IN THE SUPREME COURT OF THE STATE OF NEVADA

MANUEL IGLESIAS and EDWARD MOFFLY,

Petitioners,

v.

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

Respondents,

and

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

Real Parties in Interest.

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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 XII)

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

Docket 83157 Document 2021-19294

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 37”

“Exhibit 37”

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 (60th) 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:

NSHYG 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

[Signature Page to Stock Purchase Agreement]

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

BUYER:

NSHYG 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

[Signature Page to Stock Purchase Agreement]

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 “3”

Lewis Roca
ROTHGERBER CHRISTIE

Lewis Roca Rothgerber Christie LLP
3993 Howard Hughes Parkway
Suite 600
Las Vegas, NV 89169

702.949.8200 main
702.949.8398 fax
lrrc.com

Ogonna Brown
Partner
Admitted in Nevada
(702) 474-2622 direct
(702) 949-8298 fax
OBrown@lrrc.com

February 25, 2021

Via email (kory@kaplancottner.com)
Via email (kyle@kaplancottner.com)
Kory L. Kaplan, Esq.
Kyle P. Cottner, Esq.
Kaplan Cottner
850 E. Bonneville Ave.
Las Vegas, Nevada 89101

RE: *N5HYG, LLC, et. al. v. Iglesias and Moffly*
EJDC Case No.: A-17-762664-B

Dear Mr. Kaplan and Mr. Cottner:

My office received Defendants' Partial Motion for Judgment on the Pleadings ("Motion") filed by your office on behalf of Defendants Manuel Iglesias ("Iglesias") and Edward Moffly ("Moffly") (collectively, "Defendants") on February 22, 2021. In their Motion, Defendants seek an order dismissing Plaintiff Nevada 5, Inc.'s ("Nevada 5") claims, asserting Nevada 5 lacks standing. For the reasons set forth in this letter, Nevada 5 respectfully requests that Defendants immediately withdraw the pending Motion and vacate the scheduled hearing, as the Court has repeatedly ruled upon the standing issue. Defendants' pending Motion is not appropriate and not brought in good faith.

Defendants have previously requested that the Court dismiss Plaintiff Nevada 5's fraud claims, which the Court has repeatedly denied. As you are aware, the Court reversed a prior ruling dismissing Nevada 5 on the basis of standing. On June 3, 2019, Plaintiffs filed a Motion for Reconsideration Regarding the Dismissal of Nevada 5, Inc.'s claims. In Plaintiffs' Motion for Reconsideration, Nevada 5 argued that it had standing, could plead all the elements of its fraud claim for itself, and was not seeking to assert them on behalf of its subsidiary, N5HYG. On July 17, 2019, the Court heard oral argument and ruled it was granting the Motion for Reconsideration. In doing so, the Court expressly granted Plaintiffs leave to file a Second Amended Complaint, and directed Nevada 5 to more specifically plead facts establishing its standing. *See* Transcript of July 17, 2019 Proceedings; 12/3/19 Order granting Motion for Reconsideration. Nevada 5 did so.

On January 13, 2020, Defendants filed a Motion for Summary Judgment on Order Shortening Time ("First MSJ") arguing that Nevada 5 "impermissibly tries to bring claims based on the same allegations of fraud and misrepresentation in the [First Amended Complaint]." The Court denied that motion after a hearing in January 2020.

On November 4, 2020, Defendants filed another Motion for Summary Judgment, or in the Alternative, Motion to Dismiss, on Order Shortening Time ("Second MSJ"), again seeking to dismiss Nevada 5's fraud claims against the Defendants. *See* MSJ, § III.C. Following briefing

and the December 9, 2020 MSJ hearing, the Court entered its Order Granting in Part and Denying in Part the MSJ ("MSJ Order"), on December 17, 2020.

In its oral ruling at the December 9th hearing, the Court stated that "Nevada 5 is not barred here -- **clearly has standing**. I granted leave to assert those fraud claims." The Court further noted that the Defendants' Second MSJ 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**." *See* Transcript of December 9, 2020 Proceedings (emphasis added). These findings were expressly set forth in the Court's December 16, 2020 Order Granting In Part And Denying In Part Defendants' Motion For Summary Judgment, Or In The Alternative, Motion To Dismiss ("Second MSJ Order"). *See* Second MSJ Order, p. 3, ll. 1-2.

In blatant disregard of the Court's repeated rulings, Defendants are attempting to launch a fifth attack on the same issue. The pending Motion directly ignores the Court's December 16 Second MSJ Order, which specifically states that "Defendants may have violated NRCP 12(g)(2) such that the Plaintiffs may request relief under NRCP 41." As you are aware, NRCP 12(g)(2) states as follows:

> (g) Joining Motions.
>
> (2) Limitation on Further Motions. Except as provided in Rule 12(h)(2) or (3), a party that makes a motion under this rule must not make another motion under this rule raising a defense or objection that was available to the party but omitted from its earlier motion.

See NEV. R. CIV. P. 12(g)(2).

While the Court previously ruled that Defendants *may* have violated Rule NRCP 12(g)(2) and Plaintiffs could seek relief, Defendants' regurgitated instant Motion is clearly violative of this rule. The Court reinforced its prior rulings that Nevada 5 has standing to plead its fraud claims, and that the claims set forth in the Second Amended Complaint are permissible. Accordingly, Plaintiffs request that Defendants immediately withdraw the Motion and vacate the hearing. In the event Defendants fail to withdraw the Motion and vacate the hearing, Plaintiffs will 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. Under NRCP 41(d):

> (d) Costs of a Previously Dismissed Action. If a plaintiff who previously dismissed an action in any court files an action based on or including the same claim against the same defendant, the court:
>
> (1) may order the plaintiff to pay all or part of the costs of that previous action; and
>
> (2) may stay the proceedings until the plaintiff has complied.

See NEV. R. CIV. P. 41(d).

In accordance with EDCR 2.34, please consider this correspondence a good faith effort to meet and confer to resolve Defendants' ongoing violation of this Court's prior rulings and most recently the Second MSJ Order without the need for the Court's further intervention. Please confirm your availability to participate in a meet and confer for one of the below dates and times:

- Thursday, February 25, 2021 at 1:00 pm
- Friday, February 26, 2021, anytime between 8:00 am – 2:00 pm
- Monday, March 1, 2021, anytime between 8:00 am – 2:00 pm
- Tuesday, March 2, 2021, anytime between 8:00 am – 2:00 pm

Thank you for your immediate attention to this matter.

Sincerely,

Ogonna Brown
Lewis Roca Rothgerber Christie LLP

cc: G. Mark Albright, Esq.
D. Chris Albright, Esq.
E. Powell Miller, Esq.
Christopher Kaye, Esq.
Kevin J. Watts, Esq.
Candace Becker, Esq.

EXHIBIT “4”

From: Kory Kaplan <kory@kaplancottner.com>
Sent: Thursday, February 25, 2021 11:00 AM
To: Jackson, Kennya; Kyle Cottner
Cc: Sunny Southworth; Brown, Ogonna; Dale, Margaret; Christopher D. Kaye; Kevin J. Watts; Candace Becker; dca@albrightstoddard.com; gma@albrightstoddard.com; epm@millerlawpc.com
Subject: RE: A-17-762664-B // N5HYG, LLC v. Hygea Holdings Corp., et al.

FilingDate: 2/25/2021 11:01:00 AM

[EXTERNAL]

Ogonna,

I disagree with your accusations. How could I have violated any order when the Florida ruling was not signed until December 9th, the same day as our oral argument on the motion for summary judgment? I had no way of knowing about the ruling then, and case law is clear that this Court must abide by the Florida court's decision based upon issue preclusion. If that ruling was available to me to include in my motion, I obviously would have included it. NRCP 12(g)(2), which you cite in your letter, specifically states that a defense or objection must have been made available at the time of the earlier motion. Since the Florida court's ruling was clearly not available at the time of my November 4th motion for summary judgment pursuant to NRCP 56 (not NRCP 12), there is no violation.

I propose that we jointly request a Rule 16 case management conference by the Court so that we can advise the Court of the situation and ask for guidance. It is not my intent to violate any rules.

I am available on Monday from 8-2 to discuss.

Thank you,
Kory

KAPLAN COTTNER
Kory L. Kaplan, Esq.
850 E. Bonneville Ave.
Las Vegas, NV 89101
Tel (702) 381-8888
Fax (702) 832-5559
www.kaplancottner.com

EXHIBIT “5”

From: Kory Kaplan <kory@kaplancottner.com>
Sent: Monday, March 1, 2021 10:25 AM
To: Brown, Ogonna; Jackson, Kennya; Kyle Cottner
Cc: Sunny Southworth; Dale, Margaret; Christopher D. Kaye; Kevin J. Watts; Candace Becker; dca@albrightstoddard.com; gma@albrightstoddard.com; epm@millerlawpc.com
Subject: RE: A-17-762664-B // N5HYG, LLC v. Hygea Holdings Corp., et al.

FilingDate: 3/1/2021 10:30:00 AM

[EXTERNAL]

Ogonna,

Thank you for taking the time to discuss the issues in your letter with me today. As I stated, I do not see any violation of any rules or the Court's order as my pending motion is a motion for judgment on the pleadings that can be brought at any time before trial. Further, the Florida court's ruling that serves as the basis to the motion, was not issued until the same day as our hearing on my motion for summary judgment and thus was not available for briefing at that time. I offered to stipulate to extend the deadlines for your opposition or even withdraw the motion and refile after we have a case management conference with Judge Allf on order shortening time, but you rejected my offers. I will discuss your intentions with my clients and plan to have a response to you by tomorrow.

Thank you,
Kory

KAPLAN COTTNER

Kory L. Kaplan, Esq.
850 E. Bonneville Ave.
Las Vegas, NV 89101
Tel (702) 381-8888
Fax (702) 832-5559
www.kaplancottner.com

EXHIBIT “6”

From: Kory Kaplan <kory@kaplancottner.com>
Sent: Monday, March 1, 2021 2:52 PM
To: Brown, Ogonna; Kyle Cottner
Cc: Sunny Southworth; Christopher D. Kaye; Kevin J. Watts; Candace Becker; dca@albrightstoddard.com; gma@albrightstoddard.com; epm@millerlawpc.com; Jackson, Kennya; Dale, Margaret
Subject: RE: A-17-762664-B // N5HYG, LLC v. Hygea Holdings Corp., et al.

FilingDate: 3/1/2021 2:53:00 PM

[EXTERNAL]

Ogonna,

I spoke to my clients and they are not agreeable to withdraw the motion.

Thank you,
Kory

KAPLAN COTTNER

Kory L. Kaplan, Esq.
850 E. Bonneville Ave.
Las Vegas, NV 89101
Tel (702) 381-8888
Fax (702) 832-5559
www.kaplancottner.com

“Exhibit 38”

“Exhibit 38”

Electronically Filed
3/10/2021 4:47 PM
Steven D. Grierson
CLERK OF THE COURT

RPLY
Ogonna M. Brown, Esq.
Nevada Bar No. 7589
LEWIS ROCA ROTHGERBER CHRISTIE LLP
3993 Howard Hughes Parkway, Suite 600
Las Vegas, NV 89169
Tel: 702.949.8200
Fax: 702.949.8398
OBrown@lrrc.com

G. Mark Albright, Esq.
Nevada Bar No. 13940
D. Chris Albright, Esq.
Nevada Bar No. 4904
ALBRIGHT, STODDARD, WARNICK & ALBRIGHT
801 South Rancho Drive
Suite D-4
Las Vegas, NV 89106
Tel: 702.384.7111
Fax: 702.384.0605
gma@albrightstoddard.com
dca@albrightstoddard.com

E. Powell Miller, Esq. (*pro hac vice pending*)
Christopher Kaye, Esq. (*admitted pro hac vice*)
THE MILLER LAW FIRM, P.C.
950 W. University Dr.
Suite 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, v. 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. No.: 27 **REPLY IN SUPPORT OF PLAINTIFF N5HYG, LLC'S MOTION FOR PARTIAL SUMMARY JUDGMENT** Hearing Date: March 17, 2021 Hearing Time: 10:30 a.m.

Plaintiff N5HYG, LLC ("N5HYG"), by and through its counsel, Ogonna M. Brown, Esq. of the law firm of Lewis Rocca Rothgerber Christie, LLP, hereby files its Reply in Support of its Motion for Partial Summary Judgment ("Motion") against Defendants Manuel Iglesias ("Iglesias") and Edward Moffly ("Moffly") (collectively, "Defendants").

N5HYG files its Reply pursuant to Nevada Rule of Civil Procedure 56 and based upon the accompanying Memorandum and Points of Authorities; the Declaration of Ogonna M. Brown, Esq. ("Brown Decl."), one of the attorneys for N5HYG, LLC and Nevada 5 ("Plaintiffs"), a true and correct copy of which is attached hereto as **Exhibit "A"**; the papers and pleadings on file herein; and any oral argument the Court may entertain at a hearing on this matter.

Dated: March 10, 2021

LEWIS ROCA ROTHGERBER CHRISTIE LLP

By: /s/ Ogonna Brown
OGONNA M. BROWN (SBN 7589)
3993 Howard Hughes Parkway, Suite 600
Las Vegas, Nevada 89169
(702) 949-8200

Attorneys for Plaintiffs

MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

Defendants Iglesias and Moffly are parties to the October 2016 Stock Purchase Agreement ("SPA") through which they knowingly contracted to take on "absolute," "primary, direct, and unconditional" liability for "100%" of the $175,000 Post-Closing Monthly Payments to N5HYG until Hygea went public. They admit Hygea never went public. They admit that they—and Hygea—have failed to make those payments since August 2017. There is simply no genuine issue of material fact that they breached their personal, contractual obligations and guarantees to N5HYG.

Faced with that reality, Defendants' Opposition to Plaintiff's Motion (the "Opposition") resorts to mischaracterizing the plain terms of the SPA, Plaintiff's Motion and supporting Affidavit, the obligations they agreed to, and the posture of this over-three-year-old case. Defendants argue their liability is capped by their Hygea stock ownership percentages by misleadingly quoting the

3993 Howard Hughes Pkwy, Suite 600
Las Vegas, NV 89169-5996
Lewis Roca ROTHGERBER CHRISTIE

wrong section of the SPA. They claim improprieties in an Affidavit by ignoring large swaths of it and averring—with no evidence whatsoever—that the affiant lacks the personal knowledge he swore he has. Defendants also attempt to hide behind statutory provisions and solvency issues they say hindered *Hygea's* ability to pay N5HYG, but ignore that under the plain terms of the SPA, their *own* obligations are "**primary, direct, and unconditional**," irrespective of Hygea's ability. And they feign an inability to marshal evidence for their defense—claiming the case in its "nascent stages" – when they are former officers, directors, and founders of Hygea who have been defending this case since 2017.

Defendants' arguments and misstatements are unavailing. They cannot manufacture a genuine issue of material fact where none exists. Summary judgment is warranted.

II. COUNTER-STATEMENT OF UNDISPUTED FACTS

Defendants' Opposition contains a number of demonstrably and indisputably inaccurate, misleading, and contradictory assertions which merit correction at the outset:

- N5HYG, LLC is not a "Nevada limited liability company." (Opposition, p. 11) It is a Michigan limited liability company. (*See, e.g.,* Case Caption, Second Amended Complaint)
- N5HYG is not just "now" suing Defendants Iglesias and Moffly after "Hygea went through bankruptcy." (Opposition, p. 3) N5HYG has been pursuing its breach of contract claims against Iglesias and Moffly in this case for over three years. (*See, e.g.,* Case Caption, Second Amended Complaint)
- With respect to the $175,000 per-month Post-Closing Monthly Payments at issue in this Motion, Defendants did not "guarantee[] Hygea's debt only up to their pro-rata portion in accordance with their respective ownership percentages of the actual debt of Hygea." (Opposition, p. 1) SPA Section 7.4.1 clearly states on its face that Defendants are directly and personally bound to pay "**100%**" of the Post-Closing Monthly Payments. Further, these payments are not "Hygea's debt;" Section 7.4.1 also clearly provides that Defendants' liability for those payments is "**primary, direct and unconditional**."
- Defendants claim that "[i]n 2017, Hygea had gross revenues in excess of $200 million and maintained a cash reserve of approximately $5 million." (Opposition, p. 5) But they also assert

Lewis Roca ROTHGERBER CHRISTIE
3993 Howard Hughes Pkwy, Suite 600
Las Vegas, NV 89169-5996

that Hygea was "in a tight cash position and by the summer of 2017, most if not all of Hygea's reserve funds were spent." (Opposition, p. 7). They represented to this Court in February 2018, "…Hygea is not 'failing' or 'at or near the point of insolvency'", but they also assert that Hygea filing for Chapter 11 bankruptcy in February 2020 "suggest[s] that it had been insolvent for months if not years prior." (Opposition, pp. 3-4).[1]

- Defendants claim "the debt and equity players that Hygea had previously worked with told me [sic] that they would not, and could not, extend further investment and facilities, due to the pendency of RIN [Capital LLC]'s Receivership Action. As a result, Hygea could not continue its Post-Closing Monthly Payments." (Opposition, p. 8) But RIN Capital, LLC ("RIN") was not a party to the Receivership Action. As has been extensively set forth previously, N5HYG was one of fourteen petitioners in that case, none of which was RIN. Moreover, the Receivership Action was filed in January 2018, and effectively concluded after the May 2018 trial when that Court determined it lacked jurisdiction to appoint a receiver. Neither Hygea nor Defendants have made any Post-Closing Monthly Payments since **August 2017**, which predates the Receivership Action by several months. Further, if "pendency" of the action was the issue, there were no payments for *any month following the Receivership Action either*.

III. LEGAL ARGUMENT

A. Defendants Misrepresent the SPA Provision Whereby they Contracted to Pay the Post-Closing Monthly Payments.

Defendants falsely claim that N5HYG's calculation of the Post-Closing Monthly Payments they contracted to pay—totaling approximately $5 million with interest—is "factually incorrect." (Opposition, p. 10) In doing so, they patently misrepresent the obligations under the SPA. Citing Section 7.4.2 ("Guarantee of Seller Indemnification Obligations"), Defendants claim their collective

[1] Defendants also assert that "the purpose of a summary judgment is not to deprive the litigants of their right to trial by jury if factual issues really exist" (Opposition, p. 9), and they recently filed a jury demand. This is noteworthy because Defendants expressly moved nearly three years ago to strike the Plaintiffs' jury demand based upon the jury waiver provision of the SPA: "the Court should also strike Plaintiffs' jury demand, as Plaintiffs contractually waived their right to a jury trial by way of the [SPA]" (*See* Motion to Dismiss First Amended Complaint and to Strike Supplemental Pleadings and Jury Demand, p. 2), which the Court ***granted*.** Defendants continue to take whatever position suits them at the moment, irrespective of their prior positions or the Court's rulings.

Lewis Roca ROTHGERBER CHRISTIE
3993 Howard Hughes Pkwy, Suite 600
Las Vegas, NV 89169-5996

liability for the Post-Closing Monthly Payments is limited to their percentage share of ownership in Hygea (30.36%) applied to the total. (Opposition, pp. 10-11) Based on those percentages, Defendants claim their liability cannot exceed approximately $1.5 million. But Defendants **quote the wrong provision**—Section 7.4.2 provides for Defendants' payment of N5HYG's ***attorneys' fees*** arising out of an enforcement action (such as the action at bar), up to their pro-rata ownership share.[2] Section 7.4.2 has *nothing to do* with Defendants' obligation to pay the Post-Closing Monthly Payments. Rather, ***Defendants separately promised to pay "100%" of those payments under Section 7.4.1 ("Guarantee of Post-Closing Monthly Payments")***, as was clearly set forth in the Motion and the SPA:

> 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 [the Post-Closing Monthly Payments]**. 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. (SPA, Section 7.4.1 (bold added); Motion, p. 4)

Defendants' misleading argument ignores the plain language of the SPA and the Motion. There is no pro-rata percentage applied to Defendants' liability for the Post-Closing Monthly Payments; they are "directly," "absolutely," and "unconditionally" obligated for "**100%**" of those payments. (*Id.*) Defendants cannot create a genuine issue of material fact by blatantly misrepresenting the clear terms of the SPA. *See Slaughter v. Marquis Aurbach Coffing*, 2017 Nev. App. Unpub. LEXIS 29, *1-4 (summary judgment warranted on breach of contract claim where defendant's attack on the validity of the contract failed in the face of the contract's "clear and unambiguous language") (*See* **Exhibit "1"** to Brown Decl.: all unpublished opinions).

B. Defendants Raise No Genuine Issue Of Material Fact Regarding The Fowler Affidavit

Defendants' attack on the Affidavit of N5HYG's authorized representative, Mr. Fowler, is an improper and unavailing effort to manufacture an issue of fact where none exists. Even worse,

[2] As described in N5HYG's Motion, under Section 7.1, Hygea agreed to indemnify N5HYG for attorneys' fees incurred arising out of the SPA, including enforcement actions. Under Section 7.4.2, Iglesias and Moffly guaranteed payment of those indemnification obligations.

Lewis Roca ROTHGERBER CHRISTIE
3993 Howard Hughes Pkwy, Suite 600
Las Vegas, NV 89169-5996

Defendants again resort to misrepresenting the plain terms of a document. Defendants say that, as a purported "Nevada limited liability company," only N5HYG's "manager" can have personal knowledge of the relevant facts of the Post-Closing Monthly Payments, and Mr. Fowler's Affidavit does not establish otherwise. (Opposition, pp. 11-12). All of these arguments are patently false.

First, as the pleadings have made clear for more than three years, N5HYG is a ***Michigan limited liability company***. (*See, e.g.*, Second Amended Complaint, *Case Caption*; Par. 10) Second, regardless of an entity's management structure, the notion that only a "manager" (rather than an employee, agent, business associate, consultant, or unrelated bystander) can have knowledge of relevant facts is illogical. If that were so, cases involving LLCs would have far fewer witnesses and this Court's busy trial docket would be much lighter. Third, Defendants' assertion that "Mr. Fowler does not state the foundation for his personal knowledge" brazenly misrepresents the contents of his Affidavit. Over the course of several paragraphs, Mr. Fowler describes his personal knowledge and review of the SPA, the Post-Closing Monthly Payments it requires, the history of those payments (and non-payments), and N5HYG's business records—including the interest calculations and Defendants' delinquent payment history set forth in exhibits B and C attached to his Affidavit.[3]

It is well-established that to avoid summary judgment, the "non-moving party may not rest upon general allegations and conclusions, but must, by affidavit or otherwise, set forth specific facts demonstrating the existence of a genuine factual issue." *Pegasus v. Reno Newspapers, Inc.*, 118 Nev. 706, 713-14, 57 P.3d 82, 87 (2002). But Defendants come forward with **no facts** showing that Mr. Fowler does not have personal knowledge of the Post-Closing Monthly Payments at issue, nor could they. Defendants also admit that they never made those payments, and they come forward

[3] Defendants' assertion that the different calculations set forth in exhibits B and C of Mr. Fowler's Affidavit are "inconsistent factual statements" (Opposition, p. 12) also disregards the plain language of the Affidavit, as well as N5HYG's Motion. As the Affidavit indicates, Ex. B thereto "[a]ccount[s] for those Post-Closing Monthly Payments Hygea, Iglesias, and Moffly failed to make between August 1, 2017 and July 1, 2020." (*Id*. at Par. 14). Affidavit Ex. C "[a]ccount[s] ***only*** for those Post-Closing Monthly Payments Hygea, Iglesias, and Moffly failed to make between June 1, 2018 and July 1, 2020." (emphasis added) And as the Motion clearly describes, Affidavit Ex. C is presented "if only the Post-Closing Monthly Payments from the first month following the trial in the Receivership Action (June 1, 2018) through Hygea's July 15, 2020 bankruptcy Plan effective date are considered…," in order to account for the Court's ruling with respect to claim preclusion applied to the prior months. (Motion, p. 9)

Lewis Roca ROTHGERBER CHRISTIE
3993 Howard Hughes Pkwy, Suite 600
Las Vegas, NV 89169-5996

with **no facts**—because none exist—showing that Hygea or anyone else made the payments instead. Defendants' arguments are unfounded, and they cannot create a genuine issue of fact through speculation—especially where the record and common sense foreclose those arguments. *See Pegasus*, 118 Nev. 713-14, 57 P.3d 87 (summary judgment cannot be defeated by "the gossamer threads of whimsy, speculation and conjecture."); *Wood v. Safeway, Inc.*, 121 Nev. 724, 729, 121 P.3d 1026, 1031 (2005) (same); *Massi v. Nobis*, 435 P.3d 657 (Nev. 2019) (summary judgment appropriate where party "is not actually disputing many of the facts he points to, but rather offering an explanation as to why those facts exist"); *Anderson v. Wells Cargo, Inc.*, 2011 Nev. Unpub. LEXIS 1726, at *12-13 (Nov. 15, 2011) (non-moving party's assertion that movant could not prove the negative that construction and materials at issue were "*not* defective" was a "bare allegation" – not relevant evidence of a material issue of fact sufficient to withstand summary judgment).

C. The Post-Closing Monthly Payments Are Not "Dividends" or "Distributions" Payable By Hygea—they are Defendants' Direct, Primary, and Personal Contractual Liability

Seeking to disavow the direct, personal, contractual obligations they expressly agreed to in 2016, Defendants now say the Post-Closing Monthly Payments are "illegal and unenforceable dividends and distributions," and the debt of Hygea. (Opposition, pp. 15, 17) Their arguments fail for multiple reasons.

First, the Post-Closing Monthly Payments are not "dividends" or "distributions"—they are contracted-for obligations by Hygea, Iglesias, and Moffly, jointly and severally. As Defendants admit, "[t]he arguable purpose of the Post-Closing Payments was to *incentivize and ensure Hygea went public*." (*Id*. at 13) (emphasis added) The SPA itself makes that clear on its face; the obligation to pay N5HYG those payments ceases upon "the consummation of an initial public offering of [Hygea's] common stock on an established and internationally recognized stock exchange…" (SPA, Section 6.3) Defendants cite no caselaw interpreting NRS 78.191, nor any case (Nevada or otherwise) prohibiting a company from making a payment to a shareholder which it was obligated by contract to make. This is not surprising because the prohibition Defendants suggest would eliminate a company's ability to contract with a shareholder at all (or at least *pay* the shareholder for obligations arising out of such contract).

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Las Vegas, NV 89169-5996
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Second—and irrespective of whether the payments might be deemed "distributions" as to Hygea—Defendants mischaracterize the nature of their own liability for these payments. Defendants are not liable merely as secondary guarantors of *Hygea's* obligation to pay the Post-Closing Monthly Payments as they suggest (*see* Opposition, pp. 3, 17); Defendants are **"primary"** guarantors of ***their own obligation*** to pay N5HYG as parties to the contract. Again, Section 7.4.1 makes perfectly clear that Defendants signed the SPA as parties in their personal capacities, whose liability is "joint and several," "absolute," "***primary, direct* and unconditional and *shall not require [N5HYG] to resort to any other Person, including [Hygea].***"

Therefore, even if the Post-Closing Monthly Payments were to be considered "dividends" or "distributions" as to *Hygea*—or if *Hygea's* payment of them may have affected its solvency, as Defendants claim—that is irrelevant to *Iglesias* and *Moffly*. They have always been obligated to pay out of *their own* pockets, *not Hygea's funds*.[4] Indeed, Defendants' argument that the Post-Closing Monthly Payments are improper dividends or distributions suggests that Iglesias and Moffly are (or would have been) *prohibited* from paying their personal liabilities out of Hygea's coffers. That further demonstrates that their liability is independent of, and distinguishable from, any liability of Hygea.[5]

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[4] Even if Defendants had not assumed primary and direct liability for the Post-Closing Monthly Payments, and had been secondary guarantors of "Hygea's debt," they are still liable. Their personal guarantee and liability is "absolute," "unconditional" and does not require N5HYG to take action against Hygea. *See Transcon. Corp. v. Perna*, 2010 U.S. Dist. LEXIS 162557, at *24-25 (D. Nev. Jan. 26, 2010) ("A guaranty agreement is collateral to the principal contract, and the guarantor's liability is secondary to that of the principal debtor. However, **if the guaranty is absolute or unconditional**, such as a guaranty of payment of a promissory note, **the guarantor becomes a debtor to the party guaranteed** (creditor or obligee) **and primarily liable when the principal obligation has matured and is not performed.**") (emphasis added); *Owens-Corning Fiberglas Corp. v. Tex. Commerce Bank Nat'l Ass'n*, 104 Nev. 556, 558-59, 763 P.2d 335, 336-37 (1988) (applying Texas law, reversing lower court's failure to enforce guarantee, "The Guaranty, by its own provisions, is an '**absolute'** and '**unconditional**' **guaranty** by Owens-Corning and American Borate of payment and performance of Mountain View's obligations.") (internal citation and quotation omitted) (emphasis added).

[5] Defendants cite *Odyssey Reinsurance Co. v. Nagby*, 2019 U.S. Dist. LEXIS 111794, at *3-4 (S.D. Cal. July 2, 2019) for the proposition that "distributions" that render a company insolvent are impermissible. That case is readily distinguishable and inapplicable. The "distributions" found to be improper there were the defendants' fraudulent transfer *to themselves* of sales proceeds from assets they stripped out of their company *in order to avoid paying the company's obligation to the*

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3993 Howard Hughes Pkwy, Suite 600
Las Vegas, NV 89169-5996

Defendants cannot avoid their primary, direct contractual liability for these payments by disavowing and mischaracterizing them now, over four years later.

D. Defendants Cannot Manufacture Issues of Fact from Legal and Factual Impossibilities

Defendants' remaining arguments for the existence of a genuine issue of material fact are premised upon demonstrably untenable legal and factual positions, which are insufficient to withstand summary judgment.

Defendants first argue that non-party RIN Capital (or its representatives) somehow prevented Hygea from going public. (Opposition, p. 8) Defendants' argument is illogical. Defendants cite no facts or Nevada law—because none exist—that RIN Capital, as a non-shareholder, non-member of Hygea's board of directors somehow had decision-making authority with respect to Hygea's decision to go public. Similarly, Defendants argue that N5HYG "refused to permit Hygea to go public." (*Id.* at 3, 13) But again, they cite no facts or Nevada law supporting the argument that an 8.57% minority shareholder that did not even sit on Hygea's board of directors, somehow still had authority to "permit" or "not permit" Hygea—a company with hundreds of shareholders and a large board of directors—to go public.

Defendants also argue that RIN caused the cessation of the Post-Closing Monthly Payments, claiming "RIN sued in Nevada to have a receivership appointed" (Opposition, p. 7) and, as a result of that Receivership Action, "Hygea could not continue its Post-Closing Monthly Payments" (*id.* at 8). Defendants' argument presents a factual impossibility. RIN was ***not a party*** to the Receivership Action. And regardless, the Receivership Action was filed in January 2018 and the trial concluded in May 2018. But Defendants have failed to make any Post-Closing Monthly Payments since ***August 2017***. As a matter of course, Defendants' failure to make their contractual payments for months prior to the Receivership Action, or in the years since then, has nothing to do with that case.

Defendants also argue that 8.5% shareholder N5HYG "constrained Hygea's cash," and "instructed" Defendants to expend Hygea's reserve funds by purchasing cardiology practices in a

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plaintiff. That scenario has nothing in common with the contractual obligation willingly and knowingly incurred by Iglesias and Moffly to N5HYG. And even if the Post-Closing Monthly Payments were deemed "distributions" that could have rendered *Hygea* insolvent, that is irrelevant to Iglesias and Moffly's direct and primary liability on those payments.

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deviation from Hygea's business plan. (Opposition, pp. 6-7, 12) As described above, an 8.5% shareholder—especially one that is not an officer, nor a seated board member—has no authority to mandate corporate expenditures. Defendants cite no authority to the contrary. And again, the exhaustion of *Hygea's* cash reserves is irrelevant to Defendants' *own* primary and direct obligations, as SPA Section 7.4.1 makes clear.

Finally, Defendants appear to argue that N5HYG's agents told them that Defendants' payments of the Post-Closing Monthly Payments would be excused, or could be delayed. (Opposition, p. 6) But the SPA expressly provides at Section 8.3 that amendments must be through a signed writing, and that a waiver or delay of enforcement with respect to one breach does not extend to any others. (*See* Motion, Ex. A to Fowler Aff.) Defendants do not claim that any such written amendment exists or, even if it did, that it waived N5HYG's right to payments of the Post-Closing Monthly Payments for each month from August 2017 forward.

Defendants cannot create an issue of fact—nor establish a "frustration of purpose" or "impossibility or impracticability of performance" – through the factually and legally untenable scenarios they describe. Even if it were true that they acted at the "direction" of non-parties or a minority shareholder, even to the extent of exhausting Hygea's cash reserves, their continued liability was both unchanged and clearly foreseeable because per the SPA: (a) Hygea's inability to pay did not affect Defendants' obligations, and (b) Defendants knew that there was no written amendment to their contractual obligations. Whatever risk Defendants took in agreeing to these terms is theirs to bear. *See Nebaco, Inc. v. Riverview Realty Co.*, 87 Nev. 55, 58, 482 P.2d 305, 307 (1971) ("One who contracts to render a performance for which government approval is required assumes the duty of obtaining such approval and risk of its refusal is on him"); *Graham v. Kim*, 111 Nev. 1039, 899 P.2d 1122, 1124 (1995) (per curiam) (no frustration of commercial purpose "if the unforeseen contingency is one which the promisor should have foreseen, and for which he should have provided."); *Helms Construction and Development Co. v. Dept. of Highways*, 97 Nev. 500, 634 P.2d 1224, 1225-26 (1981) (oil embargo held foreseeable).

Even to the extent that their exposition raises disputed issues involving third parties and non-shareholders, those issues are not relevant to whether Defendants breached their obligations to

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3993 Howard Hughes Pkwy, Suite 600
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N5HYG and thus do not raise genuine issues of *material* fact. *See Anderson v. Wells Cargo, Inc.*, No. 54962, 2011 Nev. Unpub. LEXIS 1726, at *13-14 n.6 (Nov. 15, 2011) (plaintiff's evidence of factual disputes over matters relating to defective workmanship and materials held insufficient to raise genuine issue of material fact regarding claimed breach of duty of care: "We conclude that, as a matter of law, the evidence presented were irrelevant and did not create an issue of material fact as to whether respondents breached their duty of care.")

E. Defendants' Plea For Discovery Relevant To Their Breaches of the SPA Is Illusory

Defendants also say "[t]his case in in the nascent stages" and "discovery has hardly begun," claiming they need a continuance to gather evidence to support their defenses. (Opposition, pp. 16-17, citing *Aviation Ventures, Inc. v. Joan Morris, Inc.*, 121 Nev. 113, 117-18, 110 P.3d 59, 62 (2005)). Defendants' argument is unfounded for several reasons.

First, as *Aviation Ventures* itself makes clear, NRCP 56(d) "permits a district court to grant a continuance when a party opposing a motion for summary judgment is *unable to marshal facts in support of its opposition*." *Id*. (italics added). But Defendants—former officers of Hygea—have been defending this case *for over three years*. The notion that, in all that time, they have been "unable" to gather evidence supporting their purported defenses defies credibility.

Second, Defendants' assertion that they need discovery into whether Hygea actually paid the Post-Closing Monthly Payments is disingenuous. (*See* Opposition, p. 17) This argument contradicts their other arguments that non-party RIN Capital "forc[ed] [Hygea's] inability to pay the Post-Closing Monthly Payments" and "[a]s a result [of the Receivership Action], Hygea could not continue its Post-Closing Monthly Payments." (*Id*. at 8) Defendants thus *already know* that Hygea did not make the payments. This is not surprising because Defendants offer to this Court their respective sworn testimony that "**at all relevant times herein, I was an officer of Hygea Holdings Corp.**" (Opposition, Exs. A and B at Par. 3) (bold added) Without question, these former officers—the founder / CEO and CFO, no less—know full-well that Hygea never made the payments. If it had, Defendants would have brought forth evidence of it long ago. And certainly, N5HYG would have no reason to continue to expend resources litigating its breach of contract claims if it had already been paid. Further, nowhere in Defendants' Rule 26 disclosures did they

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3993 Howard Hughes Pkwy, Suite 600
Las Vegas, NV 89169-5996

identify a single document supporting this argument. (*See* **Exhibit "2"** to Brown Decl.: Defendants' Initial Disclosures, p. 8)

Third, no amount of discovery would change the simple fact that neither a non-shareholder like RIN Capital, nor an 8.57% minority shareholder like N5HYG, could either: (a) somehow transform into a majority shareholder sufficient to "refuse to permit Hygea to go public," or (b) override the SPA itself despite its written amendment and "no-waiver" provisions. Further, Defendants identified no document in their Initial Disclosures supporting any of these unfounded assertions. (*See* **Exhibit "2"** to Brown Decl., p. 8)

Defendants appear to offer a wild goose chase as a stand-in for a genuine issue of material fact. That is insufficient. The Motion should be granted.

IV. CONCLUSION

Iglesias and Moffly's liability, and the resulting damages to N5HYG, are clear and without any genuine dispute. Summary judgment in favor of N5HYG on its claim for breaches of the SPA (the Tenth Cause of Action) is warranted. For the reasons set forth herein, and in the Motion, Plaintiff N5HYG, LLC respectfully requests that this Honorable Court:

a. grant its motion for partial summary judgment in favor of N5HYG and against Defendants Iglesias and Moffly, jointly and severally;

b. award damages for Defendants' breaches of the SPA (the Tenth Cause of Action) in the amount of $4,921,130.00 in favor of N5HYG and against Defendants Iglesias and Moffly, jointly and severally (with additional interest to be determined as of the date of judgment);

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c. award attorneys' fees and costs for enforcement of the SPA in favor of N5HYG and against Defendants Iglesias and Moffly, jointly and severally, in an amount to be determined after N5HYG submits its Motion for Fees and Memorandum of Costs; and

d. grant N5HYG any other relief deemed appropriate by the Court.

Dated: March 10, 2021

Submitted by:

LEWIS ROCA ROTHGERBER CHRISTIE LLP

By: */s/ Ogonna Brown*

OGONNA M. BROWN (SBN 7589)
3993 Howard Hughes Parkway, Suite 600
Las Vegas, Nevada 89169
(702) 949-8200

Attorneys for Plaintiffs

CERTIFICATE OF SERVICE

Pursuant to NEFCR 9, NRCP 5(b), and EDCR 7.26, I certify that on March 10, 2021, I served a copy of **PLAINTIFF N5HYG, LLC'S REPLY IN SUPPORT OF MOTION FOR PARTIAL SUMMARY JUDGMENT** on all parties as follows:

☒ Electronic Service – By serving a copy thereof through the Court's electronic service system via the Odyssey Court e-file system;

N5HYG, LLC

D. Chris Albright	dca@albrightstoddard.com
G. Mark Albright	gma@albrightstoddard.com
Andrea Brebbia	abrebbia@albrightstoddard.com
Barbara Clark	bclark@albrightstoddard.com
Amy Davis	aad@miller.law
Alexis C Haan	ACH@millerlawpc.com
William Kalas	WK@millerlawpc.com
Christopher D Kaye	cdk@millerlawpc.com
E. Powell Miller	epm@millerlawpc.com
Kevin Watts	KW@oaklandlawgroup.com

Attorney for Manuel Iglesias and Edward Moffly

Kory L Kaplan	kory@kaplancottner.com
Sara Savage	sara@lzkclaw.com
Sunny Southworth	sunny@kaplancottner.com
Carita Strawn	carita@kaplancottner.com

☐ E-mail – By serving a copy thereof at the email addresses listed below; and

☐ U.S. Mail—By depositing a true copy thereof in the U.S. mail, first class postage prepaid and addressed as listed below.

/s/ Kennya Jackson
An employee of Lewis Roca Rothgerber Christie LLP

Lewis Roca ROTHGERBER CHRISTIE
3993 Howard Hughes Pkwy, Suite 600
Las Vegas, NV 89169-5996

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 REPLY IN SUPPORT OF PLAINTIFF N5HYG, LLC'S MOTION FOR PARTIAL SUMMARY JUDGMENT** **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 Reply In Support of Plaintiff N5HYG, LLC's Motion for Partial Summary Judgment ("Reply").

6. True and correct copies of the unpublished decisions, *Slaughter v. Marquis Aurbach Coffing*, 2017 Nev. App. Unpub. LEXIS 29, *1-4 and *Anderson v. Wells Cargo, Inc.*, 2011 Nev. Unpub. LEXIS 1726, at *12-13 (Nov. 15, 2011), are attached hereto as **Exhibit "1"**.

7. A true and correct copy of the Defendants Manuel Iglesias and Edward Moffly's Initial Disclosure of Witnesses and Documents Pursuant to N.R.C.P. 16.1 served on February 1, 2021 is attached hereto as **Exhibit "2"**.

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 10th day of March, 2021.

/s/ Ogonna Brown
OGONNA M. BROWN, ESQ.

3993 Howard Hughes Parkway, Suite 600
Las Vegas, NV 89169

EXHIBIT "1"

133 Nev. 1075

An unpublished order shall not be regarded as precedent and shall not be cited as legal authority. SCR 123.

Court of Appeals of Nevada.

Ronald J. SLAUGHTER, M.D., an Individual; and Kathleen Slaughter, an Individual, Appellants,
v.
Marquis Aurbach COFFING, a Nevada Professional Corporation, Respondent.

No. 68911
|
Filed January 24, 2017

Attorneys and Law Firms

Law Offices of Mont E. Tanner

Marquis Aurbach Coffing

BEFORE SILVER, C.J., TAO AND GIBBONS, JJ.

ORDER AFFIRMING IN PART, REVERSING IN PART AND REMANDING

***1** This is an appeal from a district court summary judgment in a contracts and legal malpractice action. Eighth Judicial District Court, Clark County; Stefany Miley, Judge.

Appellants hired respondent, a law firm, to challenge a probate commissioner's report and recommendation that invalidated a trust of which appellants were the beneficiaries. When respondent was unsuccessful in overturning that decision, appellants failed to pay respondent pursuant to the parties' attorney fee agreement, and respondent sued for breach of that agreement. Appellants counterclaimed for legal malpractice and for breach of contract regarding the parties' second fee agreement relating to the appeal of the decision invalidating the trust. [1] The district court granted summary judgment in favor of respondent on all of the parties' claims and this appeal followed.

With regard to summary judgment on respondent's breach of contract claim, appellants assert that they were fraudulently induced into entering into the fee agreement based on respondent's oral statement that it could overturn the probate commissioner's decision because it was grounded on an incorrect understanding of the applicable law when, in actuality, respondent could not overturn the decision. As a result, appellants allege there is no valid contract. This alleged oral guarantee, however, directly contradicts the fee agreement's clear and unambiguous language, which provides that appellants "understand[ ] that [respondent] has not and cannot guarantee results." And, because appellants' evidence directly contradicts the written contract, it is parol evidence that the district court properly concluded was inadmissible. *See* *M.C. Multi-Family Dev., LLC v. Crestdale Assocs., Ltd.,* 124 Nev. 901, 913, 193 P.3d 536, 544 (2008) (reviewing district court decisions regarding the admission of evidence for an abuse of discretion); *Ringle v. Bruton,* 120 Nev. 82, 91, 86 P.3d 1032, 1037 (2004) ("The parol evidence rule does not permit the admission of evidence that would change the contract terms when the terms of a written agreement are clear, definite, and unambiguous."). This is true even though appellants assert fraud in the inducement because they provide no evidence of the alleged fraud other than self-serving affidavits stating that there was a contradictory oral agreement. [2] *See* *Road & Highway Builders, LLC v. N. Nev. Rebar, Inc.,* 128 Nev. 384, 390, 284 P.3d 377, 381 (2012) (explaining that a party cannot get around the parol evidence rule by asserting that it was fraudulently induced into entering into the contract because a prior oral agreement contradicted the terms of the written contract).

***2** Aside from their failed assertions that the first fee agreement is not valid based on respondent's alleged oral statements, appellants present no arguments that there are genuine issues of material fact regarding the remaining elements of a breach of contract claim which would preclude summary judgment. *See* *Saini v. Int'l Game Tech.,* 434 F. Supp. 2d 913, 919-20 (D. Nev. 2006) ("Nevada law requires the plaintiff in a breach of contract action to show (1) the existence of a valid contract, (2) a breach by the defendant, and (3) damage as a result of the breach."). Accordingly, they have waived any such arguments and we necessarily affirm the district court's grant of summary judgment on respondent's breach of contract claim. *See* *Powell v. Liberty Mut. Fire Ins. Co.,* 127 Nev. 156, 161 n.3, 252 P.3d 668, 672 n.3 (2011) (holding that arguments not raised in an opening brief are deemed waived); *Wood v. Safeway, Inc.,* 121 Nev. 724, 729, 121 P.3d 1026, 1029 (2005) (providing that summary judgment is reviewed de novo on appeal and affirmance is only proper if the pleadings and all evidence demonstrate that

there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law).

Appellants next argue that the district court improperly granted summary judgment in favor of respondent on their breach of contract counterclaim regarding the second fee agreement for the appeal. As to this claim, they assert that a question of material fact remains regarding whether respondent breached that agreement by failing to prosecute the appeal at no cost to appellants. Again, the evidence appellants use to support the claimed breach—namely, affidavits regarding conversations that predated the execution of the second agreement—could not be considered under the parol evidence rule because the affidavits contradicted the clear and unambiguous language in the second fee agreement wherein appellants agreed to pay the fees for an appeal.[3] *See* *M.C. Multi-Family Dev.,* 124 Nev. at 913, 193 P.3d at 544; *Ringle,* 120 Nev. at 91, 86 P.3d at 1037. And without any evidence of a breach of the second fee agreement, the district court properly granted summary judgment against appellants on their breach of contract counterclaim. *See* *Saini,* 434 F. Supp. 2d at 919-20; *Cuzze v. Univ. & Cmty. Coll. Sys. of Nev.,* 123 Nev. 598, 603, 172 P.3d 131, 135 (2007) (noting that, because the moving party pointed to an evidentiary deficiency in a claim on which the nonmoving had the burden of production, the burden then shifted to the nonmoving party to present evidence demonstrating an issue of material fact in order to avoid summary judgment).

Appellants' final argument is that the district court erred in granting summary judgment on their legal malpractice claim.[4] Specifically, they assert that respondent breached its duty to appellants by representing that the decision invalidating the trust could be overturned without fully explaining the matter to them and by pursuing legal arguments that lacked merit in an effort to overturn that decision.[5] *See* NRPC 1.4(b) (providing that a lawyer has a duty to explain a matter to an extent that the client can make an informed decision regarding representation); *Mainor v. Nault,* 120 Nev. 750, 769, 101 P.3d 308, 321 (2004) (providing that the rules of professional conduct can be used as evidence to establish the standard of care lawyers owe to their clients). Appellants supported these allegations with an expert report. *See* *Allyn v. McDonald,* 112 Nev. 68, 71, 910 P.2d 263, 266 (1996) ("[E]xpert evidence is generally required in a legal malpractice case to establish the attorney's breach of care....").

***3** Respondent's answering brief contains no argument against appellants' assertion that, by failing to fully explain the chances of overturning the decision invalidating the trust so as to allow them to make an informed decision regarding representation and by putting forth legal arguments that lacked merit in an effort to overturn that decision, respondent breached its duty to appellants to "use such skill, prudence, and diligence as lawyers of ordinary skill and capacity possess in exercising and performing the tasks which they undertake."[6] *Mainor,* 120 Nev. at 774, 101 P.3d at 324 (quoting *Day v. Zubel,* 112 Nev. 972, 976, 922 P.2d 536, 538 (1996)) (defining the duty attorneys owe to clients). As such, we must necessarily conclude that genuine issues of fact remain regarding these allegations of breach as they relate to the legal malpractice claim. *See id.; Bates v. Chronister,* 100 Nev. 675, 681-82, 691 P.2d 865, 870 (1984) (concluding that respondent confessed error by failing to respond to appellant's argument on appeal).

This does not end our analysis of appellants' challenge to the grant of summary judgment on this aspect of appellants' legal malpractice claim, however, as respondent asserts that appellants cannot prove that any alleged breach was the proximate cause of appellants' damages, such that summary judgment on the legal malpractice claim was appropriate. *See* *Mainor,* 120 Nev. at 774, 101 P.3d at 324 (providing that proximate cause is an element of a legal malpractice claim); *see also Cuzze,* 123 Nev. at 602-03, 172 P.3d at 134 (providing that if the moving party does not bear the burden of persuasion at trial on a claim, it can win on summary judgment by pointing to a lack of evidence on one of the essential elements of that claim). We agree with respondent in part. To the extent that appellants assert that respondent proximately caused them damages in the form of the trust being invalidated, the trust was invalidated before respondent was ever hired and respondent had no part in writing the trust. And with regard to the assertion that respondent proximately caused appellants to lose the trust assets, these events occurred via a settlement agreement that appellants entered into after terminating respondent—an agreement which respondent had no part in negotiating. Under these circumstances, there are no issues of fact remaining that these claims of damages were not proximately caused by respondent, and, therefore, summary judgment was proper as to these asserted damages. *See* *Wood,* 121 Nev. at 729, 121 P.3d at 1029.

Appellants also asserted a third category of damages, however, in the form of the retainer fee they paid to respondent and the fees they now owe to respondent based on its success on its claim for breach of the fee agreement. Appellants contend that, had respondent properly explained to them that any attempt to overturn the decision invalidating the trust would be futile, as appellants' expert opined, appellants would not have entered into the fee agreement which obligated them to pay the retainer fee and the fees incurred during litigation. In other words, but for respondent's malpractice, appellants never would have entered into the fee agreement, paid respondent the retainer fee, or incurred the attorney fees and related costs in challenging the decision invalidating the trust. Although respondent asserts that it is entitled to these fees under the fee agreement, it does not respond to the contention that, regardless of any right to fees under that agreement, the alleged legal malpractice was the proximate cause of appellants' attorney-fees-related damages. Because respondent does not present any argument suggesting that its alleged malpractice was not the proximate cause of the attorney fees damages, we must conclude that a genuine issue of material fact remains as to that issue which precludes summary judgment. *See id.; Bates,* 100 Nev. at 681-82, 691 P.2d at 870.

***4** In sum, we affirm the district court's grant of summary judgment on both the breach of contract claim[7] and counterclaim. We further conclude, however, that genuine issues of fact remain which preclude summary judgment on part of appellants' legal malpractice counterclaim. Specifically, genuine issues of fact remain regarding whether respondent breached its duty to appellants by failing to fully explain their chances of success in overturning the decision invalidating the trust and by presenting arguments in the trust case that allegedly had no merit, and whether those alleged breaches were the proximate cause of appellants' attorney-fees related damages. Accordingly, we reverse the grant of summary judgment on appellants' legal malpractice counterclaim and remand this matter for further proceedings in accordance with this decision.[8]

It is so ORDERED.

All Citations

Not Reported in Pac. Rptr., 133 Nev. 1075, 2017 WL 462250

Footnotes

1 Although respondent initially presented a claim for a breach of this second contract as well, respondent voluntarily dismissed that claim below and it is not before us on appeal.

2 Further, to the extent appellants argue that the agreement is invalid due to respondent's alleged negligent or fraudulent misrepresentation regarding the chances of success, those arguments also fail as appellants did not present any evidence of justifiable reliance on respondent's alleged oral guarantees, especially in light of the contradictory written agreement. *See Barmettler v. Reno Air, Inc.,* 114 Nev. 441, 449, 956 P.2d 1382, 1387 (1998) (requiring justifiable reliance for negligent misrepresentation); *Bulbman, Inc. v. Nev. Bell,* 108 Nev. 105, 111, 825 P.2d 588, 592 (1992) (requiring justifiable reliance for fraudulent misrepresentation); *Collins v. Burns,* 103 Nev. 394, 397, 741 P.2d 819, 821 (1987) (providing that the test for justifiable reliance is "whether the recipient has information which would serve as a danger signal and a red light to any normal person of [the party's] intelligence and experience"). Additionally, appellants failed to raise their rescission argument below; therefore, we decline to address it on appeal. *See Old Aztec Mine, Inc. v. Brown,* 97 Nev. 49, 52, 623 P.2d 981, 983 (1981) (providing that claims not argued below are waived on appeal).

3 Additionally, because appellants executed and filed a substitution of counsel, thereby preventing respondent from completing work on the appeal, appellants themselves treated the agreement as no longer binding on the parties. *See Cladianos v. Friedhoff,* 69 Nev. 41, 46, 240 P.2d 208, 210 (1952) (providing that prevention of performance may be evidenced by "any acts, conduct, or declarations of the party, evincing a clear intention to repudiate the contract, and to treat it as no longer binding"). Thus, even if appellants could

demonstrate a breach of this agreement based on the arguments detailed above, the fact that appellants prevented respondent from completing its duty under the second fee agreement would excuse any such breach. *See* *id.* at 45, 240 P.2d at 210 (excusing a party's failure to perform under a contract when the other party's actions treat the contract as non-binding).

4 The elements of a legal malpractice claim are

> (1) an attorney-client relationship; (2) a duty owed to the client by the attorney to use such skill, prudence, and diligence as lawyers of ordinary skill and capacity possess in exercising and performing the tasks which they undertake; (3) a breach of that duty; (4) the breach being the proximate cause of the client's damages; and (5) actual loss or damage resulting from the negligence.

Mainor v. Nault, 120 Nev. 750, 774, 101 P.3d 308, 324 (2004) (quoting *Day v. Zubel,* 112 Nev. 972, 976, 922 P.2d 536, 538 (1996)).

5 Appellants also assert that respondent committed legal malpractice by failing to advise them whether to amend the trust's language. But the record provides uncontroverted evidence that respondent did look into amending the trust and specifically advised against it. As such, we conclude that appellants failed to demonstrate a genuine issue of material fact as to this alleged breach and summary judgment was therefore proper on that point. *See* *Wood,* 121 Nev. at 729, 121 P.3d at 1029.

6 In contrast, respondent's answering brief presents arguments asserting that it met any duty it had with regard to the amendment of the trust, and, as noted above, we conclude that summary judgment was proper on that permutation of appellants' legal malpractice claim.

7 While we affirm summary judgment on respondent's breach of contract claim, we recognize that the fees awarded to respondent under that claim may be offset if the district court finds for appellants on their legal malpractice claim on remand.

8 Our decision to reverse and remand the grant of summary judgment on the legal malpractice claim should not be construed as a comment on the merits of that claim.

End of Document

127 Nev. 1114
Unpublished Disposition
Supreme Court of Nevada.

Andy Lee ANDERSON, Appellant,
v.
WELLS CARGO, INC., a Nevada Corporation
and Superior Traffic Services Corp.,
a Nevada Corporation, Respondents.

No. 54962.
|
Nov. 15, 2011.

Synopsis

Background: Motorcyclist, who crashed his motorcycle into roadway median and sustained a brain injury sued general contractor and subcontractor involved in median's construction, alleging claims of negligence and breach of contract. The Eighth Judicial District Court, Clark County, Michelle Leavitt, J., entered summary judgment for defendants. Motorcyclist appealed.

Holdings: The Supreme Court held that:

[1] contractors were not negligent for design or maintenance of median;

[2] there was no evidence to support motorcyclist's negligence claims based on workmanship and defective materials; and

[3] there was no evidence to support motorcyclist's breach of contract claim.

Affirmed.

Cherry, J., filed dissenting opinion in which Gibbons, J., concurred.

Procedural Posture(s): On Appeal; Motion for Summary Judgment.

West Headnotes (4)

[1] **Judgment** Hearing and determination

Even if plaintiff was diligent in pursuing discovery, district court did not abuse its discretion in denying his request for summary judgment continuance in negligence action, where request for continuance was not supported by affidavit, and plaintiff did not identify what additional discovery would enable him to oppose motion for summary judgment. Rules Civ.Proc., Rule 56(f)Rules Civ.Proc., Rule 56(f).

[2] **Automobiles** Liabilities of contractors, public utilities, and others

Independent contractors involved in construction of roadway median were not negligent for its design or maintenance, where contractors did not design the median, were not responsible for doing so, and had no duty to maintain the median after the work had been completed and accepted by the county.

[3] **Automobiles** Liabilities of contractors, public utilities, and others

There was no evidence that independent contractors' performance in constructing roadway median that motorcyclist struck was defective or that materials they used in the project were defective, as required to support motorcyclist's negligence claims based on workmanship and use of defective materials.

[4] **Public Contracts** Miscellaneous acts or conduct constituting breach

There was no evidence to establish that independent contractors breached their contract with the county in constructing roadway median that motorcyclist struck, as required to support motorcyclist's claim against contractors for breach of contract.

Attorneys and Law Firms

Eric Dobberstein & Associates

J.D. Evans

Marquis Aurbach Coffing

Selman Breitman, LLP

Parker & Edwards

ORDER OF AFFIRMANCE

***1** This is an appeal from a district court order in a tort and contract action. Eighth Judicial District Court, Clark County; Michelle Leavitt, Judge.

Appellant Andy Anderson crashed his motorcycle into the median on Rainbow Boulevard in Las Vegas in April 2005 and sustained a brain injury. The median was designed by Clark County and was completed almost three years before Anderson's accident, in early May 2002. Respondent Wells Cargo, Inc., was the general contractor for the median's construction, and respondent Superior Traffic Services Corp. was a subcontractor responsible for temporary traffic control and permanent signs and striping. According to the plans provided by the county, Superior was to install reflectors and an R4–7 sign, [1] in addition to painting the median with retro-reflective paint.

Anderson commenced an action against Clark County, Wells Cargo, and Wells Cargo's subcontractors alleging negligence, negligence per se, and breach of contract. Anderson claimed that respondents were negligent in five respects: (1) defective design; (2) failure to maintain; (3) failure to perform the construction in a workmanlike manner; (4) negligent construction; and (5) using defective materials. Prior to the close of discovery, respondents filed motions for summary judgment, which Anderson opposed; Anderson also sought an NRCP 56(f) continuance for further discovery. [2] The district court denied Anderson's NRCP 56(f) request and entered summary judgment for respondents. This appeal followed.

Discussion

On appeal, Anderson argues that the district court abused its discretion in denying his NRCP 56(f) request, and that the district court erred in granting summary judgment in respondents' favor. As explained below, we conclude that these contentions lack merit, and we therefore affirm the district court's order.

The district court did not abuse its discretion in denying Anderson's NRCP 56(f)NRCP 56(f) request

We review a district court's decision denying a motion for an NRCP 56(f) continuance for an abuse of discretion. *Aviation Ventures v. Joan Morris, Inc.,* 121 Nev. 113, 118, 110 P.3d 59, 62 (2005). A party seeking an NRCP 56(f) continuance for further discovery must demonstrate how further discovery will lead to the creation of a genuine issue of material fact. *Id.*

Anderson argues that summary judgment was premature because he had been diligent in pursuing discovery, less than two years had passed, and the discovery commissioner had recently extended the discovery deadline. A party's diligence in pursuing discovery and the length of time since the complaint was filed are relevant to whether an NRCP 56(f) continuance should be granted. *Summerfield v. Coca Cola Bottling Co.,* 113 Nev. 1291, 1294, 948 P.2d 704, 705–06 (1997); *Ameritrade, Inc. v. First Interstate Bank,* 105 Nev. 696, 700, 782 P.2d 1318, 1320 (1989); *Halimi v. Blacketor,* 105 Nev. 105, 106, 770 P.2d 531, 531–32 (1989); *Harrison v. Falcon Products,* 103 Nev. 558, 560, 746 P.2d 642, 042–43 (1987). However, Anderson's argument that the district court abused its discretion in denying his request because he was diligent in pursuing discovery is without merit.

***2** Whether a party seeking an NRCP 56(f) continuance was diligent in seeking discovery is relevant only after the party has demonstrated that additional discovery was necessary to oppose the motion for summary judgment. *Aviation Ventures,* 121 Nev. at 118, 110 P.3d at 62 ("[A] motion for a continuance under NRCP 56(f) is appropriate only when the movant expresses how further discovery will lead to the creation of a genuine issue of material fact."). It is insufficient for a party seeking such a continuance to merely allege that additional discovery is necessary; instead, the party must identify what additional facts might be obtained that are necessary to oppose the motion for summary judgment. *Bakerink v. Orthopaedic Assocsiates, Ltd.,* 94 Nev. 428, 431, 581 P.2d 9, 11 (1978).

[1] In this case, Anderson's request for a continuance was not supported by an affidavit as required by NRCP 56(f). Anderson's opposition did not identify what additional discovery would enable him to oppose respondents' motion

for summary judgment.[3] The mere fact that additional discovery could be conducted does not preclude the granting of summary judgment.[4] Rather, the district court has no authority to grant an NRCP 56(f) request if the party seeking such a continuance fails to identify what additional discovery is necessary to oppose the motion for summary judgment. Therefore, the district court's denial of NRCP 56(f) relief was not an abuse of discretion.

The district court properly granted summary judgment for respondents

Standard of review

We review orders granting summary judgment de novo. *Yeager v. Harrah's Club, Inc.,* 111 Nev. 830, 833, 897 P.2d 1093, 1094 (1995). Summary judgment is only proper if no genuine issue of material fact exists and the moving party is entitled to judgment as a matter of law. NRCP 56(c); *see* *Wood v. Safeway, Inc.,* 121 Nev. 724, 729, 121 P.3d 1026, 1029 (2005).

In order to establish a claim for negligence, a plaintiff must prove four elements: "(1) an existing duty of care, (2) breach, (3) legal causation, and (4) damages." *Turner v. Mandalay Sports Entm't,* 124 Nev. 213, 217, 180 P.3d 1172, 1175 (2008). Furthermore, under the foreseeability doctrine, a construction contractor is liable for the injuries or damages to a third person caused by its negligence.[5] *Cosgriff Neon Co. v. Mattheus,* 78 Nev. 281, 286–87, 371 P.2d 819, 822 (1962). Liability is predicated on the contractor acting negligently, subject to two exceptions: (1) if the contractor establishes that the plans, specifications, and directions given to the contractor have been carefully carried out and that those plans, specifications, and directions are not so obviously defective that a reasonable contractor would not follow them; or (2) the owner discovers the danger, or it is so obvious, that the owner's conduct is an intervening cause of the injury. *Terry v. New Mexico State Highway Com'n,* 98 N.M. 119, 645 P.2d 1375, 1379 (N.M.1982), *abrogated on other grounds by* *Coleman v. United Engineers & Construct.,* 118 N.M. 47, 878 P.2d 996 (N.M.1994); *see also* *Peters v. Forster,* 804 N.E.2d 736, 742 (Ind.2004). Moreover, an owner's acceptance of the work is accompanied by the presumption that the owner made a reasonably careful inspection of the work and accepts any defects that were discoverable. *Coleman v. City of Kansas City, Mo.,* 859 S.W.2d 141, 146 (Mo.Ct.App.1993).

***3** **[2]** We have recognized that "courts are reluctant to grant summary judgment in negligence cases because foreseeability, duty, proximate cause and reasonableness usually are questions of fact for the jury," *Lee v. GNLV Corp.,* 117 Nev. 291, 296, 22 P.3d 209, 212 (2001) (internal quotation omitted). However, summary judgment is nevertheless proper if the plaintiff could not recover as a matter of law. *Id.*

A person only incurs a duty of reasonable care when he or she acts or fails to act when he or she has a duty to act. Restatement (Second) of Torts § 284 (1965). In this case, it is uncontroverted that respondents did not design the median and were not responsible for doing so. Additionally, as other courts have explained:

> An independent contractor owes no duty to third persons to judge the plans, specifications or instructions which he has merely contracted to follow. If the contractor carefully carries out the specifications provided him, he is justified in relying upon the adequacy of the specifications unless they are so obviously dangerous that no competent contractor would follow them.

Hunt v. Blasius, 74 Ill.2d 203, 23 Ill.Dec. 574, 384 N.E.2d 368, 371 (Ill.1978). Furthermore, it is undisputed that respondents had no duty to maintain the median after the work had been completed and accepted by the county. Rather, that responsibility resided solely with the county. Therefore, respondents did not owe Anderson a duty of care concerning the median's design or maintenance. Consequently, the district court properly granted summary judgment with respect to Anderson's design and maintenance claims.

The district court was also correct in granting summary judgment on the workmanship and materials claims, but for a different reason. In *Cuzze v. University & Community College System of Nevada,* 123 Nev. 598, 172 P.3d 131 (2007), we

explained that we follow the federal approach with regard to burdens of proof and persuasion when considering a motion for summary judgment. *Id.* at 602, 172 P.3d at 134. The party moving for summary judgment has the burden of production to demonstrate the absence of a genuine issue of material fact. *Id.* If the moving party makes such a demonstration, the opposing party takes on a burden of production to demonstrate the existence of a genuine issue of material fact. *Id.* If the nonmoving party, such as Anderson, bears the burden of persuasion at trial, then the moving party may satisfy its burden by either (1) presenting evidence negating an essential element of the nonmoving party's claim or (2) pointing out the absence of evidence to support an element of the nonmoving party's claim. *Id.* at 602–03, 172 P.3d at 134. If the nonmoving party fails to make a showing sufficient to establish the existence of an element essential to its case on which it bears the burden of proof, entry of summary judgment is mandatory. *Celotex Corp. v. Catrett,* 477 U.S. 317, 322–23, 106 S.Ct. 2548, 91 L.Ed.2d 265 (1986).

[3] **[4]** In this instance, Anderson bears the burden of persuasion at trial, and thus, must present specific facts that show a genuine issue of material fact to defeat summary judgment. *Cuzze,* 123 Nev. at 602–03, 172 P.3d at 134. However, he proffered no relevant evidence to show that respondents' performance was defective or that the materials were defective. Instead, Anderson merely pointed to the fact that respondents could not prove that the construction and materials used were *not* defective.[6] This bare allegation, however, is insufficient to withstand a motion for summary judgment. *Wood v. Safeway, Inc.,* 121 Nev. 724, 732, 121 P.3d 1026, 1031 (2005) ("The non-moving party 'is not entitled to build a case on the gossamer threads of whimsy, speculation, and conjecture.' " (quoting *Bulbman, Inc. v. Nevada Bell,* 108 Nev. 105, 110, 825 P.2d 588, 591 (1992))). Because Anderson did not offer any evidence that respondents breached their duty of care, summary judgment on the workmanship and materials claims was proper.[7] Accordingly, we affirm the district court's order.

***4** It is so ORDERED.

CHERRY, J., with whom, GIBBONS, J., agrees, dissenting:

***4** I differ with my colleagues as to their resolution of this appeal. In particular, I conclude that the district court erred when it granted the motion for summary judgment and therefore I dissent. Summary judgment was granted in this case when discovery was still ongoing and when Anderson's claims that issues of material fact existed were stronger than the " " "gossamer threads of whimsy, speculation and conjecture" " " that *Wood v. Safeway, Inc.* and many other Nevada cases reject as being too weak to withstand such a motion. 121 Nev. 724, 731, 121 P.3d 1026, 1030 (2005) (quoting *Pegasus v. Reno Newspapers, Inc.,* 118 Nev. 706, 713–14, 57 P.3d 82, 87 (2002) (quoting *Posadas v. City of Reno,* 109 Nev. 448, 452, 851 P.2d 438, 442 (1993) (quoting *Collins v. Union Fed. Savings & Loan,* 99 Nev. 284, 302, 662 P.2d 610, 621 (1983)))). The alteration in this court's standard for granting summary judgment created by this order of affirmance for Superior will result in the denial of important procedural safeguards that should be afforded to all litigants. Therefore, I cannot agree with the majority.

Here, Anderson was not dilatory in conducting discovery. The discovery commissioner in the case concluded that Anderson was diligent in the discovery process, given the complexity of the case and his brain damage. Anderson clearly meant to continue pursuing litigation against the defendants as he filed a motion for a continuance. Nevada caselaw is clear that a request for additional time is reflective of diligent discovery. *Summerfield v. Coca Cola Bottling Co.,* 113 Nev. 1291, 1294, 948 P.2d 704, 706 (1997); *Ameritrade, Inc. v. First Interstate Bank,* 105 Nev. 696, 700, 782 P.2d 1318, 1320 (1989); *Halimi v. Blacketor,* 105 Nev. 105, 106, 770 P.2d 531, 531 (1989); *Harrison v. Falcon Products,* 103 Nev. 558, 560, 746 P.2d 642, 642 (1987).

Moreover, Anderson's request for a continuance was not done simply to keep his case alive and harass Superior. Less than two years had elapsed since he had begun discovery. This court has previously held that declaring summary judgment before a reasonable period of time has elapsed is an abuse of discretion. *Halimi,* 105 Nev. at 106, 770 P.2d at 531–32 (holding that summary judgment was improper when less than a year had passed since the filing of the complaint); *Harrison,* 103 Nev. at 560, 746 P.2d at 642–43 (holding that summary judgment was improper when less than two years had passed since the filing of the complaint). Because Anderson was not dilatory in conducting discovery during this limited timeframe, granting summary judgment at this early stage of the proceedings when the discovery window was still open was an abuse of discretion.

Moreover, the discovery deadline had not passed and the discovery up to this point only established that the County had records indicating that a sign and reflectors were installed on the median during the initial construction of the barrier and that the sign and reflectors were not present at the time the accident occurred. At the time the motion for summary judgment was granted for Superior, Anderson planned to conduct additional discovery such as expert depositions, percipient witness depositions, and follow-up discovery. The discovery that Anderson has yet to complete could very well show that adequate signage and reflective markings were never installed by Superior in the proper locations or that the adhesives used were insufficient. Anderson could uncover information showing that the County's records were in error or that the signs and reflectors were placed on the opposite end of the median dividing the roadway. "A party is allowed to discover any information that is 'reasonably calculated to lead to the discovery of admissible evidence.' " *Harrison,* 103 Nev. at 560, 746 P.2d at 642 (quoting NRCP 26(b)(1)). Anderson's planned discovery falls well within this category and it could easily "infuse the issues with facts sufficient to defeat a motion for summary judgment." *Auerbach's, Inc. v. Kimball,* 572 P.2d 376, 377 (Utah 1977). Anderson should not be prematurely denied his opportunity to seek redress for his injuries.

***5** In addition, this court should not diverge from its precedent that summary judgment should only reluctantly be affirmed in negligence cases as "negligence is ordinarily a question of fact for the jury" unless no duty exists from the defendant to the plaintiff. *Rodriguez v. Primadonna Company,* 125 Nev. 578, 584, 216 P.3d 793, 798 (2009) (citing *Butler v. Bayer,* 123 Nev. 450, 461, 168 P.3d 1055, 1063 (2007)). Here, Anderson was not given the opportunity to conduct the relevant discovery to prove that there was a defect in the subject median. Anderson asserts that material questions of fact remain regarding his claims against respondents for defective or negligent maintenance, design and workmanship defects, and the use of defective materials. Anderson was also deprived of an opportunity to demonstrate that the contractor still owed him a duty. In this regard, the district court, in failing to allow further discovery, failed to meaningfully apply *Cosgriff Neon Co. v. Mattheus,* 78 Nev. 281, 371 P.2d 819 (1962), to this case to determine if the contractor could have been liable.

Summary judgment might well be proper after Anderson has completed his requested discovery, but prematurely ending Anderson's case when the discovery commissioner had just granted Anderson's request for an extension of discovery and when the time for discovery was still open, improperly moves the delicate balance of procedural safeguards too far away from the plaintiff's side to be just. Therefore, in my view the district court erred in granting summary judgment.

In light of the above, I would reverse the district court's order and remand this matter to the district court to allow Anderson to complete discovery. For these reasons, I dissent.

I concur: GIBBONS, J.

All Citations

127 Nev. 1114, 373 P.3d 891 (Table), 2011 WL 5579009

Footnotes

1 An R4–7 sign is a "Keep Right" sign that "may be used at locations where it is necessary for traffic to pass only to the right of a roadway feature or obstruction." U.S. Dept. of Transportation, *Manual on Uniform Traffic Control Devices* § 2B.33 (2003 ed.), *available at* http:// mutcd.fhwa.dot.gov/pdfs/2003/Ch2B.pdf.

2 We note that Anderson's deposition reflects that he has no recollection of the events relating to the accident and his only other proof of respondents' alleged negligence was an expert report. However, the expert relied in part on the observation of the accident location almost two years after the accident and photos taken by the Las Vegas Metropolitan Police Department (LVMPD) on the night of the accident. Although an expert need not learn of the material facts contemporaneously, the expert must have reviewed relevant materials to inform his or her opinion. This is not the case here. The condition of the median in 2007 during the first site inspection by the expert can provide no basis for an opinion regarding the conditions of the median at the

time of the accident or at the time that construction was completed. Additionally, the photos taken by LVMPD cannot establish the condition of the median at the time that construction was completed.

Although respondents had a duty to repair under the contract with the county, that duty was only triggered when the county made a demand for repair. No demand was made by the county because it was not on notice that the median was defective.

Furthermore, the expert report at most establishes that the lack of retro-reflective paint, reflectors, and sign caused the accident. It, however, cannot establish that the retro-reflective paint, reflectors, and sign were missing due to respondents' negligence.

3 In *Bakerink,* we noted that:

> "Rule 56(f) is not a shield that can be raised to block a motion for summary judgment without even the slightest showing by the opposing party that his opposition is meritorious. A party invoking its protections must do so in good faith by affirmatively demonstrating why he cannot respond to a movant's affidavits as otherwise required by Rule 56(e) and how postponement of a ruling on the motion will enable him, by discovery or other means, to rebut the movant's showing of the absence of a genuine issue of fact. Where, as here, a party fails to carry his burden under Rule 56(f), postponement of a ruling on a motion for summary judgment is unjustified."

Bakerink, 94 Nev. at 431, 581 P.2d at 11 (quoting *Willmar Poultry Co. v. Morton–Norwich Products, Inc.,* 520 F.2d 289, 297 (8th Cir.1975)).

4 Although the dissent suggests that Anderson should have been allowed further discovery, NRCP 56(f) requires a party to identify those additional facts that it might discover. Anderson did not identify any of the potential evidence that the dissent postulates to be available. In fact, Anderson's opposition did nothing more than state he has not completed discovery.

Moreover, it is not for this court or the district court to speculate about what evidence a party may or may not discovery with additional NRCP 56(f) discovery. It is the responsibility of the parties to identify what additional facts might be obtained that are essential to justify opposition. *Aviation Ventures,* 121 Nev. at 118, 110 P.3d at 62. Had he presented an affidavit identifying those additional facts as required by NRCP 56(f), it may very well have been an abuse of discretion for the district court to deny the discovery request and grant summary judgment; however, those are not the facts before us. Anderson's failure to comply with NRCP 56(f)'s requirement of identifying additional facts he hopes to discover and will create a genuine issue of material fact is fatal to his request for further discovery.

Contrary to the dissent's assertion, this order has no effect on the balance of procedural safeguards. It merely requires that parties comply with the. rules of civil procedure.

5 Although the parties and the district court discussed the application of the "completed and accepted" doctrine, which allows a contractor to avoid liability for injuries to a third person that result from the work after the work is complete and accepted by its owner, *see* Emmanuel S. Tipon, Annotation, *Modern Status of Rules Regarding Tort Liability of Building or Construction Contractor for Injury or Damage to Third Person Occurring After Completion and Acceptance of Work; "Completed and Accepted" Rule,* 75 A.L.R.5th (1999), we long ago joined the majority of jurisdictions and adopted the foreseeability doctrine. *See* *Cosgriff Neon Co. v. Mattheus,* 78 Nev. 281, 371 P.2d 819 (1962).

6 Anderson points to several pieces of evidence as creating an issue of material fact in dispute as to whether respondents' workmanship was defective and whether the materials used were defective: (1) his expert's report; (2) testimony that the construction was under warranty; (3) the fact that the reflectors, sign, and paint were missing; and (4) Superior's admission that the sign should last five years and that it did not refer to the MUTCD guidelines when submitting its bid. We conclude that, as a matter of law, the evidence presented

were irrelevant and did not create an issue of material fact as to whether respondents breached their duty of care.

7 We also conclude that the summary judgment was proper regarding Anderson's breach of contract claim because he presented no evidence to establish that respondents breached their contract with the county.

End of Document

EXHIBIT "2"

NLWD
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, 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 INITIAL DISCLOSURE OF WITNESSES AND DOCUMENTS PURSUANT TO N.R.C.P. 16.1**

TO: 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;

TO: OGONNA M. BROWN, ESQ., G. MARK ALBRIGHT, ESQ., D. CHRIS ALBRIGHT, ESQ., E. POWELL MILLER, ESQ. (*admitted pro hac vice*), and CHRISTOPHER KAYE, ESQ. (*admitted pro hac vice*), their Attorneys;

Defendants MANUEL IGLESIAS and EDWARD MOFFLY (collectively "Defendants") by and through their counsel, the law firm of Kaplan Cottner, hereby provide the following Initial Disclosures pursuant to N.R.C.P. 16.1 (a)(1) as follows:

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

I.

PERSONS LIKELY TO HAVE DISCOVERABLE INFORMATION

1. Manuel Iglesias
c/o Kaplan Cottner
850 E. Bonneville Ave.
Las Vegas, NV 89101
(702) 381-8888

Mr. Iglesias is expected to testify as to his knowledge of the events which are the subject matter of this litigation, as well as the facts, circumstances and allegations surrounding this action.

2. Edward Moffly
c/o Kaplan Cottner
850 E. Bonneville Ave.
Las Vegas, NV 89101
(702) 381-8888

Mr. Moffly is expected to testify as to his knowledge of the events which are the subject matter of this litigation, as well as the facts, circumstances and allegations surrounding this action.

3. The NRCP 30(b)(6) designee of N5HYG, LLC
c/o Lewis Roca Rothgerber Christie LLP
3993 Howard Hughes Parkway, Suite 600
Las Vegas, NV 89169
(702) 949-8200
And c/o Albright, Stoddard, Warnick & Albright
801 South Rancho Drive Suite D-4
Las Vegas, NV 89106
(702) 384-7111
And c/o The Miller Law Firm, P.C.
950 W. University Dr., Suite 300
Rochester, MI 48307
(248) 841-2200

The NRCP 30(b)(6) designee of N5HYG, LLC is expected to testify as to its knowledge of the events which are the subject matter of this litigation, as well as the facts, circumstances and allegations surrounding this action.

4. The NRCP 30(b)(6) designee of Nevada 5, Inc.
c/o Lewis Roca Rothgerber Christie LLP
3993 Howard Hughes Parkway, Suite 600
Las Vegas, NV 89169
(702) 949-8200
And c/o Albright, Stoddard, Warnick & Albright

801 South Rancho Drive Suite D-4
Las Vegas, NV 89106
(702) 384-7111
And c/o The Miller Law Firm, P.C.
950 W. University Dr., Suite 300
Rochester, MI 48307
(248) 841-2200

The NRCP 30(b)(6) designee of Nevada 5, Inc. is expected to testify as to its knowledge of the events which are the subject matter of this litigation, as well as the facts, circumstances and allegations surrounding this action.

5. The NRCP 30(b)(6) designee of Hygea Holdings Corp.
c/o Ballard Spahr LLP
One Summerlin
1980 Festival Plaza Drive, #900
Las Vegas, NV 89135
Telephone: (702) 471-7000

The NRCP 30(b)(6) designee of Hygea Holdings Corp. is expected to testify as to its knowledge of the events which are the subject matter of this litigation, as well as the facts, circumstances and allegations surrounding this action.

6. Daniel T. McGowan, Chairman of the Hygea Board of Directors
c/o Coffey Burlington, Attorneys at Law
2601 South Bayshore Drive, Penthouse
Miami, FL 33133
Telephone: (305) 858-2900

Mr. McGowan is expected to testify as to his knowledge of the events which are the subject matter of this litigation, as well as the facts, circumstances and allegations surrounding this action.

7. Administrator of the Estate of Frank Kelly (deceased), former Vice Chairman of the Hygea Board of Directors
c/o Fox Rothschild LLP
999 Peachtree Street NE, Suite 1500
Atlanta, GA 30309
Telephone: (404) 962-1000

This Administrator is expected to testify as to his/her knowledge of the events which are the subject matter of this litigation, as well as the facts, circumstances and allegations surrounding this action.

8. Martha Mairena Castillo, Chief Administrative Officer of Hygea and Member of the Hygea Board of Directors

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

12727 SW 116th St.
Miami, FL 33186
Telephone: (786) 387-7086

Ms. Castillo is expected to testify as to her knowledge of the events which are the subject matter of this litigation, as well as the facts, circumstances and allegations surrounding this action.

9. Lacy Loar, Member of the Hygea Board of Directors
2060 Dartmouth Avenue N.
St. Petersburg, FL 33713
Telephone: (727) 798-9812

Ms. Loar is expected to testify as to her knowledge of the events which are the subject matter of this litigation, as well as the facts, circumstances and allegations surrounding this action.

10. Richard L. Williams, Esq., Chief Legal Officer of Hygea and Member of the Hygea Board of Directors
8451 SW 72nd Terrace
Miami, FL 33143-3701
Telephone: (786) 405-3312

Mr. Williams is expected to testify as to his knowledge of the events which are the subject matter of this litigation, as well as the facts, circumstances and allegations surrounding this action.

11. Glenn Marrichi, M.D., Member of the Hygea Board of Directors
c/o Coffey Burlington, Attorneys at Law
2601 South Bayshore Drive, Penthouse
Miami, FL 33133
Telephone: (305) 858-2900

Dr. Marrichi is expected to testify as to his knowledge of the events which are the subject matter of this litigation, as well as the facts, circumstances and allegations surrounding this action.

12. Keith Collins, M.D., Member of the Hygea Board of Directors
c/o Coffey Burlington, Attorneys at Law
2601 South Bayshore Drive, Penthouse
Miami, FL 33133
Telephone: (305) 858-2900

Dr. Collins is expected to testify as to his knowledge of the events which are the subject matter of this litigation, as well as the facts, circumstances and allegations surrounding this action.

13. Jack Mann, M.D., Member of the Hygea Board of Directors
c/o Coffey Burlington, Attorneys at Law
2601 South Bayshore Drive, Penthouse
Miami, FL 33133
Telephone: (305) 858-2900

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

Dr. Mann is expected to testify as to his knowledge of the events which are the subject matter of this litigation, as well as the facts, circumstances and allegations surrounding this action.

14. Administrator of the Estate of Howard Sussman, M.D. (deceased), former Member of the Hygea Board of Directors
c/o Marc G. Sussman
12740 Countryside Terrace
Cooper City, FL 33330

This Administrator is expected to testify as to his knowledge of the events which are the subject matter of this litigation, as well as the facts, circumstances and allegations surrounding this action.

15. Joseph Campanella, Member of the Hygea Board of Directors
c/o Coffey Burlington, Attorneys at Law
2601 South Bayshore Drive, Penthouse
Miami, FL 33133
Telephone: (305) 858-2900

Mr. Campanella is expected to testify as to his knowledge of the events which are the subject matter of this litigation, as well as the facts, circumstances and allegations surrounding this action.

16. Carl Rosencrantz, M.D., Member of the Hygea Board of Directors
c/o Sodhi Spoont PLLC
3050 Biscayne Blvd., Suite 904
Miami, FL 33137-4294
Telephone: (305) 907-7573

Dr. Rosencrantz is expected to testify as to his knowledge of the events which are the subject matter of this litigation, as well as the facts, circumstances and allegations surrounding this action.

17. Ray Gonzalez, Member of the Hygea Board of Directors
c/o Squire Patton Boggs LLP
200 S. Biscayne Blvd., Suite 4000
Miami, FL 33131
Telephone: (305) 577-7056

Mr. Gonzalez is expected to testify as to his knowledge of the events which are the subject matter of this litigation, as well as the facts, circumstances and allegations surrounding this action.

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

18. Chris Fowler and/or the Person Most Knowledgeable of RIN Capital and/or SI Capital
38955 Hills Tech Dr.
Farmington Hills, MI 48331
Telephone: (248) 987-7856

Chris Fowler and/or the Person Most Knowledgeable of RIN Capital and/or SI Capital are expected to testify as to their knowledge of the events which are the subject matter of this litigation, as well as the facts, circumstances and allegations surrounding this action.

19. Tim Dragelin and/or the Person Most Knowledgeable of FTI Consulting
c/o Matthew Bascardi, Esq.
Chief Counsel, US Operations
FTI Consulting
6300 Blair Hill Lane, Suite 303
Baltimore, MD 21209
Telephone: (410) 951-4800

Tim Dragelin and/or the Person Most Knowledgeable of FTI Consulting are expected to testify as to their knowledge of the events which are the subject matter of this litigation, as well as the facts, circumstances and allegations surrounding this action.

20. Michael Weintraub and/or the Person Most Knowledgeable of RIN Capital and/or SI Capital LLC
38955 Hills Tech Dr.
Farmington Hills, MI 48331
Phone: (248) 987-7774

Michael Weintraub and/or the Person Most Knowledgeable of RIN Capital and/or SI Capital LLC are expected to testify as to their knowledge of the events which are the subject matter of this litigation, as well as the facts, circumstances and allegations surrounding this action.

21. Dan Miller
c/o Seabolt Law Firm
17199 N. Laurel Park Dr., #215
Livonia, MI 48152
Telephone: (248) 717-1302

Mr. Miller is expected to testify as to his knowledge of the events which are the subject matter of this litigation, as well as the facts, circumstances and allegations surrounding this action.

22. Steve Holtz former CPA and auditor of Goldstein Schechter Koch
2121 Ponce De Leon Blvd. 11th Floor
Coral Gables, FL 33134
Telephone: (305) 442-2200

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

Mr. Holtz is expected to testify as to his knowledge of the events which are the subject matter of this litigation, as well as the facts, circumstances and allegations surrounding this action.

23. Steve Stang, CPA and Quality of Earnings auditor from CliftonLarsonallen LLP
227 West Trade Street, Suite 800
Charlotte, North Carolina, 28202
Telephone: (704) 998-5200

Mr. Stang is expected to testify as to his knowledge of the events which are the subject matter of this litigation, as well as the facts, circumstances and allegations surrounding this action.

24. David Hernandez, Former Chief Operating Officer of Hygea Holdings Corp.
c/o Maria A. Gall, Esq.
Ballard Spahr LLP
One Summerlin
1980 Festival Plaza Drive, #900
Las Vegas, NV 89135
Telephone: (702) 471-7000

Mr. Hernandez is expected to testify as to his knowledge of the events which are the subject matter of this litigation, as well as the facts, circumstances and allegations surrounding this action.

25. Ben Quirk
(Address unknown)

Mr. Quirk is expected to testify as to his knowledge of the events which are the subject matter of this litigation, as well as the facts, circumstances and allegations surrounding this action.

26. Carlos Trueba
(Address Unknown)

Mr. Trueba is expected to testify as to his knowledge of the events which are the subject matter of this litigation, as well as the facts, circumstances and allegations surrounding this action.

27. Hamid Kabani
Kabani & Company, Inc.,
6033 W Century Blvd., Suite 810
Los Angeles, CA 90045
Telephone: (310) 694-3590

Mr. Kabani is expected to testify as to his knowledge of the events which are the subject matter of this litigation, as well as the facts, circumstances and allegations surrounding this action.

28. Lori Segide

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

(Address Unknown)

Ms. Segide is expected to testify as to her knowledge of the events which are the subject matter of this litigation, as well as the facts, circumstances and allegations surrounding this action.

29. Beth Cahill
Windsor Capital
100 South Ashely Drive.
Tampa, FL 33602
Telephone: (813) 296-2550

Ms. Cahill is expected to testify as to her knowledge of the events which are the subject matter of this litigation, as well as the facts, circumstances and allegations surrounding this action.

Defendants reserve the right to name additional witnesses should they become known. Defendants further reserve the right to utilize any witnesses named by Plaintiffs. Defendants reserve the right to supplement this list of witnesses as discovery progresses.

II.

DOCUMENTS, DATA AND OTHER TANGIBLE EVIDENCE

At present, Defendants intend to rely on the following documents which are produced herewith:

No.	Date	Description	Bates Nos.
1	2010-2011	Hygea Holdings Corp. Audit by Kabani & Company	MOF000001-MOF000025
2	June 13, 2011	Letter sent by email from the United States Securities and Exchange Commission to Manuel E. Iglesias regarding registration statement	MOF000026-MOF000036
3	December 31, 2012 and December 31, 2013	Hygea Holdings Corp 2012 and 2013 Audit by Goldstein Schechter Koch	MOF000037-MOF000061
4	November 22, 2015	Hygea Holdings Corp. Quality of Earnings Report by CliftonLarsonAllen LLP	MOF000062-MOF000096
5	2016	Hygea Holdings Corp. Valuation Analysis 2016 by CEA Group	MOF000097-MOF000108
6	May 14, 2018	Hygea Holdings Corp. Sell Side Due Diligence Report by CliftonLarsonAllen LLP	MOF000109-MOF000157

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

Defendants reserve the right to supplement this document list up to and including the time of trial. Defendants also reserve the right to utilize any document identified in the other parties' initial disclosures or any supplements thereto. Defendants reserve the right to utilize any and all responses to Interrogatories, Requests for Production and Requests for Admissions from Plaintiffs. Defendants further reserve the right to utilize any documents or witnesses produced by any party in this litigation. Defendants no longer have access to many of the documents that they wish to utilize and will seek such documents in discovery.

In addition, Defendants reserve the right to designate any document as attorney/client privileged or as protected by the work product doctrine, if the document so warrants, and expressly reserve the right to claw back any such protected document if inadvertently produced. Such inadvertent production shall not constitute a waiver of any applicable privilege and Defendants expressly reserve all rights related thereto.

III.

CALCULATION OF DAMAGES

Without waiving any of the foregoing, discovery is ongoing, and Defendants reserve the right to supplement, amend, correct, or otherwise modify this information at a later date.

IV.

INSURANCE AGREEMENTS

N/A

Dated this 1st 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 *Defendants Manuel Iglesias and Edward Moffly's Initial Disclosure of Witnesses and Documents Pursuant to N.R.C.P. 16.1* submitted electronically for filing and/or service with the Eighth Judicial District Court on this 1st day of February, 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)

G. Mark Albright, Esq. (gma@albrightstoddard.com)
D. Chris Albright, Esq. (dca@albrightstoddard.com)

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).

“Exhibit 39”

“Exhibit 39”

Electronically Filed
3/24/2021 12:58 PM
Steven D. Grierson
CLERK OF THE COURT

TRAN

DISTRICT COURT
CLARK COUNTY, NEVADA

N5HYG, LLC, Plaintiff(s), vs. HYGEA HOLDINGS CORP, Defendant(s).	)	Case No. A-17-762664-B DEPT. XXVII

BEFORE THE HONORABLE NANCY ALLF,
DISTRICT COURT JUDGE

WEDNESDAY, MARCH 17, 2021

TRANSCRIPT OF PROCEEDINGS RE:
ALL PENDING MOTIONS

(Via Audio Via BlueJeans)

APPEARANCES:
For the Plaintiff(s): OGONNA M. BROWN, ESQ.
CANDACE BECKER, ESQ.

For the Defendant(s): KORY L. KAPLAN, ESQ.

RECORDED BY: BRYNN WHITE, COURT RECORDER

1 **LAS VEGAS, NEVADA, WEDNESDAY, MARCH 17, 2021**

2 [Proceeding commenced at 10:29 a.m.]

3

4 THE COURT: Thank you, everyone. Calling the case of
5 Nevada 5 with -- as you guys call it -- versus Hygea. Let's take
6 appearances starting first with the plaintiff.
7 MS. BROWN: Good morning, Your Honor. Ogonna
8 Brown from the law firm of Lewis Rocha, Bar Number 7589, on
9 behalf of Plaintiffs N5HYG LLC, and Nevada 5, Inc.
10 THE COURT: Thank you.
11 MR. KAPLAN: Good morning, Your Honor. Kory Kaplan
12 on behalf of Defendants Edward Moffly and Manuel Iglesias.
13 THE COURT: Thank you. Is it just the two of you today?
14 MS. BROWN: Yes, Your Honor. And Ms. Becker is
15 listening in only on our side.
16 THE COURT: Court is always open. So that -- everyone's
17 always welcome here.
18 MS. BROWN: Thank you.
19 THE COURT: Okay. So let's take the defendants' Motion
20 for Judgment on the Pleadings first.
21 Mr. Kaplan.
22 MR. KAPLAN: Thank you, Your Honor.
23 As the Court recalls -- there's some playback or am I
24 speaking clearly?
25 THE COURT: I can hear you just fine. But I'll ask everyone

1 to please mute yourself.

2 MR. KAPLAN: As the Court recalls, Plaintiffs originally
3 brought this action against all of Hygea's former directors, which
4 included not only the current defendants of Iglesias and Moffly, but
5 also against 12 other individuals.

6 Plaintiffs had alleged that the directors' fraudulent
7 misrepresentations of Hygea's financial performance and their
8 intent to go public resulted in N5HYG's investment of $30 million
9 for 8.57 percent of Hygea's outstanding shares. And they brought
10 other claims for securities fraud, fraudulent inducement, and other
11 types of fraud.

12 In May of 2019, Your Honor dismissed all the directors,
13 except the current director -- defendants, for lack of personal
14 jurisdiction.

15 In December of 2019, this Court dismissed all claims
16 based on claim preclusion and ruled that Plaintiffs are barred from
17 bringing further claims based on the same set of facts.

18 Following those dismissals, there were, effectively, two
19 cases. There was the one here against Defendants Iglesias and
20 Moffly, and a sister action in Florida that Plaintiffs initiated against
21 the 12 directors that were dismissed from this case for lack of
22 personal jurisdiction.

23 The Florida court -- well, in the Florida action, also
24 brought by Nevada 5, it was alleged on the same set of facts, and I
25 don't believe that is in dispute. The directors in the Florida case

moved to dismiss that action, arguing that Nevada 5 lacked standing to bring any claims based on N5HYG's purchase of Hygea stock. And the Florida court recently agreed.

So on December 9th, 2020, the Honorable Judge William Thomas dismissed Nevada 5's Florida complaint in its entirety with prejudice, holding that Nevada 5 lacked standing to assert its claims based on the stock transaction, because N5HYG was the stockholder, not Nevada 5.

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. And we provided that order, I know Your Honor has read it, so I won't go into detail or quote from it, although that's throughout the motion.

So, accordingly, under the Doctrine of Issue Preclusion, where any issue that was actually necessarily litigated in Case 1 will be estopped from being relitigated in Case 2. As such, Nevada 5 is estopped from asserting in this action that has -- it has standing to maintain the claims arising from the stock transaction.

Nevada has adopted the Doctrine of Issue Preclusion for precisely this reason, to conserve judicial resources, maintain consistency, and avoid harassment or oppression of the adverse party.

There are four factors necessary for application of issue preclusion. The first is whether the issue decided in the prior

1 litigation must be identical to the issue presented in the current
2 action. The issue of Nevada 5's standing to maintain its claims has
3 been raised in both this case and the Florida action. Defendants
4 Iglesias and Moffly raised the same issues of standing and
5 integration here based on the exact same stock transaction between
6 Hygea and N5HYG and the exact same stock purchase agreement.
7 The Florida court's decision on these issues precludes Nevada 5
8 from relitigating the issues in this case.
9 Issue preclusion applies -- and this is the *LaForge versus*
10 *State University*, 2000 Nevada Supreme Court case, issue
11 preclusion applies, even though the causes of action are
12 substantially different if the same fact issue is presented.
13 So Nevada 5's arguments that it makes in its opposition,
14 that the causes of action are somewhat different, since they sued
15 here for additional violations of fraud in Michigan and Nevada
16 statutes is irrelevant.
17 It's also irrelevant that Defendants Iglesias and Moffly are
18 not defendants in the Florida action, because issue preclusion can
19 be invoked by any third party. A party precluded from litigating an
20 issue with an opposing party is also precluded from doing so with
21 another person. To decide otherwise would permit repeated
22 litigation of the same issue, as long as the supply of unrelated
23 defendants holds out, a practice that would reflect lack of discipline
24 and of disinterestedness on the part of the lower court.
25 Again, it's irrelevant that Defendants are also not

1 defendants in the Florida action. The determinative issue is that
2 Nevada 5 is a party to the Florida action. The Florida court's ruling
3 precludes Nevada 5 from bringing an action against any party for
4 fraudulent misrepresentations of Hygea's financial performance
5 and intent to go public, resulting in Nevada 5's investment for
6 Hygea's outstanding shares.
7 As evidenced in the Florida court's ruling, Nevada 5 has
8 no standing to make these claims against anybody, including, but
9 not limited to, the defendant.
10 It's also entirely irrelevant that Defendants signed the
11 SPA. Nevada 5 argues in its opposition that the defendants availed
12 themselves to this Court for fraud-based claims due to their signing
13 of the SPA's guarantors. Not only is that incorrect, but Nevada 5's
14 also not a party to the SPA, which is precisely the reason their
15 claims were dismissed with prejudice in Florida.
16 Defendants in this motion are not seeking to dismiss
17 Nevada 5's contract-based claims on issue preclusion. So the
18 venue clause does not matter for that reason, as well. It's clear,
19 again, from the Florida court's ruling that it makes no difference
20 that the former officers and directors did not sign the SPA. It's
21 Nevada 5 that does not have standing to maintain any claims
22 arising out of N5HYG's stock purchase.
23 The Florida Court specifically stated Nevada 5 does not
24 have standing to maintain this action, which is based entirely on a
25 purportedly fraudulently induced purchase of Hygea Holdings stock

by Nevada 5 subsidiary, N5HYG.

The SPA was signed by Hygea and N5HYG, not Nevada 5. The stock at issue was held at all times by N5HYG and never by Nevada 5. And N5HYG was the stockholder of record, not Nevada 5. So the Florida court ruled that Nevada 5 cannot bring claims based on the stock transaction at issue with any party.

The second factor, the initial ruling must have been on the merits and have become final. The Florida ruling is a final ruling on the merits. Nevada follows the restatement in defining the final judgment, which recognizes that a judgment is final if the Court intended to definitively resolve an issue litigated between parties.

The Florida order was with prejudice, indicating that the issues decided therein, that those upstanding in integration was final. Even on the face of the Florida order, it says, Final Judgment.

Rule 41 of the Nevada Rules of Civil Procedure state that a dismissal is an adjudication on the merits and final unless the order says otherwise. Nevada case law also says that a dismissal with prejudice is a judgment on the merits.

Florida has similar case law and similar rule, Florida Rule of Civil Procedure 1.420(b), that a dismissal with prejudice is an adjudication on the merits.

Just -- Plaintiffs bring this up in their opposition that the issue of standing is not an adjudication on the merits. That's not true. In the recent July 2020 Nevada Supreme Court case of *Glass versus Select Portfolio Servicing*, this exact issue was decided,

where the Nevada Supreme Court held that issue preclusion applies because the issue of standing in the -- is the same in the previous case and the current case. The decision in the previous case was on the merits and was final, and the parties were clearly in privity.

I cited other case law as well from other jurisdictions basically stating the same, that standing is when it's litigated between -- in two separate cases and decide on in a final judgment, it's on the merits and actually litigated.

The third factor, the party against whom the judgment is asserted, must have been a party or in privity with a party to the prior litigation. Nevada 5 is the same plaintiff in both lawsuits. Defendants are seeking issue preclusion against Nevada 5, which is the same party against him in the judgment, and findings on standing were issued in the Florida action.

And, finally, the issue -- the fourth factor is whether the issue was actually and necessarily litigated. It was. It was submitted for a determination, it was raised on briefings in Florida and here, the Florida court decided the motions on standing and on the integration clause. After full briefing and oral argument, and after finding that Nevada lacks standing and that the integration clause precluded any fraud-based claims, the Florida court dismissed Nevada 5's claims in total and with prejudice. So the issues of standing and integration were actually and necessarily litigated in the Florida action.

For these reasons, this Court should grant Defendants'

Partial Motion for Judgment on the Pleadings in its entirety and dismiss all claims asserted by Nevada 5 Inc. with prejudice.

To the extent this Court grants this motion, Defendants are also requesting that the joint causes of action for underlying fraudulent conduct of civil conspiracy in concert of action must also be dismissed with prejudice.

To briefly address Defendants' arguments to strike the motion and other procedural arguments, the Florida court's ruling was not issued prior to the conclusion of the briefing on Defendants' prior Motion for Summary Judgment and therefore could not have been brought to the attention of this Court then.

The Florida ruling, additionally, is a final judgment and was issued prior to this Court's order on that hearing. Defendants are not delaying the proceedings as Plaintiffs argue, pursuant to NRCP 12(g)(2). That rule actually does not apply, as that rule only precludes a party from bringing a 12 -- a Rule 12 motion with an argument that was available and omitted from a prior motion.

Nevada 5 concedes that the Florida Court's ruling was not available until after the briefing of Defendants' prior Motion for Summary Judgment.

Additionally, this is a Motion for Judgment on the Pleadings, which may be brought at any time after the pleadings are closed, but early enough not to delay trial. That's precisely where this case stands. Discovery's not being tolled, there's no delay in the proceedings due to this motion. Additionally, the

1 Florida Court's ruling and Plaintiffs' second-amended complaint in
2 the Florida action was attached to Defendants' answer. I know the
3 Court can also take judicial notice, but it's present for a judgment
4 on the pleadings.
5 Nevada 5, Your Honor, chose to litigate their claims in
6 separate forums. This is precisely the risk it undertook. They could
7 have sought to include Defendants Iglesias and Moffly in their
8 Florida action, as both are actually residents of Florida, and judicial
9 economy would be promoted by litigating against all former
10 officers and directors in Florida as the most convenient forum.
11 Nevada 5 chose to maintain these claims in Nevada and
12 risk that the Florida could would enter a dispositive final ruling on
13 the merits prior to this Court doing so. And that is precisely what
14 occurred and Nevada 5 must live with the consequences.
15 To be clear, had the Florida court not issued its order,
16 Defendants would not be bringing this motion. Defendants would
17 proceed with this litigation pursuant to the Court's prior ruling on
18 Defendants' Motion for Summary Judgment, because that order
19 was not final and appealable.
20 However, the Florida court's ruling, which is a final
21 judgment, dismissal with prejudice, and was issued first, is a final
22 adjudication, actually, and necessarily litigated precluding Nevada 5
23 from maintaining its position here in Nevada. As a result,
24 Nevada 5's conflict of action in Nevada must also be dismissed with
25 prejudice as a matter of law. Thank you.

1 THE COURT: Thank you.
2 And the opposition, please.
3 MS. BROWN: Thank you, Your Honor. Ogonna Brown on
4 behalf of the plaintiffs.
5 Your Honor, as you're probably keenly aware by now, you
6 have heard Defendants reargue the issue of standing for this Court
7 over and over and over again. Defendants have now brought their
8 fifth dispositive motion on these issues before this Court and we
9 have had to argue and brief these issues five times now.
10 And, Your Honor, I know that you've been with us from
11 inception on this case and Mr. Kaplan has not. But going back to
12 two years ago, after Defendants sought to dismiss Nevada 5's
13 claims based upon standing, Nevada 5 brought a Motion for
14 Reconsideration of this Court's December 2018 order dismissing
15 Nevada 5's claims on the basis of standing. After Nevada 5 filed its
16 second-amended complaint consistent with this Court's ruling,
17 Defendants filed yet another dispositive motion on
18 January 13th, 2020. That was over a year ago, Your Honor. And
19 this was on the issue of standing. This Court denied their motion.
20 Again, Your Honor, on November 4th, 2020, Defendants
21 filed yet another Motion to Dismiss on the standing issue. And this
22 Court again denied the Motion to Dismiss in its ruling on
23 December 9th, 2020.
24 As this Court may recall, at the conclusion of the last
25 hearing addressing the standing issue that was held before this

1 Court on December 9th, this Court invited Nevada 5 to seek fees
2 and costs arriving from Defendants' fourth pre-answer dispositive
3 motion involving this case that's been before this Court since 2017.
4 We've been before you since 2017, it's been some time.
5 And, Your Honor, I'd be remiss if I didn't remind you of
6 this Court's ruling on December 9th, 2020, at the hearing. We
7 directly raised the limitations under NRCP 12(g)(2), which prevents
8 a series of pre-answer motions and, instead, provides the defendant
9 with a single opportunity to file a dispositive motion before
10 answering the complaint.
11 And this Court echoed its -- my client's concerns at its
12 ruling on December 9th, 2020. And you stated, and I quote:
13 "Very clearly, Nevada 5 is not barred here. Clearly has
14 standing. Every cause of action is available under Nevada law."
15 And I emphasize Nevada law because we're here before
16 this Court under Nevada law.
17 And also, Your Honor, in the hearing, you also stated that:
18 "This motion is almost identical to the motion I denied in
19 January of 2020. And I am concerned that there may be a violation
20 here of NRS 12(g) -- NRCP 12(g)(2) by delaying their proceedings,
21 and I will consider relief from Rule 41."
22 Now, right after that hearing, Your Honor, we declined to
23 seek relief under Rule 41, and we proceeded. And just for your
24 court's edification, the citation to that ruling from this Court on
25 December 9th, 2020, is on pages 37 and 38 of the transcript.

1 Now, Defendants' repeated efforts to disregard and
2 undermine this Court's prior rulings are simply not appropriate and
3 they are violative of this Court's prior order and warning that was
4 issued on December 9th, 2020.
5 And I will tell you, Your Honor, Nevada 5 is not taking its
6 Request to Strike and seeking fees lightly. Before Nevada 5 filed its
7 opposition and Motion to Strike, I made every effort to meet and
8 confer with Mr. Kaplan in full transparency that this fifth dispositive
9 motion regarding issue preclusion based on standing was in direct
10 violation of this Court's prior ruling, and that Nevada 5 would be
11 seeking its fees and costs in connection with Defendants' motion
12 filed on February 22nd, 21 -- 2021.
13 But we also told counsel, during the meet-and-confer, that
14 we would also be bringing in our prior motion filed on
15 November 4th, 2020, with this Court's -- which this Court denied
16 with a warning, as you recall. I did, in fact, conduct a
17 meet-and-confer with Mr. Kaplan and I requested that Defendants
18 withdraw the motion, because this issue has been ruled upon by
19 this Court already. Unfortunately, the motion has not been
20 withdrawn and we are appearing before you today.
21 This Court has ruled repeatedly that Nevada 5 has
22 standing to adjudicate the fraudulent inducement of Nevada 5's $30
23 million payment under Nevada law. And, again, I emphasize
24 Nevada law, we're here under Nevada law.
25 Defendants again attack Nevada 5 standing and argue

1 that, because the Florida court ruled on December 9, 2020, that
2 Nevada 5 lacked standing, then this Court must adopt those
3 findings. But that is blatantly not accurate.
4 The Florida case was commenced under Florida law to
5 bring Florida statutory and common law fraud claims against
6 different defendants. You'll see there's no commonality of those
7 defendants in the Florida court that you have before you in this
8 Nevada court.
9 As this Court may recall, the very defendants that were
10 the subject of the Florida action were previously dismissed as
11 defendants in the Nevada action before this Court for jurisdictional
12 reasons. So yes, there are different parties that are involved in
13 Florida.
14 None of the same defendants in the Florida case are
15 involved in the Nevada litigation. Defendants Iglesias and Moffly
16 are not parties in the Florida case. Nevada 5 is the only plaintiff in
17 the Florida case that is also a plaintiff before this Court.
18 And again, I reiterate this, Your Honor, at issue in the
19 Florida case was Florida law, not Nevada law. And issue preclusion
20 simply does not apply here.
21 And, Your Honor, I don't think it's appropriate to comment
22 on the correctness of the Florida ruling, but we do note that the
23 Court based its decision on the notion that the stock purchase
24 agreement was a reason to find that Nevada 5 does not have
25 standing.

However, as this Court has previously been made aware and has ruled, this Court should not apply the SPA to Nevada 5, because it is not a party. The Florida court's orders do not apply to this Court.

And I think, when I listen to the factors that were enunciated by counsel, Defendants simply missed the mark on the issue preclusion, because the issue decided in the Florida action are not identical to the issues presented to this Court.

The Florida court decided standing of Nevada 5 for claims arising under Florida statute and common law. The Issue Preclusion Doctrine cannot apply here, because the Florida court did not rule on the merits. It ruled that it lacked jurisdiction based upon standing under Florida law. The question isn't whether the dismissal was with prejudice; the question and inquiry for this Court is whether a dismissal, based on a lack of jurisdiction, which standing is, is an adjudication on the merits. And under NRCP 41(b), it clearly is not, because a dismissal for lack of jurisdiction is expressly excluded for merits -- from a merits determination. And the case law we cite makes this clear, as well.

And, Your Honor, in Florida, there were different defendants in a different state with different claims. Even if this Court entertained the merits, the defendants do not meet the test or issue preclusion, because there's no identity of parties and issues. In contrast, here, this Court issued its ruling on standing under Nevada law, not Florida law. And the distinction of the applicable

1 law is completely disregarded by the defendants.

2 And, of course, I have to point this out to you. The Florida
3 court ruled that the SPA's integration clause bars of fraudulent
4 inducement claim under Florida law. Of course, Florida law is
5 expressly contrary to Nevada law.

6 And, of course, Your Honor, when you look to Nevada
7 law, which is what applies before this Court, the black letter law in
8 Nevada makes it clear that integration clauses do not bar claims for
9 intentional misrepresentation. And we cite this in our briefing and
10 I'll provide you with some quick citations under *Reynolds versus*
11 *Tufenkjian*, 475 P3d. 777, Nev. 2020, and that quoted the *Blanchard*
12 *versus Blanchard* decision, 108 Nev. 908. And that's a 1992
13 decision.

14 Also, Your Honor, under *Cooper Sands Homeowners*
15 *Association versus Cooper Sands Realty LLC,* there, the Nevada
16 Supreme Court -- there was reliance upon the Nevada Supreme
17 Court's ruling that expressly recognized that integration clauses do
18 not bar claims for misrepresentation.

19 So the most important takeaway, Your Honor, here is that
20 Nevada law, on this point, is directly contrary to Florida law. And,
21 really, Your Honor, the troubling part of Defendants' improper
22 efforts to again relitigate and relitigate the very same issue over
23 and over again is back in 2018. And this is back in August, I think
24 you'll remember this, this Court applied Nevada law when
25 Defendants made a virtually identical argument regarding the

1 integration clause in their motion to dismiss the first-amended
2 complaint. And as you recall, this Court denied that motion,
3 allowing the fraud claims to proceed.
4 And, Your Honor, I do quickly -- I would like to touch
5 quickly on some of the cases that I think were glossed over by
6 Defendants in their reply, and you'll see very quickly that they
7 simply don't state for the -- stand for the proposition or they're not
8 read in their entirety.
9 So in Defendants' reply on page 5, lines 23 to 25, they rely
10 upon *Bravo-Fernandez versus United States*, 137 Supreme
11 Court 352. But the defendants omit that the same parties were not
12 involved in both actions, and that is imperative for this Court to
13 know. There, the same parties were simply not involved in both
14 actions.
15 Also in Defendants' reply, starting on page 5, line 26,
16 going onto the next page on line 6 -- on page 6, Defendants also
17 rely upon *Sandifer versus U.S*. But there, the Court made clear that
18 in the absence of appellate review or of similar procedures, such
19 confidence is often unwarranted. Here, you have a ruling in Florida
20 based on standing, which is jurisdictional, so you don't have
21 appellate review or similar procedure. So I wanted to make that
22 distinction, as well.
23 I also wanted to discuss briefly Defendants' reliance upon
24 *Blonder-Tongue and Parklane*. It's important to note that in
25 *Blonder-Tongue*, the Court's analysis focused on whether the

1 merits of the claim were fully litigated. Since the Florida court
2 dismissed the case on a preliminary standing issue, there was no
3 ruling on the merits there.
4 And then, Your Honor, Defendants' reliance upon *Glass*
5 *versus Select Portfolio Servicing Inc.* is also really misleading,
6 because in that case, the Court ultimately went in the other
7 direction. There, the Court found that the Doctrine of Issue
8 Preclusion does not prelude SPS from asserting it has standing. So
9 I know that he referenced that in his presentation, but the Court in
10 *Glass* went in the other direction.
11 And lastly, Your Honor, I wanted to point out to you
12 Defendants' reliance on *Cutler versus Hayes*. It appears misleading
13 to me, as well, because there, the Court correctly determined that
14 all of the parties to the first proceeding were parties to the second
15 proceeding. And between the Florida and Nevada action, that is
16 simply not the case.
17 And I know you've heard this issue over and over and
18 over again and over the past years, Your Honor, but I just don't
19 want this Court to lose sight. And it is important that this Court
20 does not forget that the fact that Nevada 5 is the party that was the
21 actual subject of Defendants' fraudulent inducement, and actually
22 paid and lost $30 million, is what is at issue before this Court.
23 Defendants ask this Court to determine, despite this
24 Court's repeated prior rulings that Nevada 5, a Nevada corporation,
25 is nonetheless without standing or a remedy to recover its $30

1 million anywhere simply does not make sense. That is not the law
2 in Nevada and that simply isn't carrying out justice.
3 So to the extent you decide that issue preclusion is
4 something you should even entertain, Your Honor, it simply does
5 not apply. This Court has previously ruled on standing under
6 Nevada law and has addressed the integration clause. And we
7 maintain our request, Your Honor, for relief under Rule 41. Despite
8 our efforts for meet-and-confer, it was not successful and we had to
9 brief this issue yet again. And we are requesting reasonable
10 attorneys' fees and costs for briefing this issue again and for
11 attending not just today's hearing, but for attending the hearing on
12 December 9th, 2020, when this Court invited us to seek relief under
13 NRCP 12(g)(2) and NRCP 41.
14 Do you have any questions for me, Your Honor?
15 THE COURT: I don't.
16 MS. BROWN: Thank you.
17 THE COURT: Mr. Kaplan, and can you try to keep your
18 reply to 10 minutes, please.
19 MR. KAPLAN: Yes. I won't be nearly that long.
20 Just to reflect on the order, as Your Honor recalls, in
21 January of 2020, when it denied -- well, when the prior Motion for
22 Summary Judgment was filed, this Court denied that motion due to
23 Hygea's pending bankruptcy. That was in the Court's wording.
24 There were actually competing orders where Ms. Brown did not
25 want to include that language.

1 When the bankruptcy was done and, you know, this case
2 was ready to proceed, I brought that motion again, because I did
3 not believe that it was ruled on the merits; I believe that that -- it
4 was ruled due to the pending bankruptcy, because that was the
5 Court's language.
6 We all recall the hearing on December 9th and, you know,
7 that's fine. And to be clear, I would -- would not have been bringing
8 this motion had it not been for the Florida court ruling. I -- you
9 know, the one on December 9th, we respect the Court's ruling and
10 we would have lived with it and proceeded with this case. But the
11 Florida court ruling, which was not available at that time, is now
12 dispositive of these issues.
13 So, again, Rule -- NRCP 12(g)(2) does not apply. Because
14 the Florida court's ruling was not available during the time of
15 briefing, it's not just being raised again, you know, such as a
16 Motion for Summary Judgment that can be brought raising the
17 same issues again.
18 Counsel makes -- relies heavily on the distinguishing
19 features of Nevada law versus Florida law. Again, that doesn't
20 matter. The causes of action do not matter. It's the underlying
21 facts that give rise to those causes of action that matter and case
22 law is clear on that.
23 Plaintiffs do not dispute that, that the underlying facts are
24 the same. The underlying facts are that Plaintiffs have alleged
25 against all directors here, and then when they were dismissed for

1 lack of personal jurisdiction simultaneously in Florida, that the
2 director's fraudulent misrepresentations of Hygea's financial
3 performance and intent to go public resulted in their subsidiary's
4 investment of $30 million for 8.57 percent of Hygea's shares.
5 The defendants again, being different, Defendants Iglesias
6 and Moffly not being in Florida does not matter. Issue preclusion
7 only applies to the party against whom the issue preclusion is being
8 sought, which is Nevada 5. The Florida court in no unclear terms
9 said, You don't have the standing to bring these claims against
10 anybody. You weren't a party to the contract, in addition to the
11 integration clause.
12 And speaking just briefly on that, Your Honor, counsel
13 states that Florida law is directly contrary to Nevada law as far as
14 the integration clause. And that's simply not true. Plaintiff cites to
15 no Florida case law in their opposition that states that the existence
16 of an integration clause bars a claim from fraudulent
17 misrepresentation. They don't, because they cannot.
18 And Florida law actually holds the exact same as Nevada
19 law, and the Florida judge, obviously, interpreted that the same.
20 But again, the law doesn't matter; the standing is based on facts.
21 And unless this Court has any questions, I don't believe
22 there's anything left to add.
23 THE COURT: Thank you.
24 This is the defendants' Motion for Judgment on the
25 Pleadings. It will be denied for the following reasons.

1 The motion argues that the plaintiffs do not have standing
2 and argues issue preclusion based upon a Florida interpretation of
3 an integrated -- integration clause in SPA that would defeat and --
4 Nevada 5's claims under Nevada law, but is not the law in Nevada.
5 I will not strike the motion simply because the Florida
6 ruling was made after our last hearing on this issue. So I believe it
7 was brought in good faith. But that decision just isn't binding here.
8 It's different parties, it's different causes of action.
9 We're on a second-amended complaint now that's
10 substantially different from the one that was originally filed in 2017.
11 I have visited and revisited this issue again, and for those reasons,
12 the motion will be denied.
13 And so Ms. Brown to prepare the order.
14 Mr. Kaplan, I assume you will want to review and approve
15 the form?
16 MR. KAPLAN: Yes, Your Honor.
17 THE COURT: Good enough. I do not accept competing
18 orders. So if you have issues with regard to the language, bring
19 that to my attention through the law clerk.
20 And that will take us, then, to the plaintiffs' Motion for
21 Partial Summary Judgment.
22 Ms. Brown.
23 MS. BROWN: Thank you very much, Your Honor. I will
24 prepare the order and submit it counsel for review, of course.
25 THE COURT: Thank you.

1 MS. BROWN: Your Honor, we're here before this Court
2 today on the Motion for Summary Judgment on the Breach of
3 Guarantee claim. I represent Plaintiff N5HYG LLC in connection
4 with this Motion for Partial Summary Judgment, solely as to the
5 tenth cause of action for breach of the stock purchase agreement
6 against the defendant guarantors.
7 THE COURT: Hang on.
8 MS. BROWN: This is a --
9 THE COURT: Whoa, whoa. I think it's the eighth cause of
10 action in the first cause -- the first-amended complaint, and the
11 eighth cause of action in the second-amended complaint; is that
12 correct?
13 MS. BROWN: I will verify that. I thought it was the
14 tenth --
15 THE COURT: No.
16 MS. BROWN: -- but I will verify that.
17 THE COURT: Go ahead.
18 MS. BROWN: Thank you, Your Honor, for --
19 THE COURT: Go ahead and argue it and I'll just -- I'll
20 parallel look at it.
21 MS. BROWN: Thank you. I appreciate it.
22 Your Honor, this is a straightforward Motion for Summary
23 Judgment on the Claim for Breach of Guarantee. The guarantees of
24 Defendants Iglesias and Moffly are executed in their individual
25 capacities and are set forth in the October 5th, 2016, stock purchase

1 agreement attached to the Fowler declaration as Exhibit A.
2 Defendants Mssrs. Iglesias and Moffly personally
3 guaranteed the monthly payments through N5HYG under
4 Section 7.4 of the SPA, which provides, and I quote:
5 "A primary, direct, and unconditional liability and there --
6 without the need for N5HYG to resort to Hygea first."
7 And, specifically, Your Honor, if I could direct your
8 attention to Section 6.3 of the stock purchase agreement, there
9 Hygea was required to make post-closing monthly payments to
10 N5HYG in the amount of $175,000 plus interest beginning
11 January 1st, 2017, and continuing until Hygea either went public
12 through the issuance of shares on a public stock exchange or if
13 N5HYG was no longer a shareholder.
14 Turning to Section 7.1 of the SPA, it required
15 indemnification for all of N5HYG's attorneys' fees and costs
16 incurred in enforcing the SPA. There is no genuine issue of
17 material fact that the guarantors have failed to make payments after
18 July 2017, which is the last time any payments were made, Your
19 Honor. In fact, Defendants admitted in paragraphs 58 of their
20 answer to the amended complaint that, and I quote:
21 "In or around August 1st, 2017, Hygea Holdings Corp.
22 ceased making post-closing monthly payments to N5HYG."
23 And here, Your Honor, none of the two triggering events
24 under Section 6.3 of the SPA occurred that would eliminate
25 Defendant's post-closing monthly payment obligations.

1 Again, the first triggering event would be the H -- Hygea
2 was never listed on the public stock exchange. As Defendant
3 admits, Defendants both admit in paragraph 57 of their answer,
4 where they state that they admit only that Hygea Holdings has not
5 gone public.
6 The second triggering event, Your Honor, would be that
7 N5HYG remained a Hygea shareholder through at least here,
8 July 15th, 2020, when Hygea's bankruptcy plan was confirmed and
9 the equity holders were wiped out.
10 As a result of Hygea's bankruptcy filing and plan
11 confirmation, on February 19th, 2020, the plan's been confirmed
12 and the plaintiff is only permitted to proceed against the individual
13 guarantors. And, technically, we are no longer the shareholders,
14 the minority shareholders.
15 And, here, Your Honor, summary judgment is appropriate,
16 as there are simply no genuine issues of material fact as to any of
17 the elements for breach of contract, especially where we have a
18 clear and unambiguous contract with the terms that have been set
19 forth explicitly for this Court in the moving papers.
20 The elements for the existence of a valid contract, lack of
21 performance by the defendants, performance by the plaintiff,
22 Defendants' breach, and the breach that caused Plaintiffs' damages,
23 those are all the elements that are before this Court.
24 And, Your Honor, I just wanted to confirm that you are
25 correct, that it is the eighth cause of action and the

1 second-amended complaint. So thank you for pointing that out to
2 me, I appreciate it. And I apologize for that, Your Honor.
3 THE COURT: No problem. Okay.
4 Did that conclude your argument?
5 MS. BROWN: No, Your Honor. Sorry. I just wanted to
6 point that out to you.
7 Defendants, Your Honor, raise the scope of liability, but
8 the defendants are misleading the Court and cite to the wrong
9 provision of the stock purchase agreement. They cite to
10 Section 7.4.2 as the basis for their pro rata argument. But the stock
11 purchase agreement is clear and unambiguous that Defendants
12 agreed to pay 100 percent of the post-closing payments under
13 Section 7.4.1 of the stock purchase agreement. And that is the
14 operative provision for purposes of the motion for the matters that
15 are before this Court today.
16 Defendants also proffer absolutely no evidence on the
17 record that Mr. Iglesias, who has a -- who had a 20.75 percent
18 interest, and Defendant Moffly, who had a 9.61 percent interest,
19 which is, in the aggregate, about 30.36 percent, would limit their
20 liability as to the post-closing monthly payments pro rata. And they
21 failed to rebut the presumption presented by a clear and
22 unambiguous contract.
23 I think the pro ration argument that they refer to relates to
24 attorneys' fees under 7.4.2, but that's not before this Court today.
25 We're simply seeking summary judgment as to liability on the

1 provisions of the stock purchase agreement.

2 And, really, the agreement speaks for itself. The

3 defendants cite to the wrong section of the SPA as it relates to the

4 monthly payments. And we went to the effort, Your Honor, of copy

5 and pasting the screenshots of the actual language of the SPA in

6 the motion so there can be no confusion about what the contract

7 states on its face.

8 And, Your Honor, I also wanted to discuss briefly the

9 argument of additional discovery as being necessary. As this Court

10 is aware, acutely aware, this case is -- was filed in 2017 and

11 Defendants, who were the officers, directors, and founders of the

12 company have had more than sufficient time. They do not need

13 more time.

14 On page 4 of the opposition, on lines 11 and 12,

15 Defendants argue that they will need to conduct discovery

16 regarding what payments were made and when they were made.

17 However, in direct contradiction to this argument, Defendants

18 admitted, in paragraph 58 of their answer to the amended

19 complaint, that in or around August 1st, 2017, Hygea Holdings

20 Corp. ceased making post-closing monthly payments to N5HYG.

21 And, Your Honor, if you can turn your attention to the

22 disclosures that we provided to you on Exhibit 2 of the Brown

23 declaration, start on page 8, these disclosures were made by

24 Defendants and it makes readily apparent that Defendants have

25 failed to disclose a single document to support any of their

1 arguments that have been raised before this Court today to rebut
2 the presumption that summary judgment is appropriate.
3 And in the avoidance of doubt, Plaintiff is seeking only the
4 post-closing monthly payments from the first month following the
5 trial and the receivership action, so that's from June 1st, 2018,
6 through Hygea's bankruptcy plan confirmation date of
7 July 15th, 2020.
8 THE COURT: Hang on.
9 MS. BROWN: And those come to --
10 THE COURT: Hang on. Whoa, whoa. Wait.
11 MS. BROWN: Yes?
12 THE COURT: I thought you were asking for the breach of
13 contract starting in July, not June of 2017. No? Could you clarify?
14 MS. BROWN: No, Your Honor, we -- I mean, we're not
15 waiving the rights to that. But if you look at Exhibit C to the Fowler
16 affidavit, while we think we're entitled to it and we would prefer
17 that, we are cognizant, of course, of this Court's prior ruling as to
18 claim preclusion, that it apply to the prior month. So we're mindful
19 of this Court's prior ruling and the damages calculation reflects that.
20 So the timeframe that we're requesting is reflected in Exhibit C to
21 the Fowler declaration, and that's June 1st, 2018, to July 15th, 2020.
22 And just to be clear, that is the month following the trial of
23 the receivership action on June 1st, 2018, through July 15th, 2020.
24 THE COURT: Thank you.
25 MS. BROWN: And so we're being conservative. But yes,

1 we do believe we're entitled to the full amount going all the way
2 back, as you've stated. But to the extent we are being conservative,
3 we are seeking entry of a judgment against the guarantor.
4 And we'll give -- and, Your Honor, if you look at Exhibit B
5 to the Fowler declaration, you'll see the calculations are for the full
6 period. But in an abundance of caution, we've also provided the
7 conservative calculation under Exhibit C from June 1st, 2018,
8 through July 15th, 2020, to address the parameters that were
9 previously set by the Court, and those are for the 25 months. And
10 that comes to the 4,921,130.
11 THE COURT: Thank you.
12 MS. BROWN: You're welcome.
13 And so, Your Honor, we simply request for joint and
14 several liability. And we are also going to be requesting pre- and
15 post-judgment interest and an award of attorneys' fees. But that
16 Motion for Attorneys' Fees is not before this Court today. And that
17 will be, of course, subject to this Court's approval with a memo of
18 fees and costs. And, of course, the defendants will have the ability
19 to raise their pro rata argument as they have presented in their
20 briefing. But it doesn't relate to the monthly payments; that only
21 relates to the attorneys' fees.
22 Thank you, Your Honor.
23 THE COURT: Thank you.
24 And the opposition, please.
25 MR. KAPLAN: Yes, Your Honor.

1 Despite counsel's representations, there are genuine
2 issues of material facts here that preclude summary judgment.
3 Hygea went through bankruptcy, so now Plaintiffs are left
4 only suing Defendants' two former directors. Despite their limited
5 guarantee, Plaintiff is seeking summary judgment to the total
6 alleged debt of Hygea from the defendants, which, as detailed in
7 the opposition, is disputed.
8 The first issue is the declaration of Mr. Fowler that
9 Plaintiffs attach. And there's factual questions about its propriety.
10 The Fowler affidavit raises several questions. First, he makes
11 representations that are improper, incomplete, or insubstantial for
12 summary judgment. He states that he is an authorized agent and/or
13 representative of N5HYG. But he doesn't state his actual position
14 with N5HYG.
15 N5HYG acts through a manager under Michigan law. I
16 incorrectly stated Nevada law, but it's the same, and that's the
17 Michigan Limited Liability Act, Chapter 450. Mr. Fowler does not
18 state he is a manager or even a member or any other title.
19 Instead, the stock purchase agreement identifies Manoj
20 Bharghava as N5HYG's manager. And presuming Mr. Bharghava
21 was the manager during the events at issue, which is a matter for
22 discovery, is it is Mr. Bharghava that should have personal
23 knowledge of the facts.
24 Nevertheless, Mr. Fowler goes on to state that he is
25 personally familiar with the stock purchase agreement and the

1 books, records, and files of N5HYG.
2 Again, he doesn't give any kind of foundation for his
3 personal knowledge. And under Rule of Civil Procedure 56(c)(4), an
4 affidavit or declaration used to support or oppose a motion must be
5 made on personal knowledge, set out the facts that would be
6 admissible in evidence, and show the affiant or declarant is
7 competent to testify on the matters stated. The affidavit fails to do
8 that. It doesn't say how he's aware, it just says he's aware.
9 On top of all this, it's full of legal conclusions and
10 inconsistent factual statements further undermining his purported
11 knowledge. Mr. Fowler states that Defendants failed to make
12 payments between August 1st, 2017, and July 1st, 2020. He then
13 says that they failed to make payments between June 1st, 2018, and
14 July 1st, 2020. We should -- Defendants should have an
15 opportunity to discover whether they're -- either of these
16 statements are correct.
17 Their guarantor obligations are only triggered if Hygea
18 failed to make the payments and, you know, presently before this
19 Court, there's no evidence as to what payments Hygea did or did
20 not make. There's only this ledger that's appended to Mr. Fowler's
21 affidavit, which is hearsay within hearsay. He doesn't even state if
22 he created it or how he obtained it. Again, Defendants are entitled
23 to discovery on the accuracy of this ledger.
24 They allege in their second-amended complaint that
25 Defendant Moffly resigned as an officer in October of 2016, and

1 Defendant Iglesias in May 2018. But they then argue that they
2 would have knowledge of each payment made by the company
3 through 2020, which is an issue of fact. Even though officers may
4 have, you know, would likely have knowledge, you know, there's
5 nothing to say that they did have knowledge. And they resigned as
6 officers prior to that, you know, when they're seeking payments
7 for -- or nonpayment from June of 2018 through July of 2020.
8 We're just entitled to discovery on this issue as well. Just because
9 Defendants state and Ms. Brown quoted in the answer that just
10 because they cease making payments or Hygea ceased making
11 payments at one point of time does not mean that they didn't occur
12 after that. We have nothing. We don't know. We need to do
13 discovery on this.
14 And the reason, you know, Ms. Brown points it out that
15 Defendants didn't include any documents, they don't have access to
16 any documents, Your Honor. They're no longer officers or directors
17 and the company filed bankruptcy.
18 Because the affidavit is improper for those reasons, and
19 again, the legal conclusion, Mr. Fowler states that Defendants
20 breached the contract, summary judgment is improper.
21 Moving onto the next issue. There's factual disputes as to
22 whether the plaintiff prevented and/or hindered the defendants
23 from fulfilling their obligations under the SPA, under a frustration of
24 purpose and impossibility defense.
25 I've attached the declarations of the defendants to our

opposition. They state in there that when Hygea entered into the SPA, it had more than adequate gross revenues and cash reserves to make a post-closing monthly payments for years.

However, Plaintiff, through its manager and other agents, strong-armed Hygea into using those revenues and reserves to support its own investment opportunities for their sole benefit. They constrained Hygea's cash.

Nevertheless, Defendants pivoted. They negotiated with various investment banks and private equity firms and had plans in place to allow Hygea to go public. But Plaintiff stymied those deals and refused to permit them to do it.

Together and separately, their actions hindered Hygea's ability to make the post-closing monthly payments, excusing their performance, and by extension, Defendants' guarantee of that performance.

At a minimum a factual dispute exists regarding the ability of Hygea to go public and excusing Defendants' performance of the SPA of making post-closing monthly payments.

As held in the Nevada Supreme Court case of *Abbott versus Miller*, whether a frustration of purpose has occurred in any given case is an issue of fact, which is not appropriate for disposition on summary judgment. That it may have become additionally impossible or impractical for Hygea to go public triggers another defense for which factual issues must be established.

1 Nevada recognizes the impossibility and impracticability
2 defenses. The question of whether performance of a contract is
3 factually impossible or commercially impracticable is a question of
4 fact, improper for summary judgment. And I cited those cases that
5 state that.
6 The next issue, the post-closing monthly payments were
7 illegal and unenforceable dividend and distributions made on
8 accounts of stock. So although they're stylized as post-closing
9 monthly payments, the payments provided for by the SPA were
10 actually distributions under NRS 78.191, which defines a
11 distribution as a direct or indirect transfer of money or other
12 property other than its own shares where the incurrence of
13 indebtedness by a corporation to or for the benefit of its
14 stockholders, with respect to any of its shares. It could be nothing
15 else, because, at the bottom, there were payments to be made on
16 account of N5HYG stock ownership.
17 So distributions to one stockholder while excluding others
18 is prohibited under NRS 78.288. That speaks to -- in making
19 distributions to a class of stockholders, not any one stockholder.
20 Even if a corporation could make discriminatory
21 distributions as a general matter, it's prohibited from making any if
22 that distribution leaves the corporation insolvent. And that's
23 NRS 78.288(2).
24 In the case we cited, *Odyssey Reinsurance versus Nagby*,
25 it's a California case, but they're analyzing NRS 78.288 in that case.

1 And there they held that the distributions were unlawful under that
2 statute because they left the corporation unable to pay its debts as
3 they became due in the usual course of business, and they left the
4 corporation with assets less than the sum of its total liabilities.
5 As this Court's aware, Hygea filed for Chapter 11
6 protection in or around February of 2020, confirming it was
7 insolvent that time, and suggested it had been insolvent for
8 months, if not years prior. This factual issue must be resolved in
9 deciding whether Hygea was permitted to make the contracted for
10 distribution. If not, if discovery shows that it wasn't and the
11 obligations of Hygea were unenforceable, so too were Defendants'
12 guarantee. This is another factual issue inappropriate for summary
13 judgment.
14 Finally, Your Honor, to the extent that Your Honor is not
15 inclined to grant summary judgment -- or is inclined to grant
16 summary judgment, despite [audio cut out] the arguments made --
17 that I just made and made in the opposition, Defendants are
18 requesting relief under Rule 56(d) to conduct discovery, which,
19 given the breadth of discovery needed, should occur in the ordinary
20 course.
21 You've heard a lot of how this case has been going on for
22 years, but discovery has not been going on for a long time. It's only
23 been open for several months -- not even, a couple of months, we
24 haven't even had a Rule 16 conference before Your Honor, although
25 Ms. Brown and I did have [audio cut out].

1 THE COURT: Did that conclude your argument,
2 Mr. Kaplan? Mr. Kaplan, did that conclude your argument?
3 Is Mr. Kaplan on the phone?
4 MS. BROWN: Your Honor, it says poor network for
5 Mr. Kaplan, so I think he's having networking issues.
6 THE COURT: Okay. So Brynn, let me know --
7 MS. BROWN: There he is.
8 THE COURT: Mr. Kaplan?
9 MR. KAPLAN: Can you hear me?
10 THE COURT: Yes.
11 MS. BROWN: Yeah, Mr. Kaplan, you froze for a second.
12 MR. KAPLAN: Oh, I'm sorry, I -- Your Honor, just briefly,
13 I -- just to address the Rule 56(d) argument, this case is at its
14 infancy. I know it's been going on for years, but discovery has just
15 opened. There's not even a scheduling order issued.
16 Defendants will need to conduct discovery from Hygea
17 about payments that were made and when they were made, the
18 facts and circumstances related to Plaintiffs' request to expend
19 Hygea capital on its other investments with the promise of being
20 immediately reimbursed, facts and circumstances regarding
21 Defendants' efforts and ability to take Hygea public, and related to
22 Plaintiffs' prevention and/or hindrance of those efforts.
23 There's many third-party subpoenas that Defendants will
24 have to domesticate, serve, and possibly enforce in other states.
25 Because Hygea's no longer -- because it went through bankruptcy

1 and is now a dissolved entity, its information and assets
2 presumably have gone to the reorganized debtor, NeighborMD.
3 We'll have to subpoena NeighborMD for Hygea's financial
4 information, subpoena Hygea's former other directors who are
5 scattered throughout the United States that may have been present
6 during these meetings with Plaintiff and its agents.
7 We'll also need to subpoena current and former
8 employees of RIN Capital, a nonparty based in Michigan, who was
9 also involved in those same meetings. There's potential
10 counterparties that -- to the deals that were stymied, who also may
11 have relevant information.
12 Plaintiff, in this motion, Your Honor, is seeking millions of
13 dollars from the defendants, and Defendants are entitled to put on
14 their defense in the ordinary course. Thank you.
15 THE COURT: Thank you.
16 I have a couple of questions for you. Is the issue of
17 whether the personal guarantee was paid or not really an issue?
18 MR. KAPLAN: The personal guarantee or the post-closing
19 monthly payments?
20 THE COURT: Post-closing monthly payments.
21 MR. KAPLAN: Your Honor, we don't know anything that's
22 happened since.
23 THE COURT: Well, your clients haven't provided proof of
24 payment.
25 MR. KAPLAN: They don't have access to anything, Your

1 Honor. They don't have any documents.
2 THE COURT: Has demand been made upon them as
3 guarantors?
4 MR. KAPLAN: In this lawsuit?
5 THE COURT: Yeah.
6 MR. KAPLAN: Yeah, they filed for breach of contract as
7 personal guarantors.
8 THE COURT: Okay. And they didn't file a counterclaim,
9 they simply answered the complaint?
10 MR. KAPLAN: I don't know what -- any counterclaim they
11 would have would belong to Hygea and now NeighborMD --
12 THE COURT: That's my next --
13 MR. KAPLAN: -- as officers and directors.
14 THE COURT: That's my next question, is that -- the
15 defense, a frustration of purpose, belonged to Hygea; did Hygea
16 ever pursue that?
17 MR. KAPLAN: I'm not aware, Your Honor. But it would
18 also belong to them as personal guarantors, because the personal
19 guarantee is its own separate contract.
20 THE COURT: No.
21 MR. KAPLAN: I don't know what -- you know, they're not
22 required to pursue a counterclaim if they have these defenses, you
23 know, the counterclaim of frustration of purpose, you know, would
24 essentially be a breach of fiduciary duty. But they're entitled to
25 raise that as a defense and explore that in discovery. Nothing's

1 compelling them to bring the counterclaim.
2 THE COURT: All right. So were these parties --
3 MR. KAPLAN: And those defenses were raised in the
4 answer.
5 THE COURT: Okay. So Ms. Brown says that the -- they --
6 these entities were treated as equity, not debt, in the Hygea
7 bankruptcy; do you agree with that?
8 MR. KAPLAN: I was not part of this case in the Hygea
9 bankruptcy, Your Honor. I'm not aware of how it was treated, so I
10 don't know if I can speak to that. If anything, I would say the
11 documents speak for themselves.
12 THE COURT: And the other claim she made is that
13 Hygea -- or, I believe, you made -- that Hygea's now a dissolved
14 entity?
15 MR. KAPLAN: Correct.
16 THE COURT: So it has made no effort, then, to try to
17 advance the defenses to the SPA?
18 MR. KAPLAN: Again, Your Honor, I don't represent
19 Hygea. I was not part of the bankruptcy. I do not know what Hygea
20 has done. I am here on behalf of Manuel Iglesias and Edward
21 Moffly, two former officers and directors. All I can speak about is,
22 you know, what they put in their declarations and the issues that
23 are relevant to discovery to fully vet Plaintiffs' claim and put on a
24 valid defense.
25 THE COURT: Thank you.

1 And the reply, please.
2 MS. BROWN: Thank you, Your Honor. Ogonna Brown on
3 behalf of Plaintiffs.
4 Your Honor, I really appreciate your line of questioning,
5 and it's very clear that there was no adversary complaint
6 commenced in the bankruptcy proceedings arising from the
7 arguments that are being proffered before this Court today. There
8 has been no lawsuit, no counterclaim, no adversary complete
9 commenced, there has been no reference in the plan that
10 something would be forthcoming. And it is evident that there are
11 simply no genuine issues of material fact regarding these
12 allegations.
13 Plaintiff here has demonstrated prima facie, with the
14 evidence before the Court, that summary judgment is appropriate. I
15 keep hearing from Defendants that we don't know anything that
16 happened.
17 But I want to be clear: The bankruptcy was only filed on
18 February 19th, 2020. And the defendants who were the officers
19 who were in charge absolutely know everything that happened
20 from the inception of this litigation in 2017 forward.
21 That's 2017, 2018, 2019, and the beginning of 2020. So it's simply
22 disingenuous to make that statement.
23 But making a statement alone, Your Honor, is simply not
24 enough. Defendants now have the burden that has shifted, after
25 we've made our prima facie case for summary judgment. They

1 must proffer some evidence. And to say we have nothing is simply
2 not good enough on summary judgment.
3 And you'll note there were three affidavits that were filed
4 in connection with the defendants' opposition. There is not a single
5 document for anything to corroborate their allegations. There is
6 not one scintilla of evidence. They're simply understandably trying
7 to delay and ask for discovery where there is no question that the
8 payments were due and the monthly payments were not made.
9 And there has been no -- again, no adversary complaint
10 that has been filed by the debtor against the plaintiffs in this matter,
11 raising any of these issues that are being raised and asserted here
12 in an effort to avoid summary judgment.
13 And, Your Honor, they simply don't articulate a
14 meaningful defense regarding the calculation of the damages.
15 They failed to raise a genuine issue of material fact regarding these
16 new arguments that they're raising for the first time.
17 And, simply put, they are not defending a limited
18 guarantee, Your Honor. And I direct your attention -- I keep hearing
19 that this is a limited guarantee. This is not a limited guarantee.
20 Under Section 7.4.1 of the SPA, and we cite to it and we just plug it
21 into our motion on page 4, starting on line 18, it says that:
22 Obligation is primary, direct, and unconditional and shall
23 not require buyer to resort to any other person, including the
24 seller.
25 So this is not a limited guarantee. This is a direct

1 guarantee with a primary obligation. You know, to simply make
2 statements without anything in the declaration is insufficient on
3 summary judgment. They provide absolutely no evidence that
4 N5HYG constrained cash or made payments of Hygea's monthly
5 obligations impossible. And the evidence before this Court is to the
6 contrary.
7 N5HYG was an 8.5 percent minority shareholder. It was
8 never an officer, it was never a seated board member, it had no
9 authority to mandate corporate expenditures. So Defendants'
10 arguments are wholly unsupported by anything on the record.
11 The defendants also attempt to assert that a nonparty by
12 the name of RIN Capital had control over Hygea. But RIN Capital
13 was not a shareholder or a member of Hygea's board of directors.
14 And Defendants offer absolutely no scintilla of evidence that RIN
15 had decision-making authority with respect to Hygea's decision to
16 go public. They just don't present a shred of evidence to rebut the
17 presumption warranting summary judgment.
18 I don't know if this Court is at all interested in the
19 argument regarding illegal or enforceable dividends. It's a
20 confusing argument to me. I'm not sure how it has any merit. But
21 Defendants' reliance on Chapter 78 of the Nevada Revised Statute is
22 directly contradicted by the express terms of the stock purchase
23 agreement under which Hygea, Mr. Moffly, and Mr. Iglesias were
24 jointly, directly, and severally liable to make the monthly payments
25 to H5HYG until Hygea either went public, which is expressly and

1 unambiguously provided and Section 6.3 of the SPA.
2 All you have before you, Your Honor, is conclusory
3 allegations with nothing more, which is insufficient to survive
4 summary judgment. To simply state we don't know what
5 happened in the bankruptcy, or we don't know anything that
6 happened is so disingenuous, to say we have no documents, we
7 have no information. Your Honor, they do have information. And
8 we cite to the answers to the complaint, where they admit that no
9 further payments were made.
10 So they simply fail to raise any genuine issues of material
11 fact. And at this point, Your Honor, summary judgment is
12 warranted in favor of the plaintiff for breach of contract of the
13 guarantees.
14 THE COURT: Thank you.
15 So I am going to take the matter under submission for a
16 limited purpose. The -- it's my tentative ruling to grant the Motion
17 for Summary Judgment as to liability in accordance with the Fowler
18 affidavit, unless, in supplemental briefing, the defendants can prove
19 or show me where Hygea in Chapter 11 made an active effort to
20 dispute the obligations under the SPA agreement of 10/5/16.
21 And this is -- giving you both a chance to let me know --
22 because these defenses belong to Hygea first. So it appears to me
23 as though, based upon the eighth cause of action of the
24 second-amended complaint filed on December 13, 2019, the
25 plaintiffs have shown entitlement to summary judgment on a joint

1 and several basis as against these two defendants for liability only.
2 It would be under paragraph 7.4.1 of the SPA, which says:
3 Notwithstanding anything here and to the contrary, each
4 seller principal hereby absolutely and unconditionally
5 guarantees jointly and severally, with all other sellers'
6 principles, the prompt and punctual payment by seller of 100
7 percent of the sellers' payment obligations under 6.3.
8 Each seller principals' liability is primary, direct, and
9 unconditional and shall not require a buyer to resort to any
10 other person, including the seller or any of the right remedy or
11 collateral, whether held as collateral for satisfaction of the
12 obligation set forth and herein.
13 That is an absolute guarantee that both defendants here
14 signed. The argument with regard to frustration of purpose will
15 only prevail if Hygea made active efforts to dispute this debt. And
16 that means more than just listing the debt as disputed on its
17 Petition for Relief under Chapter 11.
18 I just don't find that first, I -- it was argued that their
19 guarantee was limited to the 30.36, which is contradicted in the
20 agreement. There was an argument made by the defendants that
21 because of the bankruptcy, personal guarantee is not enforced with
22 no legal citation and that is not my understanding of Nevada law.
23 So I'm denying the 56(d), and it will -- the decision will be
24 simply based upon whether Hygea actively pursued an effort to
25 dispute the stay. And that means more than just listing it as a

1 disputed obligation.
2 The liability would be the post-close monthly payments.
3 And I do note for the record that because it only disposes of one
4 cause of action, and there are 11 causes of action asserted, that it is
5 an interlocutory ruling, if, in fact, I do make that ruling.
6 So any questions?
7 MR. KAPLAN: Yes, Your Honor.
8 You mentioned supplemental briefing. Do we have a --
9 THE COURT: I have the dates. Okay.
10 The supplemental briefing would be due by April 16th.
11 And then Nicole McDevitt for the chambers calendar, please,
12 chambers on April 20th. That will trigger me to review your briefs
13 and review the matter -- you can expect a decision that week.
14 MR. KAPLAN: Thank you.
15 MS. BROWN: Your Honor, Ogonna Brown.
16 THE COURT: Yes.
17 MS. BROWN: Is the defendants' brief due on April 16th?
18 And do we have an opportunity to respond –
19 THE COURT: No.
20 MS. BROWN: -- on the plaintiffs' blind briefs?
21 THE COURT: Both of you will file briefs on that day.
22 MS. BROWN: Thank you, Your Honor, very much.
23 THE COURT: Attached whatever exhibits --
24 MS. BROWN: I appreciate --
25 THE COURT: -- you need, and I'll review everything.

MS. BROWN: Thank you very much for your time today, Your Honor.

MR. KAPLAN: Thank you, Your Honor.

THE COURT: Mr. Kaplan, any other questions?

MR. KAPLAN: No.

THE COURT: No? Thank you both. Stay safe and stay healthy.

[Proceeding concluded at 11:35 a.m.]

/ / /

ATTEST: I do hereby certify that I have truly and correctly transcribed the audio/video proceedings in the above-entitled case to the best of my ability. Please note: Technical glitches in the BlueJeans system resulting in audio/video distortion and/or audio cutting out completely were experienced and are reflected in the transcript.

Shawna Ortega, CET*562

“Exhibit 40”

“Exhibit 40”

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Steven D. Grierson
CLERK OF THE COURT

NEOJ
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. (admitted pro hac vice)
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 **NOTICE OF ENTRY OF ORDER DENYING DEFENDANTS' PARTIAL MOTION FOR JUDGMENT ON THE PLEADINGS** Judge: Hon. Nancy Allf

NOTICE IS HEREBY GIVEN that the *Order Denying Defendants' Partial Motion For Judgment On The Pleadings* ("Order") was entered on March 29, 2021.

. . .

A copy of said Order is attached hereto as **Exhibit "1".**

DATED: March 30, 2021.

LEWIS ROCA ROTHGERBER CHRISTIE LLP

By: *<u>/s/ Ogonna Brown</u>*
OGONNA M. BROWN (NBN 7589)
3993 Howard Hughes Parkway, Suite 600
Las Vegas, Nevada 89169
(702) 949-8200

Attorneys for Plaintiffs

CERTIFICATE OF SERVICE

Pursuant to NEFCR 9, NRCP 5(b), and EDCR 7.26, I certify that on March 30, 2021, I served a copy of **NOTICE OF ENTRY OF ORDER DENYING DEFENDANTS' PARTIAL MOTION FOR JUDGMENT ON THE PLEADINGS** on all parties as follows:

☒ Electronic Service – By serving a copy thereof through the Court's electronic service system via the Odyssey Court e-file system;

N5HYG, LLC

D. Chris Albright	dca@albrightstoddard.com
G. Mark Albright	gma@albrightstoddard.com
Andrea Brebbia	abrebbia@albrightstoddard.com
Barbara Clark	bclark@albrightstoddard.com
Amy Davis	aad@miller.law
Alexis C Haan	ACH@millerlawpc.com
William Kalas	WK@millerlawpc.com
Christopher D Kaye	cdk@millerlawpc.com
E. Powell Miller	epm@millerlawpc.com
Kevin Watts	KW@oaklandlawgroup.com

Attorney for Manuel Iglesias and Edward Moffly

Kory L Kaplan	kory@kaplancottner.com
Sara Savage	sara@lzkclaw.com
Sunny Southworth	sunny@kaplancottner.com
Carita Strawn	carita@kaplancottner.com

☐ E-mail – By serving a copy thereof at the email addresses listed below; and

☐ U.S. Mail—By depositing a true copy thereof in the U.S. mail, first class postage prepaid and addressed as listed below.

/s/ Kennya Jackson
An employee of Lewis Roca Rothgerber Christie LLP

LEWIS ROCA
3993 Howard Hughes Parkway, Suite 600
Las Vegas, NV 89169

EXHIBIT “1”

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ORDR
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. (admitted pro hac vice)
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 **ORDER DENYING DEFENDANTS' PARTIAL MOTION FOR JUDGMENT ON THE PLEADINGS** Date of Hearing: March 17, 2021 Time of Hearing: 10:30 a.m. Judge: Hon. Nancy Allf

This matter came on for hearing on March 17, 2021, at 10:30 a.m. before the Honorable Nancy Allf on Defendants Manuel Iglesias and Edward Moffly's ("Defendants") Partial Motion

for Judgment on the Pleadings ("Motion"), filed on February 22, 2021. On March 8, 2021, Plaintiff Nevada 5, Inc. ("Plaintiff") filed its Opposition to Defendants' Partial Motion for Judgment on the Pleadings. Defendants filed their Reply In Support of the Motion on March 10, 2021. Kory L. Kaplan, Esq., of the law firm of Kaplan Cottner, appeared at the hearing on behalf of Defendants. Ogonna M. Brown, Esq. of the law firm of Lewis Roca appeared at the hearing on behalf of Plaintiffs.

The Court considered the papers and pleadings on file, including the Second Amended Complaint Nevada 5, Inc. filed in the Circuit Court business division of the Eleventh Judicial Circuit in Miami-Dade County, Florida, as Case No. 19-014926 CA 44 ("Florida Court"), against McGowan, Kelly, Castillo, Loar, Williams, Marrichi, Collins, Mann, Sussman, Campanella, Rosenkrantz, Gonzalez, Hygea Health Holdings, Inc., and Bridging Finance Inc. ("Florida Action"), attached as Exhibit A to the Motion; and the Omnibus Order on Defendants' Motion to Dismiss Plaintiff's Second Amended Complaint ("Florida Omnibus Order"), attached as Exhibit B to the Motion. The Court heard oral argument presented by counsel at the Motion hearing, and good cause appearing therefor,

IT IS HEREBY ORDERED that Defendants' Partial Motion for Judgment on the Pleadings is **DENIED** in its entirety.

IT IS FURTHER ORDERED that this Court is not bound by the Florida Court's ruling on standing as set forth in the Florida Omnibus Order, as the Florida Action involved different plaintiffs in that N5HYG was not a plaintiff and entirely different defendants and different causes of action.

IT IS FURTHER ORDERED that issue preclusion based on the Florida Omnibus Order does not apply to the above-captioned Nevada action pending before this Court.

IT IS FURTHER ORDERED that in the above-captioned action pending before this Court, Nevada law, rather than the Florida Omnibus Order's interpretation of Florida law, applies to standing, as well as the integration clause of the Stock Purchase Agreement, which is not the law in Nevada.

LEWIS ROCA
3993 Howard Hughes Parkway, Suite 600
Las Vegas, NV 89169

IT IS FURTHER ORDERED that Plaintiffs Nevada 5, Inc. and N5HYG, LLC's Counter-Motion to Strike Defendants' Partial Motion for Judgment on the Pleadings, pursuant to NRCP 12(g)(2) and NRCP 41, and request for attorney's fees and costs is **DENIED**.

IT IS SO ORDERED.

March 29, 2021

Dated this 29th day of March, 2021

Nancy L Allf

NB

D69 170 C6DF A4BE
Nancy Allf
District Court Judge

Submitted by:

LEWIS ROCA ROTHGERBER CHRISTIE LLP

By: */s/ Ogonna Brown*
OGONNA M. BROWN (SBN 7589)
3993 Howard Hughes Parkway, Suite 600
Las Vegas, Nevada 89169
(702) 949-8200

Attorneys for Plaintiffs

Reviewed and approved/not approved as to form but not as to content:

KAPLAN COTTNER

By: /s/ Kory Kaplan
Kory L. Kaplan, Esq. (NBN 13164)
Email: kory@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

To: Brown, Ogonna
Subject: RE: Order Denying Defendants Partial Motion For Judgment On The Pleadings (KK redline)

From: Kory Kaplan <kory@kaplancottner.com>
Sent: Monday, March 29, 2021 12:18 PM
To: Brown, Ogonna <OBrown@lewisroca.com>
Cc: Jackson, Kennya <KJackson@lewisroca.com>; Dale, Margaret <MDale@lewisroca.com>
Subject: RE: Order Denying Defendants Partial Motion For Judgment On The Pleadings (KK redline)

[EXTERNAL]

Ogonna,

You may affix my e-signature.

Thanks,
Kory

KAPLAN COTTNER

Kory L. Kaplan, Esq.
850 E. Bonneville Ave.
Las Vegas, NV 89101
Tel (702) 381-8888
Fax (702) 832-5559
www.kaplancottner.com

From: Brown, Ogonna <OBrown@lewisroca.com>
Sent: Monday, March 29, 2021 11:42 AM
To: Kory Kaplan <kory@kaplancottner.com>
Cc: Jackson, Kennya <KJackson@lewisroca.com>; Dale, Margaret <MDale@lewisroca.com>
Subject: FW: Order Denying Defendants Partial Motion For Judgment On The Pleadings (KK redline)

Dear Kory:

Please see the finalized revisions incorporating your comments. Please confirm I may affix your electronic signature as revised. Thank you.

Ogonna Brown
Partner

OBrown@lewisroca.com
D. 702.474.2622

LEWIS ROCA

CSERV

DISTRICT COURT
CLARK COUNTY, NEVADA

N5HYG, LLC, Plaintiff(s) vs. Hygea Holdings Corp., Defendant(s)	CASE NO: A-17-762664-B DEPT. NO. Department 27

AUTOMATED CERTIFICATE OF SERVICE

This automated certificate of service was generated by the Eighth Judicial District Court. The foregoing Order was served via the court's electronic eFile system to all recipients registered for e-Service on the above entitled case as listed below:

Service Date: 3/29/2021

D. Chris Albright	dca@albrightstoddard.com
Barbara Clark	bclark@albrightstoddard.com
Las Vegas Docket	LVDocket@ballardspahr.com
Las Vegas Intake	LVCTIntake@ballardspahr.com
Joel Tasca	tasca@ballardspahr.com
G. Mark Albright	gma@albrightstoddard.com
Maria Gall	gallm@ballardspahr.com
Andrea Brebbia	abrebbia@albrightstoddard.com
E. Powell Miller	epm@millerlawpc.com
Christopher Kaye	cdk@millerlawpc.com
William Kalas	WK@millerlawpc.com

Kevin Watts	KW@oaklandlawgroup.com
Alexis Haan	ACH@millerlawpc.com
Amy Davis	aad@miller.law
Ogonna Brown	obrown@lrrc.com
Kennya Pimentel	kpimentel@lrrc.com
Docket Clerk	DocketClerk_LasVegas@ballardspahr.com
Robert Eisenberg	rle@lge.net
Lelia Geppert	lelia@lge.net
Kory Kaplan	kory@kaplancottner.com
Sunny Southworth	sunny@kaplancottner.com
Carita Strawn	carita@kaplancottner.com
Allison Hardy	allison@kaplancottner.com