("IFRS"); for 2015, the supportable revenue figure was $92 million, or $73 million under IFRS. And, again, these were revenue figures, not EBITDA. To summarize, in rounded millions, the misrepresentations were nowhere close to the independent estimates of the actual performance:

	MISREPRESENTATIONS		**DIFFERENCE**	
Year	**Represented Revenue[6]**	**Represented EBITDA**	**Actual Est. Revenue**	**Overstated Revenue**
2014	$52.9	$3.7 - $4.5	$17 - $32	$35.9 - $20.9
2015	$185.4 - $246.1	$20.4 - $28	$73 - $92	$112.4 - $154.1
2016	$300	$46.5 - $65.0	$90	$210

71. FTI further reported that Hygea's financial performance figures for 2014 through 2016 "[were] not the same as the ones they gave" to Nevada 5 during the lead-up to its investment. FTI noted it would not "come up with bullshit for [the] auditors," who supposedly would review the financial information.

72. FTI concluded that the actual, supportable EBITDA was a fraction of that represented by the Individual Defendants.

73. In August 2017, FTI also explained that one reason for Hygea's QoE's blatant inaccuracy could have been because the Individual Defendants' agents imposed constraints on the earnings review or otherwise manipulated the process. For example, it appeared that one or

[6] All figures in millions.

more of the Individual Defendants' agents manipulated the EBITDA figures through enormous medical record account ("MRA") adjustments and by improperly accounting for medical practice acquisitions.

74. The Individual Defendants knew at the time of their representations that they were false. For example, they knew that the EBITDA figures they represented to Nevada 5 were also based upon an assumed additional $130 million influx that had not materialized, and never did materialize.

75. Upon information and belief, the EBITDA was tied to the bonus compensation rate of some of the Individual Defendants, such as Castillo and Williams.

76. The Individual Defendants continued to ratify their agents' actions by failing to correct the numerous misrepresentations and omissions. The Individual Defendants failed in this regard despite numerous in-person and electronic communications with Nevada 5's representatives, including Mr. Fowler, over the ensuing year and beyond. Those opportunities included, but were not limited to, the meeting of Hygea's Board which Nevada 5's representatives attended in August 2017, as well as a host of email and telephonic communications between Nevada 5's representatives and one or more of the Individual Defendants, including, for example, McGowan and Kelly.

77. After Nevada 5's investment, the Individual Defendants and/or their agents continued to misrepresent Hygea's value and engaged in fraudulent and grossly negligent conduct by, among other things, misrepresenting Hygea's revenue on financial statements by including already-realized revenue of an acquired medical practice before it was purchased by Hygea.

The fraudulent transfers to Hygea Health and Bridging Finance

78. Within months of Nevada 5's $30 million investment, one or more of the Individual Defendants and/or their agents transferred a total of over $13 million of the specific $30 million Nevada 5 paid to Hygea out of Hygea, and into an affiliated company, Hygea Health.

79. The transfers of portions of Nevada 5's $30 million payment into Hygea Health were done without Nevada 5's knowledge or consent, and were, upon information and belief, done for the purpose of hiding the funds from creditors, including Nevada 5. Based on information and belief, the transfers also occurred during a time in which Hygea had been sued or threatened with suit.[7]

80. The Individual Defendants further concealed the transfers by failing to notify Nevada 5 of the transfers. At no time during any of its meetings or communications with any of Nevada 5's representatives did the Individual Defendants inform Nevada 5 that Hygea Health had received any portion of the $30 million Nevada 5 paid to Hygea.

81. To the contrary, Hygea had previously represented that Nevada 5's investment had been allocated for other purposes, thereby fraudulently concealing the fraudulent transfer to Hygea Health.

82. Within months of Nevada 5's $30 million investment, one or more of the Individual Defendants and/or their agents also transferred a total of over $6.8 million of the specific $30 million Nevada 5 paid to Hygea out of Hygea, and into Bridging Finance.

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[7] Such suits include, but are not limited to, the following cases in Miami-Date County: *Steele, et al., v. Hygea Holdings Corp., et al.*; and *Leistner Group, LLC v. Hygea Health Holdings, Inc.*

83. The transfer of a portion of Nevada 5's $30 million payment into Bridging Finance was done without Nevada 5's knowledge or consent, and was, upon information and belief, done for the purpose of hiding the funds from creditors, including Nevada 5. Based on information and belief, the transfer also occurred during a time in which Hygea had been sued or threatened with suit.

84. Bridging Finance further concealed the transfers by failing to notify Nevada 5 of the transfers. Through multiple meetings and discussions with Nevada 5's representatives in and after approximately August 2017, Ms. Sharpe and Bridging Finance were fully aware of Nevada 5's concerns regarding its $30 million investment, and the financial representations made to induce that payment. Yet, at no time during any of its meetings or communications with any of Nevada 5's representatives did anyone at Bridging Finance inform Nevada 5 that Bridging Finance had received a portion of the $30 million Nevada 5 paid to Hygea.

85. Moreover, Hygea had previously represented that Nevada 5's investment had been allocated for other purposes, thereby fraudulently concealing the fraudulent transfer to Bridging Finance.

COUNT I
Florida Statutory Securities Fraud
(All the Individual Defendants)

86. Nevada 5 re-alleges Paragraphs 1-32 and 46-85.

87. This is a claim for securities fraud pursuant to the Florida Securities and Investor Protection Act, § 517.301, Florida Statutes, *et seq.* (the "Florida Act").

88. The $30 million investment by Nevada 5 in Hygea was a "security" as defined by the Florida Act.

89. Under the Florida Act:

It is unlawful and a violation of the provisions of this chapter for a person:

> (a) In connection with the rendering of any investment advice or in connection with the offer, sale, or purchase of any investment or security, including any security exempted under the provisions of s. 517.051 and including any security sold in a transaction exempted under the provisions of s. 517.061, directly or indirectly:
>
> > 1. To employ any device, scheme, or artifice to defraud;
> >
> > 2. To obtain money or property by means of any untrue statement of a material fact or any omission to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading; or
> >
> > 3. To engage in any transaction, practice, or course of business which operates or would operate as a fraud or deceit upon a person.
> >
> > ***
>
> (c) In any matter within the jurisdiction of the office, to knowingly and willfully falsify, conceal, or cover up, by any trick, scheme, or device, a material fact, make any false, fictitious, or fraudulent statement or representation, or make or use any false writing or document, knowing the same to contain any false, fictitious, or fraudulent statement or entry.

§ 517.301(1), Fla. Stat.

90. The Individual Defendants violated the Florida Act by, among other things: (i) employing a device, scheme or artifice to defraud; (ii) making at least one untrue statement of a material fact or omitting to state at least one material fact that would render the statements misleading in light of the circumstances under which they are made; (iii) engaging in an act, practice or course of business which operates or would operate as a fraud or deceit upon a

person; and (iv) knowingly and willfully falsifying, concealing, or covering up, by any trick, scheme, or device, a material fact, making any false, fictitious, or fraudulent statement or representation, or making or using any false writing or document, knowing the same to contain any false, fictitious, or fraudulent statement or entry.

91. These communications came from persons in Florida such as Williams, Iglesias, and Moffly, and some of them were directed to persons situated within Florida.

92. These false communications and representations, and omissions of material fact, were made either directly by the Individual Defendants, or by Moffly and Iglesias as authorized agents on behalf, and for the benefit, of the Individual Defendants.

93. Nevada 5 was damaged as a direct result of the Individual Defendants' misrepresentations and deceit.

94. The Florida Act provides for civil liability for these violations:

> Any person purchasing or selling a security in violation of s. 517.301, and every director, officer, partner, or agent of or for the purchaser or seller, if the director, officer, partner, or agent has personally participated or aided in making the sale or purchase, is jointly and severally liable to the person selling the security to or purchasing the security from such person in an action for rescission, if the plaintiff still owns the security, or for damages, if the plaintiff has sold the security.

§ 517.211, Fla. Stat.

95. Nevada 5 is a "person … purchasing the security" from the Individual Defendants, and each Individual Defendant constitutes either a person selling the security, or a director or officer of the seller who personally participated or aided in making the sale.

96. Pursuant to the Florida Act, each Individual Defendant is jointly and severally liable to Nevada 5 to the same extent as any other seller of the securities.

WHEREFORE, Nevada 5 requests that the Court enter judgment against the Individual Defendants for damages, including disgorgement, pre-judgment interest, and attorneys' fees and costs, or such equitable relief that it deems to be appropriate.

COUNT II
Florida Statutory Securities Fraud – Control Person Liability
(All the Individual Defendants)

97. Nevada 5 re-alleges Paragraphs 1-32 and 46-85.

98. This is a claim for securities fraud pursuant to the Florida Securities and Investor Protection Act, § 517.301, Florida Statutes, *et seq.* (the "Florida Act").

99. The Individual Defendants are liable as "control persons," in addition to their liability as set forth in Count I.

100. The Individual Defendants violated the Florida Act by, among other things: (i) employing a device, scheme or artifice to defraud; (ii) making at least one untrue statement of a material fact or omitting to state at least one material fact that would render the statements misleading in light of the circumstances under which they are made; (iii) engaging in an act, practice or course of business which operates or would operate as a fraud or deceit upon a person; and (iv) knowingly and willfully falsifying, concealing, or covering up, by any trick, scheme, or device, a material fact, making any false, fictitious, or fraudulent statement or representation, or making or using any false writing or document, knowing the same to contain any false, fictitious, or fraudulent statement or entry.

101. In addition to the Individual Defendants' violations of the Florida Act, Hygea, Moffly, and Iglesias violated the Florida Act by, among other things: (i) employing a device, scheme or artifice to defraud; (ii) making at least one untrue statement of a material fact or omitting to state at least one material fact that would render the statements misleading in light of

the circumstances under which they are made; (iii) engaging in an act, practice or course of business which operates or would operate as a fraud or deceit upon a person; and (iv) knowingly and willfully falsifying, concealing, or covering up, by any trick, scheme, or device, a material fact, making any false, fictitious, or fraudulent statement or representation, or making or using any false writing or document, knowing the same to contain any false, fictitious, or fraudulent statement or entry.

102. These communications came from persons in Florida, and some of them were directed to persons situated within Florida.

103. These false communications and representations, and omissions of material fact, were made either directly by the Individual Defendants, or by Moffly and Iglesias as authorized agents on behalf, and for the benefit, of the Individual Defendants.

104. Nevada 5 was damaged as a direct result of the Individual Defendants' misrepresentations and deceit.

105. Hygea, Iglesias, and Moffly were "sellers" of the shares in Hygea that Nevada 5 paid for.

106. The Individual Defendants each constituted a "director, officer, partner, or agent of or for the … seller" of the shares in Hygea that Nevada 5 paid for. § 517.211, Fla. Stat.

107. The Individual Defendants each "personally participated or aided in making the sale" of the Hygea shares that Nevada 5 paid for. § 517.211, Fla. Stat.

108. Pursuant to the Florida Act, each Individual Defendant is jointly and severally liable to Nevada 5 to the same extent as Hygea, Iglesias, Moffly, or any other seller of the securities.

WHEREFORE, Nevada 5 requests that the Court enter judgment against the Individual Defendants for damages, including disgorgement, pre-judgment interest, and attorneys' fees and costs, or such equitable relief that it deems to be appropriate.

COUNT III
Fraudulent Misrepresentation
(All the Individual Defendants)

109. Nevada 5 re-alleges Paragraphs 1-32 and 46-85.

110. This is a claim for fraudulent misrepresentation based on the Individual Defendants' false statements of material fact, directly and through its authorized agents, Moffly and Iglesias.

111. The Individual Defendants were knowledgeable of and involved in the solicitation and procurement of new investments as part of the strategy for Hygea to purportedly "go public."

112. The Individual Defendants approved the fraudulent financial figures in order to induce Nevada 5's $30 million payment as part of that strategy, including those indicating an expected EBITDA figure of $57.5 million, with a low of $54.5 million and a high of $65 million.

113. The Individual Defendants voted to approve the $30 million stock purchase and authorize "the executive management" of Hygea to "negotiate, finalize, and execute agreements" for the purchase.

114. The Individual Defendants knew or should have known that the representations made to Nevada 5 were false.

115. The Individual Defendants intended to induce Nevada 5 to act in reliance upon the misrepresentations, in particular, by investing $30 million into Hygea.

116. Nevada 5 reasonably relied upon the misrepresentations.

117. Nevada 5 was injured and damaged as a result of this reliance.

WHEREFORE, Nevada 5 requests that the Court enter judgment against the Individual Defendants for damages, including disgorgement, pre-judgment interest, or such equitable relief that it deems to be appropriate.

COUNT IV
Negligent Misrepresentation
(All the Individual Defendants)

118. Nevada 5 re-alleges Paragraphs 1-32 and 46-85.

119. This is a claim for negligent misrepresentation based on the Individual Defendants' statements of material fact that they may have believed to be true, but which were in fact false.

120. The Individual Defendants were knowledgeable of and involved in the solicitation and procurement of new investments as part of the strategy for Hygea to purportedly "go public."

121. The Individual Defendants approved the fraudulent financial figures inducing Nevada 5's $30 million payment as part of that strategy, including those indicating an expected EBITDA figure of $57.5 million, with a low of $54.5 million and a high of $65 million.

122. The Individual Defendants voted to approve the $30 million stock purchase and authorize "the executive management" of Hygea to "negotiate, finalize, and execute agreements" for the purchase.

123. The Individual Defendants were negligent in making the statements because they should have known that the statements were false.

124. The Individual Defendants intended to induce Nevada 5 to rely on the statements.

125. Nevada 5 justifiably relied upon the false statements.

126. Nevada 5 was injured and damaged as a result of the Individual Defendants' actions.

WHEREFORE, Nevada 5 requests that the Court enter judgment against the Individual Defendants for damages, including disgorgement, pre-judgment interest, or such equitable relief that it deems to be appropriate.

COUNT V
Fraudulent Omissions
(All the Individual Defendants)

127. Nevada 5 re-alleges Paragraphs 1-32 and 46-85.

128. This is a claim for fraudulent omissions based on the Individual Defendants' failure to disclose material facts.

129. The Individual Defendants had: (a) superior knowledge regarding Hygea's value and financial conditions, (b) knowledge which was not within the fair and reasonable reach of Nevada 5 and which Nevada 5 could not discover by the exercise of reasonable diligence, and/or (c) means of knowledge which were not open to both the Individual Defendants and Nevada 5 alike.

130. The Individual Defendants omitted material facts in their communications with Nevada 5 or caused to be omitted such facts in such communications, and the Individual Defendants' conduct was intentional, fraudulent, malicious or oppressive.

131. Nevada 5 relied upon the Individual Defendants to communicate or cause to be communicated to them the true state of facts to enable them to properly, fully, and fairly evaluate the bargain.

132. Nevada 5 was injured and damaged as a result of this reliance.

WHEREFORE, Nevada 5 requests that the Court enter judgment against the Individual Defendants for damages, including disgorgement, pre-judgment interest, or such equitable relief that it deems to be appropriate.

COUNT VI
Constructive Fraud
(All the Individual Defendants)

133. Nevada 5 re-alleges Paragraphs 1-32 and 46-85.

134. This is a claim for constructive fraud against the Individual Defendants.

135. Nevada 5 requested financial information in order to explore and understand the business relationship that the Individual Defendants sought and proposed. The Individual Defendants and their cohorts were in possession of, and approved, that information, and represented its accuracy, which Nevada 5 relied on in making the investment.

136. Nevada 5's relationship with the Individual Defendants was such that the Individual Defendants had, at minimum, a moral, fiduciary and professional duty to deal in good faith and, having undertaken to provide the requested information, to present accurate and complete information.

137. Nevada 5 also had a confidential, dependent relationship with the Individual Defendants because it was relying on their representations and knowledge of Hygea's financial status, thus creating a relationship of trust and confidence between the parties.

138. Further, by virtue of the lengthy negotiations of the parties, the claimed expertise of the Individual Defendants in owning and operating businesses like Hygea, and the Individual Defendants' represented and purported business model of Hygea, the parties had a special and confidential relationship whereby Nevada 5 reposed special confidence in the Individual Defendants.

139. Nevada 5 relied upon the Individual Defendants to provide truthful and accurate information regarding the business and affairs of Hygea so that they could properly evaluate the risks and benefits associated with making an equity investment in Hygea.

140. The Individual Defendants breached this special and confidential relationship by providing Nevada 5 with false and/or fraudulent financial documents, misrepresenting and/or omitting material information related to the financial status of Hygea, and the potential profitability of Hygea, or otherwise causing such provision or omission in order to induce Nevada 5 to invest in Hygea.

141. Nevada 5 sustained and suffered damages proximately caused by the Individual Defendants' actions.

WHEREFORE, Nevada 5 requests that the Court enter judgment against the Individual Defendants for damages, including disgorgement, pre-judgment interest, or such equitable relief that it deems to be appropriate.

COUNT VII
Unjust Enrichment
(Hygea Health)

142. Nevada 5 re-alleges Paragraphs 1-32 and 46-85.

143. This is a claim for unjust enrichment against Hygea Health.

144. Hygea Health accepted over $13 million of Nevada 5's funds, and unjustly benefitted from the funds.

145. Nevada 5 conferred a direct benefit on Hygea Health because Hygea Health received over $13 million of the specific $30 million paid by Nevada 5 to Hygea.

146. Hygea Health understood and accepted the benefit of this enrichment.

147. The circumstances are such that it would be inequitable for Hygea Health to retain the benefit received from Nevada 5 without paying the value thereof, particularly because Nevada 5's $30 million payment was fraudulently-induced and Hygea Health helped to conceal from Nevada 5 its receipt of a portion of that payment, and further because Hygea Health was

controlled by many of the same people as Hygea—including and Individual Defendants Castillo and Loar, as well as Moffly and Iglesias—each of whom knew of and participated in the fraudulent inducement.

148. Hygea Health, which has been unjustly enriched, should be required to account for and repay the amounts by which it has been unjustly enriched, together with its earnings thereupon.

WHEREFORE, Nevada 5 requests that the Court enter judgment against Hygea Health for damages, including disgorgement, pre-judgment interest, or such equitable relief that it deems to be appropriate.

COUNT VIII
Aiding and Abetting a Fraud
(Hygea Health)

149. Nevada 5 re-alleges Paragraphs 1-32 and 46-85.

150. Hygea Health knew of the fraud being committed by the Individual Defendants and their agents, particularly because Hygea Health was controlled by many of the same people as Hygea—including Individual Defendants Castillo and Loar, as well as Moffly and Iglesias—each of whom know of and participated in the fraudulent inducement.

151. Hygea Health aided and abetted the fraud by providing substantial assistance to advance the fraud's commission, particularly by helping to conceal from Nevada 5 its receipt of a portion of Nevada 5's $30 million payment.

152. Hygea Health's acceptance of more than $13 million in transferred funds proximately caused damage to Nevada 5.

WHEREFORE, Nevada 5 requests that the Court enter judgment against Hygea Health for damages, including disgorgement, pre-judgment interest, or such equitable relief that it deems to be appropriate.

COUNT IX
Violation of Florida's Uniform Fraudulent Transfer Act ("UFTA")
(Hygea Health)

153. Nevada 5 re-alleges Paragraphs 1--32 and 46-85.

154. This is a cause of action brought pursuant to Florida's UFTA, § 726.101 *et. seq.*, Fla. Stat.

155. Nevada 5 is a creditor of the Individual Defendants (as well as Hygea, Iglesias, and Moffly), and the Individual Defendants (as well as Hygea, Iglesias, and Moffly) are debtors, pursuant to § 726.102, Fla. Stat.

156. The multiple transfers totaling more than $13 million that were made and approved by the Individual Defendants to Hygea Health were made without receiving a reasonably equivalent value in exchange for the transfers.

157. Hygea Health is an insider because Hygea Health and Hygea shared some controlling members, including Individual Defendants Castillo and Loar, as well as Moffly and Iglesias.

158. The transfer occurred shortly before or shortly after a substantial debt was incurred because Hygea and Hygea Health incurred at least $52 million in debt less than two weeks before the last transfer.

159. Hygea and Hygea Health incurred another $6 million in debt less than four months later.

160. Prior to the transfers, Hygea had been sued and/or threatened with suit.

161. The transfers were concealed from, or otherwise not disclosed to, Nevada 5.

162. The over $13 million in transfers violates § 726.105(1) and (2) of the UFTA.

WHEREFORE, Nevada 5 requests that the Court enter judgment against Hygea Health that (i) avoids the transfers; (ii) provides a remedy against the funds transferred or other property of Hygea Health; (iii) enters an injunction or other equitable relief necessary to take charge of the funds that were fraudulently transferred.

COUNT X
Unjust Enrichment
(Bridging Finance)

163. Nevada 5 re-alleges Paragraphs 1-85.

164. This is a claim for unjust enrichment against Bridging Finance for accepting over $6.8 million of Nevada 5's funds.

165. Based on information and belief, Bridging has loaned in excess of $100 million to Hygea and/or Hygea Health. Bridging was privy to Hygea's and Hygea Health's financial records as part of its due diligence process leading up to the loans. Bridging also had access to Hygea's and Hygea Health's financial records as it serviced the loans. Ms. Sharpe, Bridging's agent, was an observer at Hygea's Board Meetings.

166. Bridging Finance unjustly benefitted from receiving over $6.8 million of the funds paid by Nevada 5.

167. Nevada 5 conferred a direct benefit on Bridging Finance because Bridging Finance received over $6.8 million of the specific $30 million paid by Nevada 5 to Hygea.

168. Bridging Finance understood, due to its position as "senior lender" with access to financial records of both companies, and accepted the benefit of this unjust enrichment.

169. The circumstances are such that it would be inequitable for Bridging Finance to retain the benefit received from Nevada 5 without paying the value thereof, particularly because Nevada 5's $30 million payment was fraudulently-induced and Bridging Finance helped to conceal from Nevada 5 its receipt of a portion of that payment.

170. Bridging Finance, which has been unjustly enriched, should be required to account for and repay the amounts by which it has been unjustly enriched, together with its earnings thereupon.

WHEREFORE, Nevada 5 requests that the Court enter judgment against Bridging Finance for damages, including disgorgement, pre-judgment interest, or such equitable relief that it deems to be appropriate.

COUNT XI
Aiding and Abetting a Fraud
(Bridging Finance)

171. Nevada 5 re-alleges Paragraphs 1-85.

172. Bridging Finance knew of the fraud being committed by the Individual Defendants and their agents, and aided and abetted the fraud by providing substantial assistance to advance the fraud's commission, particularly by helping to conceal from Nevada 5 its receipt of a portion of Nevada 5's $30 million payment.

173. Bridging Finance's acceptance of more than $6.8 million in transferred funds proximately caused damage to Nevada 5.

WHEREFORE, Nevada 5 requests that the Court enter judgment against Bridging Finance for damages, including disgorgement, pre-judgment interest, or such equitable relief that it deems to be appropriate.

COUNT XII
Violation of Florida's Uniform Fraudulent Transfer Act ("UFTA")
(Bridging Finance)

174. Nevada 5 re-alleges Paragraphs 1-85.

175. This is a cause of action brought pursuant to Florida's UFTA, § 726.101 *et. seq.*, Fla. Stat.

176. Nevada 5 is a creditor of the Individual Defendants (as well Hygea, Iglesias, and Moffly), and the Individual Defendants (as well as Hygea, Iglesias, and Moffly) are debtors, pursuant to § 726.102, Fla. Stat.

177. The transfer totaling more than $6.8 million that was made and approved by the Individual Defendants to Bridging Finance was made without receiving a reasonably equivalent value in exchange for the transfer.

178. Prior to the transfers, Hygea had been sued and/or threatened with suit.

179. The transfers were concealed from, or otherwise not disclosed to, Nevada 5.

180. The over $6.8 million transfer violates § 726.105(1) and (2) of the UFTA.

WHEREFORE, Nevada 5 requests that the Court enter judgment against Bridging Finance that (i) avoids the transfer; (ii) provides a remedy against the funds transferred or other property of Bridging Finance; (iii) enters an injunction or other equitable relief necessary to take charge of the funds that were fraudulently transferred.

JURY DEMAND

Nevada 5 demands a trial by jury as to all issues so triable.

DATE: March 2, 2020

/s/ Alan Rosenthal

Alan Rosenthal
Florida Bar No. 220833
arosenthal@carltonfields.com
Natalie J. Carlos
ncarlos@carltonfields.com
Florida Bar No. 0146269
Carlton Fields
100 S.E. Second Street, Suite 4200
Miami, FL 33131-2114
(305) 530-0050
and

Christopher D. Kaye
(admitted *pro hac vice*)
cdk@millerlawpc.com
The Miller Law Firm, P.C.
Suite 300
950 W. University Dr.
Rochester, MI 48307
(248) 841-2200

Attorneys for Plaintiff

CERTIFICATE OF SERVICE

I CERTIFY that a true and correct copy of the foregoing was served via ePortal to all counsel of record on March 2, 2020.

/s/ Alan Rosenthal

IN THE CIRCUIT COURT OF THE ELEVENTH JUDICIAL CIRCUIT IN AND FOR MIAMI-DADE COUNTY, FLORIDA

COMPLEX BUSINESS LITIGATION DIVISION

Case No. 19-014926 CA 44

NEVADA 5, INC., a Nevada corporation,

Plaintiff,

v.

DANIEL T. MCGOWAN; FRANK KELLY; MARTHA MAIRENA CASTILLO; LACY LOAR; RICHARD WILLIAMS, ESQ.; GLENN MARRICHI;KEITH COLLINS, M.D.; JACK MANN, M.D.; MARC G. SUSSMAN, AS PERSONAL REPRESENTATIVE OF THE ESTATE OF HOWARD SUSSMAN,M.D.; JOSEPH CAMPANELLA; CARL ROSENKRANTZ; RAY GONZALEZ; HYGEA HEALTH HOLDINGS, INC.; and BRIDGING FINANCE INC.,

Defendants.

_____/

OMNIBUS ORDER ON DEFENDANTS' MOTION TO DISMISS PLAINTIFF'S SECOND AMENDED COMPLAINT

THIS CAUSE came before the Court on Defendants' Motions to Dismiss Plaintiff's Second Amended Complaint ("Complaint" or "Second Amended Complaint"). The Court having reviewed the submissions of the parties, having heard argument of counsel, and being otherwise fully advised in the premises, makes the following findings:

Statement of Facts

The Amended Complaint alleges that Plaintiff, Nevada 5, paid HYGEA Holdings Corp. $30 million as part of a stock purchase transaction. Nevada 5 chose to create an entity, N5HYG,

to purchase the shares and to enter into a Stock Purchase Agreement ("SPA") with HYGEA Holdings for the purchase of the shares. HYGEA Holding Corp., the entity that actually sold the shares to N5HYG and who received the $30 million dollars, is not a named defendant in this Complaint. Although Plaintiff, Nevada 5, provided the money for the purchase of the shares, non-party N5HYG was the entity that actually purchased the shares through the SPA and was the entity that actually entered into the Stock Purchase Agreement and actually owns the stock. Even though Nevada 5 was not the entity that actually purchased the common stock shares, it asserts that during the course of the stock purchase negotiations, Defendants allegedly made two sets of misrepresentations. One about HYGEA'S financial performance and the other about the intention to take HYGEA public via a reverse take-over that never occurred. Nevada 5 alleges it is the real party in interest because it was fraudulently induced to pay--and did pay-- $30 million to purchase securities under false pretenses. The Defendants have each moved to dismiss the Plaintiff's Complaint alleging, among other things, that the Plaintiff did not purchase the shares, does not own the shares and is not the proper party to sue based upon the alleged misrepresentations that led to the purchase of the shares.

Legal Standard

In considering a motion to dismiss, the Court must generally limit itself to the four corners of plaintiffs' complaint, treat as true all of plaintiffs' allegations, and draw all inferences in plaintiffs' favor. *Del Pino-Allen v. Santelises*, 240 So. 3d 89, 91 (Fla. 3d DCA 2018); *Kendall S. Med. Ctr., Inc. v. Consol. Ins. Nation, Inc.*, 219 So. 3d 185, 188 (Fla. 3d DCA 2017); *Williams Island Ventures, LLC v. de la Mora*, 246 So. 3d 471, 475 (Fla. 3d DCA 2018); *Minor v. Brunetti*, 43 So. 3d 178, 179 (Fla. 3d DCA 2010). However, the Plaintiff should not be permitted to limit the review of the Court by simply not attaching a document that is integral to the allegations in the Complaint and that has been referred to in the Complaint. *Steiner Transocean ltd., v. Efremova*,

109 So. 3d 871, 873 (Fla. 3DCA 2013). *See also, Cortec Industries Inc., v. Sum Holdings LP*, 949 F. 2d 42, 44 (2d Cir. 1991) ("Here in drafting their complaint, Plaintiff relied upon documents transmitted to them by defendants though they neglected to attached these papers to, or incorporate them by reference to the complaint. When the defendant made a rule 12(b)(6) motion to dismiss utilizing the same documents, plaintiff insisted the district court not consider them, but was instead required to limit its inquiry regarding the complaint's viability to its four corners. Plaintiffs failure to plead matters which as pleaders they had notice and which was integral to their claim, and they apparently most wanted to avoid—may not serve as a means of forstalling the court's decision on the motion".)

The Plaintiff argues that the Defendants rely on the SPA that was referenced in and attached to the original complaint. Plaintiff further argues that the SPA is neither cited in nor attached to the Second Amended Complaint and therefore cannot be considered by the Court because such matters are outside the four corners of the Complaint. However, the Defendant(s) attached the SPA to its motion to dismiss. It is a finding of this Court that the SPA is integral to the claims outlined in the Complaint and thus may properly be considered on a motion to dismiss as the Complaint refers to the SPA and impliedly incorporated by referenced its terms. *See Veal v. Voyager Prop. & Cas. Ins. Co.*, 51 So. 3d 1246, 1249–50 (Fla. 2d DCA 2011) ("However, in this case, the complaint refers to the settlement agreement. ... Accordingly, since the complaint impliedly incorporates the terms of the agreement by reference, the trial court was entitled to review the terms of that agreement to determine the nature of the claim being alleged.")

The Amended Complaint essentially argues that but for the alleged fraudulent misrepresentations that the Plaintiff relied upon, it would never had transferred the $30 million that was used by N5HYG to purchase the shares. The shares were purchased through the SPA that the Plaintiff is attempting to avoid. The Plaintiff cannot act as if the SPA that facilitated the transfer

of the money in exchange for the shares does not exist. The Plaintiff knew about the SPA document, made reference to it in the original complaint, and attached it to the original complaint. The Plaintiff drafted its Second Amended Complaint to avoid making reference to the SPA document relied upon in the original complaint solely to avoid dismissal. Our system of justice must not be reduced to strategically crafted complaints drafted to avoid making reference to a document to avoid dismissal.

The Plaintiff asserts to satisfy the requirements of standing, it must show that a case and controversy exists between the Plaintiff and Defendants, and that such a case and controversy continues from the commencement to the conclusion of the litigation. *Ferreiro v. Phila. Indem. Ins. Co.* 928 So. 2d 374, 377 (Fla. 3DCA 2006). To this end, Plaintiff argues that it, after relying on alleged false representations from Defendants, invested $30 million in HYGEA. Plaintiff argues that it is not asserting a claim based upon a breach of the SPA on behalf of N5HYG, it is asserting claims based on its $30 million investment based upon false pretenses. Plaintiff suggest that the fact that it paid $30 million for the shares is the relevant inquiry in regard to standing. This Court disagrees. It is true that the Plaintiff transferred the money to HYGEA. However, Plaintiff created a separate entity to actually purchase, own and hold the shares pursuant to a SPA. Therefore, this Court concludes that Plaintiff, Nevada 5, does not have standing to maintain this action, which is based entirely upon a purportedly fraudulently induced purchase of HYGEA holding stock by Nevada 5's subsidiary, N5HYG. A subsidiary is a separate legal entity from the parent company. It was the subsidiary who agreed to purchase HYGEA common stock for $30 million under specified conditions. Those specified conditions were outlined in a SPA signed by HYGEA and N5HYG. It is N5HYG not Nevada 5 who is the proper party to request adjudication of the issues identified in the Second Amended Complaint.

Having established that N5HYG is the party with standing to bring this action, the Court will now briefly discuss the SPA. The integration clause in the "SPA" defeats Nevada 5's claims for fraudulent inducement. The Plaintiff cannot recover in fraud for alleged oral misrepresentations that are adequately covered or expressly contradicted in a later written contract. In the instant case, the alleged misrepresentations consist of alleged statements about HYGEA Holdings earnings and other aspects of HYGEA's financial conditions. Yet, the "SPA" contains a specific set of representations and warranties under the heading "Financial Matters" in which HYGEA Holdings expressly represented the truth and accuracy of its financial statements, balance sheets and earnings reports. Because the alleged misrepresentations claimed by Nevada 5 concern the precise topic of express representations and warranties in the "SPA", the "SPA's", integration clause bars Nevada 5's claims arising from these alleged misrepresentations. This is because the contract fully addressed the alleged representations that allegedly caused the fraudulent inducement.

Additionally, this Court finds that non-purchaser Nevada 5does not have standing to sue under section 517.211, Fla. Stat. Nevada 5's position that it, as the parent company that created the subsidiary to purchase and hold the shares—has standing to sue pursuant to 517.211 is unpersuasive. Nevada 5's attempt to analogize Federal Rule 10(b)(5) and section 517.211 is unsustainable. See *EF Hutton & Co., Inc. v. Rousseff*, 537 So. 2d 978, (1989). ("These separate bodies of federal and state law are vastly different. Rule 10b-5 is wide-ranging, covering a broad spectrum of fraud. It applies to any person who is deceitful in connection with the purchase or sale of securities. It requires no privity between buyer and seller. The Florida statutes, on the other hand, are far more restrictive. "Because section 517.211 contains an express civil liability provision, Florida courts need fashion no court-made civil right. They need only follow the clear language of the statute. Section 517.211 says that if a seller (or buyer) is untruthful in a sale, the buyer (or seller) can rescind the transaction

and get his money back. This provision applies to a far narrower group of activities than does rule 10b-5. Buyer/seller privity is required." In the instant case, the buyer under 517.211, was N5HYG and the seller was HYGEA. Nevada 5 was not in privity with anyone concerning the purchase of the securities. Based upon the above, it is

ORDERED AND ADJUDGED the Defendants' motion to dismiss based upon Plaintiff's lack of standing is granted with prejudice. Additionally, the "SPA" merger and integration clause would bar Plaintiff's fraudulent inducement claims.

DONE AND ORDERED in Chambers at Miami-Dade County, Florida, on 12/09/20.

WILLIAM THOMAS
CIRCUIT COURT JUDGE

FINAL ORDERS AS TO ALL PARTIES
SRS DISPOSITION NUMBER 12
THE COURT DISMISSES THIS CASE AGAINST ANY PARTY NOT LISTED IN THIS FINAL ORDER OR PREVIOUS ORDER(S). THIS CASE IS CLOSED AS TO ALL PARTIES.
Judge's Initials WT

The parties served with this Order are indicated in the accompanying 11th Circuit email confirmation which includes all emails provided by the submitter. The movant shall IMMEDIATELY serve a true and correct copy of this Order, by mail, facsimile, email or hand-delivery, to all parties/counsel of record for whom service is not indicated by the accompanying 11th Circuit confirmation, and file proof of service with the Clerk of Court.

Signed original order sent electronically to the Clerk of Courts for filing in the Court file.

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

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

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

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

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

"Indirect Owners" is defined in Section 4.5.1.

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

"IRS" means the Internal Revenue Service.

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

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

"Litigation Conditions" is defined in Section 7.6.2.

"Losses" is defined in Section 7.1.

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

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

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

"Most Recent Financials" is defined in Section 4.6.1.

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

"Party" is defined in the Preamble.

"Payment Date" is defined in Section 6.3.

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

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

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

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

"Physician Owner" is defined in Section 4.5.1.

"Plan" is defined in Section 4.17.1.

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

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

"Pro Rata Share" is defined in Section 7.4.2.

"Put Notice" is defined in Section 6.3.

"Put Option" is defined in Section 6.3.

"Put Price" is defined in Section 6.3.

"Real Property" is defined in Section 4.12.

"Real Property Leases" is defined in Section 4.12.

"Reimbursed Transaction Expenses" is defined in Section 6.2.

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

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

"SEC" is defined in Section 4.26.

"SEC Documents" is defined in Section 4.26.

"Seller" is defined in the Preamble.

"Seller Indemnification Obligations" is defined in Section 7.4.

"Seller Indemnified Parties" is defined in Section 7.2.

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

"Seller Owners" is defined in Section 4.5.1.

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

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

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

"Subsidiary" is defined in the Recitals.

"Subsidiary Equity Interests" is defined in Section 4.5.2.

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

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

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

"Third Party Claim" is defined in Section 7.6.1.

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

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

"Trigger Event" is defined in Section 6.3.

"Yearly Financials" is defined in Section 4.6.1.

2. GENERAL RULES OF INTERPRETATION; SCHEDULES.

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

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

3. STOCK PURCHASE.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

4. REPRESENTATIONS AND WARRANTIES OF SELLER.

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

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

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

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

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

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

4.5. Capitalization; Subsidiaries.

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

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

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

4.6. Financial Matters.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

4.14. Legal Compliance; Illegal Payments; Permits.

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

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

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

4.15. Compliance with Healthcare Laws.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

4.17. Employee Benefit Plans.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

4.19. Contracts.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

4.21. Employees.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

5. REPRESENTATIONS AND WARRANTIES OF BUYER.

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

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

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

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

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

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

6. **COVENANTS**.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

7. INDEMNIFICATION.

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

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

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

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

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

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

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

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

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

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

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

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

7.4. Personal Guarantees of Seller Principals.

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

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

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

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

7.6. Third Party Claims.

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

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

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

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

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

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

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

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

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

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

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

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

8. **MISCELLANEOUS**.

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

If to Seller or either Seller Principal:

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

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

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

If to Buyer:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

8.11. Jurisdiction; Venue; Service of Process.

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

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

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

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

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

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

BUYER:

N5HYG LLC,
a Michigan limited liability company

By: _____
Name: Manoj Bhargava
Title: Manager

SELLER:

HYGEA HOLDINGS CORP.,
a Nevada corporation

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

SELLER PRINCIPALS:

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

_____
Manuel Iglesias, individually

_____
Edward Moffly, individually

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

BUYER:

N5HYG LLC,
a Michigan limited liability company

By: _____
Name: Manoj Bhargava
Title: Manager

SELLER:

HYGEA HOLDINGS CORP.,
a Nevada corporation

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

SELLER PRINCIPALS:

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

_____
Manuel Iglesias, individually

_____
Edward Moffly, individually

EXHIBIT A

List of Subsidiaries

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

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

Exhibit B

Pro Rata Share of Seller Principals

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

“Exhibit 35”

“Exhibit 35”

MJUD
KAPLAN COTTNER
KORY L. KAPLAN, ESQ.
Nevada Bar No. 13164
Email: kory@kaplancottner.com
KYLE P. COTTNER, ESQ.
Nevada Bar No. 12722
Email: kyle@kaplancottner.com
850 E. Bonneville Ave.
Las Vegas, Nevada 89101
Telephone: (702) 381-8888
Facsimile: (702) 832-5559
Attorneys for Defendants Manuel Iglesias and Edward Moffly

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, and DOES I through X, inclusive, and ROES I-XXX, inclusive, Defendants.	CASE NO. A-17-762664-B DEPT. XXVII **DEFENDANTS' PARTIAL MOTION FOR JUDGMENT ON THE PLEADINGS** **HEARING REQUESTED** Date of Hearing: Time of Hearing:

KAPLAN COTTNER
850 E. Bonneville Ave.
Las Vegas, Nevada 89101
Tel: (702) 381-8888 Fax: (702) 832-5559

Defendants, Manuel Iglesias ("Iglesias") and Edward Moffly ("Moffly," collectively with Iglesias, the "Defendants"), by and through their attorneys, Kory L. Kaplan, Esq. and Kyle P. Cottner, Esq., of the law firm of Kaplan Cottner, hereby file this Motion for Judgment on the Pleadings ("Motion").

This Motion is made and based on the papers and pleadings on file herein, the attached Memorandum of Points and Authorities, and any oral argument the Court may choose to entertain

. . .

. . .

. . .

at the time of the hearing.

Dated this 22nd day of February, 2021.

KAPLAN COTTNER

By: /s/ Kory L. Kaplan
KORY L. KAPLAN, ESQ.
Nevada Bar No. 13164
KYLE P. COTTNER, ESQ.
Nevada Bar No. 12722
850 E. Bonneville Ave.
Las Vegas, Nevada 89101
Attorneys for Defendants Manuel Iglesias and Edward Moffly

KAPLAN COTTNER
850 E. Bonneville Ave.
Las Vegas, Nevada 89101
Tel: (702) 381-8888 Fax: (702) 832-5559

MEMORANDUM OF POINTS AND AUTHORITIES

I.

INTRODUCTION

This case arises from Plaintiff N5HYG, LLC's ("N5HYG") purchase of stock in Hygea Holdings Corp. ("Hygea"). There is no dispute that the stock purchase agreement governing that purchase was between Hygea and N5HYG, and not Nevada 5, Inc. ("Nevada 5"); that the stock at issue was held at all times by N5HYG, and never by Nevada 5; and that N5HYG was the stockholder of record, and not Nevada 5. Plaintiffs admit as much in their operative complaint. Despite these admissions that Plaintiff Nevada 5 neither held the stock nor purchased the stock, *Nevada 5* alleges that *it* has standing to maintain claims arising from the stock purchase merely because it transferred the purchase monies to Hygea. ***Nevada 5, however, is issue precluded from maintaining this position***.

The issue of Nevada 5's standing to maintain claims based on N5HYG's stock purchase—has already been litigated and decided by the Florida Circuit Court ***against*** Nevada 5. In December 2020, the Florida Court ruled ***with prejudice*** that Nevada 5 lacks standing to bring any claims based on the stock transaction at issue. Accordingly, under the doctrine of issue preclusion, where "any issue that was actually and necessarily litigated in [case I] will be estopped from being

relitigated in [case II]," Nevada 5 is estopped from asserting in this action that it has standing to maintain the claims arising from the stock transaction. *Exec. Mgmt. v. Ticor Title Ins. Co.*, 114 Nev. 823, 835, 963 P.2d 465, 473 (1998) (internal quotations omitted) (brackets in original). Nevada 5's claims should be dismissed.

II.

STATEMENT OF FACTS

In 2016, Hygea and Plaintiff N5HYG entered into a stock purchase agreement (the "SPA").[1] Plaintiff Nevada 5 is not a party to the SPA. Indeed, pursuant to the SPA, Hygea agreed to sell 8.57% of its issued and outstanding shares to N5HYG, *not Nevada 5*, in exchange for $30 million. Among other things, the SPA contains an integration clause, which provides that the SPA "constitutes the entire agreement among the Parties with respect to the subject matter hereof and supersedes any and all prior discussions negotiations, proposal, undertakings, understandings, and agreements … none of which shall ever be used as evidence of the Parties' intent."

Following the stock purchase, N5HYG became disenchanted with Hygea's performance, and so it and its parent company, Nevada 5, sued. Plaintiffs originally brought this action against all of Hygea's former directors, which included not only current defendants Iglesias and Moffly, but also twelve other individuals. *See* Complaint and First Amended Complaint, on file herein. Plaintiffs alleged that the directors' fraudulent misrepresentations of Hygea's financial performance and intent to go public resulted in N5HYG's investment of $30 million for 8.57% of Hygea's outstanding shares and brought various claims for securities fraud, fraudulent inducement, and other fraud. *Id*. at ¶¶ 1, 24, 35.

Preliminary motion practice ensued, including motions to dismiss for failure to state a claim, for lack of personal jurisdiction, and for claim preclusion. Defendants will not repeat the entire history of those motions here, only their relevant outcomes as follows:

[1] The SPA is attached as Exhibit A to the Second Amended Complaint.

KAPLAN COTTNER
850 E. Bonneville Ave.
Las Vegas, Nevada 89101
Tel: (702) 381-8888 Fax: (702) 832-5559

- The Court dismissed all directors (other than Iglesias and Moffly) for lack of personal jurisdiction. *See* May 10, 2019 Findings of Fact, Conclusions of Law, and Order, on file herein.

- The Court dismissed all claims based on claim preclusion and ruled that Plaintiffs are barred from bringing further claims based on the same facts. *See* December 3, 2019 Findings of Fact, Conclusions of Law, and Order Granting Defendants' Motion for Reconsideration Re: Claim Preclusion, on file herein.[2]

Following these dismissals, there were effectively two cases: (1) the one here against Iglesias and Moffly and (2) a "sister" action in Florida that Plaintiffs initiated against the 12 directors dismissed from this case for lack of personal jurisdiction. The Florida Action, also brought by Nevada 5, was based on the same facts as this case: the directors' fraudulent misrepresentations of Hygea's financial performance and intent to go public resulted in an investment of $30 million for 8.57% of Hygea's outstanding shares. *See* **Exhibit A**, Florida Second Amended Complaint.[3]

The directors in the Florida case moved to dismiss that action, arguing that Nevada 5 lacks standing to bring any claims based on N5HYG's purchase of Hygea stock. The Florida Court agreed. On December 9, 2020, the Honorable Judge William Thomas dismissed Nevada 5's Florida Complaint in its entirety ***with prejudice,*** holding that Nevada 5 lacks standing to assert its claims based on the stock transaction, because N5HYG was the stockholder, not Nevada 5. *See* Omnibus Order on Defendants' Motion to Dismiss Plaintiff's Second Amended Complaint, a true and correct copy of which is attached hereto as **Exhibit B**.[4] The Florida Court additionally held that the integration clause in the Stock Purchase Agreement defeats Nevada 5's claims for "fraud for alleged oral misrepresentations that are adequately covered or expressly contradicted in a later written contract." *Id*. at p. 5.

The Florida Court's findings are more fully, in relevant part, as follows:

---

[2] Also attached to Defendants Iglesias and Moffly's January 4, 2021 Answer to Second Amended Complaint.

[3] Also attached to Defendants Iglesias and Moffly's January 4, 2021 Answer to Second Amended Complaint.

[4] Also attached to Defendants Iglesias and Moffly's January 4, 2021 Answer to Second Amended Complaint. The Court may also take judicial notice of this Omnibus Order.

KAPLAN COTTNER
850 E. Bonneville Ave.
Las Vegas, Nevada 89101
Tel: (702) 381-8888 Fax: (702) 832-5559

KAPLAN COTTNER
850 E. Bonneville Ave.
Las Vegas, Nevada 89101
Tel: (702) 381-8888 Fax: (702) 832-5559

> The Plaintiff asserts to satisfy the requirements of standing, it must show that a case and controversy exists between the Plaintiff and Defendants, and that such a case and controversy continues from the commencement to the conclusion of the litigation. *Ferreiro v. Phila. Indem. Ins. Co*. 928 So. 2d 374, 377 (Fla. 3DCA 2006). To this end, Plaintiff argues that it, after relying on alleged false representations from Defendants, invested $30 million in HYGEA. Plaintiff argues that it is not asserting a claim based upon a breach of the SPA on behalf of N5HYG, it is asserting claims based on its $30 million investment based upon false pretenses. Plaintiff suggest that the fact that it paid $30 million for the shares is the relevant inquiry in regard to standing. This Court disagrees. It is true that the Plaintiff transferred the money to HYGEA. However, Plaintiff created a separate entity to actually purchase, own and hold the shares pursuant to a SPA. Therefore, this Court concludes that Plaintiff, Nevada 5, does not have standing to maintain this action, which is based entirely upon a purportedly fraudulently induced purchase of HYGEA holding stock by Nevada 5's subsidiary, N5HYG. A subsidiary is a separate legal entity from the parent company. It was the subsidiary who agreed to purchase HYGEA common stock for $30 million under specified conditions. Those specified conditions were outlined in a SPA signed by HYGEA and N5HYG. It is N5HYG not Nevada 5 who is the proper party to request adjudication of the issues identified in the Second Amended Complaint.
>
> Having established that N5HYG is the party with standing to bring this action, the Court will now briefly discuss the SPA. The integration clause in the "SPA" defeats Nevada 5's claims for fraudulent inducement. The Plaintiff cannot recover in fraud for alleged oral misrepresentations that are adequately covered or expressly contradicted in a later written contract. In the instant case, the alleged misrepresentations consist of alleged statements about HYGEA Holdings earnings and other aspects of HYGEA's financial conditions. Yet, the "SPA" contains a specific set of representations and warranties under the heading "Financial Matters" in which HYGEA Holdings expressly represented the truth and accuracy of its financial statements, balance sheets and earnings reports. Because the alleged misrepresentations claimed by Nevada 5 concern the precise topic of express representations and warranties in the "SPA", the "SPA's", integration clause bars Nevada 5's claims arising from these alleged misrepresentations. This is because the contract fully addressed the alleged representations that allegedly caused the fraudulent inducement.
>
> …
>
> **ORDERED AND ADJUDGED** the Defendants' motion to dismiss based upon Plaintiff's lack of standing is granted with prejudice. Additionally, the "SPA" merger and integration clause would bar Plaintiff's fraudulent inducement claims.

Id. at pp. 3-6.

As set forth further below, the Florida Court's rulings against Nevada 5 preclude Nevada 5 from asserting in this action that it has standing to maintain claims arising from the stock

transaction to which N5HYG, not Nevada 5, was a party, and even if Nevada 5 had standing, the SPA's integration clause defeats its fraud-based claims. This is fatal to Nevada 5's case, and it and its claims should be dismissed from this case in their entirety.

III.

LEGAL ARGUMENT

A. Legal Standard for Judgment on the Pleadings.

In considering a motion for judgment on the pleadings, nothing outside the complaint and any defenses in the answer thereto may be taken into consideration. S*ee Lovelock Lands v. Lovelock Land & Dev. Co*., 54 Nev. 1, 7 P.2d 593, 594 (1932) ("The settled rule is that upon a motion for judgment on the pleadings nothing dehors the complaint nor any defense thereto set up in the answer can be taken into account in disposing of such motion.").

> After the pleadings are closed but within such time as not to delay the trial, any party may move for judgment on the pleadings. If, on a motion for judgment on the pleadings, matters outside the pleadings are presented to and not excluded by the court, the motion shall be treated as one for summary judgment and disposed of as provided in Rule 56, and all parties shall be given reasonable opportunity to present all material made pertinent to such a motion by Rule 56.

NRCP 12(c).

Judicial notice is appropriate in the motion for judgment on the pleadings context: "[I]n evaluating a motion for judgment on the pleadings ... [a] court may 'take judicial notice of 'proceedings' in other courts, both within and outside of the federal judicial system, if the proceedings have a direct relation to the matters at issue."' *Black & Decker, Inc. v. Robert Bosch Tool Corp*., 500 F. Supp. 2d 864, 867 (N.D. Ill. 2007) (granting competitor's motion for judgment on the pleadings) (quoting *United States v. Hope*, 906 F.2d 254 (7th Cir. 1990)); *see also United States v. 14.02 Acres of Land More or Less in Fresno Cty*., 547 F.3d 943, 955 (9th Cir. 2008) (holding district court did not abuse its discretion in considering public records outside of the pleadings in ruling on a motion for judgment on the pleadings).

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. . .

KAPLAN COTTNER
850 E. Bonneville Ave.
Las Vegas, Nevada 89101
Tel: (702) 381-8888 Fax: (702) 832-5559

B. Nevada's Doctrine of Issue Preclusion Dictates that Judgment be Entered in Defendants' Favor on All of Nevada 5's Claims.

Issue preclusion, also called collateral estoppel, prevents parties from re-litigating an issue that has already been decided against that party by another court. *Thompson v. City of N. Las Vegas*, 108 Nev. 435, 439–40, 833 P.2d 1132, 1134–35 (1992). The following factors are necessary for application of issue preclusion:

(1) the issue decided in the prior litigation must be identical to the issue presented in the current action;

(2) the initial ruling must have been on the merits and have become final;

(3) the party against whom the judgment is asserted must have been a party or in privity with a party to the prior litigation; and

(4) the issue was actually and necessarily litigated.

Five Star Capital Corp v. Ruby, 194 P.3d 709, 713 (Nev. 2008). As discussed below, these factors are all met with respect to the issue of Nevada 5's standing and/or ability to bring fraud-based claims.

i. The issue of Nevada 5's standing to maintain its claims has been raised in both this case and the Florida case.

First, the Court must address whether "the issue decided in the prior litigation [is] identical to the issue presented in the current action." It is.

Standing is "a threshold question" required in every case that determines whether the court may even entertain the proceeding. *Veal v. Am. Home Mortg. Servicing, Inc. (In re Veal)*, 450 B.R. 897, 906 (9th Cir. BAP 2011) (quoting *Warth v. Seldin*, 422 U.S. 490, 499, 95 S. Ct. 2197, 2205, 45 L. Ed. 2d 343 (1975)). For a court to have jurisdiction over the case, "the party bringing the suit must establish standing." *Elk Grove Unified Sch. Dist. V. Newdow*, 542 U.S. 1, 11 (2004), *abrogated in part on other grounds in Lexmark Int'l, Inc. v. Static Control Components, Inc.*, 134 S.Ct. 1377, 1387 (2014).

In the Florida Action, the Court there held that "Nevada 5 does not have standing to maintain this action, which is based entirely on a purportedly fraudulently induced purchase of

KAPLAN COTTNER
850 E. Bonneville Ave.
Las Vegas, Nevada 89101
Tel: (702) 381-8888 Fax: (702) 832-5559

Hygea Holdings stock by Nevada 5's subsidiary, N5HYG." Exhibit B, p. 4. The Court also held that Nevada 5 is further barred from bringing its fraud claims based on N5HYG's stock purchase because:

> The integration clause in the "SPA" defeats Nevada 5's claims for fraudulent inducement. The Plaintiff cannot recover in fraud for alleged oral misrepresentations that are adequately covered or expressly contradicted in a later written contract. In the instant case, the alleged misrepresentations consist of alleged statements about HYGEA Holdings earnings and other aspects of HYGEA's financial conditions. Yet, the "SPA" contains a specific set of representations and warranties under the heading "Financial Matters" in which HYGEA Holdings expressly represented the truth and accuracy of its financial statements, balance sheets and earnings reports. Because the alleged misrepresentations claimed by Nevada 5 concern the precise topic of express representations and warranties in the "SPA", the "SPA's", integration clause bars Nevada 5's claims arising from these alleged misrepresentations. This is because the contract fully addressed the alleged representations that allegedly caused the fraudulent inducement.

Id. at 5.

The Florida Court, in its Omnibus Order, held that Nevada 5 lacked standing to maintain any claims arising out of N5HYG's stock purchase, and also that any claims based on fraud are barred by the stock purchase agreement's integration clause. Iglesias and Moffly raise the same issues of standing and integration here, based on the exact same stock transaction between Hygea and N5HYG and the exact same stock purchase agreement. The Florida Court's decision on these issues precludes Nevada 5 from relitigating the issues in this case.

ii. The Florida Order is a final ruling on the merits.

Second, the Court must decide whether the Florida Order, issued in response to the defendants' Rule 12(b) motions, was "on the merits and [has] become final." It was.

Nevada follows the Restatement in defining "final judgment," which recognizes that a judgment is final if the court intended to definitively resolve an issue litigated between parties. *Kirsch v. Traber*, 134 Nev. 163, 167, 414 P.3d 818, 822 (2018); *Restatement (Second) of Judgments* § 13, cmt g. (Am. Law Inst. 1982) ("The test of finality ... is whether the conclusion in question is procedurally definite and not whether the court might have had doubts in reaching the decision.") The Florida Order was *with prejudice*, indicating that the issues decided therein,

KAPLAN COTTNER
850 E. Bonneville Ave.
Las Vegas, Nevada 89101
Tel: (702) 381-8888 Fax: (702) 832-5559

including that of standing and integration, was final. Indeed, the face of the Florida Order even states that it is a final judgment.

The Florida Order was also on the merits, in response to a Rule 12(b)(6) motion. *See* Exhibit B. As NRCP 41(b) states "Unless the court in its order for dismissal otherwise specifies, a dismissal under this subdivision and *any dismissal not provided for in this rule*, other than a dismissal for lack of jurisdiction, for improper venue, or for failure to join a party under Rule 19, *operates as an adjudication upon the merits*." *Id*. (emphasis added.) Rule 41(b)'s mandate was echoed in *Zalk-Josephs Co. v. Wells-Cargo*, 81 Nev. 163, 169 (1965), in which the Supreme Court held that a dismissal with prejudice pursuant to Rule 12(b) is a judgment on the merits.

iii. Nevada 5 is the same plaintiff in both lawsuits.

Third, the Court must decide whether Nevada 5, the party against whom the judgment is asserted, was a party or in privity with a party to the prior litigation. *In re Sandoval*, 126 Nev. 136, 139, 232 P.3d 422, 423 (2010) (citations omitted). It was. Here, Defendants seek issue preclusion against Nevada 5, which is same party against whom the judgment and findings on standing were issued in the Florida Action.

iv. The issues were actually and necessarily litigated.

Fourth, the Court must decide whether the issue of Nevada 5's standing was actually and necessarily litigated in the Florida Action. *Alcantara ex rel. Alcantara v. Wal-Mart Stores, Inc*., 130 Nev. 252, 262, 321 P.3d 912, 918 (2014). It was.

"When an issue is properly raised ... and is submitted for determination, ... the issue is actually litigated." *Frei ex rel. Litem v. Goodsell*, 129 Nev. 403, 406, 305 P.3d 70, 72 (2013) (quoting *Restatement (Second) of Judgments* § 27 cmt. d (1982)). Whether the issue was necessarily litigated turns on whether "the common issue was ... necessary to the judgment in the earlier suit." *Id*. (quoting *Univ. of Nev. v. Tarkanian*, 110 Nev. 581, 598, 879 P.2d 1180, 1191 (1994) *holding modified on other grounds by Ticor*, 114 Nev. 823, 963 P.2d 465).

In the Florida Action, the director-defendants there filed motions to dismiss, arguing that Nevada 5 lacked standing to maintain its claims based on N5HYG's purchase of Hygea stock. *See* Exhibit B. Each of the motions had oppositions filed, replies filed, and oral argument. *Id.* The

KAPLAN COTTNER
850 E. Bonneville Ave.
Las Vegas, Nevada 89101
Tel: (702) 381-8888 Fax: (702) 832-5559

motions were submitted for decision. The Florida Court, in turn, decided the motions based on the issues of standing, primarily, and also the SPA's integration clause. After finding that Nevada 5 lacked standing, and also that the integration clause precluded any fraud-based claims, the Florida Court dismissed Nevada 5's claims *in toto* and with prejudice. As such, the issues of standing and integration were actually and necessarily litigated in the Florida Action.

IV.

CONCLUSION

For the foregoing reasons, this Court should grant Defendants' Partial Motion for Judgment on the Pleadings in its entirety and dismiss all claims asserted by Plaintiff Nevada 5, Inc. with prejudice. To the extent this Court grants this Motion in its entirety, Defendants also request that Plaintiffs' (including N5HYG, LLC) joint causes of action regarding underlying fraudulent conduct (Civil Conspiracy and Concert of Action) also be dismissed with prejudice.

Dated this 22nd day of February, 2021.

KAPLAN COTTNER

By: /s/ Kory L. Kaplan
KORY L. KAPLAN, ESQ.
Nevada Bar No. 13164
KYLE P. COTTNER, ESQ.
Nevada Bar No. 12722
850 E. Bonneville Ave.
Las Vegas, Nevada 89101
Attorneys for Defendants Manuel Iglesias and Edward Moffly

KAPLAN COTTNER
850 E. Bonneville Ave.
Las Vegas, Nevada 89101
Tel: (702) 381-8888 Fax: (702) 832-5559

KAPLAN COTTNER
850 E. Bonneville Ave.
Las Vegas, Nevada 89101
Tel: (702) 381-8888 Fax: (702) 832-5559

CERTIFICATE OF SERVICE

I hereby certify that the *Defendants' Partial Motion for Judgment on the Pleadings* submitted electronically for filing and/or service with the Eighth Judicial District Court on the 22nd day of February, 2021. Electronic service of the foregoing document shall be made in accordance with the E-Service List as follows[5]:

Attorneys for Plaintiffs NYHYG, LLC and Nevada 5, Inc.
Ogonna M. Brown, Esq. (OBrown@lrrc.com)

LEWIS ROCA ROTHGERBER CHRISTIE LLP
G. Mark Albright, Esq. (gma@albrightstoddard.com)
D. Chris Albright, Esq. (dca@albrightstoddard.com)

ALBRIGHT, STODDARD, WARNICK & ALBRIGHT
E. Powell Miller, Esq. (epm@millerlawpc.com)
Christopher Kaye, Esq. (cdk@millerlawpc.com)

/s/ Sunny Southworth
An Employee of Kaplan Cottner

[5] Pursuant to EDCR 8.05(a), each party who submits an E-Filed document through the E-Filing System consents to electronic service in accordance with NRCP 5(b)(2)(D).

“Exhibit A”

“Exhibit A”

IN THE CIRCUIT COURT OF THE ELEVENTH JUDICIAL CIRCUIT IN AND FOR MIAMI-DADE COUNTY, FLORIDA

COMPLEX BUSINESS LITIGATION DIVISION

Case No. 19-014926 CA 44

NEVADA 5, INC., a Nevada corporation,

Plaintiff,

v.

DANIEL T. MCGOWAN; FRANK KELLY; MARTHA MAIRENA CASTILLO; LACY LOAR; RICHARD WILLIAMS, ESQ.; GLENN MARRICHI; KEITH COLLINS, M.D.; JACK MANN, M.D.; MARC G. SUSSMAN, AS PERSONAL REPRESENTATIVE OF THE ESTATE OF HOWARD SUSSMAN, M.D.; JOSEPH CAMPANELLA; CARL ROSENKRANTZ; RAY GONZALEZ; HYGEA HEALTH HOLDINGS, INC.; and BRIDGING FINANCE INC.,

Defendants.
_____/

SECOND AMENDED COMPLAINT AND JURY DEMAND

Plaintiff, Nevada 5, Inc. ("Nevada 5"), sues Defendants, Daniel T. McGowan, Frank Kelly, Martha Mairena Castillo, Lacy Loar, Richard Williams, Esq., Glenn Marrichi, Keith Collins, M.D., Jack Mann, M.D., the Estate of Howard Sussman, M.D., Joseph Campanella, Carl Rosenkrantz, and Ray Gonzalez (the "Individual Defendants"), Hygea Health Holdings, Inc. ("Hygea Health"), and Bridging Finance Inc. ("Bridging Finance") and alleges:[1]

[1] This is the Second Amended Complaint as it relates to the Individual Defendants. It is the First Amended Complaint as it relates to Hygea Health and Bridging Finance, who were not parties to the original Complaint.

THE PARTIES

1. Nevada 5 brings this action against the Individual Defendants for, among other things, fraud, unjust enrichment, disgorgement and violations of Florida's securities laws for inducing it to pay $30 million on or about October 5, 2016 for the purchase of shares of stock in non-party Hygea Holdings Corp., Inc. ("Hygea"), which shares were worth only a fraction of that amount.

2. Nevada 5 brings this action against Hygea Health for, among other things, unjust enrichment, aiding and abetting a fraud, and receiving a fraudulent transfer of a portion of the $30 million paid by Nevada 5 to Hygea.[2]

3. Nevada 5 brings this action against Bridging Finance for, among other things, unjust enrichment, aiding and abetting a fraud, and receiving a fraudulent transfer of a portion of the $30 million paid by Nevada 5 to Hygea.

4. Hygea is a Nevada corporation with its principal place of business in Miami, Florida. It purports to be engaged in the business of acquiring and managing physician practices and similar medical providers.

5. Nevada 5 is a corporation organized under the laws of the State of Nevada.

6. Non-party RIN Capital is a private investment firm that served as Nevada 5's authorized agent in connection with its $30 million payment to Hygea for the purchase of shares of stock in Hygea.

7. The Individual Defendants are current and former directors of Hygea.

---

[2] Nevada 5 has not added new claims against Hygea Health in this Second Amended Complaint, and will not pursue its causes of action against Hygea Health during the automatic stay imposed by Hygea Health's pending bankruptcy proceeding in Delaware without leave of court.

8. Hygea Health is a Florida corporation with its principal place of business in Doral, Florida.

9. Bridging Finance is a Canadian corporation with its principal place of business in Toronto, Ontario, Canada. Based on information and belief, and as described further herein, Bridging Finance is a party to one or more agreements with Hygea, has loaned money to Hygea, has met and conducted business with Hygea in one or more of Hygea's Florida offices on multiple occasions, and has otherwise had continuous and systematic business contacts in Florida rendering it essentially at home in Florida.

10. Defendant Daniel T. McGowan is a citizen and resident of the State of New York. He is Co-Chairman of Hygea's Board of Directors (the "Board").

11. Defendant Frank Kelly was a citizen and resident of the State of Georgia. He was Vice Chairman of Hygea's Board and a member of its Audit Committee. Upon information and belief, he is deceased.

12. Defendant Martha Mairena Castillo is a citizen and resident of the State of Florida. She is the Chief Analytics Officer of Hygea, is a member of Hygea's Board, and was a member of its Steering Committee to prepare Hygea for "going public."

13. Defendant Lacy Loar ("Loar") is a citizen and resident of the State of Florida. She is a member of Hygea's Board.

14. Defendant Richard L. Williams, Esq. is a citizen and resident of the State of Florida. Upon information and belief, until approximately February 2018, he was the Chief Legal Officer ("CLO") of Hygea and a member of Hygea's Board.

15. Defendant Glenn Marrichi is a citizen and resident of the State of Georgia. He is a member of Hygea's Board and Audit Committee.

16. Defendant Stanton "Keith" Collins, M.D. is a citizen and resident of the State of Florida. Upon information and belief, as of approximately May 2018, Collins was named CEO of Hygea. Prior to that time, he served as a member of Hygea's Board.

17. Defendant Jack Mann, M.D., is a citizen and resident of the State of New York. He is a member of Hygea's Board.

18. Howard Sussman, M.D. ("Sussman"), who is deceased, was a citizen and resident of the State of Florida. He was, at all relevant times, a member of Hygea's Board. Marc G. Sussman has been appointed by Florida's Seventeenth Judicial Circuit Court Probate Division to be the Personal Representative of Sussman's estate and to administer his assets and liabilities.

19. Defendant Joseph Campanella is a citizen and resident of the State of California. He is a member of Hygea's Board.

20. Defendant Carl Rosenkrantz is a citizen and resident of the State of Florida. He is a member of Hygea's Board.

21. Defendant Ray Gonzalez is a citizen and resident of the State of Florida. He was formerly a member of Hygea's Board.

22. Non-Party Manuel Iglesias ("Iglesias") was the Chief Executive Officer of Hygea until approximately May 2018. Prior to that time and, based on information and belief, at least until February 2020, he was a member of Hygea's Board, and served as Co-Chairman of the Board for at least part of that time. Iglesias is, along with his family, one of the largest shareholders in Hygea.

23. Non-Party Edward Moffly ("Moffly") was the Chief Financial Officer of Hygea until departing at some point after Nevada 5's investment. Prior to that time and to the present, he was and is a member of Hygea's Board.

24. Iglesias was at all material times the CEO of Hygea Health.

25. Moffly was at all material times the CFO and Treasurer of Hygea Health.

26. Mairena Castillo was at all material times the Secretary of Hygea Health.

27. Loar was at all material times the Registered Agent of Hygea Health.

28. At all material times, Iglesias and Moffly acted with the knowledge, direction, consent, and authorization of the Individual Defendants and served as their agents.

29. Iglesias and Moffly accepted their role as the Individual Defendants' agents when they were negotiating and conferring with Nevada 5 with respect to the investment in Hygea.

30. The Individual Defendants were beneficiaries of Iglesias's and Moffly's actions, and had control over their actions.

31. The Individual Defendants acknowledged, accepted and ratified Iglesias and Moffly's representations and statements as being on their individual behalves.

32. The amount in controversy exceeds $15,000.00, and venue and jurisdiction are proper in this Court because the Defendants' unlawful actions occurred in Miami-Dade County, Florida.

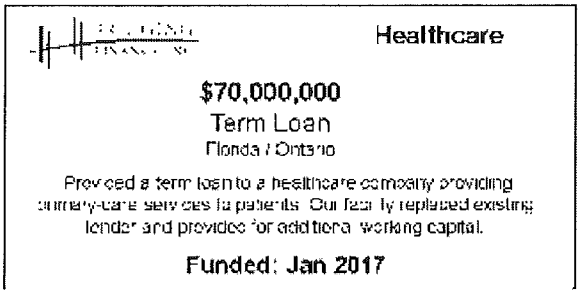
ADDITIONAL JURISDICTIONAL ALLEGATIONS REGARDING BRIDGING FINANCE

33. Based on information and belief, Bridging Finance, as the Manager of one of its affiliate companies, Sprott Bridging Income Fund LP ("Sprott"), refinanced an existing loan to Hygea from Macquarie U.S. Trading LLC and Capital Southwest in the amount of approximately $70 million (the "Bridging Loan").

34. Based on information and belief, Bridging Finance exercised significant control over Sprott, including with respect to managing, servicing, and decision-making on the Bridging

Loan. At all material times, Sprott accepted its role, and acted as, Bridging Finance's agent in connection with the Bridging Loan.

35. Bridging marketed its $70 million Bridging Loan as originating in, or otherwise having a connection to, Florida, including by advertising the loan on its website. Bridging's website[3] boasts that "Bridging Finance . . . has completed over $185,000,000 in new commitments to mid-market companies throughout Canada and the United States."[4] A linked page of sample deals since Q4 2016 specifically advertises the Bridging Loan in Florida:



36. Bridging Finance, apparently in its capacity as Manager of the Bridging Loan, is currently listed in the Florida Secured Transaction Registry as a secured party in at least ten filings since 2016 for properties and assets in Doral, Florida, that are related to Hygea. Based on information and belief, prior to the Bridging Loan, Bridging Finance conducted due diligence in Florida, which included site visits to Hygea's offices in Florida, as well as other substantial communications with Hygea representatives in Florida.

37. Based on information and belief, Natasha Sharpe ("Ms. Sharpe") is Bridging Finance's Chief Investment Officer.

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[3] https://www.bridgingfinance.ca/bridging-finance-announces-recent-transactions/

[4] A May 26, 2017 news release on Bridging's website also mentions same commitment line "throughout Canada and the United States."

38. Ms. Sharpe has attended meetings regarding Hygea in Miami, Florida, on multiple occasions. For example:

a. On August 9, 2017, Ms. Sharpe attended a meeting of Hygea's Board at Hygea's offices in Miami. Nevada 5's representatives, including Chris Fowler of RIN Capital, were also in attendance. Among the topics discussed at that meeting were Hygea's inability to provide audited financial statements supporting the company's financial position that had previously been represented to Nevada 5.

b. On March 14, 2018, Nevada 5's agents, including Mr. Fowler, met with Ms. Sharpe, along with Michael Muchnicki (Hygea's former interim President), and Dr. Norman Gaylis (Hygea's former Chief Medical Officer) at a hotel in Miami. Once again, among the topics discussed at the meeting was Hygea's inability to provide audited financial statements supporting the company's financial position that had previously been represented to Nevada 5.

c. Based on information and belief, Ms. Sharpe also attended a September 20, 2017 meeting of Hygea's Board at Hygea's offices in Florida.

39. Among the topics discussed at the September 20, 2017 meeting was a September 15, 2017 letter, which she sent to Hygea's offices in Miami. Mr. Fowler also received a copy of that letter.

40. In her September 15, 2017 letter and otherwise in communications with Hygea, Ms. Sharpe gave, or purported to give, directives to Hygea and required various deliverables, ranging from staffing of Hygea's managerial personnel to Hygea's financial reporting and cash management.

41. Ms. Sharpe also purported to exert significant influence over Hygea's Board by, for example, advising the Board against appointing a particular candidate to an open position because she believed his firm was known as a consultant for failed or failing companies.

42. Ms. Sharpe also emailed Hygea's management in Florida, some of which were also sent to Mr. Fowler. Based on information and belief, such communications to Hygea have been frequent.

43. On March 12, 2018, Ms. Sharpe indicated in an email to Mr. Fowler that "Bridging is the senior secured lender to Hygea."

44. In a July 13, 2018 letter to Plaintiff's counsel representing Plaintiff dated July 13, 2018, Kevin Moreau claimed to be "in-house counsel to Bridging Finance, Inc.," and referred to Bridging as the "senior lender" to Hygea.

45. Concurrent with the filing of this Second Amended Complaint, Nevada 5 will be serving jurisdictional discovery upon Bridging Finance. Based on information and belief, such discovery will yield further support for this Court's personal jurisdiction over Bridging Finance.

GENERAL ALLEGATIONS

46. In 2016, the Individual Defendants, along with Iglesias, Moffly, and Hygea, undertook an offering of stock in Hygea. As Board members, each Individual Defendant was knowledgeable of, and involved in, the solicitation and procurement of new investments as part of the strategy for Hygea to purportedly "go public." Moreover, the magnitude of Plaintiff's payment to Hygea was such that the Individual Directors must have been closely involved in its procurement, if they were at all discharging their obligations as directors. This is especially the case in light of the undisclosed distress facing Hygea at the time the investment was procured.

47. The strategy to solicit and procure new investments in order for Hygea to purportedly "go public" was discussed, approved, initiated, and reaffirmed by the Individual Defendants at, among other times:

a. the October 14, 2015 Board meeting when the Individual Defendants—other than Gonzalez (who was not yet on the Board), as well as Williams, Mann, and Campanella (who were nominated to the Board at this meeting)—discussed the goal of raising short term and long term capital, as well as taking Hygea public "as early as possible next year";

b. the March 24, 2016 Board meeting, reconvened April 11, 2016, when the Individual Defendants discussed a capital raise and a public listing on the Toronto Stock Exchange, as well as the goal of "going public this year." The Board—including the Individual Defendants other than Gonzalez (who was not yet on the Board) and Kelly (who abstained)—unanimously approved a motion to "sanction management's negotiations for the Toronto opportunity" and further resolved to authorize Iglesias to "take, or cause to be taken, such further actions, and to execute and deliver or cause to be delivered, for and in the name and on behalf of the Company, all such agreements, instruments and documents as he, in his discretion, deems appropriate" in order to carry out the strategy;

c. the May 20, 2016 Board meeting when Defendant McGowan called for a motion that the Board was aware and in agreement that the company would continue to work on capital raises. The Board—including each of the Individual Defendants—unanimously approved the motion. The

Board also resolved that "the Board authorizes management to continue to seek opportunities for infusion of capital, through debt or equity" and further resolved to authorize Iglesias to "take, or cause to be taken, such further actions, and to execute and deliver or cause to be delivered, for and in the name and on behalf of the Company, all such agreements, instruments and documents as he, in his discretion, deems appropriate" in order to carry out the strategy.

48. In 2016, as part of the stock offering and "go public" strategy, Nevada 5's agent, RIN Capital, was approached about the possibility of Nevada 5 investing in Hygea.

49. On June 1, 2016, a RIN Capital representative, Dan Miller, discussed the potential investment with the Individual Defendants' authorized agents, Iglesias and Moffly. Carrying out the strategy the Individual Defendants had approved, Iglesias and Moffly represented to Miller that Hygea was planning on "going public."

50. On July 5, 2016, RIN Capital representatives Miller and Sean Darin had dinner in Miami with Iglesias, Moffly, and others to discuss Nevada 5's investment. The next day, July 6, 2016, they all met at Hygea's office in Miami, Florida.

The representations inducing Nevada 5 to invest $30 million in Hygea

51. At the July 6, 2016 meeting at Hygea's office, Iglesias and Moffly—on behalf of the Individual Defendants, and consistent with the strategy of which the Individual Defendants had knowledge and had approved—represented to Miller and Darin that:

a. Hygea was a successful business that was poised for continued growth and a public-exchange offering of its stock;

b. Hygea's business consisted of acquiring medical practices – primarily physicians' practices – in Florida and surrounding states;

c. by acquiring and consolidating such practices' non-medical operations, Hygea could realize value through economies of scale, improvements to billing and insurance coding practices, and more efficient business practices; and

d. such a system would allow the doctors to concentrate on their medical practices while Hygea ran and improved the medical providers' business operations.

52. At this meeting and in ensuing communications, Iglesias and Moffly—with the Individual Defendants' knowledge and authority, and again consistent with the strategy of which the Individual Defendants had knowledge and had approved—further represented that:

e. Hygea was profitable;

f. Hygea was growing;

g. Hygea's financial statements showed a high-performing company;

h. Hygea's audited financial statements showing the represented growth and success were being prepared and would be available soon; and

i. Hygea was poised for its RTO (Reverse Take Over) – by which it would be "going public".

53. Defendant Collins later admitted in ¶ 30 his Declaration to the Bankruptcy Court in which Hygea filed for Chapter 11 bankruptcy on February 19, 2020 that Hygea was "never profitable on a cash basis."

54. The explicit representations and implicit suggestions were that the planned RTO would be very remunerative to the shareholders.

55. Nevada 5 engaged in a due diligence process to decide whether to make the substantial capital investment that the Individual Defendants sought. On July 26, 2016, RIN Capital sent, on Nevada 5's behalf, a due diligence list to Iglesias and Moffly, requesting certain documentation and information.

56. In addition to making numerous representations as to Hygea's financial condition, the Individual Defendants, through their agents and representatives, provided documents and financial information on which they intended Nevada 5 would rely in making its decision as to whether to pay the $30 million to Hygea, including:

a. On or around June 27, 2016, Darin sent Fowler a Confidential Information Memorandum, or "CIM," apparently prepared on Hygea's behalf. Nevada 5's agents obtained the CIM through a "data room" to which Hygea and its agents gave RIN Capital access as part of the negotiations and in furtherance of the investment procurement and RTO strategy approved by the Individual Defendants. The CIM represented favorable financial performance numbers for 2014 and 2015, including a 2014 earnings before interest, tax, depreciation, and amortization ("EBITDA")[5] of $3,692,173 based on $52,897,640 in revenue, and a 2015 EBITDA of

[5] EBITDA is an accounting metric that gauges a company's overall financial performance and is particularly useful for determining how much cash a company generates before servicing its debts. By excluding variables such as taxes and interest, which can vary by company, it can be a useful metric of a business's "all else being equal" performance, and is therefore frequently emphasized in business valuation.

$28,003,053 based on $239,053,726 in revenue. It projected a 2016 EBITDA of $46,489,715.

b. On August 2, 2016, Moffly, in furtherance of the investment procurement and RTO strategy approved by the Individual Defendants, provided Miller with a final quarterly work file being used by third party financial analysts to perform a Quality of Earnings Report ("QoE") and a purported audit of Hygea's finances.

c. RIN Capital, on behalf of Nevada 5, was provided access to additional materials in the purported transaction "data room" on approximately August 9, 2016. This consisted of a computer folder, or set of computer folders, into which the Individual Defendants, Hygea or their agents would put financial documents, and from which Nevada 5's agents could and did access such documents. Between August 9 and the ensuing Stock Purchase Agreement, such accessing was ubiquitous. The financial representations set forth in the data room files were consistent with the financial representations set forth in detail here.

d. On September 14, 2016, in response to a request from Miller, Moffly, and in furtherance of the investment procurement and RTO strategy approved by the Individual Defendants, formally transmitted the CIM, containing information pertinent to a potential investment deal, including updated unaudited financials to Miller. It showed favorable financial performance figures for 2013 through 2015, including a 2014 EBITDA of $3.7 million

based on $52.9 million in revenue and a 2015 EBITDA of $27.1 million based on $239.1 in revenue.

e. On or about September 16, 2016, in furtherance of the investment procurement and RTO strategy approved by the Individual Defendants, Moffly sent to Miller a proposed deal structure, representing a purported valuation of Hygea at a very high level, and claimed that the company was actually ahead of the very favorable projections underlying the figure. It included, in part:

> We have an enterprise valuation done by Cormark in Canada (who you can speak with if you like) of approximately $560MM, which is based on a 10x multiple of 2016 (T9M+F3M – approximately) EBITDA of $56.9MM (BTW we are ahead of that number and are pushing for $60MM).
>
> Subtracting out all debt of a little less than $50MM we have a net value of $510MM.

f. In multiple emails on September 20-21, 2016, in furtherance of the investment procurement and RTO strategy approved by the Individual Defendants, Moffly stated to Miller that the final trial balances for June 30, 2016 would be finished in a matter of hours with the "consolidation done by [outside accountants] CLA (Clifton Larson Allen, LLP) [. . .] but assembled by our accounting team."

g. On September 20, 2016, in furtherance of the investment procurement and RTO strategy approved by the Individual Defendants, Moffly sent to Miller a copy of financials, containing balance sheets, income statements, and a statement of cash flows, purportedly done by CPA firm Rodriguez,

Trueba & Co. They once again showed a favorable financial performance over the 2013 through 2015 period, with a 2014 EBITDA of $3,692,172 and a 2015 EBITDA of $27,093,697.

h. In response to Nevada 5's questions about Hygea's physician compensation structure and agreement issues, employee benefits, possible claims for unpaid bonuses, and Hygea's potential compliance issues, Hygea's representatives, including Individual Defendant Williams, in furtherance of the investment procurement and RTO strategy approved by the Individual Defendants, addressed Nevada 5's questions via phone and email on or about September 21, 2016.

i. On or about September 22, 2016, Tom Herrmann, Hygea's Chief Compliance Officer, provided information via a telephone call with Nevada 5's agents to address Nevada 5's compliance questions. On September 22 and 25, 2016, Nevada 5's agents, including Miller, received emails from Defendant Williams, Hygea's corporate counsel, copying Iglesias and Moffly, providing information regarding existing physician contracts, incentive plans, bonus provisions, and other service agreements.

j. On or around September 27, 2016, in furtherance of the investment procurement and RTO strategy approved by the Individual Defendants, Moffly provided Miller with an Offering Memorandum with additional, and once again favorable, representations as to Hygea's financial situation, including a 2014 EBITDA of $3.7 million on $52,897,000 in revenue, and a 2015 EBITDA of $27.1 million on $246,129,000 in revenue.

k. On September 29, 2016, in furtherance of the investment procurement and RTO strategy approved by the Individual Defendants, Moffly sent to Miller an email attaching a capital table structure analysis. It indicated a favorable 2016 EBITDA, indicating on the spreadsheet, "Hygea 2016 FYE EBITDA – Low: $54.5 [million] – High: $65.0 [million] – Expected: $57.5 [million]," and claimed that "EBITDA Is (*sic*) ahead of schedule used 4 months ago with Cormark" when in fact the actual EBIDTA fell far short of all of the indicated figures; and reflected additional misleading valuation information as well. The email expressly indicated that the Board—i.e. the Individual Defendants—had approved the information.

l. On October 4, 2016, in furtherance of the investment procurement and RTO strategy approved by the Individual Defendants, Moffly sent to Miller a copy of Hygea's Quality of Earnings Report ("QoE") dated October 3, 2016, which was purportedly prepared by third party CLA, showing once again very favorable performance figures, including: a 2014 EBITDA of $4,542,000 on $52,897,000 in revenue, and a 2015 EBITDA of $20,449,000 million on $185,411,000 in revenue.

m. The October 3, 2016 QoE also showed for Hygea in the "trailing twelve months" from June 30, 2015 through June 30, 2016 continued healthy performance, with an adjusted EBITDA of $39,091,000 over that period on $291,276,000 in revenue.

n. On October 5, 2016, Iglesias and Moffly, in furtherance of the investment procurement and RTO strategy approved by the Individual Defendants,

provided to Miller and others a verification of Hygea's QoE at the following figures: a 2014 EBITDA of $4,542,000 on $52,897,000 in revenue, and a 2015 EBITDA of $20,449,000 based on $185,411,000 in revenue.

57. Taken together, Defendants' representations to Nevada 5 with respect to Hygea's financial performance were as follows, rounded to the nearest $100,000:

a. For 2014, between $3.7 and $4.5 million in EBITDA based on revenue of about $52.9 million.

b. For 2015, between $20 and $28 million in EBITDA based on revenue between $185 and $246 million.

c. For 2016, EBITDA between $46.5 and $65 million, with additional specifications that it was at least $56.9 million; that $54 million was the "low" amount; and that $57.5 million was "expected." These latter representations were made in September, after much of the year had already transpired; based on information and belief incorporated the QoE analysis for the first six months of 2016; and were supposedly based on ongoing monitoring, as shown by Moffly's indication that Hygea was "running ahead" of the figure underlying Cormark's valuation.

58. At no time during these communications did any Individual Defendant or anyone else inform any representative of Nevada 5 that the purported forthcoming "growth" of Hygea would actually come from new investors, as opposed to earnings, or from non-standard, non-GAAP (Generally Accepted Accounting Principles) accounting methods applied to new medical

practice acquisitions; or that the RTO would be impossible in light of Hygea's manifold deficiencies.

In reliance upon Defendants' representations, Nevada 5 pays Hygea $30 million

59. Nevada 5, in reliance upon the Individual Defendants' representations and omissions, paid $30 million to Hygea to purchase shares in Hygea. Nevada 5 paid this $30 million by way of an October 5, 2016 wire transfer to Hygea's lawyers'—Akerman LLP—trust account, as instructed.

60. Nevada 5 created N5HYG, LLC to hold the 23,437,500 purchased shares of Hygea's Common Stock, or 8.57% of the outstanding shares.

61. Each Individual Defendant approved Nevada 5's investment, and ratified the acts and representations of Moffly and Iglesias as their own.

62. At a meeting of Hygea's Board on October 4, 2016, each Individual Defendant officially voted to approve the $30 million stock purchase and authorize "the executive management" of Hygea to "negotiate, finalize, and execute agreements" for the purchase.

Nevada 5 discovers that the representations upon which it relied to make the $30 million investment were false

63. Nevada 5 discovered that the representations as to Hygea's financial value and performance upon which Nevada 5 relied to make its $30 million investment were false.

64. For example, Nevada 5 learned that the RTO process never happened. Instead, because of the mismanagement of financial records, failure to provide support for its financial statements, and/or its intentional misrepresentations in various iterations of its financial statements, the Individual Defendants elected not to complete the audited 2014, 2015 or 2016 financial statements, and also elected to not "go public" with the RTO.

65. At the time of Nevada 5's investment, the Individual Defendants either knew or should have known that a timely RTO was, given Hygea's financial distress, unlikely or impossible.

66. The Individual Defendants have publicly held themselves out to be well-educated, sophisticated, and experienced in matters of business. For example:

a. Kelly attended Harvard Business School MBA program and had a B.S. in Accounting and Finance from Bentley University;

b. Mairena Castillo was described as having "[e]xtensive background in accounting, having served for nine years as an accountant prior to joining Hygea." She holds degrees in accounting and business administration;

c. Collins helped take an HMO public;

d. Loar upon information and belief obtained a Juris Doctor; and

e. Williams is an attorney.

67. Nevada 5 also discovered that, far from enjoying robust growth, Hygea was running out of cash; indeed, Defendant Collins later admitted that Hygea was never profitable on a cash basis and Hygea filed for bankruptcy. Upon information and belief, Hygea was and remains deeply indebted to numerous other creditors, incurring substantial interest on tens of millions of dollars of debt.

68. On or about June 29, 2017, Fowler learned that the Individual Defendants and their cohorts had begun to backtrack on their prior representations, purporting to disclose a "corrected" EBITDA figure for 2016, which was far less than what they previously claimed.

69. However, one outside consultant—FTI Consulting, Inc. ("FTI")–having reviewed Hygea's financials, reported to Fowler that Hygea's actual revenue was closer to $90 million than the $300 million figure that the Individual Defendants' and their cohorts' $50-$60 million

EBITDA representations were based upon. Therefore, it would be virtually impossible for its EBITDA to reach $50 or $60 million in EBITDA.

70. Further, for 2014, the supportable revenue number was roughly $32 million, or $17 million according to the more restrictive International Financial Reporting Standards ("IFRS"); for 2015, the supportable revenue figure was $92 million, or $73 million under IFRS. And, again, these were revenue figures, not EBITDA. To summarize, in rounded millions, the misrepresentations were nowhere close to the independent estimates of the actual performance:

	MISREPRESENTATIONS		**DIFFERENCE**	
Year	**Represented Revenue[6]**	**Represented EBITDA**	**Actual Est. Revenue**	**Overstated Revenue**
2014	$52.9	$3.7 - $4.5	$17 - $32	$35.9 - $20.9
2015	$185.4 - $246.1	$20.4 - $28	$73 - $92	$112.4 - $154.1
2016	$300	$46.5 - $65.0	$90	$210

71. FTI further reported that Hygea's financial performance figures for 2014 through 2016 "[were] not the same as the ones they gave" to Nevada 5 during the lead-up to its investment. FTI noted it would not "come up with bullshit for [the] auditors," who supposedly would review the financial information.

72. FTI concluded that the actual, supportable EBITDA was a fraction of that represented by the Individual Defendants.

73. In August 2017, FTI also explained that one reason for Hygea's QoE's blatant inaccuracy could have been because the Individual Defendants' agents imposed constraints on the earnings review or otherwise manipulated the process. For example, it appeared that one or

[6] All figures in millions.

more of the Individual Defendants' agents manipulated the EBITDA figures through enormous medical record account ("MRA") adjustments and by improperly accounting for medical practice acquisitions.

74. The Individual Defendants knew at the time of their representations that they were false. For example, they knew that the EBITDA figures they represented to Nevada 5 were also based upon an assumed additional $130 million influx that had not materialized, and never did materialize.

75. Upon information and belief, the EBITDA was tied to the bonus compensation rate of some of the Individual Defendants, such as Castillo and Williams.

76. The Individual Defendants continued to ratify their agents' actions by failing to correct the numerous misrepresentations and omissions. The Individual Defendants failed in this regard despite numerous in-person and electronic communications with Nevada 5's representatives, including Mr. Fowler, over the ensuing year and beyond. Those opportunities included, but were not limited to, the meeting of Hygea's Board which Nevada 5's representatives attended in August 2017, as well as a host of email and telephonic communications between Nevada 5's representatives and one or more of the Individual Defendants, including, for example, McGowan and Kelly.

77. After Nevada 5's investment, the Individual Defendants and/or their agents continued to misrepresent Hygea's value and engaged in fraudulent and grossly negligent conduct by, among other things, misrepresenting Hygea's revenue on financial statements by including already-realized revenue of an acquired medical practice before it was purchased by Hygea.

The fraudulent transfers to Hygea Health and Bridging Finance

78. Within months of Nevada 5's $30 million investment, one or more of the Individual Defendants and/or their agents transferred a total of over $13 million of the specific $30 million Nevada 5 paid to Hygea out of Hygea, and into an affiliated company, Hygea Health.

79. The transfers of portions of Nevada 5's $30 million payment into Hygea Health were done without Nevada 5's knowledge or consent, and were, upon information and belief, done for the purpose of hiding the funds from creditors, including Nevada 5. Based on information and belief, the transfers also occurred during a time in which Hygea had been sued or threatened with suit.[7]

80. The Individual Defendants further concealed the transfers by failing to notify Nevada 5 of the transfers. At no time during any of its meetings or communications with any of Nevada 5's representatives did the Individual Defendants inform Nevada 5 that Hygea Health had received any portion of the $30 million Nevada 5 paid to Hygea.

81. To the contrary, Hygea had previously represented that Nevada 5's investment had been allocated for other purposes, thereby fraudulently concealing the fraudulent transfer to Hygea Health.

82. Within months of Nevada 5's $30 million investment, one or more of the Individual Defendants and/or their agents also transferred a total of over $6.8 million of the specific $30 million Nevada 5 paid to Hygea out of Hygea, and into Bridging Finance.

[7] Such suits include, but are not limited to, the following cases in Miami-Date County: *Steele, et al., v. Hygea Holdings Corp., et al.*; and *Leistner Group, LLC v. Hygea Health Holdings, Inc.*

83. The transfer of a portion of Nevada 5's $30 million payment into Bridging Finance was done without Nevada 5's knowledge or consent, and was, upon information and belief, done for the purpose of hiding the funds from creditors, including Nevada 5. Based on information and belief, the transfer also occurred during a time in which Hygea had been sued or threatened with suit.

84. Bridging Finance further concealed the transfers by failing to notify Nevada 5 of the transfers. Through multiple meetings and discussions with Nevada 5's representatives in and after approximately August 2017, Ms. Sharpe and Bridging Finance were fully aware of Nevada 5's concerns regarding its $30 million investment, and the financial representations made to induce that payment. Yet, at no time during any of its meetings or communications with any of Nevada 5's representatives did anyone at Bridging Finance inform Nevada 5 that Bridging Finance had received a portion of the $30 million Nevada 5 paid to Hygea.

85. Moreover, Hygea had previously represented that Nevada 5's investment had been allocated for other purposes, thereby fraudulently concealing the fraudulent transfer to Bridging Finance.

COUNT I
Florida Statutory Securities Fraud
(All the Individual Defendants)

86. Nevada 5 re-alleges Paragraphs 1-32 and 46-85.

87. This is a claim for securities fraud pursuant to the Florida Securities and Investor Protection Act, § 517.301, Florida Statutes, *et seq.* (the "Florida Act").

88. The $30 million investment by Nevada 5 in Hygea was a "security" as defined by the Florida Act.

89. Under the Florida Act:

> It is unlawful and a violation of the provisions of this chapter for a person:
>
> > (a) In connection with the rendering of any investment advice or in connection with the offer, sale, or purchase of any investment or security, including any security exempted under the provisions of s. 517.051 and including any security sold in a transaction exempted under the provisions of s. 517.061, directly or indirectly:
> >
> > > 1. To employ any device, scheme, or artifice to defraud;
> > >
> > > 2. To obtain money or property by means of any untrue statement of a material fact or any omission to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading; or
> > >
> > > 3. To engage in any transaction, practice, or course of business which operates or would operate as a fraud or deceit upon a person.
> > >
> > > ***
> >
> > (c) In any matter within the jurisdiction of the office, to knowingly and willfully falsify, conceal, or cover up, by any trick, scheme, or device, a material fact, make any false, fictitious, or fraudulent statement or representation, or make or use any false writing or document, knowing the same to contain any false, fictitious, or fraudulent statement or entry.

§ 517.301(1), Fla. Stat.

90. The Individual Defendants violated the Florida Act by, among other things: (i) employing a device, scheme or artifice to defraud; (ii) making at least one untrue statement of a material fact or omitting to state at least one material fact that would render the statements misleading in light of the circumstances under which they are made; (iii) engaging in an act, practice or course of business which operates or would operate as a fraud or deceit upon a

person; and (iv) knowingly and willfully falsifying, concealing, or covering up, by any trick, scheme, or device, a material fact, making any false, fictitious, or fraudulent statement or representation, or making or using any false writing or document, knowing the same to contain any false, fictitious, or fraudulent statement or entry.

91. These communications came from persons in Florida such as Williams, Iglesias, and Moffly, and some of them were directed to persons situated within Florida.

92. These false communications and representations, and omissions of material fact, were made either directly by the Individual Defendants, or by Moffly and Iglesias as authorized agents on behalf, and for the benefit, of the Individual Defendants.

93. Nevada 5 was damaged as a direct result of the Individual Defendants' misrepresentations and deceit.

94. The Florida Act provides for civil liability for these violations:

> Any person purchasing or selling a security in violation of s. 517.301, and every director, officer, partner, or agent of or for the purchaser or seller, if the director, officer, partner, or agent has personally participated or aided in making the sale or purchase, is jointly and severally liable to the person selling the security to or purchasing the security from such person in an action for rescission, if the plaintiff still owns the security, or for damages, if the plaintiff has sold the security.

§ 517.211, Fla. Stat.

95. Nevada 5 is a "person ... purchasing the security" from the Individual Defendants, and each Individual Defendant constitutes either a person selling the security, or a director or officer of the seller who personally participated or aided in making the sale.

96. Pursuant to the Florida Act, each Individual Defendant is jointly and severally liable to Nevada 5 to the same extent as any other seller of the securities.

WHEREFORE, Nevada 5 requests that the Court enter judgment against the Individual Defendants for damages, including disgorgement, pre-judgment interest, and attorneys' fees and costs, or such equitable relief that it deems to be appropriate.

COUNT II
Florida Statutory Securities Fraud – Control Person Liability
(All the Individual Defendants)

97. Nevada 5 re-alleges Paragraphs 1-32 and 46-85.

98. This is a claim for securities fraud pursuant to the Florida Securities and Investor Protection Act, § 517.301, Florida Statutes, *et seq.* (the "Florida Act").

99. The Individual Defendants are liable as "control persons," in addition to their liability as set forth in Count I.

100. The Individual Defendants violated the Florida Act by, among other things: (i) employing a device, scheme or artifice to defraud; (ii) making at least one untrue statement of a material fact or omitting to state at least one material fact that would render the statements misleading in light of the circumstances under which they are made; (iii) engaging in an act, practice or course of business which operates or would operate as a fraud or deceit upon a person; and (iv) knowingly and willfully falsifying, concealing, or covering up, by any trick, scheme, or device, a material fact, making any false, fictitious, or fraudulent statement or representation, or making or using any false writing or document, knowing the same to contain any false, fictitious, or fraudulent statement or entry.

101. In addition to the Individual Defendants' violations of the Florida Act, Hygea, Moffly, and Iglesias violated the Florida Act by, among other things: (i) employing a device, scheme or artifice to defraud; (ii) making at least one untrue statement of a material fact or omitting to state at least one material fact that would render the statements misleading in light of

the circumstances under which they are made; (iii) engaging in an act, practice or course of business which operates or would operate as a fraud or deceit upon a person; and (iv) knowingly and willfully falsifying, concealing, or covering up, by any trick, scheme, or device, a material fact, making any false, fictitious, or fraudulent statement or representation, or making or using any false writing or document, knowing the same to contain any false, fictitious, or fraudulent statement or entry.

102. These communications came from persons in Florida, and some of them were directed to persons situated within Florida.

103. These false communications and representations, and omissions of material fact, were made either directly by the Individual Defendants, or by Moffly and Iglesias as authorized agents on behalf, and for the benefit, of the Individual Defendants.

104. Nevada 5 was damaged as a direct result of the Individual Defendants' misrepresentations and deceit.

105. Hygea, Iglesias, and Moffly were "sellers" of the shares in Hygea that Nevada 5 paid for.

106. The Individual Defendants each constituted a "director, officer, partner, or agent of or for the ... seller" of the shares in Hygea that Nevada 5 paid for. § 517.211, Fla. Stat.

107. The Individual Defendants each "personally participated or aided in making the sale" of the Hygea shares that Nevada 5 paid for. § 517.211, Fla. Stat.

108. Pursuant to the Florida Act, each Individual Defendant is jointly and severally liable to Nevada 5 to the same extent as Hygea, Iglesias, Moffly, or any other seller of the securities.

WHEREFORE, Nevada 5 requests that the Court enter judgment against the Individual Defendants for damages, including disgorgement, pre-judgment interest, and attorneys' fees and costs, or such equitable relief that it deems to be appropriate.

COUNT III
Fraudulent Misrepresentation
(All the Individual Defendants)

109. Nevada 5 re-alleges Paragraphs 1-32 and 46-85.

110. This is a claim for fraudulent misrepresentation based on the Individual Defendants' false statements of material fact, directly and through its authorized agents, Moffly and Iglesias.

111. The Individual Defendants were knowledgeable of and involved in the solicitation and procurement of new investments as part of the strategy for Hygea to purportedly "go public."

112. The Individual Defendants approved the fraudulent financial figures in order to induce Nevada 5's $30 million payment as part of that strategy, including those indicating an expected EBITDA figure of $57.5 million, with a low of $54.5 million and a high of $65 million.

113. The Individual Defendants voted to approve the $30 million stock purchase and authorize "the executive management" of Hygea to "negotiate, finalize, and execute agreements" for the purchase.

114. The Individual Defendants knew or should have known that the representations made to Nevada 5 were false.

115. The Individual Defendants intended to induce Nevada 5 to act in reliance upon the misrepresentations, in particular, by investing $30 million into Hygea.

116. Nevada 5 reasonably relied upon the misrepresentations.

117. Nevada 5 was injured and damaged as a result of this reliance.

WHEREFORE, Nevada 5 requests that the Court enter judgment against the Individual Defendants for damages, including disgorgement, pre-judgment interest, or such equitable relief that it deems to be appropriate.

COUNT IV
Negligent Misrepresentation
(All the Individual Defendants)

118. Nevada 5 re-alleges Paragraphs 1-32 and 46-85.

119. This is a claim for negligent misrepresentation based on the Individual Defendants' statements of material fact that they may have believed to be true, but which were in fact false.

120. The Individual Defendants were knowledgeable of and involved in the solicitation and procurement of new investments as part of the strategy for Hygea to purportedly "go public."

121. The Individual Defendants approved the fraudulent financial figures inducing Nevada 5's $30 million payment as part of that strategy, including those indicating an expected EBITDA figure of $57.5 million, with a low of $54.5 million and a high of $65 million.

122. The Individual Defendants voted to approve the $30 million stock purchase and authorize "the executive management" of Hygea to "negotiate, finalize, and execute agreements" for the purchase.

123. The Individual Defendants were negligent in making the statements because they should have known that the statements were false.

124. The Individual Defendants intended to induce Nevada 5 to rely on the statements.

125. Nevada 5 justifiably relied upon the false statements.

126. Nevada 5 was injured and damaged as a result of the Individual Defendants' actions.

WHEREFORE, Nevada 5 requests that the Court enter judgment against the Individual Defendants for damages, including disgorgement, pre-judgment interest, or such equitable relief that it deems to be appropriate.

COUNT V
Fraudulent Omissions
(All the Individual Defendants)

127. Nevada 5 re-alleges Paragraphs 1-32 and 46-85.

128. This is a claim for fraudulent omissions based on the Individual Defendants' failure to disclose material facts.

129. The Individual Defendants had: (a) superior knowledge regarding Hygea's value and financial conditions, (b) knowledge which was not within the fair and reasonable reach of Nevada 5 and which Nevada 5 could not discover by the exercise of reasonable diligence, and/or (c) means of knowledge which were not open to both the Individual Defendants and Nevada 5 alike.

130. The Individual Defendants omitted material facts in their communications with Nevada 5 or caused to be omitted such facts in such communications, and the Individual Defendants' conduct was intentional, fraudulent, malicious or oppressive.

131. Nevada 5 relied upon the Individual Defendants to communicate or cause to be communicated to them the true state of facts to enable them to properly, fully, and fairly evaluate the bargain.

132. Nevada 5 was injured and damaged as a result of this reliance.

WHEREFORE, Nevada 5 requests that the Court enter judgment against the Individual Defendants for damages, including disgorgement, pre-judgment interest, or such equitable relief that it deems to be appropriate.

COUNT VI
Constructive Fraud
(All the Individual Defendants)

133. Nevada 5 re-alleges Paragraphs 1-32 and 46-85.

134. This is a claim for constructive fraud against the Individual Defendants.

135. Nevada 5 requested financial information in order to explore and understand the business relationship that the Individual Defendants sought and proposed. The Individual Defendants and their cohorts were in possession of, and approved, that information, and represented its accuracy, which Nevada 5 relied on in making the investment.

136. Nevada 5's relationship with the Individual Defendants was such that the Individual Defendants had, at minimum, a moral, fiduciary and professional duty to deal in good faith and, having undertaken to provide the requested information, to present accurate and complete information.

137. Nevada 5 also had a confidential, dependent relationship with the Individual Defendants because it was relying on their representations and knowledge of Hygea's financial status, thus creating a relationship of trust and confidence between the parties.

138. Further, by virtue of the lengthy negotiations of the parties, the claimed expertise of the Individual Defendants in owning and operating businesses like Hygea, and the Individual Defendants' represented and purported business model of Hygea, the parties had a special and confidential relationship whereby Nevada 5 reposed special confidence in the Individual Defendants.

139. Nevada 5 relied upon the Individual Defendants to provide truthful and accurate information regarding the business and affairs of Hygea so that they could properly evaluate the risks and benefits associated with making an equity investment in Hygea.

140. The Individual Defendants breached this special and confidential relationship by providing Nevada 5 with false and/or fraudulent financial documents, misrepresenting and/or omitting material information related to the financial status of Hygea, and the potential profitability of Hygea, or otherwise causing such provision or omission in order to induce Nevada 5 to invest in Hygea.

141. Nevada 5 sustained and suffered damages proximately caused by the Individual Defendants' actions.

WHEREFORE, Nevada 5 requests that the Court enter judgment against the Individual Defendants for damages, including disgorgement, pre-judgment interest, or such equitable relief that it deems to be appropriate.

COUNT VII
Unjust Enrichment
(Hygea Health)

142. Nevada 5 re-alleges Paragraphs 1-32 and 46-85.

143. This is a claim for unjust enrichment against Hygea Health.

144. Hygea Health accepted over $13 million of Nevada 5's funds, and unjustly benefitted from the funds.

145. Nevada 5 conferred a direct benefit on Hygea Health because Hygea Health received over $13 million of the specific $30 million paid by Nevada 5 to Hygea.

146. Hygea Health understood and accepted the benefit of this enrichment.

147. The circumstances are such that it would be inequitable for Hygea Health to retain the benefit received from Nevada 5 without paying the value thereof, particularly because Nevada 5's $30 million payment was fraudulently-induced and Hygea Health helped to conceal from Nevada 5 its receipt of a portion of that payment, and further because Hygea Health was

controlled by many of the same people as Hygea—including and Individual Defendants Castillo and Loar, as well as Moffly and Iglesias—each of whom knew of and participated in the fraudulent inducement.

148. Hygea Health, which has been unjustly enriched, should be required to account for and repay the amounts by which it has been unjustly enriched, together with its earnings thereupon.

WHEREFORE, Nevada 5 requests that the Court enter judgment against Hygea Health for damages, including disgorgement, pre-judgment interest, or such equitable relief that it deems to be appropriate.

COUNT VIII
Aiding and Abetting a Fraud
(Hygea Health)

149. Nevada 5 re-alleges Paragraphs 1-32 and 46-85.

150. Hygea Health knew of the fraud being committed by the Individual Defendants and their agents, particularly because Hygea Health was controlled by many of the same people as Hygea—including Individual Defendants Castillo and Loar, as well as Moffly and Iglesias—each of whom know of and participated in the fraudulent inducement.

151. Hygea Health aided and abetted the fraud by providing substantial assistance to advance the fraud's commission, particularly by helping to conceal from Nevada 5 its receipt of a portion of Nevada 5's $30 million payment.

152. Hygea Health's acceptance of more than $13 million in transferred funds proximately caused damage to Nevada 5.

WHEREFORE, Nevada 5 requests that the Court enter judgment against Hygea Health for damages, including disgorgement, pre-judgment interest, or such equitable relief that it deems to be appropriate.

COUNT IX
Violation of Florida's Uniform Fraudulent Transfer Act ("UFTA")
(Hygea Health)

153. Nevada 5 re-alleges Paragraphs 1--32 and 46-85.

154. This is a cause of action brought pursuant to Florida's UFTA, § 726.101 *et. seq.*, Fla. Stat.

155. Nevada 5 is a creditor of the Individual Defendants (as well as Hygea, Iglesias, and Moffly), and the Individual Defendants (as well as Hygea, Iglesias, and Moffly) are debtors, pursuant to § 726.102, Fla. Stat.

156. The multiple transfers totaling more than $13 million that were made and approved by the Individual Defendants to Hygea Health were made without receiving a reasonably equivalent value in exchange for the transfers.

157. Hygea Health is an insider because Hygea Health and Hygea shared some controlling members, including Individual Defendants Castillo and Loar, as well as Moffly and Iglesias.

158. The transfer occurred shortly before or shortly after a substantial debt was incurred because Hygea and Hygea Health incurred at least $52 million in debt less than two weeks before the last transfer.

159. Hygea and Hygea Health incurred another $6 million in debt less than four months later.

160. Prior to the transfers, Hygea had been sued and/or threatened with suit.

161. The transfers were concealed from, or otherwise not disclosed to, Nevada 5.

162. The over $13 million in transfers violates § 726.105(1) and (2) of the UFTA.

WHEREFORE, Nevada 5 requests that the Court enter judgment against Hygea Health that (i) avoids the transfers; (ii) provides a remedy against the funds transferred or other property of Hygea Health; (iii) enters an injunction or other equitable relief necessary to take charge of the funds that were fraudulently transferred.

COUNT X
Unjust Enrichment
(Bridging Finance)

163. Nevada 5 re-alleges Paragraphs 1-85.

164. This is a claim for unjust enrichment against Bridging Finance for accepting over $6.8 million of Nevada 5's funds.

165. Based on information and belief, Bridging has loaned in excess of $100 million to Hygea and/or Hygea Health. Bridging was privy to Hygea's and Hygea Health's financial records as part of its due diligence process leading up to the loans. Bridging also had access to Hygea's and Hygea Health's financial records as it serviced the loans. Ms. Sharpe, Bridging's agent, was an observer at Hygea's Board Meetings.

166. Bridging Finance unjustly benefitted from receiving over $6.8 million of the funds paid by Nevada 5.

167. Nevada 5 conferred a direct benefit on Bridging Finance because Bridging Finance received over $6.8 million of the specific $30 million paid by Nevada 5 to Hygea.

168. Bridging Finance understood, due to its position as "senior lender" with access to financial records of both companies, and accepted the benefit of this unjust enrichment.

169. The circumstances are such that it would be inequitable for Bridging Finance to retain the benefit received from Nevada 5 without paying the value thereof, particularly because Nevada 5's $30 million payment was fraudulently-induced and Bridging Finance helped to conceal from Nevada 5 its receipt of a portion of that payment.

170. Bridging Finance, which has been unjustly enriched, should be required to account for and repay the amounts by which it has been unjustly enriched, together with its earnings thereupon.

WHEREFORE, Nevada 5 requests that the Court enter judgment against Bridging Finance for damages, including disgorgement, pre-judgment interest, or such equitable relief that it deems to be appropriate.

COUNT XI
Aiding and Abetting a Fraud
(Bridging Finance)

171. Nevada 5 re-alleges Paragraphs 1-85.

172. Bridging Finance knew of the fraud being committed by the Individual Defendants and their agents, and aided and abetted the fraud by providing substantial assistance to advance the fraud's commission, particularly by helping to conceal from Nevada 5 its receipt of a portion of Nevada 5's $30 million payment.

173. Bridging Finance's acceptance of more than $6.8 million in transferred funds proximately caused damage to Nevada 5.

WHEREFORE, Nevada 5 requests that the Court enter judgment against Bridging Finance for damages, including disgorgement, pre-judgment interest, or such equitable relief that it deems to be appropriate.

COUNT XII
Violation of Florida's Uniform Fraudulent Transfer Act ("UFTA")
(Bridging Finance)

174. Nevada 5 re-alleges Paragraphs 1-85.

175. This is a cause of action brought pursuant to Florida's UFTA, § 726.101 *et. seq.*, Fla. Stat.

176. Nevada 5 is a creditor of the Individual Defendants (as well Hygea, Iglesias, and Moffly), and the Individual Defendants (as well as Hygea, Iglesias, and Moffly) are debtors, pursuant to § 726.102, Fla. Stat.

177. The transfer totaling more than $6.8 million that was made and approved by the Individual Defendants to Bridging Finance was made without receiving a reasonably equivalent value in exchange for the transfer.

178. Prior to the transfers, Hygea had been sued and/or threatened with suit.

179. The transfers were concealed from, or otherwise not disclosed to, Nevada 5.

180. The over $6.8 million transfer violates § 726.105(1) and (2) of the UFTA.

WHEREFORE, Nevada 5 requests that the Court enter judgment against Bridging Finance that (i) avoids the transfer; (ii) provides a remedy against the funds transferred or other property of Bridging Finance; (iii) enters an injunction or other equitable relief necessary to take charge of the funds that were fraudulently transferred.

JURY DEMAND

Nevada 5 demands a trial by jury as to all issues so triable.

DATE: March 2, 2020

/s/ Alan Rosenthal
Alan Rosenthal
Florida Bar No. 220833
arosenthal@carltonfields.com
Natalie J. Carlos
ncarlos@carltonfields.com
Florida Bar No. 0146269
Carlton Fields
100 S.E. Second Street, Suite 4200
Miami, FL 33131-2114
(305) 530-0050
and

Christopher D. Kaye
(admitted *pro hac vice*)
cdk@millerlawpc.com
The Miller Law Firm, P.C.
Suite 300
950 W. University Dr.
Rochester, MI 48307
(248) 841-2200

Attorneys for Plaintiff

CERTIFICATE OF SERVICE

I CERTIFY that a true and correct copy of the foregoing was served via ePortal to all counsel of record on March 2, 2020.

/s/ Alan Rosenthal

“Exhibit B”

“Exhibit B”

IN THE CIRCUIT COURT OF THE ELEVENTH JUDICIAL CIRCUIT IN AND FOR MIAMI-DADE COUNTY, FLORIDA

COMPLEX BUSINESS LITIGATION DIVISION

Case No. 19-014926 CA 44

NEVADA 5, INC., a Nevada corporation,

Plaintiff,

v.

DANIEL T. MCGOWAN; FRANK KELLY; MARTHA MAIRENA CASTILLO; LACY LOAR; RICHARD WILLIAMS, ESQ.; GLENN MARRICHI;KEITH COLLINS, M.D.; JACK MANN, M.D.; MARC G. SUSSMAN, AS PERSONAL REPRESENTATIVE OF THE ESTATE OF HOWARD SUSSMAN,M.D.; JOSEPH CAMPANELLA; CARL ROSENKRANTZ; RAY GONZALEZ; HYGEA HEALTH HOLDINGS, INC.; and BRIDGING FINANCE INC.,

Defendants.

_____/

OMNIBUS ORDER ON DEFENDANTS' MOTION TO DISMISS PLAINTIFF'S SECOND AMENDED COMPLAINT

THIS CAUSE came before the Court on Defendants' Motions to Dismiss Plaintiff's Second Amended Complaint ("Complaint" or "Second Amended Complaint"). The Court having reviewed the submissions of the parties, having heard argument of counsel, and being otherwise fully advised in the premises, makes the following findings:

Statement of Facts

The Amended Complaint alleges that Plaintiff, Nevada 5, paid HYGEA Holdings Corp. $30 million as part of a stock purchase transaction. Nevada 5 chose to create an entity, N5HYG,

to purchase the shares and to enter into a Stock Purchase Agreement ("SPA") with HYGEA Holdings for the purchase of the shares. HYGEA Holding Corp., the entity that actually sold the shares to N5HYG and who received the $30 million dollars, is not a named defendant in this Complaint. Although Plaintiff, Nevada 5, provided the money for the purchase of the shares, non-party N5HYG was the entity that actually purchased the shares through the SPA and was the entity that actually entered into the Stock Purchase Agreement and actually owns the stock. Even though Nevada 5 was not the entity that actually purchased the common stock shares, it asserts that during the course of the stock purchase negotiations, Defendants allegedly made two sets of misrepresentations. One about HYGEA'S financial performance and the other about the intention to take HYGEA public via a reverse take-over that never occurred. Nevada 5 alleges it is the real party in interest because it was fraudulently induced to pay--and did pay-- $30 million to purchase securities under false pretenses. The Defendants have each moved to dismiss the Plaintiff's Complaint alleging, among other things, that the Plaintiff did not purchase the shares, does not own the shares and is not the proper party to sue based upon the alleged misrepresentations that led to the purchase of the shares.

Legal Standard

In considering a motion to dismiss, the Court must generally limit itself to the four corners of plaintiffs' complaint, treat as true all of plaintiffs' allegations, and draw all inferences in plaintiffs' favor. *Del Pino-Allen v. Santelises*, 240 So. 3d 89, 91 (Fla. 3d DCA 2018); *Kendall S. Med. Ctr., Inc. v. Consol. Ins. Nation, Inc.*, 219 So. 3d 185, 188 (Fla. 3d DCA 2017); *Williams Island Ventures, LLC v. de la Mora*, 246 So. 3d 471, 475 (Fla. 3d DCA 2018); *Minor v. Brunetti*, 43 So. 3d 178, 179 (Fla. 3d DCA 2010). However, the Plaintiff should not be permitted to limit the review of the Court by simply not attaching a document that is integral to the allegations in the Complaint and that has been referred to in the Complaint. *Steiner Transocean ltd., v. Efremova*,

109 So. 3d 871, 873 (Fla. 3DCA 2013). *See also, Cortec Industries Inc., v. Sum Holdings LP*, 949 F. 2d 42, 44 (2d Cir. 1991) ("Here in drafting their complaint, Plaintiff relied upon documents transmitted to them by defendants though they neglected to attached these papers to, or incorporate them by reference to the complaint. When the defendant made a rule 12(b)(6) motion to dismiss utilizing the same documents, plaintiff insisted the district court not consider them, but was instead required to limit its inquiry regarding the complaint's viability to its four corners. Plaintiffs failure to plead matters which as pleaders they had notice and which was integral to their claim, and they apparently most wanted to avoid—may not serve as a means of forstalling the court's decision on the motion".)

The Plaintiff argues that the Defendants rely on the SPA that was referenced in and attached to the original complaint. Plaintiff further argues that the SPA is neither cited in nor attached to the Second Amended Complaint and therefore cannot be considered by the Court because such matters are outside the four corners of the Complaint. However, the Defendant(s) attached the SPA to its motion to dismiss. It is a finding of this Court that the SPA is integral to the claims outlined in the Complaint and thus may properly be considered on a motion to dismiss as the Complaint refers to the SPA and impliedly incorporated by referenced its terms. *See Veal v. Voyager Prop. & Cas. Ins. Co.*, 51 So. 3d 1246, 1249–50 (Fla. 2d DCA 2011) ("However, in this case, the complaint refers to the settlement agreement. ... Accordingly, since the complaint impliedly incorporates the terms of the agreement by reference, the trial court was entitled to review the terms of that agreement to determine the nature of the claim being alleged.")

The Amended Complaint essentially argues that but for the alleged fraudulent misrepresentations that the Plaintiff relied upon, it would never had transferred the $30 million that was used by N5HYG to purchase the shares. The shares were purchased through the SPA that the Plaintiff is attempting to avoid. The Plaintiff cannot act as if the SPA that facilitated the transfer

of the money in exchange for the shares does not exist. The Plaintiff knew about the SPA document, made reference to it in the original complaint, and attached it to the original complaint. The Plaintiff drafted its Second Amended Complaint to avoid making reference to the SPA document relied upon in the original complaint solely to avoid dismissal. Our system of justice must not be reduced to strategically crafted complaints drafted to avoid making reference to a document to avoid dismissal.

The Plaintiff asserts to satisfy the requirements of standing, it must show that a case and controversy exists between the Plaintiff and Defendants, and that such a case and controversy continues from the commencement to the conclusion of the litigation. *Ferreiro v. Phila. Indem. Ins. Co.* 928 So. 2d 374, 377 (Fla. 3DCA 2006). To this end, Plaintiff argues that it, after relying on alleged false representations from Defendants, invested $30 million in HYGEA. Plaintiff argues that it is not asserting a claim based upon a breach of the SPA on behalf of N5HYG, it is asserting claims based on its $30 million investment based upon false pretenses. Plaintiff suggest that the fact that it paid $30 million for the shares is the relevant inquiry in regard to standing. This Court disagrees. It is true that the Plaintiff transferred the money to HYGEA. However, Plaintiff created a separate entity to actually purchase, own and hold the shares pursuant to a SPA. Therefore, this Court concludes that Plaintiff, Nevada 5, does not have standing to maintain this action, which is based entirely upon a purportedly fraudulently induced purchase of HYGEA holding stock by Nevada 5's subsidiary, N5HYG. A subsidiary is a separate legal entity from the parent company. It was the subsidiary who agreed to purchase HYGEA common stock for $30 million under specified conditions. Those specified conditions were outlined in a SPA signed by HYGEA and N5HYG. It is N5HYG not Nevada 5 who is the proper party to request adjudication of the issues identified in the Second Amended Complaint.

Having established that N5HYG is the party with standing to bring this action, the Court will now briefly discuss the SPA. The integration clause in the "SPA" defeats Nevada 5's claims for fraudulent inducement. The Plaintiff cannot recover in fraud for alleged oral misrepresentations that are adequately covered or expressly contradicted in a later written contract. In the instant case, the alleged misrepresentations consist of alleged statements about HYGEA Holdings earnings and other aspects of HYGEA's financial conditions. Yet, the "SPA" contains a specific set of representations and warranties under the heading "Financial Matters" in which HYGEA Holdings expressly represented the truth and accuracy of its financial statements, balance sheets and earnings reports. Because the alleged misrepresentations claimed by Nevada 5 concern the precise topic of express representations and warranties in the "SPA", the "SPA's", integration clause bars Nevada 5's claims arising from these alleged misrepresentations. This is because the contract fully addressed the alleged representations that allegedly caused the fraudulent inducement.

Additionally, this Court finds that non-purchaser Nevada 5does not have standing to sue under section 517.211, Fla. Stat. Nevada 5's position that it, as the parent company that created the subsidiary to purchase and hold the shares—has standing to sue pursuant to 517.211 is unpersuasive. Nevada 5's attempt to analogize Federal Rule 10(b)(5) and section 517.211 is unsustainable. See *EF Hutton & Co., Inc. v. Rousseff*, 537 So. 2d 978, (1989). ("These separate bodies of federal and state law are vastly different. Rule 10b-5 is wide-ranging, covering a broad spectrum of fraud. It applies to any person who is deceitful in connection with the purchase or sale of securities. It requires no privity between buyer and seller. The Florida statutes, on the other hand, are far more restrictive. "Because section 517.211 contains an express civil liability provision, Florida courts need fashion no court-made civil right. They need only follow the clear language of the statute. Section 517.211 says that if a seller (or buyer) is untruthful in a sale, the buyer (or seller) can rescind the transaction

and get his money back. This provision applies to a far narrower group of activities than does rule 10b-5. Buyer/seller privity is required." In the instant case, the buyer under 517.211, was N5HYG and the seller was HYGEA. Nevada 5 was not in privity with anyone concerning the purchase of the securities. Based upon the above, it is

ORDERED AND ADJUDGED the Defendants' motion to dismiss based upon Plaintiff's lack of standing is granted with prejudice. Additionally, the "SPA" merger and integration clause would bar Plaintiff's fraudulent inducement claims.

DONE AND ORDERED in Chambers at Miami-Dade County, Florida, on 12/09/20.

WILLIAM THOMAS
CIRCUIT COURT JUDGE

FINAL ORDERS AS TO ALL PARTIES
SRS DISPOSITION NUMBER 12
THE COURT DISMISSES THIS CASE AGAINST ANY PARTY NOT LISTED IN THIS FINAL ORDER OR PREVIOUS ORDER(S). THIS CASE IS CLOSED AS TO ALL PARTIES.
Judge's Initials WT

The parties served with this Order are indicated in the accompanying 11th Circuit email confirmation which includes all emails provided by the submitter. The movant shall IMMEDIATELY serve a true and correct copy of this Order, by mail, facsimile, email or hand-delivery, to all parties/counsel of record for whom service is not indicated by the accompanying 11th Circuit confirmation, and file proof of service with the Clerk of Court.

Signed original order sent electronically to the Clerk of Courts for filing in the Court file.

“Exhibit 36”

“Exhibit 36”

OPPS
OGONNA M. BROWN, ESQ. (NBN 007589)
LEWIS ROCA ROTHGERBER CHRISTIE
3993 Howard Hughes Pkwy., Suite 600
Las Vegas, NV 89169
OBrown@lrrc.com

G. MARK ALBRIGHT, ESQ. (NBN 0013940)
D. CHRIS ALBRIGHT, ESQ. (NBN 004904)
ALBRIGHT, STODDARD, WARNICK & ALBRIGHT
801 South Rancho Drive, Suite D-4
Las Vegas, Nevada 89106
Tel: (702) 384-7111 / Fax: (702) 384-0605
gma@albrightstoddard.com / dca@albrightstoddard.com

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

DISTRICT COURT
CLARK COUNTY, NEVADA

N5HYG, LLC, a Michigan limited liability company; and, NEVADA 5, INC., a Nevada corporation, Plaintiffs, vs. HYGEA HOLDINGS CORP., a Nevada corporation; MANUEL IGLESIAS; EDWARD MOFFLY; and ROES I-XXX, inclusive, Defendants.	CASE NO.: A-17-762664-B DEPT. NO.: 27 **PLAINTIFF NEVADA 5's OPPOSITION TO, AND REQUEST TO STRIKE, DEFENDANTS' PARTIAL MOTION FOR JUDGMENT ON THE PLEADINGS** Date of Hearing: March 17, 2021 Time of Hearing: 10:30 a.m.

Plaintiff Nevada 5, Inc. ("Nevada 5"), by and through its undersigned counsel, hereby brings Plaintiff's Opposition to Defendants'[1] Partial Motion for Judgment on the Pleadings ("Opposition"). This Opposition is supported by the Declaration of Ogonna M. Brown, Esq. ("Brown Decl."), one of

[1] Defendants Moffly and Iglesias filed the instant Motion. Plaintiffs are not pursuing claims from the Complaint against Defendant Hygea Holdings Corp. in light of Hygea's bankruptcy.

the attorneys for N5HYG, LLC and Nevada 5 ("Plaintiffs"), a true and correct copy of which is attached hereto as **Exhibit "A"**. The Brown Decl. sets forth in detail Nevada 5's efforts to meet and confer in good faith with Defendants, through their counsel, in an effort to address the propriety of the Motion given this Court's prior express rulings regarding Nevada 5, Inc.'s standing to pursue its claims against Iglesias and Moffly in Nevada. This Opposition is further based upon the memorandum of points and authorities and the pleadings and papers on file herein, and any oral argument the Court wishes to entertain on the Motion for Partial Judgment on the Pleadings ("Motion").

MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

In blatant disregard of this Court's crystal-clear ruling just weeks ago, and despite the Court's warning that it would consider Rule 41 relief when Defendants previously re-argued fully-adjudicated issues, Defendants still refuse to take "no" for an answer. Now in their ***fifth dispositive motion***, Defendants ask this Court to expressly reverse itself, citing "issue preclusion" based upon a ruling from a court in Florida, applied to different defendants, regarding claims based solely in Florida law, and under Florida's standing law. But the "issue" of whether Nevada 5 has standing to pursue its fraud claims against *these Defendants*, under *Nevada* law, has only—and already—been adjudicated by one Court: ***this one*.**

By way of reminder, during the recent hearing on Defendants' *fourth* pre-Answer dispositive motion, this Court expressly ruled:

> "**[V]ery clearly, Nevada 5 is not barred here -- clearly has standing**. … Every cause of action is available under Nevada law. All of them have been adequately pled -- Nevada or Michigan or Florida law, and they have all been adequately pled."
>
> "This motion … is almost identical to the motion I denied in January of 2020, and **I'm concerned that there may be a violation here of NRS 12(g)(2) by delaying the proceedings.** I will consider relief from Rule 41…"

See Transcript of Court's ruling during the hearing on December 9, 2020, denying Defendants' *fourth* pre-Answer dispositive motion ("December 2020 Hearing Trans."), pp. 37-38, on file herein.

In addition to their improper attempt to undo this Court's ruling, Defendants' argument fails

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on the merits because the Florida Court's ruling has no bearing on this Court's prior ruling. The issue decided in Florida is **not** identical to the issue this Court already decided: that Nevada 5 has standing to pursue its claims against Iglesias and Moffly *in Nevada*. Further, the Florida Court's dismissal was based on a lack of *jurisdiction—not on the merits*—and applied Florida law, not Nevada law. Moreover, to apply the Stock Purchase Agreement Defendants signed with co-Plaintiff N5HYG to Nevada 5's claims, as Defendants insist, only further illustrates that they are bound by this Court's rulings and Nevada law.

Defendants' fifth dispositive Motion is unfounded and an inefficient use of Nevada 5's and this Court's resources, especially given the Court's recent warning regarding the propriety of Defendants' fourth dispositive motion—which was also filed to relitigate fully-adjudicated issues relating to Nevada 5's standing. Nevada 5 requests that the Court deny and/or strike the Motion, and award Nevada 5 costs and attorneys' fees for having to respond to the Motion, and likewise grant attorneys' fees and costs incurred by Plaintiffs in connection with Defendants' prior motion.

II. PROCEDURAL HISTORY

As extensively briefed several times previously, this Court granted Nevada 5's motion for reconsideration of the December 2018 order dismissing Nevada 5's claims on the basis of standing. In that motion—filed nearly two years ago—Nevada 5 argued that it had standing, could plead all the elements of its fraud claims for itself, and was not seeking to assert them on behalf of its subsidiary, N5HYG. The Court granted the motion, ruling at the July 17, 2019 oral argument: "…it does seem that the [Nevada 5] dismissal should be without prejudice, but you have to be more specific if you replead. **You have to differentiate the standing between the different entities**." *See* Transcript of Court's ruling during hearing on July 17, 2019 ("July 2019 Hearing Trans."), p. 35, on file herein (emphasis added). Nevada 5 heeded the Court's directive, and Plaintiffs filed the operative Second Amended Complaint ("SAC") consistent with the Court's ruling.

On January 13, 2020, Defendants filed another dispositive motion, asserting Nevada 5's claims under the SAC were barred. After a hearing on January 30, 2020, the Court ruled during the February 26, 2020 telephonic status conference that it would deny that motion, and entered the corresponding Order on April 15, 2020. Undeterred, on November 4, 2020, Defendants filed yet

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another motion to dismiss the SAC. The Court **denied that motion as well,** and unmistakably ruled (again) that Nevada 5 has standing to pursue its fraud claims:

> **But very clearly, Nevada 5 is not barred here -- clearly has standing.** I granted leave to assert those fraud claims. I compared the Second Amended Complaint with the first and the specificity is appropriate. I find that there's no bar due to the Receivership Action and that the Claim Preclusion Order here is not applicable, because a nucleus of operative facts is very carefully been written to the Second Amended Complaint. **Every cause of action is available under Nevada law. All of them have been adequately pled -- Nevada or Michigan or Florida law, and they have all been adequately pled.** So for those reasons, the motion is dismissed.

December 2020 Hearing Trans. excerpt, p. 38, on file herein (emphasis added).

The Court further held, "This motion … is almost identical to the motion I denied in January of 2020, and **I'm concerned that there may be a violation here of NRS 12(g)(2) by delaying the proceedings.** I will consider relief from Rule 41…" *Id*., p. 37 (emphasis added) The Court's December 16, 2020 written order incorporated these rulings. *See* December 16, 2020 Order Granting in Part and Denying In Part Defendants' Motion for Summary Judgment, Or In The Alternative, Motion to Dismiss ("December 2020 Order"), on file herein.

In a Florida action brought by Nevada 5 against different former Hygea directors,[2] the Florida Court ruled on December 9, 2020 that Nevada 5 lacked standing under Florida law to bring Florida statutory and common law fraud claims against those defendants. Nevada 5 will not address the substance of that ruling here, other than to say that the Florida Court did not—and could not—adjudicate the rights or standing of Nevada 5 as to *different* defendants (Iglesias and Moffly), to bring *different* statutory and common law claims (including Nevada and Michigan, as well as Florida statutes, and Nevada common law), according to *Nevada* law on standing.

Now, Defendants Iglesias and Moffly, who are *not* parties in the Florida case, seek to parlay that ruling into a finding of "issue preclusion" and bar Nevada 5's claims here. They essentially ask this Court to undo two years of litigation, and reverse its repeated consideration and determination of Nevada 5's standing to pursue its fraud claims against these Defendants under Nevada law. Defendants' Motion defies the Court's express rulings, is contrary to Nevada law, and is yet another

[2] This Court previously dismissed former defendants Campanella, Castillo, Collins, Gonzalez, Kelly, Loar, Mann, Marrichi, McGowan, Rosenkrantz, Sussman, Williams for lack of personal jurisdiction. Nevada 5 subsequently brought suit against those individuals in Florida state court.

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attempt to delay proceedings and avoid adjudication of their fraudulent inducement of Nevada 5's $30 million payment.

Not only should Defendants' Motion be stricken and/or denied, but Nevada 5 should be awarded its fees and costs for Defendants' disregard of this Court's Order Granting in Part and Denying in Part Defendants' Motion for Summary Judgment, or in the Alternative, Motion to Dismiss, entered December 16, 2020. Likewise, Plaintiffs Nevada 5 and N5HYG should be awarded their fees and costs for having to respond to the fourth dispositive motion by which Defendants also sought to re-litigate decided issues. *See* December 2020 Order , p. 3, ll. 1-2, on file herein ("Defendants may have violated NRCP 12(g)(2) such that the Plaintiffs may request relief under NRCP 41").

III. ARGUMENT

A. The Court Has Already Ruled That Nevada 5 Has Standing

At the risk of belaboring the point, this Court has exhaustively considered and definitively ruled that Nevada 5 has standing to bring its fraud claims against Iglesias and Moffly in this action. The Court reconsidered its 2018 ruling that Nevada 5 lacked standing, and provided a clear directive that Nevada 5 would need to amend its pleadings in order to establish that standing. (*See* July 2019 Hearing Trans., on file herein) Nevada 5 heard and honored that directive in its SAC, which the Court recognized when it *twice* denied these Defendants' motions seeking to dismiss it. And just weeks ago, after another round of extensive oral argument, the Court could not have been more clear: "**Nevada 5… clearly has standing.** … Every cause of action is available under Nevada law. All of them have been adequately pled -- Nevada or Michigan or Florida law, and they have all been adequately pled." *See* December 2020 Hearing Trans.,, p. 38, on file herein. The Court is well-familiar with this matter, and correctly adjudicated the standing issue as it relates to Nevada 5's claims, against these Defendants, in this Nevada case. There is simply no basis to undo that determination and reverse course.

B. Issue Preclusion Does Not Otherwise Apply

Defendants argue that the Florida Court's order constitutes "issue preclusion" as to Nevada 5's standing in Nevada, averring that Nevada 5 is barred from re-litigating an issue that has already been decided against it in Florida. (Motion, p. 7) Aside from constituting an affront to this Court's

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rulings, Defendants' argument is simply wrong.

1. The "issues" are not "identical."

Defendants admit that for issue preclusion to apply, "the issue decided in the prior action must be **identical** to the issue presented in the current action." (Motion, p. 7) (emphasis added). There is no such "identity of issues" here. The only issue the Florida Court decided was whether Nevada 5 had standing under Florida law to bring claims under a Florida statute and common law[3], against different defendants. The Florida Court *did not* decide the issue that this Court already *did* decide: that Nevada 5 had standing under *Nevada* law, to assert fraud claims based on *Nevada, Michigan, and Florida law*, against *Iglesias and Moffly*. Nowhere in the Florida Court's order did it cite or apply Nevada law regarding fraud *or* standing, nor did it (nor could it) purport to reverse this Court's rulings or otherwise bind this Court to its ruling.[4] The only "re-litigating" of issues here is Defendants' repeated efforts to re-litigate what this Court has emphatically decided.

2. Standing is a jurisdictional question—not a decision "on the merits."

Defendants also recognize that for issue preclusion to apply, the issue decided must be based on a "final ruling on the merits." (Motion, p. 8) The Florida Court's ruling was not on the merits, as Defendants' own Motion makes clear. Defendants cite NRCP 41(b) for proposition that:

> Unless the court in its order for dismissal otherwise specifies, a dismissal under this subdivision and *any dismissal not provided for in this rule*, **other than a dismissal for lack of jurisdiction,** for improper venue, or for failure to join a party under Rule 19, *operates as an adjudication upon the merits*. (Motion, p. 9) (bold added)

But it is well-settled that **standing is a matter of jurisdiction**. *See Wallace v. Smith*, 2018 Nev. App. Unpub. LEXIS 106, *6-7, 2018 WL 1426396[5] ("whether a party has standing is a question that goes to the court's jurisdiction… [S]tanding, or lack thereof, is a critical matter that must be addressed before we even get to the merits…"); *Brunk v. Eighth Judicial Dist. Court*, 449 P.3d 1270

[3] Nevada 5's operative complaint in Florida only brought Florida statutory and common law claims. (*See* Defendants' Motion at Ex. A)

[4] Again, without addressing the substance of the Florida Court's decision, standing laws can differ among states. *See, e.g., Michael H. v. Gerald D.*, 491 U.S. 110, 125-26, 109 S. Ct. 2333, 2343 (1989) (identifying differences in standing afforded to parents among states' paternity statutes).

[5] A true and correct copy of the unpublished opinion is attached to the Brown Decl. as **Exhibit "1"**.

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(Nev. 2019) ("[W]e agree with the district court's initial determination that it lacked subject matter jurisdiction to adjudicate [plaintiff's] claims, because [plaintiff] lacked standing to assert them…"); *Ctr. for Biological Diversity v. Mattis*, 868 F.3d 803, 815 (9th Cir. 2017) (lack of standing deprives court of jurisdiction). Defendants themselves recognize this. They specifically argue, "Standing is a threshold question required in every case that determines whether the court may even entertain the proceeding. … **For a court to have jurisdiction over the case, the party bringing the suit must establish standing**." (Motion, p. 7) (emphasis added)

Accordingly, the law is clear that a determination regarding standing is **not a determination on the merits**. *See Kirola v. City & Cty. of S.F.*, 860 F.3d 1164, 1175 (9th Cir. 2017) ("The district court seems to have improperly conflated [plaintiff's] standing with whether she would prevail on the merits. … 'Our threshold inquiry into standing in no way depends on the merits of the petitioner's contention that particular conduct is illegal,'" quoting *Whitmore v. Arkansas*, 495 U.S. 149, 155 (1990)); *Safer Chems. v. United States EPA*, 943 F.3d 397, 418-19 (9th Cir. 2019) (same); *Ctr. for Biological Diversity v. Mattis*, 868 F.3d 803, 818 (9th Cir. 2017) (distinguishing standing from merits, "the claim fails not for lack of standing but on the merits."); *Paher v. Cegavske*, 457 F. Supp. 3d 919, 922 (D. Nev. 2020) (distinguishing standing from merits, ruling "even if [plaintiffs] can establish standing, Plaintiffs' claims fail on the merits…"). Defendants fail to meet at least two of the required components to establish issue preclusion. For those additional reasons, the Motion should be denied.

3. Defendants' reliance on the Stock Purchase Agreement further illustrates why they are bound by this Court's rulings and Nevada law, and why issue preclusion does not apply.

As the SAC makes clear and Nevada 5 made clear at the December 9 hearing, Nevada 5 is not suing for breach of the October 2016 Stock Purchase Agreement ("SPA") between co-Plaintiff N5HYG and Defendants; Nevada 5 is suing Iglesias and Moffly because they fraudulently induced it into paying $30 million. (*See* SAC, on file herein; *see also* December 2020 Hearing Transcript, , p. 31, on file herein) And as the Court has ruled, Nevada 5 clearly has standing to do so. However, Defendants latch on to a ruling from the Florida Court that the SPA itself barred Nevada 5's claims

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against the Florida defendants, despite the fact that Nevada 5 was not a signatory.[6] But the SPA does not help Iglesias and Moffly; it further shows why they are bound by this Court's ruling and Nevada law.

Iglesias and Moffly signed and are bound by the SPA in their personal capacities. And by attempting to tie the SPA itself to Nevada 5's fraudulent inducement claims, Defendants run headlong into their express acknowledgement that *only Nevada laws*, applied by *this Court* apply to them:

> 8.10. Governing Law. This Agreement, the negotiation, terms, and performance of this Agreement, the rights of the Parties under this Agreement, and all **Actions arising** in whole or in part under or **in connection with this Agreement, shall be governed by and construed in accordance with the domestic substantive laws of the State of Nevada, without giving effect to any choice or conflict of law provision or rule that would cause the application of the laws of any other jurisdiction.**
>
> 8.11.1. Jurisdiction. **Each Party to this Agreement**, by his, her, or its execution hereof, (a) **hereby irrevocably submits to the exclusive jurisdiction and venue of the Nevada state** and/or United States federal **courts located in Clark County, Nevada** for the purpose of any Action between any of the Parties hereto arising in whole or in part under or in connection with this Agreement, any Ancillary Agreement, the Contemplated Transactions, or the negotiation, terms or performance hereof or thereof, (b) hereby waives to the extent not prohibited by applicable Legal

[6] As Defendants indicate, the Florida Court based its ruling in part on the SPA's "integration clause," finding that clause barred fraudulent inducement claims under Florida law. (Motion, p. 8) Although not necessary for this Court's decision on this Motion, Nevada 5 notes that Defendants made avirtually identical argument to this Court in their Motion to dismiss the First Amended Complaint back in August 2018. But this Court was unpersuaded, allowing the fraud claims to proceed.

This Court was correct, as black letter *Nevada* law makes clear. *See Reynolds v. Tufenkjian*, 475 P.3d 777 (Nev. 2020) ("**integration clauses do not bar claims for [intentional] misrepresentation**," (bracketed language in original), quoting *Blanchard v. Blanchard*, 108 Nev. 908, 912, 839 P.2d 1320, 1322-23 (Nev. 1992)) (emphasis added); *Copper Sands Homeowners Ass'n v. Copper Sands Realty, LLC*, 2013 U.S. Dist. LEXIS 90551, at *21 n.4 (D. Nev. June 26, 2013) ("**the Nevada Supreme Court has expressly recognized that integration clauses do not bar claims for misrepresentation.**") (emphasis added); *Epperson v. Roloff*, 102 Nev. 206, 719 P.2d 799, 802 (Nev. 1986) (same); *Sarro v. Nev. State Bank*, 2016 U.S. Dist. LEXIS 162988, at *16 n.4 (D. Nev. Nov. 23, 2016) (same); *Khan v. Bakhsh*, 129 Nev. 554, 558, 306 P.3d 411, 413 (Nev. 2013) ("[e]xtrinsic or oral evidence, however, is admissible to prove fraud in the inducement of an agreement"); *Insulation Contracting & Supply, Inc. v. S3H, Inc.*, 2015 WL 5774180, *2 (Nev. Sep. 29, 2015) (Nevada "applies traditional exceptions to the parol evidence rule, like fraud and mistake.").

By now seeking to apply the Florida Court's ruling that an integration clause bars fraudulent inducement claims, Defendants ask this Court to disregard Nevada law that provides exactly the opposite. That is improper.

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> Requirements, and **agrees not to assert, by way of motion, as a defense or otherwise, in any such Action**, any claim that he or she is not subject personally to the jurisdiction of the above-named court, that venue in such court is improper, that his, her or its property is exempt or immune from attachment or execution, that any such Action brought in the above-named court should be dismissed on grounds of *forum non conveniens* or improper venue, that such Action should be transferred or removed to any court other than the abovenamed court, that such Action should be stayed by reason of the pendency of some other Action in any other court other than the above-named court or **that this Agreement or the subject matter hereof may not be enforced in or by such court**, and (c) hereby agrees not to commence or prosecute any such Action other than before the above-named court.

***See* Exhibit "2"** to Brown Decl., SPA excerpt, Sections 8.10 and 8.11.1 (emphasis added).

Defendants have thus expressly agreed that claims related to the SPA—which, they argue, Nevada 5's claims are—can only be litigated in *this Court*, under *Nevada law*. Again, the Florida order is not applicable to the claims and parties at issue here. Moreover, Defendants' reliance on the SPA to defend against Nevada 5's claims provides further evidence of the impropriety of their Motion. Defendants contractually waived any rights or defenses based on another court's application of a different state's laws to the claims against them.

Further, this illustrates yet another reason why the issue of Nevada 5's standing was not—*and could not have been*—litigated against Iglesias and Moffly in Florida. Iglesias and Moffly were not defendants in Florida. And the defendants in Florida were not bound to these provisions of the SPA because **they were not parties to the SPA**. The distinguishable application of the SPA to Iglesias and Moffly was thus never—*and could not have been*—before the Florida Court. Again, there is no identity of issues that could cause issue preclusion to apply.

C. The Court Should Strike the Motion and Award Relief Under Rule 41

Defendants have now filed ***five*** dispositive motions. All five motions were filed before a Rule 16 Conference has been held. And the last two (at least) have sought to relitigate issues previously decided by this Court. The Court admonished Defendants for this duplicative practice just weeks ago, expressing concern of a potential violation of NRS 12(g)(2), and indicating that it would entertain a request for relief under Rule 41 because of their prior motion. *See* December 2020 Hearing Trans., p. 37, on file herein. In the interests of pressing the case forward on the merits, Plaintiffs have not pursued such relief previously. But enough is enough.

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Las Vegas, NV 89169

Although Defendants presumably did not know of the Florida Court's ruling when they filed and argued their fourth dispositive motion, they most certainly knew of *this Court's* rulings before filing this *fifth* dispositive motion. Their repeated attempt to re-litigate Nevada 5's standing violates NRS 12(g)(2). And this latest Motion presents—at minimum—an "insufficient defense" and "redundant" arguments that warrant striking it under NRS 12(f), especially given that their arguments run afoul of the "Governing Law" and "Jurisdiction" provisions of the SPA by which they waived arguments and defenses based on other courts' application of other states' laws to claims against them.

Moreover, Defendants were expressly warned by this Court. (*See* December 2020 Order , p. 3, ll. 1-2, on file herein: "Defendants may have violated NRCP 12(g)(2) such that the Plaintiffs may request relief under NRCP 41.") In addition to the Court's admonitions, Nevada 5's Counsel sent a February 25, 2021 letter advising that Defendants' subject Motion is contrary to the Court's repeated Orders, was not brought in good faith, and should be withdrawn. A true and correct copy of the letter dated February 25, 2021 to Defendants' counsel is attached to the Brown Decl. as **Exhibit "3"** . The parties met and conferred on March 1, 2021 at Nevada 5's request in an attempt to resolve this issue without the Court's intervention. But Defendants refused to withdraw the Motion, offering only to seek what amounted to an advisory opinion from the Court on a motion they already filed and only they briefed. Defendants' refusal thus necessitated Nevada 5 preparing and filing this Opposition to fully brief the issues for the Court, including the impropriety of Defendants' Motion and their efforts to circumvent the most recent Order.

Plaintiffs and this Court should not have to continue to expend precious resources entertaining Defendants' interminable delay tactics. Relief under Rule 41 or otherwise is warranted.

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Las Vegas, NV 89169

IV. CONCLUSION

For all of the reasons set forth above, Nevada 5 respectfully requests that the Court deny and/or strike Defendants' Motion, and award Nevada 5 costs, reasonable attorneys' fees, and such other relief the Court deems appropriate for having to respond to this Motion. Plaintiffs further request that the Court award Plaintiffs' costs, reasonable attorneys' fees, and such other relief the Court deems appropriate for having to respond to the November 4, 2020 motion.

DATED this 8th day of March, 2021.

LEWIS ROCA ROTHGERBER CHRISTIE

/s/ Ogonna Brown
OGONNA M. BROWN, ESQ.
Nevada bar No. 007589
3993 Howard Hughes Pkwy., Suite 600
Las Vegas, NV 89169
OBrown@lrrc.com

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

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

Attorneys for Plaintiffs

CERTIFICATE OF SERVICE

I hereby certify that I am an employee of Lewis Roca Rothgerber Christie LLP, and that on March 8, 2021, I served a true and correct copy of the foregoing *Plaintiffs' Opposition to Defendants' Motion for Summary Disposition or, in the Alternative, Motion to Dismiss* upon all counsel of record by electronically serving the document using the Court's electronic filing system.

/s/ Annette Jaramillo
An employee of Lewis Roca Rothgerber Christie LLP

3993 Howard Hughes Parkway, Suite 600
Las Vegas, NV 89169

EXHIBIT A

EXHIBIT A

DECL

OGONNA M. BROWN, ESQ. (NBN 007589)
LEWIS ROCA ROTHGERBER CHRISTIE
3993 Howard Hughes Pkwy., Suite 600
Las Vegas, NV 89169
OBrown@lrrc.com

G. MARK ALBRIGHT, ESQ. (NBN 0013940)
D. CHRIS ALBRIGHT, ESQ. (NBN 004904)
ALBRIGHT, STODDARD, WARNICK & ALBRIGHT
801 South Rancho Drive, Suite D-4
Las Vegas, Nevada 89106
Tel: (702) 384-7111 / Fax: (702) 384-0605
gma@albrightstoddard.com / dca@albrightstoddard.com

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

DISTRICT COURT
CLARK COUNTY, NEVADA

N5HYG, LLC, a Michigan limited liability company; and, in the event the Court grants the pending Motion for Reconsideration, NEVADA 5, INC., a Nevada corporation, Plaintiffs, vs. HYGEA HOLDINGS CORP., a Nevada corporation; MANUEL IGLESIAS; EDWARD MOFFLY; and ROES I-XXX, inclusive, Defendants.	CASE NO.: A-17-762664-B DEPT. NO.: 27 **DECLARATION OF OGONNA M. BROWN, ESQ. IN SUPPORT OF PLAINTIFF NEVADA 5's OPPOSITION TO, AND REQUEST TO STRIKE, DEFENDANTS' PARTIAL MOTION FOR JUDGMENT ON THE PLEADINGS** Date of Hearing: March 17, 2021 Time of Hearing: 10:30 a.m.

I, Ogonna M. Brown, Esq., declare as follows,

1. I am a shareholder with the law firm of Lewis Roca Rothgerber Christie LLP, attorneys of record for Plaintiffs N5HYG, LLC ("N5HYG") and Nevada 5, Inc. ("Nevada 5") (collectively, "Plaintiffs") in the above-referenced proceeding.

2. I have personal knowledge of the facts in this Declaration, except as to those matters based upon information and belief, and as to those matters, I believe them to be true and correct.

3. I am over the age of eighteen (18) years and competent to testify to the matters set forth herein.

4. I make this Declaration based upon my personal knowledge of the facts and matters of this action.

5. I make this Declaration in support of Plaintiff Nevada 5's Opposition to, and Request to Strike, Defendants' Partial Motion for Judgment on the Pleadings ("Opposition").

6. A true and correct copy of the unpublished decision, *Wallace v. Smith, 2018 Nev. App. Unpub. LEXIS 106, *6-7, 2018 WL 1426396* is attached hereto as **Exhibit "1"**.

7. A true and correct copy of the October 2016 Stock Purchase Agreement ("SPA") is attached hereto as **Exhibit "2"**.

8. On February 25, 2021, shortly after the Defendants filed their Partial Motion for Judgment on the Pleadings ("Motion"), my office sent a letter to Defendants on behalf of Plaintiff, Nevada 5 advising that Defendants' subject Motion is contrary to the Court's repeated Orders, was not brought in good faith, and requesting that it should be withdrawn (the "Letter"). A true and correct copy of the Letter dated February 25, 2021 to Defendants' counsel is attached hereto as **Exhibit "3"**.

9. In their Letter, Plaintiffs further advised Defendants Plaintiffs' would seek any and all available remedies under NRCP 41 in connection with Defendants' previously barred arguments, including recovery of all attorneys' fees and costs incurred as a result of drafting the oppositions to these Motions, preparing for and attending the Motion hearings. *See* **Ex. "3"**, attached hereto.

10. On February 25, 2021, in response to the Letter, counsel for the Defendants, Kory Kaplan, Esq. ("Attorney Kaplan"), sent an email stating that he did not agree that Defendants had violated the Court's prior rulings, and confirming his availability for a meet and confer. A true and correct copy of Attorney Kaplan's email dated February 25, 2021 is attached hereto as **Exhibit "4"**.

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11. On March 1, 2021, the parties met and conferred at Nevada 5's request in an attempt to resolve this issue without the Court's intervention.

12. During the March 1st telephone conference, Defendants' counsel advised that Defendants refused to withdraw the Motion, offering only to seek what amounted to an advisory opinion from the Court on a motion they already filed and only they briefed.

13. During the meet and confer, I again advised Attorney Kaplan that Plaintiffs would seek costs incurred as a result of preparing an opposition to, and attending the hearing for, the Motion.

14. On March 1, 2021, following the meet and confer, Attorney Kaplan sent an email reiterating that he did not "not see any violation of any rules or the Court's order." A true and correct copy of Attorney Kaplan's email dated March 1, 2021 is attached hereto as **Exhibit "5"**.

15. Later the same day, Attorney Kaplan sent an email confirming that he had conversed with his clients and "they are not agreeable to withdraw the motion." A true and correct copy of Attorney Kaplan's second email dated March 1, 2021 is attached hereto as **Exhibit "6"**.

16. Defendants' refusal thus necessitated Nevada 5 preparing and filing this Opposition to fully brief the issues for the Court, including the impropriety of Defendants' Motion and their efforts to circumvent the most recent Order.

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct to the best of my knowledge.

DATED this 8th day of March, 2021.

/s/ Ogonna Brown
OGONNA M. BROWN, ESQ.

3993 Howard Hughes Parkway, Suite 600
Las Vegas, NV 89169

EXHIBIT "1"

134 Nev. 1027

An unpublished order shall not be regarded as precedent and shall not be cited as legal authority. SCR 123.

Court of Appeals of Nevada.

Tanya WALLACE, Appellant,
v.
Shafer C. SMITH, Respondent.

No. 70574
|
Filed MARCH 05, 2018

Attorneys and Law Firms

David Lee Phillips & Associates

JH Freeman Law

Snell & Wilmer, LLP/Las Vegas

BEFORE Silver, C.J., Gibbons and Tao, JJ.

ORDER OF AFFIRMANCE

***1** Tanya Wallace appeals from district court orders denying a motion for reconsideration and granting a motion for determination of good faith settlement.[1] Eighth Judicial District Court, Clark County; Linda Marie Bell, Judge.

David Wallace, appellant's former husband, sued respondent Shafer C. Smith, now professionally known as "Ne-Yo," for damages under a talent management contract. While litigation was pending, Wallace divorced his wife, Tanya, and the divorce decree awarded Tanya one-half of the proceeds from any future judgment in the lawsuit. The district court later dismissed the case and while Wallace's appeal was pending he passed away. The Nevada Supreme Court subsequently reversed the district court, *see Wallace v. Smith*, Docket No. 60456 (Order Affirming in Part, Reversing in Part and Remanding, September 26, 2014), and upon remand Wallace's two daughters, as administrators of the estate, proceeded with the case. Tanya continued to monitor the case.

Smith moved the district court for summary judgment against Wallace's Estate. During the hearing, Tanya orally moved to intervene, which was granted. Tanya then requested a continuance to oppose Smith's motion for summary judgment, but the district court denied her request and granted partial summary judgment on an issue that was unopposed by Wallace's Estate.

Tanya moved the district court for reconsideration of its order granting partial summary judgment, but the district court denied Tanya's motion. Thereafter, Smith and Wallace's Estate settled the case and filed a motion for a determination of good faith settlement, which was granted over Tanya's objections.[2]

On appeal, Tanya argues that the district court abused its discretion by denying her motion to reconsider the granting of partial summary judgment and granting Smith's and Wallace's Estate's joint motion for determination of good faith settlement.[3] We disagree.

***2** Tanya first argues that the district court abused its discretion by denying her motion to reconsider the granting of partial summary judgment because she provided new issues of fact, rendering partial summary judgment inappropriate. Despite the fact that Tanya retained the same counsel that filed the lawsuit and was monitoring the case, she never filed a written motion to intervene, nor a written opposition to the motion for summary judgment. Thus, by failing to intervene sooner and oppose Smith's motion for summary judgment, she consented to the court's decision to grant the motion. *See* EJDC 2.20(e) ("Failure of the opposing party to serve and file written opposition may be construed as an admission that the motion and/or joinder is meritorious and a consent to granting the same."). Further, under these facts, the district court properly granted partial summary judgment because Wallace's Estate agreed with Smith and did not oppose the issue within in its opposition. Substantively, Tanya's motion for reconsideration did not provide substantially different evidence or show that the district court's decision was clearly erroneous. *See Masonry & Tile Contractors Ass'n of S. Nev. v. Jolley, Urga & Wirth, Ltd.*, 113 Nev. 737, 741, 941 P.2d 486, 489 (1997) ("A district court may reconsider a previously decided issue if substantially different evidence is subsequently introduced or the decision is clearly erroneous."). Accordingly, the district court did not abuse its discretion by denying Tanya's motion for reconsideration.

Next, Tanya contends that the district court abused its discretion by granting Smith's and Wallace's Estate's motion for determination of good faith settlement because the settlement was unreasonable. She further contends that Wallace's Estate did not adequately represent her interests

and that Wallace's Estate and Smith colluded to keep her out of settlement negotiations. We review a district court's determination of good faith for an abuse of discretion. *Velsicol Chem. Corp. v. Davidson*, 107 Nev. 356, 360, 811 P.2d 561, 563 (1991). We will uphold the district court's decision so long as it is supported by substantial evidence: "that which a reasonable mind might accept as adequate to support a conclusion." *Otak Nev., LLC v. Eight Judicial Dist. Court,* 129 Nev. 799, 805, 312 P.3d 491, 496 (2013) (internal quotation marks omitted). "This standard of review vests the district court with considerable discretion." *Doctors Co. v. Vincent,* 120 Nev. 644, 652, 98 P.3d 681, 687 (2004).

Our review of the record reveals the district court properly considered the relevant factors and determined the settlement was made in good faith, was reasonable, and its decision is supported by substantial evidence. *See Otak,* 129 Nev. at 805, 312 P.3d at 496 (holding that factors such as "[t]he amount paid in settlement, the allocation of the settlement," the defendant's financial condition, and the existence of fraud or collusion are relevant though not exclusive factors for determining a good faith settlement (alteration in original) (internal quotation marks omitted)). Here, Wallace's Estate had every incentive to recover the greatest amount of money in the settlement as 50 percent of the judgment would be turned over to Tanya. Further, Tanya's opposition to the good faith settlement was without merit because Tanya failed to present any evidence of collusion or lack of prosecution in this case. Thus, the district court did not abuse its discretion by granting the motion for good faith settlement. Accordingly, we

ORDER the judgment of the district court AFFIRMED.

TAO, J., concurring:
Tanya Wallace doesn't possess legal standing to maintain this appeal, and I would just dismiss it without reaching the merits.

I.

This case seems to have the trappings of a classic morality tale of right, wrong, and redemption. It involves, on the one hand, a local kid who made good and against all odds became an internationally famous singer, songwriter, and producer; on the other hand, the manager he once signed a contract with when young and who claims to have been callously left behind on the road to fame and fortune, and who tragically died before justice could be done, leaving his heirs to see things through. It seems imbued with its own built-in drama. So it may seem a buzz-kill for me to object on grounds of something like "standing." Structural questions about "standing" don't make for interesting reading, whether in story-telling or even in judicial opinions whose readability is generally pretty low to begin with. But they may be the most legally important thing about this entire case.

***3** During oral argument, the parties represented that they mutually agreed to "stipulate" that Tanya possessed legal standing to bring this appeal. But whether a party has standing is a question that goes to the court's jurisdiction, and questions of jurisdiction can never be waived or stipulated away by the parties. Furthermore, they may be raised at any time, even *sua sponte* by the court for the first time on appeal. *See Baldonado v. Wynn Las Vegas, LLC,* 124 Nev. 951, 964-65, 194 P.3d 96, 105 (2008); *Vaile v. Eighth Judicial Dist. Court,* 118 Nev. 262, 276, 44 P.3d 506, 515-16 (2002). This is so because questions of jurisdiction go to whether the court has the fundamental power to grant the requested relief and enforce its own judgment. If the court has no power to grant relief—either because it lacks jurisdiction over the subject matter, an indispensable party is absent from the litigation, the dispute is moot or not yet ripe, or a party does not have the legal right to seek or receive the requested relief—then its ruling is legally void and not much more than a meaningless advisory opinion whether or not any party raised a timely objection below. *See State Indus. Ins. Sys. v. Sleeper,* 100 Nev. 267, 269, 679 P.2d 1273, 1274 (1984) ("There can be no dispute that lack of subject matter jurisdiction renders a judgment void."). A failure of subject matter jurisdiction cannot be waived because parties cannot artificially invest a court with a power it does not constitutionally have by ducking their heads and pretending the problem doesn't exist. *Vaile,* 118 Nev. at 276, 44 P.3d at 515-16 ("subject matter jurisdiction cannot be waived"); *Swan v. Swan,* 106 Nev. 464, 469, 796 P.2d 221, 224 (1990) (subject matter jurisdiction "cannot be conferred by the parties"). Consequently, whether raised and briefed by the parties or not, Tanya's standing, or lack thereof, is a critical matter that must be addressed before we even get to the merits, if any, underlying her arguments.

II.

Tanya isn't a signatory to the contract that is the basis of this lawsuit. She was merely married to someone who was. She asserts that she has an interest in the outcome of the litigation because the marriage was domiciled in Nevada, a community-property state, and Nevada's community property laws entitle her to 50% of anything that her now-deceased ex-husband earned during the marriage, and the proceeds of this contract constitute income earned during the marriage.

All of that is correct, as far as it goes. But Tanya takes it much too far. It's true that Nevada's community property laws entitle her to a 50% interest in anything her ex-husband earned while alive. But that doesn't make her a signatory to his business contracts. It doesn't give her an interest in the contract itself. It only gives her an interest in any proceeds that might be collected under it. Those are two different things. The difference lies in the question of who has privity with whom. Tanya has a relationship of privity with her ex-husband by virtue of her marriage to him, and therefore has a right to recover a share of proceeds from him. But marriage to one contracting party creates no privity with the other. Merely because Tanya was married to Wallace does not mean she has any sort of legal privity with Ne-Yo entitling her to sue him.

Thus, Nevada's community property laws entitle her to any money collected under the contract by her ex-husband's estate, but no legal right to sue other parties to enforce the contract itself. As a non-party to the contract, she couldn't have sued Ne-Yo herself for breaching the contract. So the question here is: can she file an appeal seeking to overturn a judgment regarding the same contract that she couldn't have sued to enforce in the first place?

I think the answer is no. There may be some hypothetical instances where something like that might be possible; maybe one can imagine some situations in which a party can acquire standing to appeal something that it didn't have standing to sue on initially. But this isn't one of those cases.

III.

Tanya was never named as a party to the initial complaint filed by her ex-husband's estate, and Ne-Yo's answer never asserted any counterclaims or third-party claims against her. Tanya, then, wasn't a party to the lawsuit, in any capacity, for much of the early stages of the litigation. Then, deep into the district court proceedings, Ne-Yo filed a motion for summary judgment that the husband's estate chose not to oppose. At that point, on the date the motion was supposed to be decided, Tanya suddenly made a last-minute oral request for leave to intervene.

***4** Rather than do the easy and obvious thing that courts usually do with last-minute oral requests unaccompanied by moving papers setting forth legal analysis and properly noticed and served on any opposing party, the district court decided to grant Tanya's request. It did so despite two glaring problems. First, Tanya's request didn't meet the requirements of NRCP 24. Rule 24 permits a non-party to intervene in "an action," not in a single event such as a motion. NRCP 24 ("Upon timely application anyone shall be permitted to intervene in an action"). Here, Tanya sat on the sidelines and let her ex-husband's estate handle the entirety of the litigation. She had her attorney attend every hearing in order to keep an eye on things, and was apparently satisfied with everything she saw right up until the moment that the summary judgment motion went unopposed. At that point, she sought to intervene at the last moment in order to oppose a motion that the other parties in the action chose not to.

But that's not how Rule 24 intervention is supposed to work. A party may intervene in "an action" only when it meets certain criteria. Among them is that the party must possess an interest in the outcome of the litigation that is not "adequately represented by existing parties." NRCP 24(a). But that standard is tested by whether the intervenor's interests in the outcome of the case diverge from those of existing parties, not whether the intervenor agrees with every tactical move that the current parties might want to make during the course of the suit. "If an applicant for intervention and an existing party share the same ultimate objective," then courts presume that the party adequately represents the interests of the non-party.[4] *Citizens for Balanced Use v. Mont. Wilderness Ass'n,* 647 F.3d 893, 898 (9th Cir. 2011); *see* *Texas v. United States,* 805 F.3d 653, 661 (5th Cir. 2015) ("when the would-be intervenor has the same ultimate objective as a party to the lawsuit," then the party is presumed to adequately represent the interests of the non-party). This presumption may only be overcome by a "compelling showing" that the non-party's interests are not being adequately represented. *Arakaki v. Cayetano,* 324 F.3d 1078, 1086 (9th Cir. 2003).

Here, Tanya shares, under community property law, a 50% interest in any proceeds collected from the litigation. Her interest in the ultimate outcome of the litigation is therefore

identical to that of her husband's estate: she gets half of what the estate wins, and nothing if the estate gets nothing. There is no "divergence" in their interests in any sense of the word, and thus she shouldn't have been permitted to intervene in the case at all, much less permitted to interject herself into the middle of a pending summary judgment motion that didn't target her.

Indeed, there's some indication that Tanya seemed to be aware of this problem throughout the early stages of the litigation, as she instructed her attorney to attend every relevant proceeding and yet chose to do nothing more than watch, apparently satisfied to let the estate safeguard her interests until the day of the summary judgment hearing came about and Ne-Yo's motion stood unopposed. Only then did she seek to intervene for the first time in order to file her own opposition. But disagreeing with the tactical choices made by other parties in responding to a single motion isn't a "divergence of interests" in the outcome of the entire "action." It's just a disagreement on tactics by a non-party possessing the same interest in the overall outcome of the case. And a disagreement regarding tactics has nothing to do with NRCP 24.

IV.

***5** Whether or not Tanya's request met the standards of NRCP 24 when made, the second and more fundamental problem here is that Tanya lacks standing to appeal anything that happened during the case because of how she handled the litigation after intervening.

After entering the case, Tanya participated in some motion practice, including filing a motion seeking reconsideration of the summary judgment motion. Later, she filed a motion seeking leave to amend the complaint and file her own complaint-in-intervention adding allegations of unjust enrichment, fraud, breach of fiduciary duty, and punitive damages. However, the district court denied leave in a written order, partly because Tanya's request was belatedly filed only a week before trial was scheduled to commence, and partly because Tanya's new causes of action went beyond her status as an intervenor to assert allegations unrelated to the underlying action. Tanya does not now appeal from this denial, so the question of whether she ought to have been allowed to assert any claims in district court is not before us and is now closed. (Tanya did file a petition seeking emergency interlocutory relief from the Nevada Supreme Court which the court summarily denied without reaching the merits, and Tanya does not re-assert those issues in this appeal so any challenge to them is waived).

The bottom line is that Tanya never asserted any claims against any other party in the action, and no other party asserted any claims against her. So, Tanya is neither a named plaintiff nor a named defendant on any claim pending in the lawsuit. Why does that create a standing problem? Because no appealable final judgment has ever been entered for or against her on any claim in which she is actually either a plaintiff or defendant.

"This is a court of limited appellate jurisdiction. Specifically, this court has jurisdiction to entertain an appeal only where an appeal is authorized by statute or court rule." *Valley Bank of Nev. v. Ginsburg,* 110 Nev. 440, 444, 874 P.2d 729, 732 (1994). Thus, "this court has jurisdiction to entertain an appeal only where the appeal is brought by an aggrieved party. NRAP 3(a) limits the right of appeal to 'parties aggrieved' by a district court's decision." *Id.* at 446, 874 P.2d at 734 (italics and internal brackets omitted). Moreover, "[t]his court has consistently taken a restrictive view of those persons or entities that have standing to appeal as parties." *Id.*

A party does not have standing to appeal when "it was never named as a party to the lawsuit." *Id.* at 447, 874 P.2d at 734. Here, though weirdly permitted to enter the case as a free-floating intervenor, Tanya is not a party to any claim on which a final appealable order was entered either for or against her. She therefore has no right to appeal because there is nothing for her to appeal on her own behalf, and she has no right to appeal any judgment entered on claims that did not involve her on behalf of parties other than her. Consequently, I would dismiss the entire appeal without reaching the merits of any argument raised in the briefing.

V.

Tanya's lack of standing isn't merely a minor technical glitch that the parties can stipulate away in order to get to arguing about the merits. It's a constitutional defect. Fundamentally, the doctrine of "standing" is a structural limitation on judicial power, inimical to the preservation of liberty, that operates to ensure that courts act like courts and not like legislatures by preventing them from issuing advisory opinions on questions of general policy that have not been raised or litigated by

an injured party possessing a concrete stake in a pending lawsuit. *See* *Camreta v. Greene,* 563 U.S. 692, 717, 131 S.Ct. 2020, 179 L.Ed.2d 1118 (2011) (Kennedy, J., dissenting) ("the judicial Power is one to render dispositive judgments, not advisory opinions" (internal quotation marks omitted)). It's what keeps courts from becoming involved in generalized political grievances best left to the other representative branches of government. *See Schwartz v. Lopez,* 132 Nev. ——, ——, 382 P.3d 886, 894 (2016) (to establish standing, a party mast show the occurrence of an injury that is "special," "peculiar," or "personal" to him and not merely a generalized grievance shared by all members of the public); *see also* James E. Pfander, *Scalia's Legacy: Originalism and Change in the Law of Standing,* 6 Brit. J. A. Leg. Stud. 85, 92 (2017) (citing *Lujan v. Defenders of Wildlife,* 504 U.S. 555, 112 S.Ct. 2130, 119 L.Ed.2d 351 (1992), for the proposition that "standing imposed constitutional limits on Congress's power to authorize individuals to pursue generalized grievances, especially where the suits in question were seen as interfering with the executive branch primacy in law enforcement and thus threatening the separation of powers"); John G. Roberts, Jr., *Article III Limits on Statutory Standing,* 42 Duke L.J. 1219, 1229-30 (1993) ("By properly contenting itself with the decision of actual cases or controversies at the instance of someone suffering distinct and palpable injury, the judiciary leaves for the political branches the generalized grievances that are their responsibility under the Constitution.").

***6** Indeed, issuing purely advisory opinions to address generalized political grievances is the very definition of legislating from the bench. *See* *In re Phandanouvong,* No. DG 08-10058, 2009 WL 3635877, at *1 (Bankr. W.D. Mich. Oct. 2, 2009) ("The court must decide issues presented for the purposes of resolving individual, concrete controversies, not to correct systemic wrongs by legislating from the bench."). If courts have the power to issue advisory opinions without needing to wait for a question to be raised by a party with standing, then they have legislative power that rightfully belongs to the Legislature. *See* Nev. Const. art. 4, § 1; *Galloway v. Truesdell,* 83 Nev. 13, 20, 422 P.2d 237, 242 (1967). Courts would also possess executive power that rightfully belongs to the Governor, as the standing requirement is supposed to "ensure[ ] that the court is carrying out its function of deciding a case or controversy, rather than fulfilling the executive's responsibility of taking care that the laws be faithfully executed." Roberts, Jr., *Article III Limits on Statutory Standing, supra,* at 1230. *See* Nev. Const. art. 5, § 7 (the Governor "shall see that the laws are faithfully executed"); *Galloway,* 83 Nev. at 20, 422 P.2d at 242 ("The executive power extends to the carrying out and enforcing the laws enacted by the Legislature."). As Chief Justice John Marshall warned, "[i]f the judicial power extended to every question under the constitution it would involve almost every subject proper for legislative discussion and decision ... [and] almost every subject on which the executive could act." *Daimler-Chrysler Corp. v. Cuno*, 547 U.S. 332, 341, 126 S.Ct. 1854, 164 L.Ed.2d 589 (2006) (quoting 4 Papers of John Marshall 95 (C. Cullen ed. 1984)). A world in which courts aren't confined by limitations of standing is one in which the judiciary is no longer just one branch of a co-equal and tripartite system of checks-and-balances, but rather the modern reincarnation of the judicial tyranny of the Sanhedrin Court of ancient Israel, possessing combined legislative, executive, and judicial authority over all the people. *See* Exodus 18:21-22; Numbers 11:16-17; Numbers 11:24-25; Deuteronomy 1:15-18; Deuteronomy 17:9-12.

VI.

In the federal courts, standing is a constitutional requirement originating in the "case or controversy" clause of Article III of the United States Constitution, and which also contains a second "subconstitutional 'prudential' element" as well. *In re Amerco Derivative Litigation,* 127 Nev. 196, 213, 252 P.3d 681, 694 (2011). The Nevada Constitution doesn't contain a "case or controversy" clause. *See* Michael W. Bowers, *The Nevada State Constitution: A Reference Guide* 84 (Greenwood Press 1993) ("The Nevada Constitution does not include the 'cases and controversies' language of the U.S. Constitution"). It does, however, contain a superficially similar clause stating that courts have jurisdiction over civil and criminal "cases." Nev. Const. art. 6, § 4. This clause has been interpreted to prohibit courts from ruling on matters not yet ripe for review or that have been rendered moot. *See Boulet v. City of Las Vegas*, 96 Nev. 611, 613, 614 P.2d 8, 9 (1980) (mootness: license revocation appeal was rendered moot when appellant permitted license to expire before decision; courts cannot "render opinions on moot or abstract questions"); *State v. Viers*, 86 Nev. 385, 386, 469 P.2d 53, 53-54 (1970) (mootness: striking down, as violating both Nev. Const. art. 6, § 4 and the state's double jeopardy clause, a statute that authorized the judiciary to decide moot questions of criminal law after a defendant had already been acquitted at trial); *City of North Las Vegas v. Cluff,* 85 Nev. 200, 452 P.2d 461 (1969) (ripeness: "The question here is whether or

not the validity of a proposed legislative act can be ruled upon in advance of its enactment. The answer is that it cannot.").

"Although state courts do not have constitutional Article III standing, Nevada has a long history of requiring an actual justiciable controversy as a predicate to judicial relief." *In re Amerco Derivative Litigation,* 127 Nev. at 213, 252 P.3d at 694 (internal quotation marks omitted), *citing Doe v. Bryan,* 102 Nev. 523, 525, 728 P.2d 443, 444 (1986). The basis for this is a little murky, though; I myself have called it a doctrine that we must follow, but in the end nothing more than a judicially created doctrine of convenience with no constitutional foundation. *See Schulte v. Fafaleos,* No. 68685, 2017 WL 2591346 (Nev. App. June 9, 2017) (Tao, J., concurring) ("in the courts of Nevada, the doctrine of standing is not a constitutional command but rather merely a judicially-created doctrine of convenience"); *Padilla Constr. Co. v. Burley*, No. 65854, 2016 WL 2871829 (Nev. App. May 10, 2016) (same).

But, upon reflection, that may not be correct. Though the Nevada Supreme Court has not expressly grounded the doctrine of standing in the "case" requirement of the Nevada Constitution, it may well be rooted either there, or alternatively in the separation-of-powers clause of Nev. Const. art. 3, § 1 ("The powers of the Government of the State of Nevada shall be divided into three separate departments, the Legislative, the Executive and the Judicial; and no persons charged with the exercise of powers properly belonging to one of these departments shall exercise any functions, appertaining to either of the others, except in the cases expressly directed or permitted in this constitution."). This may be so because standing is, at heart, a separation-of-powers issue. *See Allen v. Wright*, 468 U.S. 737, 750, 104 S.Ct. 3315, 82 L.Ed.2d 556 (1984) (the federal case or controversy requirement "defines with respect to the Judicial Branch the idea of separation of powers on which the Federal Government is founded."); *Warth v. Seldin*, 422 U.S. 490, 498, 95 S.Ct. 2197, 45 L.Ed.2d 343 (1975) (standing "is founded in concern about the proper—and properly limited—role of the courts in a democratic society.").

***7** Thus, while the Nevada Constitution doesn't have a case or controversy requirement, it does have an express separation-of-powers clause that the federal Constitution does not. The concept of separation of powers is only implied in the structure of the federal Constitution, though very strongly and clearly implied. *See* Eleanore Bushnell & Don W. Driggs, *The Nevada Constitution: Origin and Growth*, 78 (Univ. of Nev. Press, 5th Ed. 1980) ("The Constitution does not expressly announce that the national government is dedicated to the theory of separation of powers, but the intention of the framers clearly emerges from the language they used"). In contrast, it's much more explicit in the Nevada Constitution. *See id.* ("Nevada attempts a distinct separation"); *cf. Comm'n on Ethics v. Hardy,* 125 Nev. 285, 292, 212 P.3d 1098, 1103-04, 125 Nev. 1027, 292 (2009) (discussing other differences between Nevada Constitution and U.S. Constitution). That the state Constitution has such an express clause while the federal Constitution does not suggests that the framers of the state Constitution took the concept of separation of powers more seriously than perhaps even the federal founders did. They may even have thought that the decades of experience between the adoption of the federal Constitution in 1788 and the drafting of the Nevada Constitution in 1864 showed that the federal articulation of the concept didn't go quite far enough, or at least wasn't clear enough. It seems rather odd, therefore, that at the same time the state founders omitted the "case or controversy" clause that gives rise to the federal "standing" doctrine. This makes little sense—unless it's possible that they thought that its purposes were already served by another provision which made it unnecessary. That provision could only be the separation-of-powers clause of art. 3, § 1 of the Nevada Constitution.

If I am wrong about that, let's think through what it means to say that standing is nothing more than a judge-made prudential doctrine. A doctrine of judicial convenience's one that rests on a weak foundation: it's just what the court prefers to do in a given case even though the power exists to do much more. Such a doctrine stands very low on the totem pole of rules that a court must obey. As I noted in *Padilla Construction,* "in the hierarchy of sources of law in which the United States Constitution stands at the top and pre-empts everything that conflicts with it, judicially-created doctrines of prudence are at the bottom and yield to all other superior sources of authority that conflict with them."

Judge-made rules can be overruled by statutes, regulations, or any other source of law superior to a mere common law judicial invention. *See Holliday v. McMullen*, 104 Nev. 294, 296, 756 P.2d 1179, 1180 (1988) ("The legislature has chosen to preempt the common law by enacting [a contradictory statute]"); *Orr Ditch & Water Co. v. Justice Court,* 64 Nev. 138, 164, 178 P.2d 558, 571 (1947) (in interpreting a statute, "where the intention to alter or repeal [a judge-made

common-law rule] is clearly expressed, it must be given effect by the courts"). Consequently, if standing is a mere judicial creation with no other basis in law, then its requirements can be conferred, amended, or removed by the other branches of government without limitation through the enactment of superseding statutes or regulations.

That's a troubling proposition that, to me, seems to raise all sorts of potential constitutional problems. The doctrine of standing is supposed to be what confines courts to their traditional role of adjudicating disputes between injured parties seeking judicially cognizable relief. *See* *Daimler-Chrysler Corp.,* 547 U.S. at 341, 126 S.Ct. 1854. But if judicial standing can be legislatively overruled, then the Legislature could, if it wanted, enact a statute requiring courts to hear and address generalized grievances even without an injured plaintiff seeking any relief the court could traditionally grant. But that comes perilously close to allowing the Legislature to confer legislative power upon the judiciary. Similarly, if an executive-branch agency can do the same thing through agency regulation, then that confers executive power upon the judiciary. If both branches can do that, then all governmental power, or at least much of it, could then be vested in a single branch. That strikes at the very heart of the tripartite structure of our state government and effectively abolishes the concept of checks-and-balances "essential to the preservation of liberty" in favor of "a gradual concentration of the several powers in the same department." The Federalist No. 51, at 321 (James Madison) (Clinton Rossiter ed., 1961), quoted in *Morrison v. Olson,* 487 U.S. 654, 698, 108 S.Ct. 2597, 101 L.Ed.2d 569 (1988) (Scalia, J., dissenting); *see also* *Youngstown Sheet & Tube Co. v. Sawyer,* 343 U.S. 579, 635, 640, 72 S.Ct. 863, 96 L.Ed. 1153 (1952) (Jackson, J., concurring) ("the Constitution diffuses power the better to secure liberty...."; "The purpose of the Constitution was not only to grant power, but to keep it from getting out of hand.").

***8** One might think that, as a practical matter, the Legislature and the Governor would be unlikely to give away their power, and perhaps I'm just hypothesizing about things they'd never consent to. But is their consent needed? The real constitutional concern isn't whether or not the other branches might want to give away their constitutional powers by expanding the concept of standing; it's that the judiciary can simply expand its constitutional powers all by itself.

Judicially created rules of convenience are waivable by the courts that created them. A judge-made rule of convenience is simply that: a rule that courts apply when they want to, and don't apply when they don't want to. For example, in Nevada there's a judicial rule that arguments raised for the first time in a reply brief need not be fully considered. *See* *Moon v. McDonald Carano & Wilson,* 129 Nev. 547, 553 n.3, 306 P.3d 406, 410 n.3 (2013); *Francis v. Wynn Las Vegas,* 127 Nev. 657, 671 n.7, 262 P.3d 705, 715 n.7 (2011). The Nevada Supreme Court follows this rule, unless it chooses not to "in the interests of justice." *Bertsch v. Eighth Judicial Dist. Court,* 133 Nev. ——, ——, 396 P.3d 769, 772 (2017) ("Issues not raised in an appellant's opening brief are deemed waived unless this court, in its discretion, determines that consideration of those issues is in the interests of justice" (quoting *Powell v. Liberty Mutual Fire Ins. Co.,* 127 Nev. 156, 161 n.3, 252 P.3d 668, 672 n.3 (2011) (internal quotation marks omitted)). There are plenty of other judicial rules that courts must follow, unless they conclude that the "interests of justice" permits them not to be followed. *See, e.g., Harte v. State,* 132 Nev. ——, ——, 373 P.3d 98, 101 (2016) ("in the interests of justice, a district court may deviate from the traditional order of evidence presentation" (citing *State v. Harrington,* 9 Nev. 91, 94 (1873)).

But as Oliver Wendell Holmes, Jr. observed, the phrase "interests of justice" is just a fancy (and highly subjective) way of permitting courts to do what they want without having to offer an actual reason based in law to explain why; "I hate justice, which means that I know if a man begins to talk about that, for one reason or another he is shirking thinking in legal terms." Michael Herz, *"Do Justice!": Variations of a Thrice-Told Tale,* 82 Va. L. Rev. 111, 113 (1996).

If standing is nothing more than a judicial convenience with no more of a constitutional foundation than the rule that arguments raised for the first time in reply briefs need not be considered, then it's a rule that need not always be followed. Without a constitutional foundation, standing is simply whatever courts say it is. And that strikes me as a dangerous thing. If standing is nothing more than a self-imposed but entirely voluntary restraint—as opposed to an externally imposed structural constitutional restraint—then the only thing that keeps courts from acting as legislative bodies is simply a matter of will: a preference not to do so for the time being, but the power to do so any time it's deemed to be "in the interests of justice." It's true that there have been, and are, responsible judges sitting on our

courts who take their judicial duties seriously and would never dare dream of abusing their power to its absolute limits. I suggest nothing to the contrary. But who can speak for future occupants of the court? Just as ancient Rome was sometimes ruled by responsible Emperors, it was also sometimes ruled by terrible ones: for every Caesar Augustus there was a Caligula; for every Marcus Aurelius, a Nero. Whether our three branches of government can permanently remain separate and independent ought not depend on a question of mere personality, but rather on a question of fixed structure. *See* Benjamin M. Flowers, *An Essay Concerning Some Problems with the Constitutional-Doubt Canon,* 74 Wash. & Lee L. Rev. Online 248, 249 (2018) ("Members of the founding generation ... understood that all mortals, even well-meaning ones, will tend to aggrandize their power, exercising authority they do not have").

***9** In the end, "the fairness of a process must be adjudged on the basis of what it permits to happen, not what it produced in a particular case." *Morrison,* 487 U.S. at 731, 108 S.Ct. 2597 (Scalia, J., dissenting). "[T]he Framers considered structural protections of freedom the most important ones ... The fragmentation of power produced by the structure of our Government is central to liberty, and when we destroy it, we place liberty at peril." *Nat'l. Fed. of Indep. Businesses v. Sebelius,* 567 U.S. 519, 707, 132 S.Ct. 2566, 183 L.Ed.2d 450 (2012) (Scalia, J., dissenting). If the only source of "standing" recognized under Nevada law is the goodwill and convenience of the judiciary, there are no such structural rules or limitations on the exercise of judicial power in Nevada. We're no longer co-equal in power to the legislative branch. Rather, our power is far superior because it's unbounded by structural limits, and we can engage in legislative as well as judicial functions whenever we choose. We just choose not to. At least for now. But that could change in a heartbeat. All of which is why I'd much prefer that, in a future case, the Nevada Supreme Court finally explore the relationship of the doctrine to, and its possible basis in, Nev. Const. art. 3, § 1 of the Nevada Constitution.

VII.

For the foregoing reasons, I would simply dismiss this appeal for lack of standing and jurisdiction over the subject matter without reaching the merits of any arguments raised by the parties.

All Citations

Not Reported in Pac. Rptr., 134 Nev. 1027, 2018 WL 1426396

Footnotes

1 Tanya also gave notice of appeal of district court orders granting Smith's motion to supplement the record, and denying Tanya's motion to bifurcate. However, Tanya does not address those orders in her opening brief, and thus, this court does not consider those appeals. *Edwards v. Emperor's Garden Rest.,* 122 Nev. 317, 330 n.38, 130 P.3d 1280, 1288 n.38 (2006) (this court need not consider arguments not adequately briefed, not supported by relevant authority, and not cogently argued).

2 We do not recount the facts except as necessary to our disposition.

3 Our colleague believes we should dismiss this appeal without reaching the merits on grounds that Tanya does not have standing to maintain this appeal. While we agree with our concurring colleague that appellate courts generally may sua sponte question jurisdiction on appeal, we conclude that in this case we are constrained by the Nevada Supreme Court's ruling that Tanya has standing to appeal. *See Wallace v. Smith,* Docket No. 70574 (Order Regarding Motions, September 5, 2017) (denying respondent's motion to dismiss, which was based in significant part on Smith's contention that Tanya lacked standing to appeal, and concluding this court has jurisdiction to consider the appeal). We also note that Smith, during oral argument, conceded that Tanya has standing to appeal. Accordingly, we must address this case on the merits.

4 Where the Nevada Rules of Civil Procedure parallel the Federal Rules of Civil Procedure, rulings of federal courts interpreting and applying the federal rules are persuasive authority for this court in applying the Nevada Rules. *See Exec. Mgmt. Ltd. v. Ticor Title Ins. Co.,* 118 Nev. 46, 53, 38 P.3d 872, 876 (2002).

End of Document

EXHIBIT “2”

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

Exhibit A: List of Subsidiaries

STOCK PURCHASE AGREEMENT

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

RECITALS

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

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

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

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

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

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

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

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

AGREEMENT

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

1. DEFINITIONS.

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

"1934 Act" is defined in Section 4.26.

"2013 Yearly Financials" is defined in Section 4.6.1.

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

"409A Plan" is defined in Section 4.17.8.

"Acquired Stock" is defined in the Recitals.

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

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

"Agreement" is defined in the Preamble.

"AJCA" is defined in Section 4.17.8.

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

"Business" is defined in the Recitals.

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

"Business Employee" is defined in Section 4.21.3.

"Buyer" is defined in the Preamble.

"Buyer Indemnified Persons" is defined in Section 7.1.

"Buyer Investor Protections" is defined in Section 6.4.

"Center" is defined in Section 4.15.1.

"Closing" is defined in Section 3.2.

"Closing Date" is defined in Section 3.2.

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

"Common Stock" is defined in the Recitals.

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

"Consideration" is defined in Section 3.3.

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

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

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

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

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

"Direct Owners" is defined in Section 4.5.1.

"Disclosed Contract" is defined in Section 4.19.2.

"Disclosure Schedules" is defined in Section 2.2.

"Effective Date" is defined in the Recitals.

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

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

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

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

ERISA" is defined in Section 4.17.1.

"ERISA Affiliate" is defined in Section 4.17.1.

"ERISA Employer" is defined in Section 4.17.1.

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

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

"Financials" is defined in Section 4.6.1.

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

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

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

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

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

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

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

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

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

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

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

"Indirect Owners" is defined in Section 4.5.1.

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

"IRS" means the Internal Revenue Service.

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

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

"Litigation Conditions" is defined in Section 7.6.2.

"Losses" is defined in Section 7.1.

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

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

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

"Most Recent Financials" is defined in Section 4.6.1.

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

"Party" is defined in the Preamble.

"Payment Date" is defined in Section 6.3.

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

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

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

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

"Physician Owner" is defined in Section 4.5.1.

"Plan" is defined in Section 4.17.1.

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

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

"Pro Rata Share" is defined in Section 7.4.2.

"Put Notice" is defined in Section 6.3.

"Put Option" is defined in Section 6.3.

"Put Price" is defined in Section 6.3.

"Real Property" is defined in Section 4.12.

"Real Property Leases" is defined in Section 4.12.

"Reimbursed Transaction Expenses" is defined in Section 6.2.

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

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

"SEC" is defined in Section 4.26.

"SEC Documents" is defined in Section 4.26.

"Seller" is defined in the Preamble.

"Seller Indemnification Obligations" is defined in Section 7.4.

"Seller Indemnified Parties" is defined in Section 7.2.

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

"Seller Owners" is defined in Section 4.5.1.

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

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

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

"Subsidiary" is defined in the Recitals.

"Subsidiary Equity Interests" is defined in Section 4.5.2.

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

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

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

"Third Party Claim" is defined in Section 7.6.1.

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

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

"Trigger Event" is defined in Section 6.3.

"Yearly Financials" is defined in Section 4.6.1.

2. GENERAL RULES OF INTERPRETATION; SCHEDULES.

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

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

3. STOCK PURCHASE.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

4. REPRESENTATIONS AND WARRANTIES OF SELLER.

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

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

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

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

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

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

4.5. Capitalization; Subsidiaries.

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

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

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

4.6. Financial Matters.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

4.14. Legal Compliance; Illegal Payments; Permits.

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

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

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

4.15. Compliance with Healthcare Laws.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

4.17. Employee Benefit Plans.

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

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

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

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

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