

**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 L. ALLF, District  
Court Judge,

Respondents,

and

N5HYG, LLC, and NEVADA 5, INC.,

Real Parties in Interest.

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Aug 17 2021 10:28 a.m.  
Supreme Court No. 83157  
Elizabeth A. Brown  
Clerk of Supreme Court  
Distr. Ct. Case No. A-17-762664-B  
Dept. XXVII

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**EMERGENCY MOTION FOR STAY PURSUANT TO NRAP 27(e)**

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*Action is needed by September 6, 2021*

COME NOW, the Petitioners Manuel Iglesias and Edward Moffly, by and through their counsel, Kory L. Kaplan, Esq. of the law firm of Kaplan Cottner, and submit their Emergency Motion for Stay Pursuant to NRAP 27(e). The grounds for

Petitioners' Emergency Motion are set forth in the following Memorandum of Points and Authorities.

Dated: August 17, 2021

KAPLAN COTTNER

By: /s/ Kory L. Kaplan  
KORY L. KAPLAN  
Nevada Bar No. 13164  
850 E. Bonneville Ave.  
Las Vegas, Nevada 89101  
*Attorneys for Petitioners*

## **MEMORANDUM OF POINTS AND AUTHORITIES**

### **I.**

#### **FACTUAL BACKGROUND**

On July 6, 2021, Petitioners filed their Writ of Prohibition, or in the alternative, Writ of Mandamus ("Writ Petition") requesting this Court's intervention due to the District Court continuing to entertain claims by Plaintiff/Real Party in Interest Nevada 5, Inc. ("Nevada 5")<sup>1</sup>, even though a Florida court has already ruled that Nevada 5 has no standing to bring claims based on the same underlying facts and dismissed Nevada 5's claims there with prejudice through a final adjudication on the merits. If Petitioners are required to defend Nevada 5's claims until a final

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<sup>1</sup> Plaintiff/Real Party in interest N5HYG, LLC's claims have been adjudicated, leaving only Nevada 5's claims remaining.

judgment is reached, the entire purpose of Nevada’s adoption of the issue preclusion doctrine would be undermined. Such an outcome contradicts the purpose of the issue preclusion doctrine, which is to obtain finality by preventing a party from filing another suit that is based on the same issue of fact or law that was actually litigated and determined by a valid and final judgment.

On July 30, 2021, this Court issued its “Order Directing Answer” regarding Petitioners’ Writ Petition. Based on that Order, Nevada 5’s Answer to Petitioners’ Writ Petition is due by August 27, 2021.

On August 3, 2021, Petitioners filed a Motion for Stay of Proceedings on Order Shortening Time in the District Court.<sup>2</sup> On August 9, 2021, Nevada 5 filed its Opposition to Petitioners’ Motion for Stay of Proceedings.<sup>3</sup> On August 13, 2021, the District Court denied Petitioners’ Motion for Stay of Proceedings on Order Shortening Time. Even though no order from the District Court has yet been entered, the District Court largely based its denial on the fact that this case was filed in October 2017 and its desire for the case to proceed in light of the 5-year rule.<sup>4</sup> The

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<sup>2</sup> See **Exhibit 1**.

<sup>3</sup> See **Exhibit 2**.

<sup>4</sup> It should be noted that the case was stayed due to Defendant Hygea Holdings Corp.’s filing of bankruptcy as well as multiple motions to dismiss being granted, ultimately resulting in the filing of the Second Amended Complaint.

District Court also stated that Petitioners have a remedy in the form of the instant Motion before this Court.

The District Court held the mandatory Rule 16 Conference between the parties on July 29, 2021. On August 5, 2021, 2 days after Petitioners filed their Motion to Stay Proceedings on Order Shortening Time, Nevada 5 served 26 Interrogatories, 52 Requests for Production of Documents, and 21 Requests for Admission on Petitioner Edward Moffly and 26 Interrogatories, 52 Requests for Production of Documents, and 20 Requests for Admission on Petitioner Manuel Iglesias.<sup>5</sup> The responses to those discovery requests are due by September 6, 2021.

## II.

### **LEGAL ARGUMENT**

#### **A. Legal Standard.**

Pursuant to NRAP 8(a)(1)(A), “[a] party must ordinarily move first in the district court for the following relief: (A) a stay of the judgment or order of, or proceedings in, a district court pending appeal or resolution of a petition to the Supreme Court or Court of Appeals for an extraordinary writ.” NRAP 8(a)(1)(A); *see also Hansen v. Eighth Judicial Dist. Court ex rel. County of Clark*, 116 Nev. 650, 657, 6 P.3d 982, 986 (2000) (NRAP 8 applies with equal force to writ petitions

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<sup>5</sup> *See Exhibit 3 & 4*, respectively.

and to direct appeals). In deciding whether to issue a stay, the following factors must be considered: (1) whether the object of the appeal or writ petition will be defeated if the stay is denied; (2) whether the petitioner will suffer irreparable or serious injury if the stay is denied; (3) whether the real party in interest will suffer irreparable or serious injury if the stay is granted; and (4) whether the petitioner is likely to prevail on the merits in the appeal or writ petition. *See* NRAP 8(c); *Kress v. Corey*, 65 Nev. 1, 189 P.2d 352 (1948).

This Court has noted that no “one factor carries more weight than the others” but rather “recognizes that if one or two factors are especially strong, they may counterbalance other weak factors.” *Mikohn Gaming Corp. v. McCrea*, 120 Nev. 248, 251, 89 P.3d 36, 38 (2004).

Because the balance of these factors favors Petitioners, the action in the District Court should be stayed pending a determination from this Court on Petitioners’ Writ Petition.

**B. The Purpose of the Writ Petition Will Be Defeated if a Stay is Denied Since the Litigation Will Continue Despite a Question as to the Sufficiency of the Second Amended Complaint.**

It is fundamental that Petitioners should not be required to litigate a case that arguably should have been dismissed as a matter of law. If this matter were required to proceed forward, the Writ Petition’s purpose, to enforce the final ruling by the

Florida court on the same underlying facts that dismissed Nevada 5's claims with prejudice, would be defeated.

It must be recognized that the law at issue in the Writ Petition - the issue preclusion doctrine - is at issue: (1) because Nevada 5 should be prevented from re-litigating an issue that has already been decided by another court; (2) to prevent multiple litigation causing vexation and expense to the parties; (3) to not waste judicial resources; (4) to maintain consistency; (5) to avoid oppression or harassment of the adverse party; and (6) to lend stability to judgments, thus inspiring confidence in the judicial system.

Here, Petitioners have challenged the sufficiency of Nevada 5's Second Amended Complaint pursuant to the issue preclusion doctrine. The Writ Petition raises a purely legal question and its purpose will undeniably be defeated if a stay is not granted. Because there is still a question regarding the sufficiency of the Second Amended Complaint in this case given the Florida court's ruling, Nevada 5 should not be allowed to continue litigating its causes of action. Allowing Nevada 5 to continue litigation as though there were no Writ Petition pending would frustrate the purpose of the Writ Petition and subject Petitioners to needless discovery requests and proceedings in derogation of the Writ Petition. Therefore, the purpose of the Writ Petition would be frustrated if no stay is issued.

**C. Petitioners Will Suffer Irreparable Harm if a Stay is Denied.**

Although irreparable or serious harm remains part of the stay analysis, this factor will not generally play a significant role in the decision whether to issue a stay. *Mikohn Gaming*, 120 Nev. at 253, 89 P.3d at 39.

However, without a stay, Petitioners would suffer serious harm as it would be blatantly unfair to force Petitioners to have to wade through expensive litigation when the outcome of the Writ Petition would force dismissal of this matter in its entirety, with clear authority supporting Petitioners' position. Without a stay, Petitioners would be subjected to continued discovery, attorney's fees, the impending trial, and a potential judgment.

The District Court's decision to deny the Partial Motion for Summary Judgment placed Petitioners in a position of having to litigate claims for which Nevada 5 has no legally binding authority. Irreparable or serious harm will occur since Petitioners cannot determine the value of Nevada 5's case because of the uncertainty of whether its claims are legally supportable. A stay will allow an adjudication on the Writ Petition to eliminate any such uncertainty.

Also, subjecting Petitioners to potentially futile litigation would entail a significant waste of public resources and considerations of judicial efficiency would preclude such an approach in an ordinary case. Thus, the stay should be granted.

**D. Nevada 5 Will Not Suffer Irreparable Harm if the Stay is Granted.**

A mere delay in pursuing discovery and litigation normally does not constitute irreparable harm. *Mikohn Gaming*, 120 Nev. at 253, 89 P.3d at 39.

Nevada 5 will suffer no irreparable injury if this Court stays the action pending a determination on Petitioners' Writ Petition. Thus, Nevada 5 will actually benefit from a stay in this case until this Court either clarifies that issue preclusion does not apply or issues a writ petition requiring dismissal of Nevada 5's Second Amended Complaint. In either event, Nevada 5 will benefit by saving needless time and energy spent pursuing discovery.

**E. This Matter Involves a Serious Legal Question, the Balance of Equities Weigh Heavily in Favor of Granting the Stay, and Petitioners Have Presented a Substantial Case on the Merits.**

Although, when moving for a stay pending an appeal or writ proceedings, a movant does not always have to show a probability of success on the merits, the movant must "present a substantial case on the merits when a serious legal question is involved and show that the balance of equities weighs heavily in favor of granting the stay." *Hansen*, 116 Nev. at 659, 6 P.3d at 987 (citing *Ruiz v. Estelle*, 650 F.2d 555, 565 (5th Cir.1981)); see also *Lair v. Bullock*, 697 F.3d 1200, 1204 (9th Cir.2012) (the Ninth Circuit has held that the party seeking relief is not required "to show that it is more likely than not that they will win on the merits" and that the



petitioner need only show “that there is a substantial case for relief on the merits”). The Ninth Circuit has further recognized that one interchangeable formulation of this standard is whether there are “serious legal questions raised.” *Id.* “Serious questions are substantial, difficult and doubtful, as to make them a fair ground for litigation and thus for more deliberative investigation.” *Republic of the Phil. v. Marcos*, 862 F.2d 1355, 1362 (9th Cir.1988).

Both the standard for writ relief and the underlying merits demonstrate that there is a great likelihood that the Writ Petition will be granted. First, this Court has concluded that writ relief may be granted when the right to a dismissal is clear. *Smith v. Gabrielli*, 80 Nev. 390, 395 P.2d 325 (1964); *Dzack v. Marshall*, 80 Nev. 345, 393 P.2d 610 (1964). Additionally, this Court did not deny the Writ Petition and ordered Nevada 5 to answer.

Here, Petitioners’ Writ Petition challenges the District Court’s denial of Petitioners’ Partial Motion for Judgment on the Pleadings and raises a pure question of law based upon issue preclusion. Therefore, this Court has jurisdiction to hear the case and indeed has chosen to do so. Thus, Petitioners believe that it is likely that this Court will grant Petitioners’ Writ Petition and require dismissal of all of Nevada 5’s causes of action.

### III.

#### CONCLUSION

Because the purpose of the Writ Petition requesting review of the District Court's denial of Petitioners' Partial Motion for Judgment on the Pleadings would be defeated by allowing litigation to continue; because it is in the best interests of the District Court and all parties to stay the proceedings until this Court has made a determination on the Writ Petition; and because it is likely that this Court will grant the Writ Petition, this Court should grant a stay in these proceedings until this Court has made a determination on Petitioners' Writ Petition.

Dated: August 17, 2021

KAPLAN COTTNER

By: /s/ Kory L. Kaplan

KORY L. KAPLAN

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Las Vegas, Nevada 89101

*Attorneys for Petitioners*

## **CERTIFICATE OF COMPLIANCE**

1. I certify that this brief complies with the formatting requirements of NRAP 32(a)(4) and the typeface requirements of NRAP 32(a)(5) and the type style requirements of NRAP 32(a)(6) because this brief has been prepared in a proportionally spaced typeface using Microsoft Word with 14-point, double spaced Times New Roman font.

2. I further certify that this brief complies with the page-or type-volume limitations of NRAP 27(d)(2) because it does not exceed 10 pages.

3. Finally, I hereby certify that I have read this brief, and to the best of my knowledge, information, and belief, it is not frivolous or interposed for any improper purpose. I further certify that this brief complies with all applicable Nevada Rules of Appellate Procedure, in particular NRAP 28(e)(1), which requires every assertion in the brief regarding matters in the record to be supported by a reference to the page and volume number, if any, of the transcript or appendix where the matter relied on is to be found. I understand that I may be subject to sanctions in the event that the accompanying brief is not in conformity with the

requirements of the Nevada Rules of Appellate Procedure.

Dated: August 17, 2021

KAPLAN COTTNER

By: /s/ Kory L. Kaplan  
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*Attorneys for Petitioners*

### **NRAP 27(e) CERTIFICATE**

Pursuant to NRAP 27(e), the undersigned counsel of record certifies the following:

Because the District Court is acting in excess of its jurisdiction pursuant to the issue preclusion doctrine, Petitioners certify that to avoid irreparable harm relief is needed in less than 14 days. The responses to Nevada 5's discovery requests are due by September 6, 2021 and Petitioners need to begin gathering necessary information and draft responses well prior to that date.

The telephone numbers and office addresses of the attorneys for the parties are:

For Nevada 5, Inc. and N5HYG, LLC: Ogonna M. Brown, Esq. of the law firm of Lewis Roca Rothgerber Christie LLP, 3993 Howard Hughes Pkwy., Suite 600 Las Vegas, Nevada 89169. Her telephone number is (702) 949-8200. Also, for Nevada 5, Inc. and N5HYG, LLC: G. Mark Albright, Esq. and D. Chris Albright, Esq. of the law firm of Albright, Stoddard, Warnick & Albright, 801 South Rancho Drive, Suite D-4, Las Vegas, Nevada 89106. Their telephone number is (702) 384-7111. Also, for Nevada 5, Inc. and N5HYG, LLC: E. Powell Miller, Esq. and Christopher Kaye, Esq. of the Miller Law Firm, P.C., 950 W. University Dr., Ste. 300, Rochester, Michigan 48307. Their phone number is (248) 841-2200.

Counsel for all parties were notified of the instant Motion via email on August 17, 2021. The Motion was attached to the email and all parties were served with the Motion via electronic service on August 17, 2021.

Dated: August 17, 2021

KAPLAN COTTNER

By: /s/ Kory L. Kaplan  
KORY L. KAPLAN  
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*Attorneys for Petitioners*

## CERTIFICATE OF SERVICE

I hereby certify that this ***EMERGENCY MOTION FOR STAY PURSUANT TO NRAP 27(E)*** was filed electronically with the Nevada Supreme Court on August 17, 2021, and served electronically on participants registered with the Eflex system; any parties listed below not registered with Eflex will be mailed a copy of the foregoing via regular U.S. Mail:

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## INDEX OF EXHIBITS

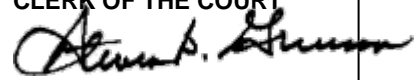
Exhibit	Document
1	August 3, 2021 Petitioners' Motion for Stay of Proceedings
2	August 9, 2021 Nevada 5's Opposition to Petitioner's Motion for Stay of Proceedings
3	Nevada 5's First Discovery Requests to Moffly
4	Nevada 5's First Discovery Requests to Iglesias



“Exhibit 1”

Petitioners' Motion  
for Stay of  
Proceedings

“Exhibit 1”



**MSTY**  
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**DISTRICT COURT**

**CLARK COUNTY, NEVADA**

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

Plaintiffs,

vs.

HYGEA HOLDINGS CORP., a Nevada  
corporation; MANUEL IGLESIAS; EDWARD  
MOFFLY, and DOES I through X, inclusive, and  
ROES I-XXX, inclusive,

Defendants.

CASE NO. A-17-762664-B  
DEPT. XXVII

**DEFENDANTS' MOTION FOR STAY OF  
PROCEEDINGS**

**HEARING REQUESTED**

Defendants Manuel Iglesias ("Iglesias") and Edward Moffly ("Moffly," collectively with Iglesias, the "Defendants"), by and through their attorneys, Kory L. Kaplan, Esq. and Kyle P. Cottner, Esq., of the law firm of Kaplan Cottner, hereby move the Court for an Order staying all proceedings pursuant to Nevada Rules of Appellate Procedure ("NRAP") Rule 8.

This Motion is based upon and supported by the following Memorandum of Points and Authorities, the pleadings and papers on file, any exhibits attached hereto, and any argument that

...

...

...

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the Court may allow at the time of hearing.

Dated this 3<sup>rd</sup> day of August, 2021.

KAPLAN COTTNER

By: /s/ Kory L. Kaplan

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*Attorneys for Defendants Manuel Iglesias  
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## MEMORANDUM OF POINTS AND AUTHORITIES

### I.

#### INTRODUCTION

Defendants hereby move the Court, pursuant to Nevada Rules of Appellate Procedure (“NRAP”) Rule 8, for a stay of proceedings pending resolution of Defendants’ Writ of Prohibition, or in the alternative, Writ of Mandamus (“Writ”).

This Court recently denied Defendants’ Partial Motion for Judgment on the Pleadings seeking to dismiss all of Plaintiff Nevada 5, Inc.’s (“Nevada 5”) causes of action based upon issue preclusion arising from the Florida Circuit Court’s dismissal with prejudice of Nevada 5’s claims due to its lack of standing and the integration clause within the Stock Purchase Agreement. As a result, Defendants filed the Writ with the Nevada Supreme Court.

On July 30, 2021, the Nevada Supreme Court issued an Order Directing Answer, requiring Plaintiffs “to file and serve an answer, including authorities, against issuance of the requested writ.” Because the Nevada Supreme Court did not deny the Writ and ordered Plaintiffs to respond, the Nevada Supreme Court impliedly held that Defendants do not have a plain, speedy, and adequate remedy at law. *Int’l Game Tech., Inc. v. Second Judicial Dist. Court*, 124 Nev. 193, 197,

179 P.3d 556, 558 (2008).

In considering this Motion, this Court should consider: (1) whether the object of the Writ will be defeated without a stay; (2) whether Defendants will suffer irreparable harm/serious injury without a stay; (3) whether Plaintiffs will suffer irreparable harm/serious injury if a stay is granted; and (4) Defendants' likelihood of prevailing on appeal. Not all of the factors need to weigh in favor of Defendants, and one or two factors strongly in favor of Defendants can be sufficient to grant a stay.

Given that the object of the Writ is that Nevada 5 is precluded from maintaining this action due to issue preclusion based upon the Florida court's final ruling, Nevada 5's claims should have been dismissed with prejudice and Defendants should not be subjected to discovery based upon such impermissible claims. As the other Plaintiff, N5HYG LLC, has already been granted summary judgment on its contract-based claims rendering the remainder of its claims moot, the only claims left for this Court to entertain are Nevada 5's claims that are subject to the Writ. As such, the purpose of the Writ would be mooted if this Court were to not grant a stay.

Given that this Court just recently held the mandatory Rule 16 Conference between the parties on July 29, 2021, a scheduling order is likely imminent, subjecting Defendants to discovery that is potentially needless and impermissible. Further, if the Writ is granted, all parties will have expended unnecessary efforts, attorney's fees, and have wasted judicial resources if a stay is not granted.

Plaintiffs will also not suffer any prejudice based upon any mere delay in an order on the Writ by the Nevada Supreme Court. Finally, the doctrine of issue preclusion is a purely legal question. Defendants have raised a substantial case on the merits on such serious legal question and have shown that the balance of equities weigh heavily in favor of granting the stay.

Therefore, this Court should issue a stay of all proceedings pending resolution of the Writ by the Nevada Supreme Court.

## II.

### **STATEMENT OF RELEVANT FACTS**

On February 22, 2021, Defendants filed a Partial Motion for Judgment on the Pleadings,

1 seeking to dismiss all of Nevada 5's causes of action based upon the Florida court's dismissal  
2 order that ruled, with prejudice, that Nevada 5 lacks standing to bring any claims based on the  
3 stock transaction at issue. *See* Partial Motion for Judgment on the Pleadings, already on file herein.  
4 The Florida court also ruled that the Stock Purchase Agreement additionally contained a merger  
5 and integration clause barring Nevada 5's fraudulent inducement claims. *Id.*

6 On March 30, 2021, an Order was entered denying Defendants' Partial Motion for  
7 Judgment on the Pleadings. *See* Notice of Entry of Order Denying Defendants' Partial Motion for  
8 Judgment on the Pleadings, already on file herein.

9 On July 6, 2021, Defendants filed the Writ with the Nevada Supreme Court. *See* Writ, a  
10 true and correct copy of which is attached hereto as **Exhibit A**. On July 30, 2021, the Nevada  
11 Supreme Court issued an Order Directing Answer, requiring Plaintiffs to file an answer within 28  
12 days of July 30, 2021. *See* Order Directing Answer, a true and correct copy of which is attached  
13 hereto as **Exhibit B**.

14 The Nevada Supreme Court's Order Directing Answer states, in pertinent part:

15 Having reviewed the petition, it appears that an answer may assist this court in  
16 resolving this matter. Therefore, real parties in interest, on behalf of respondents,  
17 shall have 28 days from the date of this order within which to file and serve an  
18 answer, including authorities, against issuance of the requested writ. We further  
direct real parties in interest to address the propriety of writ relief, in addition to  
addressing the merits of the petition, in their answer.

19 *Id.*

20 This Court held the mandatory Rule 16 Conference between the parties on July 29, 2021.  
21 *See* Register of Actions. As of the filing of this Motion, no scheduling order has been issued. *Id.*

### 22 **III.**

### 23 **LEGAL ARGUMENT**

#### 24 **A. Legal Standard.**

25 NRAP 8(a) requires that a stay pending a request for writ relief be first sought in the district  
26 court. NRAP 8(a); *see also Hansen v. Eighth Judicial Dist. Court ex rel. County of Clark*, 116  
27 Nev. 650, 657, 6 P.3d 982, 986 (2000) (NRAP 8 applies with equal force to writ petitions and to  
28

1 direct appeals). In deciding whether to issue a stay, the following factors must be considered: (1)  
2 whether the object of the appeal or writ petition will be defeated if the stay is denied; (2) whether  
3 the petitioner will suffer irreparable or serious injury if the stay is denied; (3) whether the real party  
4 in interest will suffer irreparable or serious injury if the stay is granted; and (4) whether the  
5 petitioner is likely to prevail on the merits in the appeal or writ petition. *See* NRAP 8(c); *Kress v.*  
6 *Corey*, 65 Nev. 1, 189 P.2d 352 (1948).

7 Because the balance of these factors favors Defendants, the action in this Court should be  
8 stayed pending a determination from the Nevada Supreme Court on Defendants' Petition for Writ  
9 Relief.

10 **B. The Purpose of the Writ Petition Will Be Defeated if a Stay is Denied Since the**  
11 **Litigation Will Continue Despite a Question as to the Sufficiency of the Second Amended**  
12 **Complaint.**

13 It is fundamental that Defendants should not be required to litigate a case that arguably  
14 should have been dismissed as a matter of law. If this matter were required to proceed forward,  
15 the Writ's purpose, to enforce the final ruling by the Florida court on the same underlying facts  
16 that dismissed Nevada 5's claims with prejudice, would be defeated.

17 It must be recognized that the law at issue in the Writ - the issue preclusion doctrine - is at  
18 issue: (1) because Nevada 5 should be prevented from re-litigating an issue that has already been  
19 decided by another court; (2) to prevent multiple litigation causing vexation and expense to the  
20 parties; (3) to not waste judicial resources; (4) to maintain consistency; (5) to avoid oppression or  
21 harassment of the adverse party; and (6) to lend stability to judgments, thus inspiring confidence  
22 in the judicial system.

23 Here, Defendants have challenged the sufficiency of Plaintiff's Second Amended  
24 Complaint pursuant to the issue preclusion doctrine. Although the Partial Motion for Judgment  
25 on the Pleadings was initially denied by this Court, Defendants have requested the Nevada  
26 Supreme Court to review via the Writ. The Writ raises a purely legal question and its purpose will  
27 undeniably be defeated if a stay is not granted. Because there is still a question regarding the  
28 sufficiency of the Second Amended Complaint in this case given the Florida court's ruling, Nevada

5 should not be allowed to continue litigating its causes of action. Allowing Plaintiffs to continue litigation as though there were no Writ pending would frustrate the purpose of the Writ and subject Defendants to needless discovery requests and proceedings in derogation of the Writ. Therefore, the purpose of the Writ would be frustrated if no stay is issued.

**C. Defendants Will Suffer Irreparable Harm if a Stay is Denied.**

Although irreparable or serious harm remains part of the stay analysis, this factor will not generally play a significant role in the decision whether to issue a stay. *Mikohn Gaming Corp. v. McCrea*, 120 Nev. 248, 253, 89 P.3d 36, 39 (2004).

However, without a stay, Defendants would suffer serious harm as it would be blatantly unfair to force Defendants to have to wade through expensive litigation when the outcome of the Writ would force dismissal of this matter in its entirety, with clear authority supporting Defendants' position. Without a stay, Defendants would be subjected to continued discovery, attorney's fees, the impending trial, and a potential judgment.

The Court's decision to deny the Partial Motion for Summary Judgment placed Defendants in a position of having to litigate claims for which Plaintiffs have no legally binding authority. Irreparable or serious harm will occur since Defendants cannot determine the value of Plaintiffs' case because of the uncertainty of whether their claims are legally supportable. A stay will allow an adjudication on the Writ to eliminate any such uncertainty.

Also, subjecting Defendants to potentially futile litigation would entail a significant waste of public resources and considerations of judicial efficiency would preclude such an approach in an ordinary case. Thus, the stay should be granted.

**D. Plaintiffs Will Not Suffer Irreparable Harm if the Stay is Granted.**

A mere delay in pursuing discovery and litigation normally does not constitute irreparable harm. *Mikohn Gaming*, 120 Nev. at 253, 89 P.3d at 39.

Plaintiffs will suffer no irreparable injury if this Court stays the action pending a determination on Defendants' Writ. Thus, Plaintiffs will actually benefit from a stay in this case until the Nevada Supreme Court either clarifies that issue preclusion does not apply or issues a

writ petition requiring dismissal of Plaintiffs' Second Amended Complaint. In either event, Plaintiffs will benefit by saving needless time and energy spent pursuing discovery.

**E. This Matter Involves a Serious Legal Question, the Balance of Equities Weigh Heavily in Favor of Granting the Stay, and Defendants Have Presented a Substantial Case on the Merits.**

Although, when moving for a stay pending an appeal or writ proceedings, a movant does not always have to show a probability of success on the merits, the movant must "present a substantial case on the merits when a serious legal question is involved and show that the balance of equities weighs heavily in favor of granting the stay." *Hansen v.* 116 Nev. at 659, 6 P.3d at 987 (citing *Ruiz v. Estelle*, 650 F.2d 555, 565 (5th Cir.1981)); *see also Lair v. Bullock*, 697 F.3d 1200, 1204 (9th Cir.2012) (the Ninth Circuit has held that the party seeking relief is not required "to show that it is more likely than not that they will win on the merits" and that the petitioner need only show "that there is a substantial case for relief on the merits"). The Ninth Circuit has further recognized that one interchangeable formulation of this standard is whether there are "serious legal questions raised." *Id.* "Serious questions are substantial, difficult and doubtful, as to make them a fair ground for litigation and thus for more deliberative investigation." *Republic of the Phil. v. Marcos*, 862 F.2d 1355, 1362 (9th Cir.1988).

Both the standard for writ relief and the underlying merits demonstrate that there is a great likelihood that the Writ will be granted. First, the Supreme Court has concluded that writ relief may be granted when the right to a dismissal is clear. *Smith v. Gabrielli*, 80 Nev. 390, 395 P.2d 325 (1964); *Dzack v. Marshall*, 80 Nev. 345, 393 P.2d 610 (1964). Additionally, the Nevada Supreme Court did not deny the Writ and ordered Plaintiffs to answer, demonstrating that the Nevada Supreme Court also views the merit in the Writ.

Here, Defendants' Writ challenges the Court's denial of Defendants' Partial Motion for Judgment on the Pleadings and raises a pure question of law based upon issue preclusion. Therefore, the Nevada Supreme Court has jurisdiction to hear the case and indeed has chosen to do so. Therefore, Defendants believe that it is likely that the Nevada Supreme Court will grant Defendants' Writ and require dismissal of all of Nevada 5's causes of action.



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IV.

**CONCLUSION**

Because the purpose of the Writ requesting review of this Court's denial of Defendants' Partial Motion for Judgment on the Pleadings would be defeated by allowing litigation to continue; because it is in the best interests of this Court and all parties to stay the proceedings until the Nevada Supreme Court has made a determination on the Writ; and because it is likely that the Nevada Supreme Court will grant the Writ, this Court should grant a stay in these proceedings until the Nevada Supreme Court has made a determination on Defendants' Writ.

Dated this 3<sup>rd</sup> day of August, 2021.

KAPLAN COTTNER

By: /s/ Kory L. Kaplan

KORY L. KAPLAN, ESQ.

Nevada Bar No. 13164

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Nevada Bar No. 12722

850 E. Bonneville Ave.

Las Vegas, Nevada 89101

*Attorneys for Defendants Manuel Iglesias  
and Edward Moffly*

**AFFIDAVIT OF KORY L. KAPLAN, ESQ., IN SUPPORT OF MOTION FOR STAY OF  
PROCEEDINGS ON ORDER SHORTENING TIME**

STATE OF NEVADA            )  
                                          ) SS:  
COUNTY OF CLARK         )

I, Kory L. Kaplan, Esq., declare as follows:

1. I am an attorney duly licensed to practice law in the state of Nevada and am a partner at the law firm of Kaplan Cottner.

2. I am the attorney for Defendants Manuel Iglesias and Edward Moffly ("Defendants") in Case No.: A-17-762664-B in and for Clark County, Nevada. I am over the age of eighteen (18) years old and competent to testify to the matters set forth herein.

3. I am submitting this Affidavit in support of Defendants' Motion for Stay of Proceedings on Order Shortening Time ("Motion"). I make this Affidavit based upon my personal knowledge of the facts and matters of this action, except as to those matters stated upon information and belief. As to those matters stated upon information and belief, I believe them to be true.

4. Pursuant to EDCR 2.26, there exists good cause and justification to hear the Motion on shortened time.

5. On or about March 30, 2021, an Order was entered by this Court denying Defendants' Partial Motion for Judgment on the Pleadings.

6. On July 6, 2021, Defendants filed a Writ of Prohibition, or in the alternative, Writ of Mandamus.

7. This Court held the mandatory Rule 16 Conference between the parties on July 29, 2021.

8. On July 30, 2021, the Nevada Supreme Court issued an Order Directing Answer.

9. Plaintiffs have 28 days from July 30, 2021 to respond to the Writ.

10. This Motion cannot await to be heard in the ordinary course as a scheduling order is likely imminent from this Court, subjecting Defendants to potentially needless and impermissible discovery.

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1 11. Accordingly, it is respectfully requested that the instant Motion be heard as soon as  
2 practicable so that the case is stayed pending issuance of this Court's scheduling order or that  
3 Defendants may move for a stay by the Nevada Supreme Court.

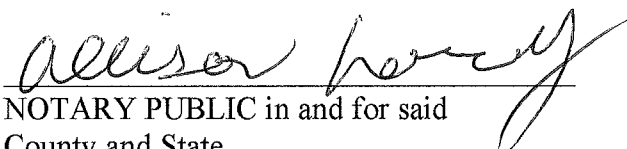
4 12. This Motion for an Order Shortening Time is made in good faith and not for  
5 purposes of delay.

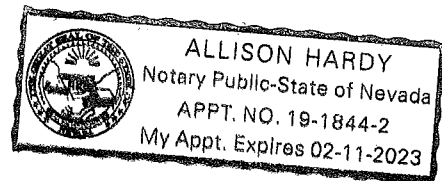
6 I declare under penalty of perjury that the foregoing is true and correct.

7 DATED this 3<sup>rd</sup> day of August, 2021.

8  
9   
KORY L. KAPLAN, ESQ.

10  
11 SUBSCRIBED AND SWORN to before me  
12 this 3<sup>rd</sup> day of August, 2021.

13   
14 NOTARY PUBLIC in and for said  
15 County and State



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**CERTIFICATE OF SERVICE**

I hereby certify that the *Defendants' Motion for Stay of Proceedings* was submitted electronically for filing and/or service with the Eighth Judicial District Court on the 3<sup>rd</sup> day of August, 2021. Electronic service of the foregoing document shall be made in accordance with the E-Service List as follows<sup>1</sup>:

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/s/ Sunny Southworth  
An Employee of Kaplan Cottner

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

“Exhibit A”

“Exhibit A”

**IN THE 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 L. ALLF, District  
Court Judge,

Respondents,

and

N5HYG, LLC, and NEVADA 5, INC.,

Real Parties in Interest.

Electronically Filed  
Jul 06 2021 01:06 p.m.  
Supreme Court No. Elizabeth A. Brown  
Clerk of Supreme Court  
Distr. Ct. Case No. A-17-762664-B  
Dept. XXVII

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**WRIT OF PROHIBITION, OR IN THE ALTERNATIVE, WRIT OF MANDAMUS**

---

Petitioners hereby state, by and through their counsel of record, that this Court's action is required as soon as possible as the District Court continues to entertain claims by Nevada 5, Inc. ("Nevada 5") even though a Florida court has already ruled that Nevada 5 has no standing to bring claims based on the same underlying facts and dismissed Nevada 5's claims there with prejudice through a final adjudication on the merits. Nevada has adopted the issue preclusion doctrine for this precise circumstance: to prevent parties from re-litigating an issue that has already been decided by another court; to prevent multiple litigation causing vexation and expense to the parties; wasting judicial resources; maintaining consistency; avoiding oppression or harassment of the adverse party; and to lend stability to judgments, thus inspiring confidence in the judicial system. Even though this is the Second Amended Complaint that only just recently passed the dismissal stage, if Petitioners are required to defend these claims until a final judgment is reached, the entire purpose of Nevada's adoption of the issue preclusion doctrine would be undermined. Such an outcome contradicts the purpose of the issue preclusion doctrine, which is to obtain finality by preventing a party from filing another suit that is based on the same issue of fact or law was actually litigated and determined by a valid and final judgment.

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*Attorneys for Petitioners*

## **NRAP 26.1 DISCLOSURE**

The undersigned counsel of record certifies that the following are persons and entities as described in NRAP 26.1(a), and must be disclosed. These representations are made in order that the judges of this Court may evaluate possible disqualifications or recusals. Here list names of all such persons and entities and identify their connection and interest:

For Petitioners Manuel Iglesias and Edward Moffly, as individuals, have no parent corporation and/or publicly held corporation(s) owning 10% or more of the corporate party's stock. The law firm of Kaplan Cottner has appeared for Petitioners in the district court litigation that is the subject of this Petition. Prior to Kaplan Cottner's representation of Petitioners, Petitioners were represented by Joel E. Tasca, Esq., Maria A. Gall, Esq., and Kyle A. Ewing, Esq. of the law firm of Ballard Spahr LLP, 1980 Festival Plaza Drive, Suite 900, Las Vegas, Nevada 89135. Also prior to Kaplan Cottner's representation of Petitioners, Petitioners were represented by Julian W. Friedman, Esq. of the law firm of Ballard Spahr LLP, 919 3<sup>rd</sup> Avenue, Floor 37, New York, New York 10022.

For Nevada 5, Inc. and N5HYG, LLC (collectively, the "Plaintiffs"), Ogonna M. Brown, Esq. of the law firm of Lewis Roca Rothgerber Christie LLP, 3993 Howard Hughes Parkway, Suite 600, Las Vegas Nevada 89169. Also for the Plaintiffs, G. Mark Albright, Esq. and D. Chris Albright, Esq. of the law firm of Albright, Stoddard,



Warnick & Albright, 801 South Rancho Drive, Suite D-4, Las Vegas, Nevada 89106.

Also for the Plaintiffs, E. Powell Miller, Esq. and Christopher Kaye, Esq. of the law firm of The Miller Law Firm, P.C., 950 West University Drive, Suite 300, Rochester, Michigan 48307.

Dated: July 6, 2021

KAPLAN COTTNER

By: /s/ Kory L. Kaplan  
KORY L. KAPLAN, ESQ.  
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850 E. Bonneville Ave.  
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## **TABLE OF CONTENTS**

<b>NRAP 26.1 DISCLOSURE.....</b>	<b>ii</b>
<b>TABLE OF AUTHORITIES.....</b>	<b>vi</b>
<b>I. INTRODUCTION .....</b>	<b>1</b>
<b>II. RELIEF SOUGHT .....</b>	<b>4</b>
<b>III. ISSUES PRESENTED .....</b>	<b>5</b>
<b>IV. FACTS NECESSARY FOR AN UNDERSTANDING OF THE ISSUES PRESENTED BY THE PETITION .....</b>	<b>5</b>
<b>V. STATEMENT OF REASONS WHY THE WRIT SHOULD ISSUE .....</b>	<b>10</b>
<b>A. Jurisdictional Statement.....</b>	<b>10</b>
<b>B. Standard of Review for a Writ of Mandamus and Writ of Prohibition .....</b>	<b>11</b>
<b>C. The District Court Erred When It Did Not Grant Petitioners’ Partial Motion for Judgment on the Pleadings.....</b>	<b>13</b>
<b>1. The issue of Nevada 5’s standing to maintain its claims has been raised in both this case and the Florida case .....</b>	<b>13</b>
<b>2. The Florida Order is a final ruling on the merits .....</b>	<b>16</b>
<b>3. Nevada 5 is the same plaintiff in both lawsuits .....</b>	<b>17</b>
<b>4. The issues were actually and necessarily litigated .....</b>	<b>19</b>
<b>5. The District Court further erred in holding that the Florida Court’s order is not binding .....</b>	<b>20</b>

<b>VII. CONCLUSION .....</b>	<b>22</b>
<b>CERTIFICATE OF COMPLIANCE .....</b>	<b>24</b>
<b>VERIFICATION .....</b>	<b>26</b>

## TABLE OF AUTHORITIES

### Cases

<i>Alcantara ex rel. Alcantara v. Wal-Mart Stores, Inc.</i> , 130 Nev. 252, 259, 321 P.3d 912, 916–17 (2014) .....	4, 19
<i>Archon Corp. v. Eighth Judicial Dist. Court in &amp; for Cty. of Clark</i> , 407 P.3d 702, 706 (Nev. 2017) .....	12
<i>Bankers Life &amp; Cas. Co., v. Holland</i> , 346 U.S. 379, 384, 74 S.Ct. 145, 98 L.Ed. 106 (1953) .....	12
<i>Blonder–Tongue Labs. v. Univ. of Ill. Found.</i> , 402 U.S. 313, 329, 91 S.Ct. 1434, 28 L.Ed.2d 788 (1971) .....	18
<i>Bravo-Fernandez v. United States</i> , 137 S. Ct. 352, 356, 196 L. Ed. 2d 242 (2016) .....	3, 18
<i>Clark v. Clark</i> , 80 Nev. 52, 56, 389 P.2d 69, 71 (1964) .....	3
<i>Club Vista Fin. Servs. v. Eighth Judicial Dist. Court</i> , 128 Nev. Adv. Op. 21, 276 P.3d 246, 249 (2012) .....	12–13
<i>Cote H. v. Eighth Jud. Dist. Ct.</i> , 124 Nev. 36, 39, 175 P.3d 906, 908 (2008) .....	11, 13
<i>Cutler v. Hayes</i> , 818 F.2d 879, 889 (D.C.Cir.1987) .....	22
<i>Dodge v. Cotter Corp.</i> , 203 F.3d 1190, 1198 (10th Cir.2000) .....	18
<i>Drady v. Hillsborough Cty. Aviation Auth.</i> , 193 So. 2d 201, 205 (Fla. 2d DCA 1966) .....	21
<i>Elk Grove Unified Sch. Dist. v. Newdow</i> , 542 U.S. 1, 11 (2004), <i>abrogated in part on other grounds in Lexmark Int'l, Inc. v. Static Control Components, Inc.</i> , 134 S.Ct. 1377, 1387 (2014) .....	15
<i>Exec. Mgmt. v. Ticor Title Ins. Co.</i> , 114 Nev. 823, 835, 963 P.2d 465, 473 (1998) .....	2, 9–10
<i>Ferreiro v. Phila. Indem. Ins. Co.</i> , 928 So. 2d 374, 377 (Fla. 3DCA 2006) .....	8
<i>Five Star Cap. Corp. v. Ruby</i> , 124 Nev. 1048, 1055, 194 P.3d 709, 713–14 (2008) .....	4, 14
<i>Frei ex rel. Litem v. Goodsell</i> , 129 Nev. 403, 406, 305 P.3d 70, 72 (2013) .....	20
<i>G.C. Wallace, Inc. v. Eighth Jud. Dist. Ct. of State, ex rel. Cty. of Clark</i> , 127 Nev. 701, 704, 262 P.3d 1135, 1137 (2011) .....	10
<i>Glass v. Select Portfolio Servicing, Inc.</i> , 466 P.3d 939 (Nev. 2020) .....	22
<i>Griffith v. Gonzales-Alpizar</i> , 132 Nev. Adv. Op. 38, 373 P.3d 86, 87 (2016) .....	13
<i>Hardee v. Gordon Thompson Chevrolet, Inc.</i> , 154 So. 2d 174, 178 (Fla. Dist. Ct. App. 1963) .....	21
<i>Harvey L. Lerer, Inc. v. Eighth Judicial District Court</i> , 111 Nev. 1165, 1168, 901 P.2d 643, 645 (1995) .....	11

<i>Helfstein v. Eighth Judicial Dist. Ct.</i> , 131 Nev. Adv. Op. 91, 362 P.3d 91, 94 (2015) .....	12
<i>In re Sandoval</i> , 126 Nev. 136, 139, 232 P.3d 422, 423 (2010) .....	17
<i>Int'l Game Tech., Inc. v. Second Judicial Dist. Court</i> , 122 Nev. 132, 142, 127 P.3d 1088, 1096 (2006) .....	12, 14
<i>Kirsch v. Traber</i> , 134 Nev. 163, 167, 414 P.3d 818, 822 (2018) .....	16
<i>LaForge v. State, Univ. &amp; Cmty. Coll. Sys. of Nevada</i> , 116 Nev. 415, 420, 997... 4 P.2d 130, 134 (2000) .....	3
<i>McDonald v. D.P. Alexander &amp; Las Vegas Boulevard, LLC</i> , 121 Nev. 812, 815, 123 P.3d 748, 750 (2005) .....	13
<i>Park Lake Res. Ltd. Liab. v. U.S. Dep't Of Agr.</i> , 378 F.3d 1132, 1138 (10th Cir. 2004) .....	18
<i>Sergio G. v. The Eighth Jud. Dist. Ct.</i> , 132 Nev. 975, 385 P.3d 617 (2016) .....	13
<i>Sil-Flo, Inc. v. SFHC, Inc.</i> , 917 F.2d 1507, 1521 (10th Cir.1990) .....	18
<i>Smith v. Eighth Jud. Dist. Ct. In &amp; For Cty. of Clark</i> , 113 Nev. 1343, 1344–45, 950 P.2d 280, 281 (1997) .....	12
<i>Smith v. St. Vil</i> , 714 So. 2d 603, 605 (Fla. Dist. Ct. App. 1998) .....	21
<i>Snooks v. District Court</i> , 112 Nev. 798, 919 P.2d 1064 (1996) .....	11
<i>South Fork Band, Te-Moak Tribe v. Dist. Ct.</i> , 116 Nev. 805, 811, 7 P.3d 455, 459 (2000) .....	11
<i>Standefer v. United States</i> , 447 U.S. 10, 23, n. 18, 100 S.Ct. 1999, 64 L.Ed.2d 689 (1980) .....	18
<i>State v. Eighth Judicial Dist. Court ex rel. County of Clark</i> , 111 Nev. 1023, 899 P.2d 1121 (1995) .....	11
<i>Stephens Media, LLC v. Eighth Judicial District Court</i> , 125 Nev. 849, 857, 221 P.3d 1240, 1246 (2009) .....	11
<i>Swanson Grp. Mfg. LLC v. Jewell</i> , 195 F. Supp. 3d 66, 73 (D.D.C. 2016) .....	22
<i>Thompson v. City of N. Las Vegas</i> , 108 Nev. 435, 439–40, 833 P.2d 1132, 1134–35 (1992) .....	14
<i>University &amp; Cmty. Coll. Sys. v. Sutton</i> , 120 Nev. 972, 984, 103 P.3d 8, 16 (2004) .....	13
<i>Univ. of Nev. v. Tarkanian</i> , 110 Nev. 581, 598, 879 P.2d 1180, 1191 (1994) holding modified on other grounds by <i>Ticor</i> , 114 Nev. 823, 963 P.2d 465) ....	20
<i>Veal v. Am. Home Mortg. Servicing, Inc. (In re Veal)</i> , 450 B.R. 897, 906 (9th Cir. BAP 2011) .....	15
<i>Warth v. Seldin</i> , 422 U.S. 490, 499, 95 S. Ct. 2197, 2205, 45 L. Ed. 2d 343 (1975) .....	15
<i>White v. City of Pasadena</i> , 671 F.3d 918, 926 (9th Cir.2012) .....	4
<i>Zalk-Josephs Co. v. Wells-Cargo</i> , 81 Nev. 163, 169 (1965) .....	17, 21

<b>Statutes</b>	
NRS 34.020(2) .....	10
NRS 34.160 .....	11
NRS 34.170 .....	10
NRS 34.320 .....	11-12
NRS 34.330 .....	10

#### **Other Authorities**

Restatement (Second) of Judgments § 13, cmt g. (Am. Law Inst. 1982) .....	16
Restatement (Second) of Judgments §§ 17, 27, at 148, 250 (1980) .....	3
Restatement (Second) of Judgments § 27 cmt. d (1982)) .....	20
Restatement (Second) of Judgments § 29 at 291 .....	18
18 C. Wright, A. Miller, & E. Cooper, <i>Federal Practice and Procedure</i> § 4416, p. 386 (2d ed. 2002) .....	3

#### **Rules**

Chapter 34 of the Nevada Revised Statutes .....	10
Fl. R. Civ. Pr. Rule 1.420(b) .....	21
NRAP 17(a) .....	1
NRAP 17(a)(9) .....	1
NRAP 17(a)(12) .....	1
NRAP 17(b) .....	1
NRAP 21(a)(3)(A) .....	1
NRCp 41(b) .....	17, 21

#### **Constitutional Provisions**

Nev. Const. art. 6, § 4(1). .....	11
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## **NRAP 21(a)(3)(A) ROUTING STATEMENT**

NRAP 21(a)(3)(A) states that a writ petition must state “whether the matter falls in one of the categories of cases retained by the Supreme Court pursuant to NRAP 17(a) or presumptively assigned to the Court of Appeals pursuant to NRAP 17(b).” This matter does not presumptively fall within a category of cases assigned to the Court of Appeals. This Petition should be retained by the Supreme Court because it originated in business court under NRAP 17(a)(9) and because it raises as a principal issue a question of statewide importance under NRAP 17(a)(12).

### **I. INTRODUCTION**

This Petition raises purely legal issues of statewide importance concerning a district court’s refusal to estop a party from relitigating an issue already actually and necessarily decided by the Florida Circuit Court (“Florida Court”) against that party. Here, the District Court committed clear error by denying Petitioners’ Partial Motion for Judgment on the Pleadings on the basis that the District Court lacks the ability to entertain Nevada 5’s claims as they have already been litigated and decided by the Florida Court against Nevada 5.

This case arises from Plaintiff N5HYG, LLC’s (“N5HYG”) purchase of stock in Hygea Holdings Corp. (“Hygea”). There is no dispute that the stock purchase agreement governing that purchase was between Hygea and N5HYG, and not Plaintiff Nevada 5, Inc. (“Nevada 5”); that the stock at issue was held at all times by

N5HYG, and never by Nevada 5; and that N5HYG was the stockholder of record, and not Nevada 5. Plaintiffs admit as much in their operative complaint. Despite these admissions that Nevada 5 neither held the stock nor purchased the stock, Nevada 5 alleges that it has standing to maintain claims arising from the stock purchase merely because it transferred the purchase monies to Hygea. Nevada 5, however, is issue precluded from maintaining this position.

The issue of Nevada 5's standing to maintain claims based on N5HYG's stock purchase has already been litigated and decided by the Florida Court against Nevada 5. In December 2020, the Florida Court ruled with prejudice that Nevada 5 lacks standing to bring any claims based on the stock transaction at issue. Accordingly, under the doctrine of issue preclusion, where "any issue that was actually and necessarily litigated in [case I] will be estopped from being relitigated in [case II]," Nevada 5 is estopped from asserting in this action that it has standing to maintain the claims arising from the stock transaction.<sup>1</sup> The District Court should have dismissed Nevada 5's claims as a matter of law.

However, the District Court erroneously denied Petitioners' Partial Motion for Judgment on the Pleadings in its entirety.<sup>2</sup> The District Court incorrectly held

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<sup>1</sup> *Exec. Mgmt. v. Ticor Title Ins. Co.*, 114 Nev. 823, 835, 963 P.2d 465, 473 (1998) (internal quotations omitted) (brackets in original).

<sup>2</sup> (PA Vol. XII, PET002806-15) (Citations to the Petitioner's Appendix are herein designated "PA").



that issue preclusion did not apply because: (1) the District 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; and (2) Nevada law applies in this case, rather than the Florida Omnibus Order's interpretation of Florida law as to standing and the integration clause of the Stock Purchase Agreement. The District Court committed clear error in its Order.

First, issue preclusion bars relitigation of an issue of fact or law raised and necessarily resolved by a prior judgment.<sup>3</sup> The determinative issue is that Nevada 5 is a party to the Florida action, and the Florida Court's ruling precludes Nevada 5 from bringing an action against any party for fraudulent misrepresentations of Hygea's financial performance and intent to go public resulting in Nevada 5's investment of \$30 million for 8.57% of Hygea's outstanding shares.

Additionally, issue preclusion applies "even though the causes of action are substantially different, if the same fact issue is presented."<sup>4</sup> Issue preclusion cannot be avoided by attempting to raise a new legal or factual argument that involves the

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<sup>3</sup> *Bravo-Fernandez v. United States*, 137 S. Ct. 352, 356, 196 L. Ed. 2d 242 (2016); see Restatement (Second) of Judgments §§ 17, 27, at 148, 250 (1980); 18 C. Wright, A. Miller, & E. Cooper, *Federal Practice and Procedure* § 4416, p. 386 (2d ed. 2002).

<sup>4</sup> *LaForge v. State, Univ. & Cmty. Coll. Sys. of Nevada*, 116 Nev. 415, 420, 997 P.2d 130, 134 (2000) (quoting *Clark v. Clark*, 80 Nev. 52, 56, 389 P.2d 69, 71 (1964)).

same ultimate issue previously decided in the prior case.<sup>5</sup> Issue preclusion applies to prevent relitigation of a specific issue that was decided in a previous suit between the parties, even if the second suit is based on different causes of action and different circumstances.<sup>6</sup> Thus, the fact that Nevada 5 did not have identical causes of action in this case and the Florida action is irrelevant as its claims are based on the same set of facts.

Finally, the District Court erred in basing its denial on Florida's interpretation of Florida law as opposed to Nevada's interpretation of Nevada law. Interpretation of each state's law is irrelevant, and further, Nevada 5 offered no support for its insinuation that the law in each jurisdiction is conflicting – because it cannot.

As such, issue preclusion applies and Nevada 5 cannot bring any claims against Petitioners based on the same set of facts that were dismissed with prejudice by the Florida Court.

## **II. RELIEF SOUGHT**

Petitioner asks this Honorable Court for a Writ of Prohibition, or in the alternative, Writ of Mandamus, directing that:

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<sup>5</sup> *Alcantara ex rel. Alcantara v. Wal-Mart Stores, Inc.*, 130 Nev. 252, 259, 321 P.3d 912, 916–17 (2014); *White v. City of Pasadena*, 671 F.3d 918, 926 (9th Cir.2012) (“Issue preclusion ... bars successive litigation of an issue of fact or law actually litigated and resolved in a valid court determination essential to the prior judgment, even if the issue recurs in the context of a different claim”) (citation omitted).

<sup>6</sup> *Five Star Cap. Corp. v. Ruby*, 124 Nev. 1048, 1055, 194 P.3d 709, 713–14 (2008).

1. The Eighth Judicial District Court and the Honorable Nancy L. Allf (collectively, the “District Court”) vacate its Order Denying Petitioners’ Partial Motion for Judgment on the Pleadings, entered on March 28, 2021; and

2. The District Court dismiss Nevada 5’s claims as it is issue precluded from asserting these claims.

### **III. ISSUES PRESENTED**

Did the District Court err when it denied Petitioners’ Partial Motion for Judgment on the Pleading based on issue preclusion?

### **IV. FACTS NECESSARY FOR AN UNDERSTANDING OF THE ISSUES PRESENTED BY THE PETITION**

In 2016, Hygea and Plaintiff N5HYG entered into a stock purchase agreement (the “SPA”).<sup>7</sup> Plaintiff Nevada 5 is not a party to the SPA.<sup>8</sup>

Indeed, pursuant to the SPA, Hygea agreed to sell 8.57% of its issued and outstanding shares to N5HYG, not Nevada 5, in exchange for \$30 million.<sup>9</sup> Among other things, the SPA contains an integration clause, which provides that the SPA “constitutes the entire agreement among the Parties with respect to the subject matter hereof and supersedes any and all prior discussions negotiations, proposal,

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<sup>7</sup> (PA Vol. II, PET000233-289).

<sup>8</sup> *Id.*

<sup>9</sup> *Id.*

undertakings, understandings, and agreements ... none of which shall ever be used as evidence of the Parties' intent.”<sup>10</sup>

Following the stock purchase, N5HYG became disenchanted with Hygea's performance, and so it and its parent company, Nevada 5, sued.<sup>11</sup> Plaintiffs originally brought this action against all of Hygea's former directors, which included not only current Petitioners Iglesias and Moffly, but also twelve other individuals.<sup>12</sup> Plaintiffs alleged that the directors' fraudulent misrepresentations of Hygea's financial performance and intent to go public resulted in N5HYG's investment of \$30 million for 8.57% of Hygea's outstanding shares and brought various claims for securities fraud, fraudulent inducement, and other fraud.<sup>13</sup>

Preliminary motion practice ensued.<sup>14</sup> Petitioners will not repeat the entire history of those motions here, only their relevant outcomes as follows:

- The Court dismissed all directors (other than Iglesias and Moffly) for lack of personal jurisdiction.<sup>15</sup>

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<sup>10</sup> (PA Vol. II, PET000282).

<sup>11</sup> (PA Vol. I, PET000001-30).

<sup>12</sup> *Id.*; *see also* (PA Vol. I, PET000122-160).

<sup>13</sup> (PA Vol. I, PET000122-160).

<sup>14</sup> *See, e.g.* (PA Vol. I, PET000031-121, 166-228).

<sup>15</sup> (PA Vol. VII, PET001504-23).

- The Court dismissed all claims based on claim preclusion and ruled that Plaintiffs are barred from bringing further claims based on the same facts.<sup>16</sup>

Following these dismissals, there were effectively two cases: (1) the one before the District Court against Iglesias and Moffly and (2) a “sister” action in Florida that Plaintiffs initiated against the 12 directors dismissed from this case for lack of personal jurisdiction. The Florida action, also brought by Nevada 5, was based on the same facts as this case: the directors’ fraudulent misrepresentations of Hygea’s financial performance and intent to go public resulted in an investment of \$30 million for 8.57% of Hygea’s outstanding shares.<sup>17</sup>

The directors in the Florida case moved to dismiss that action, arguing that Nevada 5 lacks standing to bring any claims based on N5HYG’s purchase of Hygea stock. The Florida Court agreed. On December 9, 2020, the Honorable Judge William Thomas dismissed Nevada 5’s Florida Complaint in its entirety *with prejudice*, holding that Nevada 5 lacks standing to assert its claims based on the stock transaction, because N5HYG was the stockholder, not Nevada 5.<sup>18</sup> The Florida Court additionally held that the integration clause in the SPA defeats Nevada

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<sup>16</sup> (PA Vol. X, PET002333-2352).

<sup>17</sup> (PA Vol. XI, PET002585-2622).

<sup>18</sup> (PA Vol. XI, PET002623-2629).

5's claims for "fraud for alleged oral misrepresentations that are adequately covered or expressly contradicted in a later written contract."<sup>19</sup>

The Florida Court's findings are more fully, in relevant part, as follows:

The Plaintiff asserts to satisfy the requirements of standing, it must show that a case and controversy exists between the Plaintiff and Defendants, and that such a case and controversy continues from the commencement to the conclusion of the litigation. *Ferreiro v. Phila. Indem. Ins. Co.* 928 So. 2d 374, 377 (Fla. 3DCA 2006). To this end, Plaintiff argues that it, after relying on alleged false representations from Defendants, invested \$30 million in HYGEA. Plaintiff argues that it is not asserting a claim based upon a breach of the SPA on behalf of N5HYG, it is asserting claims based on its \$30 million investment based upon false pretenses. Plaintiff suggest that the fact that it paid \$30 million for the shares is the relevant inquiry in regard to standing. This Court disagrees. It is true that the Plaintiff transferred the money to HYGEA. However, Plaintiff created a separate entity to actually purchase, own and hold the shares pursuant to a SPA. Therefore, this Court concludes that Plaintiff, Nevada 5, does not have standing to maintain this action, which is based entirely upon a purportedly fraudulently induced purchase of HYGEA holding stock by Nevada 5's subsidiary, N5HYG. A subsidiary is a separate legal entity from the parent company. It was the subsidiary who agreed to purchase HYGEA common stock for \$30 million under specified conditions. Those specified conditions were outlined in a SPA signed by HYGEA and N5HYG. It is N5HYG not Nevada 5 who is the proper party to request adjudication of the issues identified in the Second Amended Complaint. Having established that N5HYG is the party with standing to bring this action, the Court will now briefly discuss the SPA. The integration clause in the "SPA" defeats Nevada 5's claims for fraudulent inducement. The Plaintiff cannot recover in fraud for alleged oral misrepresentations that are adequately covered or expressly contradicted in a later written contract. In the instant case, the alleged misrepresentations consist of alleged statements about HYGEA Holdings earnings and other aspects of HYGEA's financial conditions. Yet, the "SPA" contains a specific set of representations and warranties

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<sup>19</sup> (PA Vol. XI, PET002628).

under the heading “Financial Matters” in which HYGEA Holdings expressly represented the truth and accuracy of its financial statements, balance sheets and earnings reports. Because the alleged misrepresentations claimed by Nevada 5 concern the precise topic of express representations and warranties in the “SPA”, the “SPA’s”, integration clause bars Nevada 5’s claims arising from these alleged misrepresentations. This is because the contract fully addressed the alleged representations that allegedly caused the fraudulent inducement.

...

**ORDERED AND ADJUDGED** the Defendants’ motion to dismiss based upon Plaintiff’s lack of standing is granted with prejudice. Additionally, the “SPA” merger and integration clause would bar Plaintiff’s fraudulent inducement claims.<sup>20</sup>

As set forth further below, the Florida Court’s rulings against Nevada 5 preclude Nevada 5 from asserting in this action that it has standing to maintain claims arising from the stock transaction to which N5HYG, not Nevada 5, was a party, and even if Nevada 5 had standing, the SPA’s integration clause defeats its fraud-based claims.<sup>21</sup> Accordingly, under the doctrine of issue preclusion, where “any issue that was actually and necessarily litigated in [case I] will be estopped from being relitigated in [case II],” Nevada 5 is estopped from asserting in this action that it has standing to maintain the claims arising from the stock transaction.<sup>22</sup>

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<sup>20</sup> (PA Vol. XI, PET002626-2629).

<sup>21</sup> *Id.*

<sup>22</sup> *Exec. Mgmt.*, 114 Nev. at 835, 963 P.2d at 473 (internal quotations omitted) (brackets in original).

The Florida Court's ruling is fatal to Nevada 5's case, and the District Court was required to dismiss Nevada 5 and its claims in their entirety.

## **V. STATEMENT OF REASONS WHY THE WRIT SHOULD ISSUE**

### **A. Jurisdictional Statement**

Chapter 34 of the Nevada Revised Statutes governs the issuance of extraordinary writs by courts of competent jurisdiction. Nevada law specifically authorizes this Court, by virtue of its original jurisdiction, to issue writs of certiorari, mandamus and/or prohibition when no plain, speedy and adequate remedy exists in the ordinary course of the law.<sup>23</sup>

Here, an appeal is not an adequate and speedy legal remedy given the infancy of the underlying litigation<sup>24</sup> and considerations of sound judicial administration.<sup>25</sup> In the absence of intervention by this Court, Petitioners will be improperly forced to defend themselves against claims that Nevada 5 has no standing to assert.

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<sup>23</sup> See NRS 34.020(2); NRS 34.170; NRS 34.330.

<sup>24</sup> Even though this case was initiated in 2017, it is still in its infancy as no scheduling order has even been issued yet. Due to significant motion practice, multiple amendments to the complaint, and Hygea's filing of bankruptcy, this case is very much still in its infancy.

<sup>25</sup> *G.C. Wallace, Inc. v. Eighth Jud. Dist. Ct. of State, ex rel. Cty. of Clark*, 127 Nev. 701, 704, 262 P.3d 1135, 1137 (2011).



For the reasons set forth in more detail below, the Court should issue a peremptory writ of prohibition and/or mandamus or other appropriate relief prohibiting the District Court from entertaining any claims made by Nevada 5.

## **B. Standard of Review for a Writ of Mandamus and Writ of Prohibition**

The Court may issue a writ of mandamus to “compel the performance of an act which the law especially enjoins as a duty resulting from an office.”<sup>26</sup> Additionally, this Court may issue a writ of mandamus to “control a manifest abuse or an arbitrary or capricious exercise of discretion.”<sup>27</sup>

Conversely, “[t]he writ of prohibition is the counterpart of the writ of mandate.”<sup>28</sup> A writ of prohibition “arrests the proceedings of any tribunal . . . when such proceedings are without or in excess of the jurisdiction of such tribunal.”<sup>29</sup>

In exercising its power to entertain extraordinary writ review of district court decisions,<sup>30</sup> this Court has not confined itself to policing jurisdictional excesses and

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<sup>26</sup> NRS 34.160; *Cote H. v. Eighth Jud. Dist. Ct.*, 124 Nev. 36, 39, 175 P.3d 906, 908 (2008).

<sup>27</sup> *Cote H.*, 124 Nev. at 39, 175 P.3d at 908.

<sup>28</sup> NRS 34.320.

<sup>29</sup> *Id.*; *Stephens Media, LLC v. Eighth Judicial District Court*, 125 Nev. 849, 857, 221 P.3d 1240, 1246 (2009); *Harvey L. Lerer, Inc. v. Eighth Judicial District Court*, 111 Nev. 1165, 1168, 901 P.2d 643, 645 (1995); *see State v. Eighth Judicial Dist. Court ex rel. County of Clark*, 111 Nev. 1023, 899 P.2d 1121 (1995); *see also South Fork Band, Te-Moak Tribe v. Dist. Ct.*, 116 Nev. 805, 811, 7 P.3d 455, 459 (2000); *see also Snooks v. District Court*, 112 Nev. 798, 919 P.2d 1064 (1996).

<sup>30</sup> *See Nev. Const. art. 6, § 4(1).*

refusals.<sup>31</sup> This Court has also granted writ relief where the district court judge has committed “clear and indisputable” legal error,<sup>32</sup> or an “arbitrary or capricious” abuse of discretion.<sup>33</sup>

“In the context of writ petitions, [the Court] review[s] district court orders for an arbitrary or capricious abuse of discretion.”<sup>34</sup> “A writ of prohibition may be warranted when a district court acts without or in excess of its jurisdiction.”<sup>35</sup> “[The Court] review[s] questions of law,” such as the interpretation of Nevada’s statutes and whether a particular statute precludes subject matter jurisdiction under Nevada common law, “de novo, even in the context of writ petitions.”<sup>36</sup> Here, the legal

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<sup>31</sup> *Archon Corp. v. Eighth Judicial Dist. Court in & for Cty. of Clark*, 407 P.3d 702, 706 (Nev. 2017).

<sup>32</sup> *Bankers Life & Cas. Co., v. Holland*, 346 U.S. 379, 384, 74 S.Ct. 145, 98 L.Ed. 106 (1953); *see Smith v. Eighth Jud. Dist. Ct. In & For Cty. of Clark*, 113 Nev. 1343, 1344–45, 950 P.2d 280, 281 (1997) (writ relief may be granted when dismissal is required “pursuant to clear authority”).

<sup>33</sup> *Int’l Game Tech., Inc. v. Second Judicial Dist. Court*, 122 Nev. 132, 142, 127 P.3d 1088, 1096 (2006).

<sup>34</sup> *Helfstein v. Eighth Judicial Dist. Ct.*, 131 Nev. Adv. Op. 91, 362 P.3d 91, 94 (2015).

<sup>35</sup> *Id.* (citing NRS 34.320; *Club Vista Fin. Servs. v. Eighth Judicial Dist. Court*, 128 Nev. Adv. Op. 21, 276 P.3d 246, 249 (2012) (“A writ of prohibition may issue to arrest the proceedings of a district court exercising its judicial functions when such proceedings are in excess of the jurisdiction of the district court.”))

<sup>36</sup> *Id.*; *see also McDonald v. D.P. Alexander & Las Vegas Boulevard, LLC*, 121 Nev. 812, 815, 123 P.3d 748, 750 (2005) (“Statutory interpretation is a question of law.”); *Griffith v. Gonzales-Alpizar*, 132 Nev. Adv. Op. 38, 373 P.3d 86, 87 (2016) (“Subject matter jurisdiction is a question of law subject to de novo review.”); *Cote H.*, 124 Nev. at 39, 175 P.3d at 908 (noting that this Court has complete discretion

conclusions, not the facts, are disputed, so this Court should exercise de novo review.<sup>37</sup>

This Court may exercise its discretion to consider writ petitions when the district court is obligated to dismiss an action pursuant to clear authority under a statute or rule or when an important issue of law needs clarification and this Court's review would serve considerations of public policy or sound judicial economy and administration.<sup>38</sup>

### **C. The District Court Erred When It Did Not Grant Petitioners' Partial Motion for Judgment on the Pleadings.**

Issue preclusion, also called collateral estoppel, prevents parties from re-litigating an issue that has already been decided against that party by another court.<sup>39</sup>

The following factors are necessary for application of issue preclusion:

- (1) the issue decided in the prior litigation must be identical to the issue presented in the current action;

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to determine whether to consider a petition for a writ of mandamus or prohibition and that even when an arguably adequate remedy exists, this Court may exercise its discretion “under circumstances of urgency or strong necessity, or when an important issue of law needs clarification and sound judicial economy and administration favor the granting of the petition”) (internal quotation marks omitted).

<sup>37</sup> *Sergio G. v. The Eighth Jud. Dist. Ct.*, 132 Nev. 975, 385 P.3d 617 (2016); *University & Cmty. Coll. Sys. v. Sutton*, 120 Nev. 972, 984, 103 P.3d 8, 16 (2004) (reviewing de novo whether issue preclusion is available).

<sup>38</sup> *Int'l Game Tech.*, 122 Nev. at 142, 127 P.3d at 1096.

<sup>39</sup> *Thompson v. City of N. Las Vegas*, 108 Nev. 435, 439–40, 833 P.2d 1132, 1134–35 (1992).

- (2) the initial ruling must have been on the merits and have become final;
- (3) the party against whom the judgment is asserted must have been a party or in privity with a party to the prior litigation; and
- (4) the issue was actually and necessarily litigated.<sup>40</sup>

As discussed below, these factors are all met with respect to the issue of Nevada 5's standing and/or ability to bring fraud-based claims.

***1. The issue of Nevada 5's standing to maintain its claims has been raised in both this case and the Florida case.***

First, the Court must address whether “the issue decided in the prior litigation [is] identical to the issue presented in the current action.” It is.

Standing is “a threshold question” required in every case that determines whether the court may even entertain the proceeding.<sup>41</sup> For a court to have jurisdiction over the case, “the party bringing the suit must establish standing.”<sup>42</sup>

In the Florida Action, the Court there held that “Nevada 5 does not have standing to maintain this action, which is based entirely on a purportedly fraudulently induced purchase of Hygea Holdings stock by Nevada 5's subsidiary,

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<sup>40</sup> *Five Star Capital*, 194 P.3d 713.

<sup>41</sup> *Veal v. Am. Home Mortg. Servicing, Inc. (In re Veal)*, 450 B.R. 897, 906 (9th Cir. BAP 2011) (quoting *Warth v. Seldin*, 422 U.S. 490, 499, 95 S. Ct. 2197, 2205, 45 L. Ed. 2d 343 (1975)).

<sup>42</sup> *Elk Grove Unified Sch. Dist. v. Newdow*, 542 U.S. 1, 11 (2004), *abrogated in part on other grounds in Lexmark Int'l, Inc. v. Static Control Components, Inc.*, 134 S.Ct. 1377, 1387 (2014).

N5HYG.”<sup>43</sup> The Court also held that Nevada 5 is further barred from bringing its fraud claims based on N5HYG’s stock purchase because:

The integration clause in the “SPA” defeats Nevada 5’s claims for fraudulent inducement. The Plaintiff cannot recover in fraud for alleged oral misrepresentations that are adequately covered or expressly contradicted in a later written contract. In the instant case, the alleged misrepresentations consist of alleged statements about HYGEA Holdings earnings and other aspects of HYGEA’s financial conditions. Yet, the “SPA” contains a specific set of representations and warranties under the heading “Financial Matters” in which HYGEA Holdings expressly represented the truth and accuracy of its financial statements, balance sheets and earnings reports. Because the alleged misrepresentations claimed by Nevada 5 concern the precise topic of express representations and warranties in the “SPA”, the “SPA’s”, integration clause bars Nevada 5’s claims arising from these alleged misrepresentations. This is because the contract fully addressed the alleged representations that allegedly caused the fraudulent inducement.<sup>44</sup>

The Florida Court, in its Omnibus Order, held that Nevada 5 lacked standing to maintain any claims arising out of N5HYG’s stock purchase, and also that any claims based on fraud are barred by the stock purchase agreement’s integration clause. Iglesias and Moffly raise the same issues of standing and integration here, based on the exact same stock transaction between Hygea and N5HYG and the exact same stock purchase agreement. The Florida Court’s decision on these issues precludes Nevada 5 from relitigating the issues in this case.

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<sup>43</sup> (PA Vol. XI, PET002627).

<sup>44</sup> (PA Vol. XI, PET002628).

## ***2. The Florida Order is a final ruling on the merits.***

Second, the Court must decide whether the Florida Order, issued in response to the defendants' Rule 12(b) motions, was "on the merits and [has] become final." It was.

Nevada follows the Restatement in defining "final judgment," which recognizes that a judgment is final if the court intended to definitively resolve an issue litigated between parties.<sup>45</sup> The Florida Order was *with prejudice*, indicating that the issues decided therein, including that of standing and integration, was final. Indeed, the face of the Florida Order even states that it is a final judgment.

The Florida Order was also on the merits, in response to a Rule 12(b)(6) motion.<sup>46</sup> As NRCP 41(b) states: "Unless the court in its order for dismissal otherwise specifies, a dismissal under this subdivision and *any dismissal not provided for in this rule*, other than a dismissal for lack of jurisdiction, for improper venue, or for failure to join a party under Rule 19, *operates as an adjudication upon the merits.*" (emphasis added). Rule 41(b)'s mandate was echoed in *Zalk-Josephs Co. v. Wells-Cargo*, 81 Nev. 163, 169 (1965), in which the Nevada Supreme Court

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<sup>45</sup> *Kirsch v. Traber*, 134 Nev. 163, 167, 414 P.3d 818, 822 (2018); Restatement (Second) of Judgments § 13, cmt g. (Am. Law Inst. 1982) ("The test of finality ... is whether the conclusion in question is procedurally definite and not whether the court might have had doubts in reaching the decision.")

<sup>46</sup> (PA Vol. XI, PET002623-2629).

held that a dismissal with prejudice pursuant to Rule 12(b) is a judgment on the merits.

**3. Nevada 5 is the same plaintiff in both lawsuits.**

Third, the Court must decide whether Nevada 5, the party against whom the judgment is asserted, was a party or in privity with a party to the prior litigation.<sup>47</sup> It was. Here, Petitioners seek issue preclusion against Nevada 5, which is the same party against whom the judgment and findings on standing were issued in the Florida Action.

The doctrine of issue preclusion bars relitigation of an issue of fact or law raised and necessarily resolved by a prior judgment.<sup>48</sup> The preclusion doctrine is premised on “an underlying confidence that the result achieved in the initial litigation was substantially correct.”<sup>49</sup>

Although we require that “the party against whom [issue preclusion] is invoked [be] a party, or in privity with a party, to the prior adjudication,” *Dodge v. Cotter Corp.*, 203 F.3d 1190, 1198 (10th Cir.2000), ***issue preclusion can be invoked by any third party.*** See *Sil-Flo, Inc. v. SFHC, Inc.*, 917 F.2d 1507, 1521 (10th Cir.1990) (allowing new defendant to assert issue preclusion against plaintiff that brought two claims on essentially the same issue); Restatement (Second) of Judgments § 29 at 291 (“***A party precluded from relitigating an issue***

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<sup>47</sup> *In re Sandoval*, 126 Nev. 136, 139, 232 P.3d 422, 423 (2010) (citations omitted).

<sup>48</sup> *Bravo-Fernandez*, 137 S. Ct. at 356, 196 L. Ed. 2d 242; see Restatement (Second) of Judgments §§ 17, 27, at 148, 250; 18 C. Wright, A. Miller, & E. Cooper, *Federal Practice and Procedure* § 4416, p. 38.

<sup>49</sup> *Standefer v. United States*, 447 U.S. 10, 23, n. 18, 100 S.Ct. 1999, 64 L.Ed.2d 689 (1980).

*with an opposing party ... is also precluded from doing so with another person....”). To decide otherwise would be to “[p]ermit[ ] repeated litigation of the same issue as long as the supply of unrelated defendants holds out,” a practice that would “reflect[ ] either the aura of the gaming table or a lack of discipline and of disinterestedness on the part of the lower courts.”* *Blonder–Tongue Labs. v. Univ. of Ill. Found.*, 402 U.S. 313, 329, 91 S.Ct. 1434, 28 L.Ed.2d 788 (1971) (internal quotation marks omitted).<sup>50</sup>

Thus, it is irrelevant that Petitioners are not also defendants in the Florida action. The determinative issue is that Nevada 5 is a party to the Florida action, and the Florida Court’s ruling precludes Nevada 5 from bringing an action against any party for fraudulent misrepresentations of Hygea’s financial performance and intent to go public resulting in Nevada 5’s investment of \$30 million for 8.57% of Hygea’s outstanding shares. Nevada 5 has no standing to make these claims against anybody, including but not limited to Petitioners.

Therefore, the District Court incorrectly held that that issue preclusion did not apply because “the Florida Action involved different plaintiffs in that N5HYG was not a plaintiff and entirely different defendants and different causes of action.”<sup>51</sup> Nevada 5 again cannot maintain claims against Petitioners or anyone based on the

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<sup>50</sup> *Park Lake Res. Ltd. Liab. v. U.S. Dep’t Of Agr.*, 378 F.3d 1132, 1138 (10th Cir. 2004) (emphasis added).

<sup>51</sup> (PA Vol. XII, PET002811).



same set of facts as Nevada 5 lacks standing and the SPA contains a fully integrated clause.<sup>52</sup>

***4. The issues were actually and necessarily litigated.***

Fourth, the Court must decide whether the issue of Nevada 5's standing was actually and necessarily litigated in the Florida Action.<sup>53</sup> It was.

“When an issue is properly raised ... and is submitted for determination, ... the issue is actually litigated.”<sup>54</sup> Whether the issue was necessarily litigated turns on whether “the common issue was ... necessary to the judgment in the earlier suit.”<sup>55</sup>

In the Florida Action, the director-defendants there filed motions to dismiss, arguing that Nevada 5 lacked standing to maintain its claims based on N5HYG's purchase of Hygea stock.<sup>56</sup> Each of the motions had oppositions filed, replies filed, and oral argument.<sup>57</sup> The motions were submitted for decision. The Florida Court, in turn, decided the motions based on the issues of standing, primarily, and also the SPA's integration clause. After finding that Nevada 5 lacked standing, and also that

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<sup>52</sup> (PA Vol. XI, PET002623-2629).

<sup>53</sup> *Alcantara ex rel. Alcantara v. Wal-Mart Stores, Inc.*, 130 Nev. 252, 262, 321 P.3d 912, 918 (2014).

<sup>54</sup> *Frei ex rel. Litem v. Goodsell*, 129 Nev. 403, 406, 305 P.3d 70, 72 (2013) (quoting Restatement (Second) of Judgments § 27 cmt. d (1982)).

<sup>55</sup> *Id.* (quoting *Univ. of Nev. v. Tarkanian*, 110 Nev. 581, 598, 879 P.2d 1180, 1191 (1994) *holding modified on other grounds by Tigor*, 114 Nev. 823, 963 P.2d 465).

<sup>56</sup> (PA Vol. XI, PET002623-2629).

<sup>57</sup> *Id.*

the integration clause precluded any fraud-based claims, the Florida Court dismissed Nevada 5's claims *in toto* and with prejudice.<sup>58</sup> As such, the issues of standing and integration were actually and necessarily litigated in the Florida Action.

***5. The District Court further erred in holding that the Florida Court's Order is not binding.***

In its Order Denying Petitioners' Partial Motion for Judgment on the Pleadings, the District Court incorrectly held 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."<sup>59</sup>

First, the Florida Court's ruling was on the merits, in response to a Rule 12(b)(6) motion. As NRCP 41(b) states, "Unless the court in its order for dismissal otherwise specifies, a dismissal under this subdivision and any dismissal not provided for in this rule, other than a dismissal for lack of jurisdiction, for improper venue, or for failure to join a party under Rule 19, operates as an adjudication upon the merits." Rule 41(b)'s mandate was echoed in *Zalk-Josephs*, 81 Nev. at 169, in which the Nevada Supreme Court held that a dismissal with prejudice pursuant to Rule 12(b) is a judgment on the merits.

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<sup>58</sup> *Id.*

<sup>59</sup> (PA Vol. XII, PET002811).

Florida law holds the same.<sup>60</sup> Because the issue of standing was actually and necessarily litigated, it was a decision on the merits. “Issue preclusion applies because the issue of SPS’s standing 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 are clearly in privity.”<sup>61</sup>

The issue – standing – was actually litigated and adjudicated on the merits. It was the same issue before the District Court and Nevada 5 did not present any authority from Florida demonstrating that Florida follows different law with respect to standing. The Florida Court dismissed Nevada 5’s claims with prejudice, and a

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<sup>60</sup> *Drady v. Hillsborough Cty. Aviation Auth.*, 193 So. 2d 201, 205 (Fla. 2d DCA 1966) (“The dismissal of a cause of action can either be with prejudice, same being an adjudication on the merits, or without prejudice, which is not an adjudication on the merits and is no bar to a subsequent suit on the same cause of action.”); *Hardee v. Gordon Thompson Chevrolet, Inc.*, 154 So. 2d 174, 178 (Fla. Dist. Ct. App. 1963) (An order finally dismissing a complaint for failure to state a cause of action is an adjudication on the merits); *Smith v. St. Vil*, 714 So. 2d 603, 605 (Fla. Dist. Ct. App. 1998) (same); Fl. R. Civ. Pr. Rule 1.420(b) (A dismissal of an action or claim for failure to comply with the rules or any order of court is an adjudication on the merits unless the dismissal otherwise specifies).

<sup>61</sup> *Glass v. Select Portfolio Servicing, Inc.*, 466 P.3d 939 (Nev. 2020) (quoting *LaForge*, 116 Nev. at 419, 997 P.2d at 133. See *Swanson Grp. Mfg. LLC v. Jewell*, 195 F. Supp. 3d 66, 73 (D.D.C. 2016) (court dismissed plaintiffs’ previous case based on standing, and due to issue preclusion, the plaintiffs were precluded from relitigating their standing again). See also *Cutler v. Hayes*, 818 F.2d 879, 889 (D.C.Cir.1987) (“[p]rinciples of collateral estoppel clearly apply to standing determinations” and a key inquiry “is whether the issue presented in the two proceedings is substantially the same.”) (internal quotation marks and footnote citation omitted).

dismissal with prejudice is an adjudication on the merits for purposes of res judicata. The Florida court did not specify that the ruling was not on the merits, and therefore the ruling is on the merits pursuant to both Nevada and Florida law.

Moreover, Nevada 5 argued that Nevada law is different from Florida law as Nevada law permits fraudulent inducement claims to proceed despite integration clauses.<sup>62</sup> However, Florida law holds the same, and Nevada 5 disingenuously implied that Florida's law is different than Nevada's without providing any authority (because it cannot). Nevertheless, the Florida Court still determined that Nevada 5 was precluded from asserting claims based on the same set of facts as this case, regardless of choice of law.<sup>63</sup>

## **VI. CONCLUSION**

For the foregoing reasons, this Court should issue a writ of prohibition instructing the District Court to abstain from entertaining Nevada 5's claims against Petitioners beyond taking the steps necessary to dismiss the case or, in the alternative, a writ of mandamus compelling the District Court to dismiss Nevada 5's

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<sup>62</sup> (PA Vol. XI, PET002637).

<sup>63</sup> (PA Vol. XI, PET002623-2629).

claims.

Dated: July 6, 2021

KAPLAN COTTNER

By: /s/ Kory L. Kaplan

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## **CERTIFICATE OF COMPLIANCE**

1. I certify that this brief complies with the formatting requirements of NRAP 32(a)(4) and the typeface requirements of NRAP 32(a)(5) and the type style requirements of NRAP 32(a)(6) because this brief has been prepared in a proportionally spaced typeface using Microsoft Word with 14-point, double spaced Times New Roman font.

2. I further certify that this brief complies with the page-or type-volume limitations of NRAP 32(a)(7) because, excluding the parts of the brief exempted by NRAP 32(a)(7)(C), it is proportionately spaced, has a typeface of 14 points or more and contains 6,936 words.

3. Finally, I hereby certify that I have read this brief, and to the best of my knowledge, information, and belief, it is not frivolous or interposed for any improper purpose. I further certify that this brief complies with all applicable Nevada Rules of Appellate Procedure, in particular NRAP 28(e)(1), which requires every assertion in the brief regarding matters in the record to be supported by a reference to the page and volume number, if any, of the transcript or appendix where the matter relied on is to be found. I understand that I may be subject to sanctions in the event that the accompanying brief is not in conformity with the

requirements of the Nevada Rules of Appellate Procedure.

Dated: July 6, 2021

KAPLAN COTTNER

By: /s/ Kory L. Kaplan  
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## VERIFICATION

STATE OF NEVADA     )  
                                  ) SS:  
COUNTY OF CLARK    )

I, Kory L. Kaplan, declare:

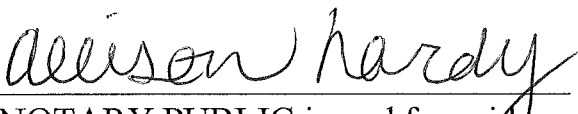
I am counsel for Petitioner named in the foregoing Petition and know the contents thereof; the pleading is true to my own knowledge, except as to those matters stated on information and belief, and as to such matters, I believe them to be true. This verification is made pursuant to NRAP 21(a)(5). Pursuant to NRS 15.010(1) and NRAP 21(a)(5), Petitioners are absent from the county where I reside and the facts within the foregoing Petition are within my knowledge.

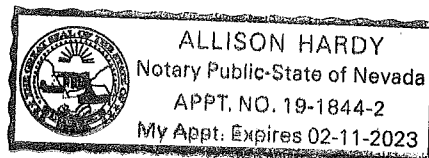
I declare under penalty of perjury that the foregoing is true and correct.

Executed June 9, 2021

  
\_\_\_\_\_  
KORY L. KAPLAN, ESQ.

SUBSCRIBED AND SWORN to before me  
this 9th day of June, 2021.

  
\_\_\_\_\_  
NOTARY PUBLIC in and for said  
County and State





## CERTIFICATE OF SERVICE

I hereby certify that this ***PETITION UNDER NRAP 21 & 27 FOR WRIT OF PROHIBITION, OR IN THE ALTERNATIVE, WRIT OF MANDAMUS*** was filed electronically with the Nevada Supreme Court on July 6, 2021, and served electronically on participants registered with the Eflex system; any parties listed below not registered with Eflex will be mailed a copy of the foregoing via regular U.S. Mail:

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The Honorable Nancy L. Allf  
Eighth Judicial District Court  
200 Lewis Avenue  
Las Vegas, NV 89155

/s/ Sunny Southworth  
\_\_\_\_\_  
An employee of Kaplan Cottner

“Exhibit B”

“Exhibit B”

IN THE SUPREME COURT OF THE STATE OF NEVADA

MANUEL IGLESIAS; AND EDWARD  
MOFFLY,  
Petitioners,

vs.

THE EIGHTH JUDICIAL DISTRICT  
COURT OF THE STATE OF NEVADA,  
IN AND FOR THE COUNTY OF  
CLARK; AND THE HONORABLE  
NANCY L. ALLF, DISTRICT JUDGE,  
Respondents,  
and  
N5HYG, LLC; AND NEVADA 5, INC.,  
Real Parties in Interest.

No. 83157

FILED


JUL 30 2021

ELIZABETH A. BROWN  
CLERK OF SUPREME COURT  
BY   
DEPUTY CLERK

*ORDER DIRECTING ANSWER*

This original petition for a writ of prohibition or mandamus challenges a district court order denying a motion for partial judgment on the pleadings. Having reviewed the petition, it appears that an answer may assist this court in resolving this matter. Therefore, real parties in interest, on behalf of respondents, shall have 28 days from the date of this order within which to file and serve an answer, including authorities, against issuance of the requested writ. We further direct real parties in interest to address the propriety of writ relief, in addition to addressing the merits of the petition, in their answer. Petitioners shall have 14 days from service of the answer to file and serve any reply.

It is so ORDERED.

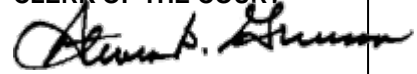
, C.J.  
Hardesty

cc: Hon. Nancy L. Alf, District Judge  
Kaplan Cottner  
The Miller Law Firm, P.C.  
Albright Stoddard Warnick & Albright  
Lewis Roca Rothgerber Christie LLP/Las Vegas  
Eighth District Court Clerk

“Exhibit 2”

August 9, 2021  
Nevada 5's  
Opposition to  
Motion for Stay of  
Proceedings

“Exhibit 2”



**OPPS**

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*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

**PLAINTIFFS' OPPOSITION TO  
DEFENDANTS' MOTION FOR STAY  
OF PROCEEDINGS**

Date of Hearing: **August 13, 2021**

Time of Hearing: **11:00 AM**

Plaintiffs Nevada 5, Inc. ("Nevada 5") and N5HYG, LLC ("N5HYG") (collectively, "Plaintiffs"), by and through their undersigned counsel, hereby bring Plaintiffs' Opposition to Defendants Iglesias and Moffly's ("Defendants") Motion for Stay of Proceedings ("Opposition").<sup>1</sup>

<sup>1</sup> To the extent Defendants have directed their pending Motion to both Nevada 5 and N5HYG, N5HYG joins Nevada 5 in opposing the Motion. However, it does so without prejudice to the

This Opposition is supported by the Declaration of Ogonna M. Brown, Esq. (“Brown Decl.”), one of the attorneys for Plaintiffs, a true and correct copy of which is attached hereto as **Exhibit “A”**. This Opposition is further based upon the memorandum of points and authorities and the pleadings and papers on file herein, and any oral argument the Court wishes to entertain on the Motion for Stay of Proceedings (“Motion”).

## **MEMORANDUM OF POINTS AND AUTHORITIES**

### **I. INTRODUCTION**

Nevada 5 filed this case in October 2017 after Defendants fraudulently induced it to pay (and lose) \$30 million as part of an ill-fated stock purchase. In the nearly four years since, Defendants have avoided adjudication of Nevada 5’s claims on the merits, through an avalanche of preliminary maneuvers. They have filed *five dispositive motions*—four before they finally filed an Answer in January 2021, three in the last two years, and *two in the last nine months*. Prior to that, Defendants detoured this case for over six months through a facially improper removal to federal court for which the federal court issued an attorneys’ fees sanction against them.

Now, after this Court held the Mandatory Rule 16.1 Conference, and as discovery is finally getting underway, Defendants unveil their latest attempt to avoid defending this action on the merits. Risking fading witness memories and scattering evidence, they seek a stay based on their misguided effort to obtain extraordinary interlocutory relief from this Court’s well-reasoned decision denying their motion for judgment on the pleadings (the “Issue Preclusion Motion”).

This Court has repeatedly ruled over the years that Nevada 5 has standing and the right to pursue its \$30 million claims against Defendants in Nevada. And this Court denied the Issue Preclusion Motion because it declined to graft onto this Nevada case a subsequent Florida ruling that pertained to differently-situated parties, was based on Florida law that does not comport with Nevada law, and did not implicate Nevada 5’s claims against Defendants. Defendants now seek to convince this Court that its sound decision is in peril, claiming the mere fact that the Nevada

---

finality of the Final Judgment in Favor of Plaintiff N5HYG, LLC, entered July 22, 2021, on file herein.

1 Supreme Court directed Nevada 5 to answer Defendants’ petition suggests that the petition is  
2 meritorious and that Defendants will prevail. Defendants assume too much.

3 It is not unusual for the Supreme Court to direct a real party in interest to answer a writ  
4 petition, and far more often than not, the Supreme Court ultimately denies the petition. Defendants  
5 provide no substantial basis to believe this case will be different. Plaintiffs will file an answer to  
6 the petition in the coming weeks, exposing the petition’s host of legal and factual inadequacies and  
7 inaccuracies. The Supreme Court will then make its decision in due course. But Defendants fail  
8 to provide a compelling reason to stay this case in the meantime. In fact, their primary rationale—  
9 avoiding the time, expense, and inconvenience of discovery that could theoretically become  
10 moot—has been expressly rejected by the Nevada Supreme Court. This four-year-old case should  
11 not be further delayed based on the “if come” that a writ *could* be issued. The Motion should be  
12 denied.

## 13 II. COUNTER-STATEMENT OF FACTS

14 Even before denying Defendants’ Issue Preclusion Motion, and before the Florida court  
15 issued its decision, this Court had repeatedly rejected Defendants’ underlying arguments: (a) that  
16 Nevada 5 somehow lacks standing despite being defrauded out of \$30 million, and (b) that the  
17 integration clause of the October 2016 Stock Purchase Agreement (to which Nevada 5 is not a  
18 party) bars Nevada 5’s claims. This Court correctly—and repeatedly—ruled that under Nevada  
19 law, Nevada 5 has a right to its day in this Nevada court:

20  
21 “This motion ... is almost identical to the motion I denied in January  
22 of 2020... **[V]ery clearly, Nevada 5 is not barred here -- clearly**  
23 **has standing.** ... Every cause of action is available under Nevada  
law. All of them have been adequately pled -- Nevada or Michigan  
or Florida law, and they have all been adequately pled.”

24 (Opp. to Mot. for Judgmt. on the Pleadings at Ex.“1” to Brown Decl.: Excerpts of Trans. of  
25 December 9, 2020 hearing, pp. 37-38, on file herein) (*See also, e.g.*, Opp. to Mot. for Judgmt. on  
26 the Pleadings at Ex. “2” to Brown Decl.: Excerpt of Trans. of July 17, 2019 hearing, p. 35, on file  
27 herein; FOFCOL and Order Granting Pltfs.’ Mot. for Recons. re: Nevada 5, on file herein).



1 In subsequently denying the Issue Preclusion Motion, the Court correctly recognized that  
2 it had already determined those “issues” relevant to Nevada 5’s claims against Defendants in  
3 Nevada. (Excerpts of Trans. of March 17, 2021 hearing, pp. 21-22 at **Exhibit “1”** to Brown Decl.;  
4 March 29, 2021 Order Denying Defs’ Partial Mot. for Judgt. on the Pleadings, on file herein). And  
5 the Court correctly recognized that those issues were not the same as the issues litigated in the  
6 Florida case, which involved differently-situated parties and different claims, subject to different  
7 substantive and procedural laws that do not comport with Nevada law on standing, fraud, or  
8 integration clauses. (*Id.*)

9 Simply put, contrary to Defendants’ characterization, the Florida court did not—and *could*  
10 *not have*—adjudicated Nevada 5’s standing or right to bring its claims against Defendants in  
11 Nevada.

12 Unsatisfied with this Court’s March 30, 2021 order denying the Issue Preclusion Motion,  
13 Defendants waited over three months, and then petitioned the Nevada Supreme Court for a writ of  
14 mandamus or prohibition on July 5, 2021, seeking review “as soon as possible.” (Writ Petition,  
15 Ex. A to Motion at p. i) The Supreme Court directed Nevada 5 to file an answer, addressing “the  
16 propriety of writ relief, in addition to addressing the merits of the petition.” (Order Directing  
17 Answer, Ex. B to Motion). The Supreme Court made no rulings, expressly or impliedly; it only  
18 directed Plaintiffs to file an answer by August 27, 2021 that “may assist this court in resolving this  
19 matter.” *Id.*

20 In the interim, this Court held a Mandatory Rule 16.1 Conference on July 29, 2021,  
21 indicating on the record that it would adopt the scheduling order proposed by Nevada 5 in its  
22 Amended Individual Case Conference Report, with the close of discovery on January 31, 2022.  
23 (*See* ICCR, on file herein.) Accordingly, on August 5, 2021, Nevada 5 served its First Discovery  
24 Requests on Defendants. (Brown Decl., Par. 7) Defendants’ responses are due September 6, 2021.  
25 (*Id.*)

### 26 **III. ARGUMENT**

27 Nevada courts consider the following factors when deciding a motion for a stay: (1)  
28 whether the object of the writ petition will be defeated if the stay is denied; (2) whether petitioner

1 will suffer irreparable or serious injury if the stay is denied; (3) whether real party in interest will  
2 suffer irreparable or serious injury if the stay is granted; and (4) whether petitioner is likely to  
3 prevail on the merits in the writ petition. *Fritz Hansen A/S v. Eighth Judicial Dist. Court*, 116 Nev.  
4 650, 657, 6 P.3d 982, 986 (2000).

5 Here, Defendants seek a stay in order to avoid what they call “potentially needless and  
6 impermissible” discovery, which they say may result in “unnecessary efforts [and] attorney’s  
7 fees.” (Motion, p. 3) But “a party seeking a stay of discovery carries the heavy burden of making  
8 a strong showing why discovery should be denied.” *Trice v. Liberty Mut. Ins. Co.*, 2021 U.S. Dist.  
9 LEXIS 37203, at \*1-2 (D. Nev. Mar. 1, 2021)<sup>2</sup>, quoting *Tradebay, LLC v. eBay, Inc.*, 278 F.R.D.  
10 597, 601 (D. Nev. 2011). A showing that “discovery may involve some inconvenience and  
11 expense” is an insufficient basis to issue a stay. *Turner Broadcasting, Inc. v. Tracinda Corp.*, 175  
12 F.R.D. 554, 556 (D. Nev. 1997). Rather, Defendants must “show that the balance of equities  
13 weighs heavily in favor of granting the stay.” *Fritz Hansen*, 116 Nev. at 658-59, 6 P.3d at 986-87,  
14 quoting *Ruiz v. Estelle*, 650 F.2d 555, 565 (5th Cir. 1981).

15 Defendants cannot meet any of the four elements, failing to carry their heavy burden to  
16 show the balance of equities heavily favors delaying this four-year-old, \$30 million fraud case  
17 once more at their behest.

18 **A. The Object Of The Writ Petition Will Not Be Defeated If A Stay Is Denied**

19 The ultimate object of Defendants’ writ petition is to overturn this Court’s denial of their  
20 Issue Preclusion Motion, thus avoiding accountability for their fraud. That object will not be  
21 automatically defeated if a stay is denied. Defendants have other opportunities to obtain the  
22 outcome they seek, and a stay is not necessary to achieve it. Even if the Supreme Court denies  
23 their writ petition, Defendants could (arguably) prevail at trial, or (unless the Supreme Court  
24 indicates otherwise) appeal this Court’s decision in the normal course, should Nevada 5 ultimately  
25 win a favorable judgment.

26  
27  
28 <sup>2</sup>True and correct copies of unpublished opinions are attached to the Brown Decl. as **Exhibit “2”**.

Further, Defendants mischaracterize the state of affairs by claiming that a *writ* is “pending,” and that proceeding with discovery would be “in derogation of the *Writ*,” as if a writ has actually been issued. (Motion, p. 6) Defendants have merely filed a *petition* for a writ; **no writ has been issued**. The mere *possibility* that a writ *could be* issued is an insufficient basis for a stay.

**B. Defendants Will Not Suffer Irreparable Or Serious Injury If The Stay Is Denied**

Defendants argue that without a stay, they may be subject to “potentially futile litigation,” “potentially needless and impermissible” discovery, and may have to expend “unnecessary efforts [and] attorney’s fees.” (Motion, pp. 3, 5) But the Nevada Supreme Court has firmly **rejected** this argument on multiple occasions.

In *Mikohn Gaming Corp. v. McCrea*, 120 Nev. 248, 89 P.3d 36 (2004), the Supreme Court expressly recognized that “**litigation costs, even if potentially substantial, are not irreparable harm.**” *Id.* at 253, 39 (bold added). In *Fritz Hansen*, the Supreme Court elaborated:

Fritz Hansen would not suffer irreparable or serious injury if the stay is denied. **It argues that it should not be required to participate “needlessly” in the expense of lengthy and time-consuming discovery, trial preparation, and trial. Such litigation expenses, while potentially substantial, are neither irreparable nor serious.**

*Id.* at 658-59, 986-87 (bold added) (citing, *inter alia*, *Wisconsin Gas Co. v. F.E.R.C.*, 758 F.2d 669, 674 (D.C. Cir. 1985) (noting that “**mere injuries, however substantial, in terms of money, time and energy necessarily expended in the absence of a stay are not enough**” to show irreparable harm) (internal quotations omitted; bold added)).

Indeed, if Defendants’ rationale were the standard for granting a stay—that an interlocutory writ petition *could* render interim litigation costs and efforts unnecessary—district courts would be compelled to grant stays as a matter of course any time a party files a petition for the issuance of a writ. That is not the law.

**C. Nevada 5 Is In Danger Of Irreparable Harm Or Serious Injury If A Stay Is Granted**

As time goes by, the danger that relevant evidence and testimony will be lost only increases. Since Nevada 5 filed this case in 2017, at least one potential witness has died, others have

1 reportedly suffered significant health issues, and Hygea itself went bankrupt. It is unclear what, if  
2 any, measures Defendants or their former company took to preserve evidence, but a stay would  
3 only enhance the risk that memories of relevant events will fade and documents will scatter to the  
4 wind. Even setting aside the fact that after four years, Nevada 5 has not been able to adjudicate on  
5 the merits its \$30 million injury, the potential loss of testimony and evidence undeniably threatens  
6 to seriously and irreparably injure Nevada 5.

7 On balance, the harm and injury with which Nevada 5 is threatened by a stay weigh against  
8 Defendants' request. *See Fritz Hansen*, at 658-59, 986-87 ("unnecessar[y] delay" of the "underlying  
9 proceedings" militates against stay).

#### 10 **D. Defendants Are Unlikely To Prevail On The Merits**

11 Defendants cannot meet this final element for several reasons. At the outset, Defendants  
12 claim that "[b]ecause the Nevada Supreme Court did not deny the Writ and ordered Plaintiffs to  
13 respond, the Nevada Supreme Court impliedly held that Defendants do not have a plain, speedy,  
14 and adequate remedy at law." (Motion, pp. 2-3) That is simply untrue. As Defendants themselves  
15 point out, the Supreme Court's Order Directing Answer expressly directs Plaintiffs to address "**the**  
16 **propriety of writ relief**, in addition to addressing the merits of the petition." (Order Directing  
17 Answer, Ex. B to Motion) (bold added) Whether a writ is properly issued depends, in part, on  
18 whether a "speedy and adequate remedy in the ordinary course of law" exists. NRS 34.170, 34.330.  
19 And "[t]he right to appeal in the future, after a final judgment is ultimately entered, generally  
20 constitutes an adequate and speedy legal remedy precluding writ relief." *Wynn Resorts, Ltd. v.*  
21 *Eighth Judicial Dist. Court of Nev.*, 133 Nev. 1096, 406 P.3d 963 (2017). Therefore, if the  
22 Supreme Court had already determined that Defendants lacked a speedy and adequate legal  
23 remedy, it would not have directed Plaintiffs to address that issue in their answer to the petition.

24 Defendants also suggest that the mere fact that the Supreme Court directed Plaintiffs to  
25 answer the petition indicates that the petition will be *granted*. (Motion, p. 7) That is also untrue;  
26 it is commonplace for the Supreme Court to both direct a real party in interest to file an answer  
27 and then to subsequently deny the petition. *See, e.g., Wynn Resorts*, 133 Nev. 1096, 406 P.3d 963  
28 ("Having considered the petition, **answer**, reply, and supporting documents, we are not satisfied

1 that our intervention is warranted at this time.”) (bold added); *Archon Gaming Corp. v. Eighth*  
2 *Judicial Dist. Court*, 132 Nev. 940, 385 P.3d 600 (2016) (2016 Nev. Unpub. LEXIS 952) (same);  
3 *Walker v. Second Judicial Dist. Court*, 476 P.3d 1194, 1195 (Nev. 2020) (“**Extraordinary relief**  
4 **should be extraordinary’: real parties in interest...state the principle aptly.** And ... there is  
5 nothing in the resulting interlocutory district court decision challenged here which clears that  
6 ‘extraordinary’ bar.”) (quoting answer of real parties in interest) (bold added).

7 Moreover, as the Supreme Court has emphasized, “[a]lthough, when moving for a stay  
8 pending... writ proceedings, a movant does not always have to show a probability of success on  
9 the merits, **the movant must present a substantial case on the merits when a serious legal**  
10 **question is involved and show that the balance of equities weighs heavily in favor of granting**  
11 **the stay.**” *Fritz Hansen*, at 658-59, 986-87 (internal quotation and citation omitted) (bold added).  
12 Defendants have shown no such serious legal question nor substantial case on the merits. Rather,  
13 they dress up an apples-and-oranges comparison of the Florida and Nevada cases in a costume they  
14 label “issue preclusion.” The Nevada Supreme Court will be the final arbiter of the merits of  
15 Defendants’ petition. But Defendants’ incomplete and inaccurate characterization of the effect of  
16 the Florida court’s ruling—and this Court’s rulings preceding it—neither present a substantial case  
17 of a serious legal question on the merits, nor tip the balance of equities in their favor such that a  
18 stay is warranted in the meantime. The Motion should be denied.

19 ...

20 ...

21 ...

22 ...

23 ...

**IV. CONCLUSION**

Defendants fail to carry their heavy burden to show the balance of equities heavily favors delaying this four-year-old, \$30 million fraud case yet again. To the contrary, further delay would threaten to compromise the testimony and evidence and otherwise irreparably and seriously harm Nevada 5. The Motion should be denied.

DATED this 9th day of August, 2021.

**LEWIS ROCA ROTHGERBER CHRISTIE**

/s/ Ogonna Brown

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*Attorneys for Plaintiffs*

**CERTIFICATE OF SERVICE**

Pursuant to NEFCR 9, NRCP 5(b), and EDCR 7.26, I certify that on August 9, 2021, I served a copy of **PLAINTIFFS' OPPOSITION TO DEFENDANTS' MOTION FOR STAY OF PROCEEDINGS** 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;

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☐ 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/ Annette Jaramillo

An employee of Lewis Roca Rothgerber  
Christie LLP

EXHIBIT A

EXHIBIT A



**DECL**

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Nevada Bar No. 7589

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*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

**DECLARATION OF OGONNA M.  
BROWN IN SUPPORT OF  
PLAINTIFFS' OPPOSITION TO  
DEFENDANTS' MOTION FOR STAY OF  
PROCEEDINGS**

Date of Hearing: August 13, 2021

Time of Hearing: 11:00AM

OGONNA M. BROWN, being duly sworn states as follows:

1. I am a partner with the law firm of Lewis Roca Rothgerber Christie LLP ("LRRC"),  
and counsel for Plaintiffs Nevada 5, Inc. ("Nevada 5") and N5HYG, LLC ("N5HYG") in the above

captioned case.

2. I am over the age of eighteen (18) years and competent to testify to the matters set forth herein.

3. I make this Declaration based on my personal knowledge of the facts and matters of this action.

4. I make this Declaration in support of Plaintiffs' Opposition to Defendants' Motion for Stay of Proceedings ("Opposition").

5. A true and correct copy of pages 21-22 of the transcript of this Court's March 17, 2021 hearing on Defendants' Motion for Judgment on the Pleadings is attached hereto as **Exhibit "1"**.

6. True and correct copies of the following unpublished decisions are attached hereto as **Exhibit "2"**:

- a. *Archon Gaming Corp. v. Eighth Judicial Dist. Court*, 132 Nev. 940, 385 P.3d 600 (2016) (2016 Nev. Unpub. LEXIS 952); and
- b. *Trice v. Liberty Mut. Ins. Co.*, 2021 U.S. Dist. LEXIS 37203 (D. Nev. Mar. 1, 2021).

7. On August 5, 2021, Nevada 5 served its First Discovery Requests on Defendants. Defendants' responses are due September 6, 2021.

8. 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.

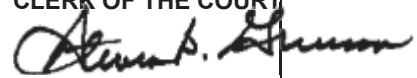
Dated this 9th day of August, 2021.



OGONNA M. BROWN, ESQ.

# EXHIBIT 1

# EXHIBIT 1



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 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.

## EXHIBIT 2

## EXHIBIT 2





**User Name:** Candace Becker

**Date and Time:** Monday, August 9, 2021 7:24:00 PM EDT

**Job Number:** 150235901

## Document (1)

1. [\*Archon Gaming Corp. v. Eighth Judicial Dist. Court, 2016 Nev. Unpub. LEXIS 952\*](#)

**Client/Matter:** -None-

**132 Nev 940:**

**Search Type:** Natural Language

**Narrowed by:**

**Content Type**  
Cases

**Narrowed by**  
custom: Custom

## **Archon Gaming Corp. v. Eighth Judicial Dist. Court**

Supreme Court of Nevada

November 18, 2016, Filed

No. 71390

### **Reporter**

2016 Nev. Unpub. LEXIS 952 \*; 385 P.3d 600; 132 Nev. 940; 2016 WL 6837858

ARCHON GAMING CORPORATION, Petitioner, vs.  
THE EIGHTH JUDICIAL DISTRICT COURT OF THE  
STATE OF NEVADA, IN AND FOR THE COUNTY OF  
CLARK; AND THE HONORABLE JAMES CROCKETT,  
DISTRICT JUDGE, Respondents, and THE  
DEPARTMENT OF ADMINISTRATION APPEALS  
OFFICE, AN AGENCY OF THE STATE OF NEVADA;  
SIERRA NEVADA ADMINISTRATORS; AND JAMES  
KELLY, Real Parties in Interest.

**Notice:** PUBLISHED IN TABLE FORMAT IN THE  
PACIFIC REPORTER.

PUBLISHED IN TABLE FORMAT IN THE NEVADA  
REPORTS.

**Subsequent History:** Reported at [Archon Gaming Corp. v. Dist. Court, 2016 Nev. LEXIS 2204 \(Nev., Nov. 18, 2016\)](#)

Related proceeding at *Archon Gaming Corp. v. Eighth Judicial Dist. Court*, 133 Nev. 979, 2017 Nev. Unpub. LEXIS 207, 390 P.3d 962, 2017 WL 1102887 (Mar. 23, 2017)

Related proceeding at *Archon Gaming Corp. v. Eighth Judicial Dist. Court of Nev.*, 133 Nev. 979, 2017 Nev. Unpub. LEXIS 356, 394 P.3d 212, 2017 WL 1957094 (May 10, 2017)

Related proceeding at, Decision reached on appeal by [Kelly v. Archon Gaming Corp., 2021 Nev. App. Unpub. LEXIS 87 \(Nev. Ct. App., Feb. 25, 2021\)](#)

### **Core Terms**

district court, jurisdictional issue, documents

**Judges:** [\*1] Parraguirre, C.J., Hardesty, J., Pickering, J.

### **Opinion**

#### **ORDER DENYING PETITION FOR WRIT RELIEF**

This original petition for a writ of certiorari, mandamus, or prohibition challenges a district court order directing the production of documents and the district court's continuing exercise of jurisdiction over the underlying petition for judicial review.

Having considered the petition and supporting documents, we are not persuaded that our extraordinary and discretionary intervention is warranted at this time. [Pan v. Eighth Judicial Dist. Court](#), 120 Nev. 222, 228, 88 P.3d 840, 844 (2004); [Smith v. Eighth Judicial Dist. Court](#), 107 Nev. 674, 677, 679, 818 P.2d 849, 851, 853 (1991); [Zamarripa v. First Judicial Dist. Court](#), 103 Nev. 638, 640, 747 P.2d 1386, 1387 (1987). In particular, although petitioner asks this court to order the district court to statistically close the underlying matter, it does not appear that petitioner has formally filed a motion in district court asking for that relief. In the absence of formal motion practice and a decision from the district court thereon, we are unable to meaningfully review the jurisdictional issues presented in this writ petition. Accordingly, we decline at this time to consider the jurisdictional issues. Because the issue regarding copy costs appears to be somewhat intertwined with the jurisdictional issues, we likewise decline at this time to consider that issue. We therefore

ORDER the petition DENIED.

/s/ [\*2] Parraguirre, C.J.

Parraguirre

/s/ Hardesty, J.

Hardesty

/s/ Pickering, J.

Pickering

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End of Document



Neutral

As of: August 9, 2021 1:50 PM Z

## [Trice v. Liberty Mut. Ins. Co.](#)

United States District Court for the District of Nevada

March 1, 2021, Decided; March 1, 2021, Filed

Case No.: 2:20-cv-02139-KJD-NJK

### Reporter

2021 U.S. Dist. LEXIS 37203 \*; 2021 WL 1821201

GERALDINE TRICE, Plaintiff(s), v. LIBERTY MUTUAL INSURANCE COMPANY, Defendant(s).

**Prior History:** [Trice v. Liberty Mut. Ins. Co., 2021 U.S. Dist. LEXIS 12147 \(D. Nev., Jan. 22, 2021\)](#)

### Core Terms

discovery, motion to stay, deadline, criminal investigation, plans, dispositive motion, initial disclosure, pending resolution, amend a pleading, modification, underway, reasons, staying, agrees

**Counsel:** [\*1] Geraldine Trice, Plaintiff, Pro se, Las Vegas, NV.

For Liberty Mutual Insurance Company, Defendant:  
Amy M. Samberg, LEAD ATTORNEY, FORAN GLENNON PALANDECH PONZI & RUDLOFF, Phoenix, AZ; Dylan P Todd, LEAD ATTORNEY, FORAN GLENNON PALANDECH PONZI & RUDLOFF, Henderson, NV.

**Judges:** Nancy J. Koppe, United States Magistrate Judge.

**Opinion by:** Nancy J. Koppe

### Opinion

### Order

[Docket Nos. 19, 27, 28]

Pending before the Court are the parties' competing discovery plans. Docket Nos. 27-28. Also pending before the Court is Plaintiff's motion to stay proceedings.

Docket No. 19; see *also* Docket No. 22.<sup>1</sup> Defendant construed that motion as seeking a stay of discovery and filed a response in opposition. Docket No. 23. Plaintiff filed a reply. Docket No. 24.<sup>2</sup> The discovery plans and the motion to stay are properly resolved without a hearing. See Local Rule 78-1. For the reasons discussed more fully below, Plaintiff's motion to stay discovery (Docket No. 19) is **DENIED**, Defendant's discovery plan (Docket No. 28) is **GRANTED in part**, and Plaintiff's discovery plan (Docket No. 27) is **DENIED**.

### I. MOTION TO STAY

The first issue before the Court is Plaintiff's motion to stay discovery.<sup>3</sup> The Court has broad discretionary power to control discovery. See, e.g., [Little v. City of Seattle, 863 F.2d 681, 685 \(9th Cir. 1988\)](#). "[A] [\*2] party seeking a stay of discovery carries the heavy burden of making a strong showing why discovery should be denied." [Tradebay, LLC v. eBay, Inc., 278 F.R.D. 597, 601 \(D. Nev. 2011\)](#). In deciding whether to grant a stay of discovery, the Court is guided by the objectives of Rule 1 to ensure a just, speedy, and inexpensive determination of every action. [Kor Media Grp., LLC v. Green, 294 F.R.D. 579, 581 \(D. Nev. 2013\)](#). It is insufficient to seek a stay of discovery based on a showing that "discovery may involve some inconvenience and expense." [Turner Broadcasting, Inc.](#)

<sup>1</sup> The Court construes Plaintiff's filings liberally. [Erickson v. Pardus, 551 U.S. 89, 94, 127 S. Ct. 2197, 167 L. Ed. 2d 1081 \(2007\)](#).

<sup>2</sup> Plaintiff's reply exceeds the page limits. See Local Rule 7-3(b). The Court has considered the reply in this instance, but Plaintiff must comply with all governing rules moving forward.

<sup>3</sup> Given the procedural posture of the case and the arguments presented, the Court treats Plaintiff's motion as seeking a stay of discovery.

[\*v. Tracinda Corp.\*, 175 F.R.D. 554, 556 \(D. Nev. 1997\).](#)

Plaintiff proffers two bases for staying discovery in this case. First, she seeks a stay of discovery pending resolution of her motion to remand. See Docket No. 22 at 5-6. The motion to remand has now been resolved. Docket No. 26. As such, this aspect of Plaintiff's motion to stay discovery is properly denied as moot.

Second, Plaintiff seeks a stay of discovery pending completion of a criminal investigation. See Docket No. 22 at 4-5. Defendant opposes this aspect of the motion based on the lack of evidence that any such criminal investigation is actually ongoing and that any such investigation does not bear directly on the issues raised in this case. See Docket No. 23 at 3. The Court agrees with Defendant that staying discovery on this basis is not warranted. **[\*3]** Most notably, Plaintiff has provided documentation requesting a criminal investigation but has not demonstrated that any such investigation is underway. See, e.g., Docket No. 22 at 11. Indeed, Plaintiff's exhibits suggest that a criminal investigation is not underway. See *id.* at 15 (letter from Plaintiff to the Department of Justice indicating that she has "not received any response from [her] complaints to these agencies"). As such, delaying discovery on this ground is not warranted.

In light of the above, Plaintiff has not met her burden of showing a stay of discovery is appropriately imposed and her motion will be denied.

## II. DISCOVERY PLANS

Next before the Court are the parties' competing discovery plans. Plaintiff's discovery plan seeks a delay in setting any deadlines pending resolution of a criminal investigation. See Docket No. 27 at 4. Defendant's discovery plan seeks entry of deadlines pursuant to the default schedule provided in the local rules. Docket No. 28 at 6-7. The Court largely agrees with the schedule proposed by Defendant with a modification to the deadline to amend the pleadings given that the proposed deadline has now expired and a modification to the initial disclosure deadline **[\*4]** that is imminent.

Accordingly, Defendant's discovery plan is **GRANTED** in part and Plaintiff's discovery plan is **DENIED**. Deadlines are hereby **SET** as follows:

- Initial disclosures: March 8, 2021
- Amend pleadings/ add parties: March 15, 2021
- Initial experts: March 29, 2021
- Rebuttal experts: April 28, 2021

- Discovery cutoff: May 26, 2021
- Dispositive motions: June 25, 2021
- Joint proposed pretrial order: July 26, 2021, or 30 days after resolution of dispositive motions

## III. CONCLUSION

For the reasons discussed more fully above, Plaintiff's motion to stay discovery (Docket No. 19) is **DENIED**, Defendant's discovery plan (Docket No. 28) is **GRANTED in part**, and Plaintiff's discovery plan (Docket No. 27) is **DENIED**.

IT IS SO ORDERED.

Dated: March 1, 2021

/s/ Nancy J. Koppe

Nancy J. Koppe

United States Magistrate Judge

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End of Document

“Exhibit 3”

Nevada 5's Discovery  
Requests to Moffly

“Exhibit 3”

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*Attorneys for Plaintiff Nevada 5, Inc.*

**IN THE EIGHTH JUDICIAL DISTRICT COURT  
CLARK COUNTY, NEVADA**

N5HYG, LLC, a Michigan limited liability  
company; and, 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

**PLAINTIFF NEVADA 5's FIRST  
DISCOVERY REQUESTS TO  
DEFENDANT MOFFLY**

115158030.1

Pursuant to Nevada Rules of Civil Procedure 33, 34, and 36, and otherwise under the Rules, Plaintiff Nevada 5, Inc. (“Plaintiff” or “Nevada 5”) hereby requests that Defendant Edward Moffly (“Defendant” or “Moffly”) answer and produce all documents responsive to the following Interrogatories, Requests for Production, and Requests for Admission (collectively, the “Discovery Requests”) set forth herein within 30 days.

### INSTRUCTIONS

1. You must respond to the Discovery Requests and produce responsive documents within 30 days after being served with the Discovery Requests.

2. Each Request for Production of a document shall extend to all documents which are or have been in the possession or subject to the control of Defendant at any time.

3. With respect to any Discovery Request which is objected to on the ground of any claim of privilege or for any other reason, you shall identify the document and shall further:

- a. state the nature of the claim or privilege or other ground for objection;
- b. state all facts relied upon in support of the claim of privilege or other ground of objection;
- c. identify all documents related to the claim of privilege or other ground of objection;
- d. identify all persons having knowledge of any facts related to the claim of privilege or other ground of objection; and
- e. identify all events, transactions or occurrences related to the claim of privilege or other ground of objection.

4. If any document requested to be produced has been lost, discarded, transferred to others, or destroyed, the document so lost, discarded, transferred to others, or destroyed shall be identified as completely as possible, including the following information:

- a. author;
- b. date and subject matter;
- c. date of destruction, transfer, or loss;
- d. the manner and reason(s) for destruction, transfer, or loss; and



e. person authorizing loss, transfer, discard or disposal.

5. In producing the documents requested, you should indicate the specific request(s) in response to which each document or group of documents is being produced.

6. Documents contained in a computer or stored electronically shall be produced on a USB memory stick device, or made available to Plaintiff by way of an electronic file-sharing method such as DropBox.

7. Responses to these Discovery Requests, including all documents responsive thereto, shall be delivered to Ogonna Brown, counsel for Plaintiff.

8. These Discovery Requests shall be deemed continuing, requiring prompt, further and supplemental production in the event you obtain, locate, or come into possession of additional responsive documents before trial.

9. Whenever appropriate, the singular form of a word shall also be interpreted as plural, and the plural form of a word shall also be interpreted as singular. In addition, “and” as well as “or” shall be broadly construed either disjunctively or conjunctively as necessary to bring information within the scope of these Discovery Requests.

#### DEFINITIONS

1. The terms “document(s)” and “documentation” are used in the most comprehensive and inclusive sense permitted by the Nevada Rules of Civil Procedure, and mean any and all materials and tangible objects conveying or carrying spoken, visual or literal substance, including, but not limited to, the original (or, if the original is not in your possession, a copy) and any nonidentical copies, regardless of origin or location. The terms “document(s)” and “documentation” include the following: papers, correspondence, records, tables, charts, analysis, graphs, schedules, reports, spreadsheets, memoranda, journals, notes, logs, calendars, appointment books, letters, telegrams, telecopy, telex and telefacsimile transmissions, messages, studies, books, periodicals, magazines, newspapers, booklets, advertisements, brochures, instructions, minutes, resolutions, contracts, books of account, orders, invoices, statements, checks, bills, receipts, files, vouchers, notebooks, scrapbooks, data sheets, data processing cards, computer files, computer disks, computer printouts, electronic data, e-mail messages, text messages, photographs, negatives,

1 phone recordings, tape recordings, wire recordings, drawings, forms, catalogues, manuals,  
2 tabulations and any other matter of any kind, regardless of the manner in which produced.

3 2. “Describe” means, in the case of an act, event, transaction, relationship, thing or  
4 occurrence:

5 a. A detailed description, including identification of dates, places, persons  
6 involved, and means employed;

7 b. Identification of your sources of information concerning such act, event,  
8 transaction, thing or occurrence, including the date you received such information;

9 c. Identification of each person having knowledge of such act, event,  
10 transaction, thing or occurrence; and

11 d. Identification of each communication and each document relating to such  
12 act, event, transaction, thing or occurrence.

13 3. “Identify” means:

14 a. With respect to a natural person: his or her full name, present or last known  
15 residential address, present or last known job title and responsibilities, the name and address of his  
16 or her present or last known employer, and his or her job title and responsibilities at the time in  
17 question;

18 b. With respect to a corporation or other business entity, to state, to the extent  
19 known, its full name and address;

20 c. With respect to a document, to describe specifically the document, its date,  
21 its present or last known location and custodian, its author (and, if different, the signer or signers),  
22 the addressee, the manner and date of its disposition if it is no longer in your possession or subject  
23 to your control, and all other means of identifying it with sufficient particularity to satisfy the  
24 requirements for its inclusion in a demand or request for its production pursuant to Rule 34 of the  
25 Nevada Rules of Civil Procedure or by a subpoena duces tecum; and

26 d. With respect to a communication: the manner of the communication, the date  
27 of and parties to the communication, where it took place, its substance, and the identification of all  
28 documents that relate to the communication.

1           4.       “Concerning,” “relating to,” “referring to,” “relate to”, “regarding” have their  
2 customary and usual meaning, and include, but are not limited to: discussing, pertaining,  
3 constituting, comprising, containing, setting forth, showing, disclosing, describing, explaining,  
4 summarizing, evidencing, identifying, touching upon, mentioning, referencing, and/or referring to  
5 in any way.

6           5.       “And” means “or” and “or” means “and,” as necessary to denote the broadest  
7 possible construction and to bring within the scope of these Discovery Requests any information  
8 that may otherwise be construed to be outside their scope.

9           6.       “You” or “Your” means Defendant Edward Moffly or, if applicable, Defendant  
10 Moffly’s agents, representatives, and all persons acting or purporting to act on his behalf.

11          7.       “Communication” means all oral, visual, written, electronic or other means of  
12 transmitting information, messages, or statements.

13          8.       The singular shall be deemed to include the plural, and vice versa. Words of one  
14 gender shall be deemed to include works of all genders.

15          9.       The term “person” or “persons” means, unless otherwise specified, any natural  
16 person, firm, corporation, association, group or organization, business entity, or any agent thereof.

17          10.       The term “meeting” includes any formal, informal, personal, telephonic, electronic  
18 or visual meeting between any two or more individuals, including, without limitation, any  
19 conference, discussion, conversation, communication, negotiation, incident, event or any other  
20 interaction or exchange.

21          11.       The terms “all” and “each” shall be construed as “all” and “each.”

22          12.       “Experts” means any person designated, disclosed or retained by Defendant as a  
23 potential testifying expert witness in this matter.

24          13.       “Financial Status” means profits, losses, revenue, income, earnings, indebtedness,  
25 EBITDA, or cash flow.

26          14.       “Hygea” means Hygea Holdings Corp.

27          15.       “Hygea Affiliate” means one or any combination of the following entities: All Care  
28 Management Services, Inc.; First Harbour Health Management, LLC; First Harbour Medical

Centers, LLC ; Florida Group Healthcare LLC; Gemini Healthcare Fund, LLC; Hygea Acquisition Longwood, LLC; Hygea Acquisition Orlando, LLC; Hygea Health Holdings, Inc. ; Hygea IGP of Central Florida, Inc.; Hygea IGP, LLC; Hygea Medical Centers of Florida, LLC; Hygea Medical Partners, LLC; Hygea of Delaware, LLC; Hygea of Georgia, LLC; Hygea of Pembroke Pines, LLC; Hygea Primum Acquisition, Inc.; Medlife Activity Center, LLC; Mobile Clinic Services, LLC; NeighborMD; Palm A.C. MSO, LLC; Palm Allcare Medicaid MSO, Inc.; Palm Allcare MSO, Inc.; Palm Medical Group, Inc.; Palm Medical MSO LLC; Palm Medical Network, LLC; Palm MSO System, Inc.; Palm PGA MSO, Inc.; Physician Management Associates East Coast, LLC; Physician Management Associates SE, LLC; Physicians Group Alliance, LLC; Primum Alternatives, Inc.; Primum Healthcare, LLC; and Professional Health Choice, Inc..

15. “Nevada 5” means Nevada 5, Inc., including its officers, managers, and representatives.

16. “N5HYG” means N5HYG, LLC, including its officers, managers, and representatives.

17. “RIN Capital” means RIN Capital, LLC, including its officers, employees, and representatives.

18. “Second Amended Complaint” means the Second Amended Complaint filed on or about December 13, 2019 in the above-captioned matter.

## **DISCOVERY REQUESTS**

### **INTERROGATORIES**

**INTERROGATORY NO. 1:** Identify each person who has assisted in the preparation of the responses to these Discovery Requests and describe in detail the role they played.

**INTERROGATORY NO. 2:** Describe Your affiliation with Hygea, including, without limitation, any and all titles and positions You have held with Hygea over the last ten (10) years.

**INTERROGATORY NO. 3:** Have You (or entity or trust in which You have an ownership or beneficial interest) owned any shares in Hygea within the last ten (10) years? If yes, describe:

a. the number of shares owned and by whom,

- b. when the shares were acquired,
- c. the purchase price for all such shares,
- d. when You or the entity or trust sold or otherwise disposed of some or all of the shares,
- e. to whom You or the entity or trust sold or otherwise transferred or relinquished the shares,
- f. the value You assigned to the shares between January 1 and October 5, 2016,
- g. the value You assigned to the shares between October 6, 2016 and July 15, 2020, and
- h. at what price you, the entity, or trust sold the shares, or any other consideration You received in exchange for any shares You disposed of.

**INTERROGATORY NO. 4:** Have You received any income from Hygea or a Hygea Affiliate within the last ten (10) years? If yes, describe the amount of, and the basis for, the income received.

**INTERROGATORY NO. 5:** Has any entity or trust in which You have an ownership or beneficial interest received any income from Hygea or a Hygea Affiliate within the last ten (10) years? If yes, describe the name of the entity or trust, as well as the amount of, and the basis for, the income received.

**INTERROGATORY NO. 6:** Has any member of Your family owned any shares in Hygea or a Hygea Affiliate within the last ten (10) years? If yes, for each, describe:

- a. the name and relationship of each family member,
- b. the entity(ies) of which the family member owns shares,
- c. the number and purchase prices of the shares each family member owned,
- d. when each family member acquired the shares,
- e. when each family member sold or otherwise disposed of some or all of the shares,
- f. to whom each family member sold or otherwise transferred or relinquished the shares,
- g. the value each family member assigned to the shares between January 1 and October 5, 2016,
- h. the value each family member assigned to the shares between October 6, 2016 and July 15, 2020, and

- i. at what price each family member sold the shares, or any other consideration each family member received in exchange for any shares each family member disposed of.

**INTERROGATORY NO. 7:** Describe any and all Communications to which You have been a party regarding a potential or actual investment in Hygea by RIN Capital, LLC; Nevada 5, Inc.; or N5HYG, LLC.

**INTERROGATORY NO. 8:** Describe Your duties as a member of the Board of Directors of Hygea.

**INTERROGATORY NO. 9:** Identify all time period(s) since January 1, 2014 in which You served as CFO of Hygea, and identify Your duties in that position.

**INTERROGATORY NO. 10:** Identify any and all Communications regarding the Financial Status of Hygea to which You have been a party since January 1, 2014.

**INTERROGATORY NO. 11:** Describe any and all meetings of the Board of Directors of Hygea since January 1, 2014 in which the Financial Status of Hygea was discussed or the subject of a resolution or other action of the Board of Directors, including the specific aspect of the Financial Status of Hygea that was discussed or acted upon.

**INTERROGATORY NO. 12:** Describe any and all meetings of the Board of Directors of Hygea in which the disposition of any portion of Nevada 5's \$30 million payment to Hygea was discussed or the subject of a resolution or other action of the Board of Directors, including the specific aspect of the disposition of Nevada 5's \$30 million payment that was discussed or acted upon.

**INTERROGATORY NO. 13:** Describe any and all meetings of the Board of Directors of Hygea in which a potential or actual investment by Nevada 5, RIN Capital, or N5HYG was discussed or the subject of a resolution or other action of the Board of Directors, including the specific aspect of the aforesated potential or actual investment that was discussed or acted upon.

**INTERROGATORY NO. 14:** Identify any and all computers (including desktops and laptops), electronic storage devices, cell phones, including their locations, and email addresses You have utilized in Your dealings with or concerning Hygea between January 1, 2014 and the present.

...

1           **INTERROGATORY NO. 15:** Describe any and all document retention measures You  
2 have implemented since January 1, 2014.

3           **INTERROGATORY NO. 16:** To the extent that Your answer to any of Plaintiff's  
4 Requests for Admission was anything other than an unequivocal admission, describe in detail all  
5 of the factual and legal support for Your denial.

6           **INTERROGATORY NO. 17:** Identify any and all persons who represented to You that  
7 Hygea was suitably positioned for listing on any public stock exchange between fall 2016 and  
8 September 2017, as well as the specific representations such person(s) made to you, when they  
9 made them, and by what means they communicated them to you.

10           **INTERROGATORY NO. 18:** Identify any and all Communications in which You  
11 represented to Nevada 5, RIN Capital, or N5HYG, LLC that Hygea was suitably positioned for  
12 listing on any public stock exchange between fall 2016 and spring 2017, as well as the specific  
13 representations You made, when You made them, and by what means You communicated them to  
14 Nevada 5, RIN Capital, or N5HYG.

15           **INTERROGATORY NO. 19:** Identify what You contend was the total fair market value  
16 of Hygea on October 5, 2016, as well as all documents supporting Your contention.

17           **INTERROGATORY NO. 20:** Identify each and every fact, document, and witness upon  
18 which You rely for Your denial of the allegations in Paragraph 48 of the Second Amended  
19 Complaint.

20           **INTERROGATORY NO. 21:** Identify each and every fact, document, and witness upon  
21 which You rely for Your denial of the allegations in Paragraph 49 of the Second Amended  
22 Complaint.

23           **INTERROGATORY NO. 22:** Identify each and every fact, document, and witness upon  
24 which You rely for Your denial of the allegations in Paragraph 50 of the Second Amended  
25 Complaint.

26           **INTERROGATORY NO. 23:** Identify each and every fact, document, and witness upon  
27 which You rely for Your denial of the allegations in Paragraph 51 of the Second Amended  
28 Complaint.

**INTERROGATORY NO. 24:** Identify each and every fact, document, and witness upon which You rely for Your denial of the allegations in Paragraph 52 of the Second Amended Complaint.

**INTERROGATORY NO. 25:** Identify each and every fact, document, and witness upon which You rely for Your denial of the allegations in Paragraph 53 of the Second Amended Complaint.

**INTERROGATORY NO. 26:** Describe your relationship with NeighborMD, including, without limitation: any and all title(s) You have held with that company; whether You (or any entity of which You are an owner) are a shareholder in that company; and any income You (or any entity of which You are an owner) has received from that company.

#### **REQUESTS TO PRODUCE DOCUMENTS**

**REQUEST TO PRODUCE NO. 1:** Produce any and all documents, including, without limitation, any and all Communications, relating to a potential or actual investment in Hygea by RIN Capital, LLC, Nevada 5, Inc., or N5HYG, LLC.

**REQUEST TO PRODUCE NO. 2:** Produce any and all documents relating to meetings of the Board of Directors of Hygea since January 1, 2014 in which the Financial Status of Hygea was a topic of discussion or the subject of a resolution or other action of the Board of Directors.

**REQUEST TO PRODUCE NO. 3:** Produce any and all documents regarding the Financial Status of Hygea between January 1, 2014 through the present, including without limitation: quality of earnings reports; confidential information memoranda; sell side due diligence reports; state and federal income tax returns; profit and loss statements; income statements; financial statements (audited and unaudited); financial summaries; and email Communications in which representations were made regarding the company's Financial Status.

**REQUEST TO PRODUCE NO. 4:** Produce any and all documents relating to meetings of the Board of Directors of Hygea in which the disposition of any portion of Nevada 5's \$30

...



1 million payment or the related stock purchase was the topic of discussion or the subject of a  
2 resolution or other action of the Board of Directors.

3 **REQUEST TO PRODUCE NO. 5:** Produce any and all documents relating to the  
4 disposition of any portion of Nevada 5's \$30 million payment to Hygea.

5 **REQUEST TO PRODUCE NO. 6:** Produce any and all documents relating to meetings  
6 of the Board of Directors of Hygea in which a potential or actual investment by Nevada 5, RIN  
7 Capital, or N5HYG was the topic of discussion or the subject of a resolution or other action of the  
8 Board of Directors.

9 **REQUEST TO PRODUCE NO. 7:** Produce any and all documents describing or relating  
10 to the document retention measures You have implemented since January 1, 2014.

11 **REQUEST TO PRODUCE NO. 8:** To the extent that Your answer to any of Plaintiff's  
12 Requests for Admission was anything other than an unequivocal admission, produce all documents  
13 that support, negate or otherwise refer or relate to any of the allegations that You have denied.

14 **REQUEST TO PRODUCE NO. 9:** Produce any and all documents in which any person  
15 represented to You that Hygea was suitably positioned for listing on any public stock exchange  
16 between fall 2016 and spring 2017.

17 **REQUEST TO PRODUCE NO. 10:** Produce any and all documents in which You  
18 represented to Nevada 5, RIN Capital, or N5HYG, LLC that Hygea was suitably positioned for  
19 listing on any public stock exchange between fall 2016 and spring 2017.

20 **REQUEST TO PRODUCE NO. 11:** Produce any and all documents supporting Your  
21 contention of the total fair market value of Hygea on October 5, 2016.

22 **REQUEST TO PRODUCE NO. 12:** Produce any and all documents supporting Your  
23 Affirmative Defense No. 1.

24 **REQUEST TO PRODUCE NO. 13:** Produce any and all documents supporting Your  
25 Affirmative Defense No. 2.

26 **REQUEST TO PRODUCE NO. 14:** Produce any and all documents supporting Your  
27 Affirmative Defense No. 3.

28 . . .

**REQUEST TO PRODUCE NO. 15:** Produce any and all documents supporting Your Affirmative Defense No. 4.

**REQUEST TO PRODUCE NO. 16:** Produce any and all documents supporting Your Affirmative Defense No. 5.

**REQUEST TO PRODUCE NO. 17:** Produce any and all documents supporting Your Affirmative Defense No. 6.

**REQUEST TO PRODUCE NO. 18:** Produce any and all documents supporting Your Affirmative Defense No. 7.

**REQUEST TO PRODUCE NO. 19:** Produce any and all documents supporting Your Affirmative Defense No. 8.

**REQUEST TO PRODUCE NO. 20:** Produce any and all documents supporting Your Affirmative Defense No. 9.

**REQUEST TO PRODUCE NO. 21:** Produce any and all documents supporting Your Affirmative Defense No. 10.

**REQUEST TO PRODUCE NO. 22:** Produce any and all documents supporting Your Affirmative Defense No. 11.

**REQUEST TO PRODUCE NO. 23:** Produce any and all documents supporting Your Affirmative Defense No. 12.

**REQUEST TO PRODUCE NO. 24:** Produce any and all documents supporting Your Affirmative Defense No. 13.

**REQUEST TO PRODUCE NO. 25:** Produce any and all documents supporting Your Affirmative Defense No. 14.

**REQUEST TO PRODUCE NO. 26:** Produce any and all documents supporting Your Affirmative Defense No. 15.

**REQUEST TO PRODUCE NO. 27:** Produce any and all documents supporting Your Affirmative Defense No. 16.

**REQUEST TO PRODUCE NO. 28:** Produce any and all documents supporting Your Affirmative Defense No. 17.

**REQUEST TO PRODUCE NO. 29:** Produce any and all documents supporting Your Affirmative Defense No. 18.

**REQUEST TO PRODUCE NO. 30:** Produce any and all documents supporting Your Affirmative Defense No. 19.

**REQUEST TO PRODUCE NO. 31:** Produce any and all documents supporting Your Affirmative Defense No. 20.

**REQUEST TO PRODUCE NO. 32:** Produce any and all documents supporting Your Affirmative Defense No. 21.

**REQUEST TO PRODUCE NO. 33:** Produce any and all documents supporting Your Affirmative Defense No. 22.

**REQUEST TO PRODUCE NO. 34:** Produce any and all documents supporting Your Affirmative Defense No. 23.

**REQUEST TO PRODUCE NO. 35:** Produce any and all documents supporting Your Affirmative Defense No. 24.

**REQUEST TO PRODUCE NO. 36:** Produce any and all documents supporting Your Affirmative Defense No. 25.

**REQUEST TO PRODUCE NO. 37:** Produce any and all documents supporting Your Affirmative Defense No. 26.

**REQUEST TO PRODUCE NO. 38:** Produce any and all documents supporting Your Affirmative Defense No. 27.

**REQUEST TO PRODUCE NO. 39:** Produce any and all documents supporting Your Affirmative Defense No. 28.

**REQUEST TO PRODUCE NO. 40:** Produce any and all documents supporting Your Affirmative Defense No. 29.

**REQUEST TO PRODUCE NO. 41:** Produce any and all documents supporting Your Affirmative Defense No. 30.

**REQUEST TO PRODUCE NO. 42:** Produce any and all documents supporting Your Affirmative Defense No. 31.

**REQUEST TO PRODUCE NO. 43:** Produce any and all documents supporting Your Affirmative Defense No. 32.

**REQUEST TO PRODUCE NO. 44:** Produce any and all documents supporting Your Affirmative Defense No. 33.

**REQUEST TO PRODUCE NO. 45:** Produce any and all documents supporting Your Affirmative Defense No. 34.

**REQUEST TO PRODUCE NO. 46:** Produce any and all documents supporting Your Affirmative Defense No. 35.

**REQUEST TO PRODUCE NO. 47:** Produce any and all documents upon which You rely for Your denial of the allegations in Paragraph 48 of the Second Amended Complaint.

**REQUEST TO PRODUCE NO. 48:** Produce any and all documents upon which You rely for Your denial of the allegations in Paragraph 49 of the Second Amended Complaint.

**REQUEST TO PRODUCE NO. 49:** Produce any and all documents upon which You rely for Your denial of the allegations in Paragraph 50 of the Second Amended Complaint.

**REQUEST TO PRODUCE NO. 50:** Produce any and all documents upon which You rely for Your denial of the allegations in Paragraph 51 of the Second Amended Complaint.

**REQUEST TO PRODUCE NO. 51:** Produce any and all documents upon which You rely for Your denial of the allegations in Paragraph 52 of the Second Amended Complaint.

**REQUEST TO PRODUCE NO. 52:** Produce any and all documents upon which You rely for Your denial of the allegations in Paragraph 53 of the Second Amended Complaint.

#### **REQUESTS FOR ADMISSION**

**REQUEST FOR ADMISSION NO. 1:** Admit that Nevada 5 paid, and Hygea received, \$30 million on or about October 5, 2016 for a purchase of shares of Hygea.

**REQUEST FOR ADMISSION NO. 2:** Admit that You voted to approve the stock purchase by which Nevada 5 paid, and Hygea received, \$30 million on or about October 5, 2016.

1           **REQUEST FOR ADMISSION NO. 3:** Admit that as part of the executive management  
2 of Hygea, You negotiated, finalized, and executed agreements relating to the sale of shares of  
3 Hygea for which Nevada 5 paid \$30 million.

4           **REQUEST FOR ADMISSION NO. 4:** Admit that the 2016 EBITDA of Hygea did not  
5 exceed \$46 million.

6           **REQUEST FOR ADMISSION NO. 5:** Admit that the value of Hygea did not exceed  
7 \$349 million as of October 5, 2016.

8           **REQUEST FOR ADMISSION NO. 6:** Admit that as part of Nevada 5's due diligence  
9 prior to paying the \$30 million for the stock purchase, with Defendant Iglesias's knowledge or  
10 consent, You provided Nevada 5 access to a "data room" containing documents with  
11 representations of Hygea's Financial Status.

12           **REQUEST FOR ADMISSION NO. 7:** Admit that among the documents provided to  
13 Nevada 5 through the "data room" was a Confidential Information Memorandum ("CIM") for  
14 Hygea which included: a 2014 earnings before interest, tax, depreciation, and amortization  
15 ("EBITDA") of \$3,692,173 based on \$52,897,640 in revenue; a 2015 EBIDTA of \$28,003,053  
16 based on \$239,053,726 in revenue; and projected a 2016 EBITDA of \$46,489,715.

17           **REQUEST FOR ADMISSION NO. 8:** Admit that on or about August 2, 2016, with  
18 Defendant Iglesias's knowledge or consent, You provided Nevada 5 representative Dan Miller with  
19 a final quarterly work file being used by third-party financial analysts to perform a Quality of  
20 Earnings Report ("QoE") and a purported audit of Hygea's finances.

21           **REQUEST FOR ADMISSION NO. 9:** Admit that on or about September 14, 2016, in  
22 response to a request from Miller, with Defendant Iglesias's knowledge or consent, You transmitted  
23 to Miller a CIM that represented financial performance figures for Hygea including a 2014  
24 EBITDA of \$3.7 million based on \$52.9 million in revenue and a 2015 EBITDA of \$27.1 million  
25 based on \$239.1 in revenue.

26           **REQUEST FOR ADMISSION NO. 10:** Admit that on or about or about September 15,  
27 2016, with Defendant Iglesias's knowledge or consent, You sent to Miller a proposed deal structure,  
28 representing a purported valuation of Hygea, and claimed that the company was actually ahead of

1 that valuation figure, including: “We have an enterprise valuation done by Cormark in Canada (who  
2 you can speak with if you like) of approximately \$560MM, which is based on a 10x multiple of  
3 2016 (T9M+F3M – approximately) EBITDA of \$56.9MM (BTW we are ahead of that number and  
4 are pushing for \$60MM). Subtracting out all debt of a little less than \$50MM we have a net value  
5 of \$510MM.”

6 **REQUEST FOR ADMISSION NO. 11:** Admit that on or about September 20-21, 2016,  
7 with Defendant Iglesias’s knowledge or consent, You stated to Miller that the final trial balances  
8 for Hygea for June 30, 2016 would be finished in a matter of hours with the “consolidation done  
9 by CLA [Clifton Larson Allen, LLP] [. . .] but assembled by our accounting team.”

10 **REQUEST FOR ADMISSION NO. 12:** Admit that on or about September 20, 2016, with  
11 Defendant Iglesias’s knowledge or consent, You sent to Miller a copy of Hygea balance sheets,  
12 income statements, and a statement of cash flows, prepared by CPA firm Rodriguez, Trueba & Co,  
13 showing, among other figures, a 2014 EBITDA of \$3,692,172 and a 2015 EBITDA of \$27,093,697.

14 **REQUEST FOR ADMISSION NO. 13:** Admit that on or about September 27, 2016, with  
15 Defendant Iglesias’s knowledge or consent, You provided Miller with an Offering Memorandum  
16 with additional representations as to Hygea’s Financial Status, including a 2014 EBITDA of \$3.7  
17 million on \$52,897,000 in revenue, and a 2015 EBITDA of \$27.1 million on \$246,129,000 in  
18 revenue.

19 **REQUEST FOR ADMISSION NO. 14:** Admit that on or about September 29, 2016, with  
20 Defendant Iglesias’s knowledge or consent, You sent to Miller an email stating that the  
21 attachment—a Hygea capital table structure analysis—was approved by Cormark and Hygea’s  
22 Board; stating that “Hygea 2016 FYE EBITDA – Low: \$54.5 [million] – High: \$65.0 [million] –  
23 Expected: \$57.5 [million];” and stating that “EBITDA Is (*sic*) ahead of schedule used 4 months ago  
24 with Cormark.”

25 **REQUEST FOR ADMISSION NO. 15:** Admit that on or about October 4, 2016, with  
26 Defendant Iglesias’s knowledge or consent, You sent to Miller a copy of Hygea’s Quality of  
27 Earnings Report dated October 3, 2016, which included: a 2014 EBITDA of \$4,542,000 on  
28 \$52,897,000 in revenue; a 2015 EBITDA of \$20,449,000 million on \$185,411,000 in revenue; and

1 showed for Hygea in the “trailing twelve months” from June 30, 2015 through June 30, 2016 an  
2 adjusted EBITDA of \$39,091,000 over that period on \$291,276,000 in revenue.

3 **REQUEST FOR ADMISSION NO. 16:** Admit that on or about October 5, 2016, You  
4 and Defendant Iglesias provided to Miller a verification of Hygea’s QoE at the following figures:  
5 a 2014 EBITDA of \$4,542,000 on \$52,897,000 in revenue, and a 2015 EBITDA of \$20,449,000  
6 based on \$185,411,000.

7 **REQUEST FOR ADMISSION NO. 17:** Admit that at no time during Your  
8 Communications with Nevada 5 prior to its \$30 million payment did You inform any representative  
9 of Nevada 5 that Hygea’s financial growth would come from new investors, as opposed to earnings.

10 **REQUEST FOR ADMISSION NO. 18:** Admit that at no time during Your  
11 Communications with Nevada 5 prior to its \$30 million payment did You inform any representative  
12 of Nevada 5 that the financial growth represented with respect to Hygea was based upon non-  
13 standard, non-GAAP (Generally Accepted Accounting Principles) accounting methods applied to  
14 new medical practice acquisitions.

15 **REQUEST FOR ADMISSION NO. 19:** Admit that at no time during Your  
16 Communications with Nevada 5 prior to its \$30 million payment did You inform any representative  
17 of Nevada 5 that an RTO for Hygea was not feasible or not likely.

18 **REQUEST FOR ADMISSION NO. 20:** Admit that on or about September 30, 2016, with  
19 Your knowledge or consent, Defendant Iglesias sent Miller information about Hygea’s Financial  
20 Status.

21 **REQUEST FOR ADMISSION NO. 21:** Admit that on or about August 9, 2017, at a  
22 Hygea Board Meeting, You advised that depending on the treatment revenue recognition is given  
23 in the audits, there could be a several hundred million dollar difference in the financials.

24 DATED August 5, 2021

25 LEWIS ROCA ROTHGERBER CHRISTIE LLP

26 /s/ Ogonna Brown  
27 By: Ogonna M. Brown, Esq. (NBN 7589)  
28 3993 Howard Hughes Parkway, Suite 600  
Las Vegas, Nevada 89169  
*Attorneys for Plaintiff Nevada 5, Inc.*



**CERTIFICATE OF SERVICE**

Pursuant to NEFCR 9, NRCP 5(b), and EDCR 7.26, I certify that on August 5, 2021, I served a copy of **PLAINTIFF NEVADA 5'S FIRST DISCOVERY REQUESTS TO DEFENDANT MOFFLY** 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;

*Nevada 5, Inc.*

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Carita Strawn

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☐ 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/ Nicole N. Lord

An employee of Lewis Roca Rothgerber  
Christie LLP



“Exhibit 4”

Nevada 5's Discovery  
Requests to Iglesias

“Exhibit 4”

3993 Howard Hughes Parkway, Suite 600  
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**LEWIS**  **ROCA**

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cdk@millerlawpc.com

*Attorneys for Plaintiff Nevada 5, Inc.*

**IN THE EIGHTH JUDICIAL DISTRICT COURT  
CLARK COUNTY, NEVADA**

N5HYG, LLC, a Michigan limited liability  
company; and 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

**PLAINTIFF NEVADA 5's FIRST  
DISCOVERY REQUESTS TO  
DEFENDANT IGLESIAS**

115155557.1

Pursuant to Nevada Rules of Civil Procedure 33, 34, and 36, Plaintiff Nevada 5, Inc. (“Plaintiff” or “Nevada 5”) hereby requests that Defendant Manuel Iglesias (“Defendant” or “Iglesias”) answer and produce all documents responsive to the following Interrogatories, Requests for Production, and Requests for Admission (collectively, the “Discovery Requests”) set forth herein within 30 days.

### **INSTRUCTIONS**

1. You must respond to the Discovery Requests and produce responsive documents within 30 days after being served with the Discovery Requests.

2. Each Request for Production of a document shall extend to all documents which are or have been in the possession or subject to the control of Defendant at any time.

3. With respect to any Discovery Request which is objected to on the ground of any claim of privilege or for any other reason, you shall identify the document and shall further:

- a. state the nature of the claim or privilege or other ground for objection;
- b. state all facts relied upon in support of the claim of privilege or other ground of objection;
- c. identify all documents related to the claim of privilege or other ground of objection;
- d. identify all persons having knowledge of any facts related to the claim of privilege or other ground of objection; and
- e. identify all events, transactions or occurrences related to the claim of privilege or other ground of objection.

4. If any document requested to be produced has been lost, discarded, transferred to others, or destroyed, the document so lost, discarded, transferred to others, or destroyed shall be identified as completely as possible, including the following information:

- a. author;
- b. date and subject matter;
- c. date of destruction, transfer, or loss;
- d. the manner and reason(s) for destruction, transfer, or loss; and

e. person authorizing loss, transfer, discard or disposal.

5. In producing the documents requested, you should indicate the specific request(s) in response to which each document or group of documents is being produced.

6. Documents contained in a computer or stored electronically shall be produced on a USB memory stick device, or made available to Plaintiff by way of an electronic file-sharing method such as DropBox.

7. Responses to these Discovery Requests, including all documents responsive thereto, shall be delivered to Ogonna Brown, counsel for Plaintiff.

8. These Discovery Requests shall be deemed continuing, requiring prompt, further and supplemental production in the event you obtain, locate, or come into possession of additional responsive documents before trial.

9. Whenever appropriate, the singular form of a word shall also be interpreted as plural, and the plural form of a word shall also be interpreted as singular. In addition, “and” as well as “or” shall be broadly construed either disjunctively or conjunctively as necessary to bring information within the scope of these Discovery Requests.

#### **DEFINITIONS**

1. The terms “document(s)” and “documentation” are used in the most comprehensive and inclusive sense permitted by the Nevada Rules of Civil Procedure, and mean any and all materials and tangible objects conveying or carrying spoken, visual or literal substance, including, but not limited to, the original (or, if the original is not in your possession, a copy) and any nonidentical copies, regardless of origin or location. The terms “document(s)” and “documentation” include the following: papers, correspondence, records, tables, charts, analysis, graphs, schedules, reports, spreadsheets, memoranda, journals, notes, logs, calendars, appointment books, letters, telegrams, telecopy, telex and telefacsimile transmissions, messages, studies, books, periodicals, magazines, newspapers, booklets, advertisements, brochures, instructions, minutes, resolutions, contracts, books of account, orders, invoices, statements, checks, bills, receipts, files, vouchers, notebooks, scrapbooks, data sheets, data processing cards, computer files, computer disks, computer printouts, electronic data, e-mail messages, text messages, photographs, negatives,

115155557.1

1 phone recordings, tape recordings, wire recordings, drawings, forms, catalogues, manuals,  
2 tabulations and any other matter of any kind, regardless of the manner in which produced.

3 2. “Describe” means, in the case of an act, event, transaction, relationship, thing or  
4 occurrence:

5 a. A detailed description, including identification of dates, places, persons  
6 involved, and means employed;

7 b. Identification of your sources of information concerning such act, event,  
8 transaction, thing or occurrence, including the date you received such information;

9 c. Identification of each person having knowledge of such act, event,  
10 transaction, thing or occurrence; and

11 d. Identification of each communication and each document relating to such  
12 act, event, transaction, thing or occurrence.

13 3. “Identify” means:

14 a. With respect to a natural person: his or her full name, present or last known  
15 residence address, present or last known job title and responsibilities, the name and address of his  
16 or her present or last known employer, and his or her job title and responsibilities at the time in  
17 question;

18 b. With respect to a corporation or other business entity, to state, to the extent  
19 known, its full name and address;

20 c. With respect to a document, to describe specifically the document, its date,  
21 its present or last known location and custodian, its author (and, if different, the signer or signers),  
22 the addressee, the manner and date of its disposition if it is no longer in your possession or subject  
23 to your control, and all other means of identifying it with sufficient particularity to satisfy the  
24 requirements for its inclusion in a demand or request for its production pursuant to Rule 34 of the  
25 Nevada Rules of Civil Procedure or by a subpoena duces tecum; and

26 d. With respect to a communication: the manner of the communication, the date  
27 of and parties to the communication, where it took place, its substance, and the identification of all  
28 documents that relate to the communication.

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4. “Concerning,” “relating to,” “referring to,” “relate to”, “regarding” have their customary and usual meaning, and include, but are not limited to: discussing, pertaining, constituting, comprising, containing, setting forth, showing, disclosing, describing, explaining, summarizing, evidencing, identifying, touching upon, mentioning, referencing, and/or referring to in any way.

5. “And” means “or” and “or” means “and,” as necessary to denote the broadest possible construction and to bring within the scope of these Discovery Requests any information that may otherwise be construed to be outside their scope.

6. “You” or “Your” means Defendant Manuel Iglesias or, if applicable, Defendant Iglesias’s, agents, representatives, and all persons acting or purporting to act on his behalf.

7. “Communication” means all oral, visual, written, electronic or other means of transmitting information, messages, or statements.

8. The singular shall be deemed to include the plural, and vice versa. Words of one gender shall be deemed to include words of all genders.

9. The term “person” or “persons” means, unless otherwise specified, any natural person, firm, corporation, association, group or organization, business entity, or any agent thereof.

10. The term “meeting” includes any formal, informal, personal, telephonic, electronic or visual meeting between any two or more individuals, including, without limitation, any conference, discussion, conversation, communication, negotiation, incident, event or any other interaction or exchange.

11. The terms “all” and “each” shall be construed as “all” and “each.”

12. “Experts” means any person designated, disclosed or retained by Defendant Iglesias as a potential testifying expert witness in this matter.

13. “Financial Status” means profits, losses, revenue, income, earnings, indebtedness, EBITDA, or cash flow.

14. “Hygea” means Hygea Holdings Corp.

15. “Hygea Affiliate” means one or any combination of the following entities: All Care Management Services, Inc.; First Harbour Health Management, LLC; First Harbour Medical

115155557.1

Centers, LLC ; Florida Group Healthcare LLC; Gemini Healthcare Fund, LLC; Hygea Acquisition Longwood, LLC; Hygea Acquisition Orlando, LLC; Hygea Health Holdings, Inc. ; Hygea IGP of Central Florida, Inc.; Hygea IGP, LLC; Hygea Medical Centers of Florida, LLC; Hygea Medical Partners, LLC; Hygea of Delaware, LLC; Hygea of Georgia, LLC; Hygea of Pembroke Pines, LLC; Hygea Primum Acquisition, Inc.; Medlife Activity Center, LLC; Mobile Clinic Services, LLC; NeighborMD; Palm A.C. MSO, LLC; Palm Allcare Medicaid MSO, Inc.; Palm Allcare MSO, Inc.; Palm Medical Group, Inc.; Palm Medical MSO LLC; Palm Medical Network, LLC; Palm MSO System, Inc.; Palm PGA MSO, Inc.; Physician Management Associates East Coast, LLC; Physician Management Associates SE, LLC; Physicians Group Alliance, LLC; Primum Alternatives, Inc.; Primum Healthcare, LLC; and Professional Health Choice, Inc..

15. “Nevada 5” means Nevada 5, Inc., including its officers, managers, and representatives.

16. “N5HYG” means N5HYG, LLC, including its officers, managers, and representatives.

17. “RIN Capital” means RIN Capital, LLC, including its officers, employees, and representatives.

18. “Second Amended Complaint” means the Second Amended Complaint filed on or about December 13, 2019 in the above-captioned matter.

## **DISCOVERY REQUESTS**

### **INTERROGATORIES**

**INTERROGATORY NO. 1:** Identify each person who has assisted in the preparation of the responses to these Discovery Requests and describe in detail the role they played.

**INTERROGATORY NO. 2:** Describe Your affiliation with Hygea, including, without limitation, any and all titles and positions You have held with Hygea over the last ten (10) years.

**INTERROGATORY NO. 3:** Have You (or entity or trust in which You have an ownership or beneficial interest) owned any shares in Hygea within the last ten (10) years? If yes, describe:

a. the number of shares owned and by whom,

115155557.1

- b. when the shares were acquired,
- c. the purchase price for all such shares,
- d. when You or the entity or trust sold or otherwise disposed of some or all of the shares,
- e. to whom You or the entity or trust sold or otherwise transferred or relinquished the shares,
- f. the value You assigned to the shares between January 1 and October 5, 2016,
- g. the value You assigned to the shares between October 6, 2016 and July 15, 2020, and
- h. at what price you, the entity, or trust sold the shares, or any other consideration You received in exchange for any shares You disposed of.

**INTERROGATORY NO. 4:** Have You received any income from Hygea or a Hygea Affiliate within the last ten (10) years? If yes, describe the amount of, and the basis for, the income received.

**INTERROGATORY NO. 5:** Has any entity or trust in which You have an ownership or beneficial interest received any income from Hygea or a Hygea Affiliate within the last ten (10) years? If yes, describe the name of the entity or trust, as well as the amount of, and the basis for, the income received.

**INTERROGATORY NO. 6:** Has any member of Your family owned any shares in Hygea or a Hygea Affiliate within the last ten (10) years? If yes, for each, describe:

- a. the name and relationship of each family member,
- b. the entity(ies) of which the family member owns shares,
- c. the number and purchase prices of the shares each family member owned,
- d. when each family member acquired the shares,
- e. when each family member sold or otherwise disposed of some or all of the shares,
- f. to whom each family member sold or otherwise transferred or relinquished the shares,
- g. the value each family member assigned to the shares between January 1 and October 5, 2016,
- h. the value each family member assigned to the shares between October 6, 2016 and July 15, 2020, and

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- i. at what price each family member sold the shares, or any other consideration each family member received in exchange for any shares each family member disposed of.

**INTERROGATORY NO. 7:** Describe any and all Communications to which You have been a party regarding a potential or actual investment in Hygea by RIN Capital, LLC; Nevada 5, Inc.; or N5HYG, LLC.

**INTERROGATORY NO. 8:** Describe Your duties as a member of the Board of Directors of Hygea.

**INTERROGATORY NO. 9:** Identify all time period(s) since January 1, 2014 in which You served as CEO of Hygea, and identify Your duties in that position.

**INTERROGATORY NO. 10:** Identify any and all Communications regarding the Financial Status of Hygea to which You have been a party since January 1, 2014.

**INTERROGATORY NO. 11:** Describe any and all meetings of the Board of Directors of Hygea since January 1, 2014 in which the Financial Status of Hygea was discussed or the subject of a resolution or other action of the Board of Directors, including the specific aspect of the Financial Status of Hygea that was discussed or acted upon.

**INTERROGATORY NO. 12:** Describe any and all meetings of the Board of Directors of Hygea in which the disposition of any portion of Nevada 5's \$30 million payment to Hygea was discussed or the subject of a resolution or other action of the Board of Directors, including the specific aspect of the disposition of Nevada 5's \$30 million payment that was discussed or acted upon.

**INTERROGATORY NO. 13:** Describe any and all meetings of the Board of Directors of Hygea in which a potential or actual investment by Nevada 5, RIN Capital, or N5HYG was discussed or the subject of a resolution or other action of the Board of Directors, including the specific aspect of the aforesated potential or actual investment that was discussed or acted upon.

**INTERROGATORY NO. 14:** Identify any and all computers (including desktops and laptops), electronic storage devices, cell phones, including their locations, and email addresses You have utilized in Your dealings with or concerning Hygea between January 1, 2014 and the present.

1           **INTERROGATORY NO. 15:** Describe any and all document retention measures You  
2 have implemented since January 1, 2014.

3           **INTERROGATORY NO. 16:** To the extent that Your answer to any of Plaintiff's  
4 Requests for Admission was anything other than an unequivocal admission, describe in detail all  
5 of the factual and legal support for Your denial.

6           **INTERROGATORY NO. 17:** Identify any and all persons who represented to You that  
7 Hygea was suitably positioned for listing on any public stock exchange between fall 2016 and  
8 September 2017, as well as the specific representations such person(s) made to you, when they  
9 made them, and by what means they communicated them to you.

10           **INTERROGATORY NO. 18:** Identify any and all Communications in which You  
11 represented to Nevada 5, RIN Capital, or N5HYG, LLC that Hygea was suitably positioned for  
12 listing on any public stock exchange between fall 2016 and spring 2017, as well as the specific  
13 representations You made, when You made them, and by what means You communicated them to  
14 Nevada 5, RIN Capital, or N5HYG.

15           **INTERROGATORY NO. 19:** Identify what You contend was the total fair market value  
16 of Hygea on October 5, 2016, as well as all documents supporting Your contention.

17           **INTERROGATORY NO. 20:** Identify each and every fact, document, and witness upon  
18 which You rely for Your denial of the allegations in Paragraph 48 of the Second Amended  
19 Complaint.

20           **INTERROGATORY NO. 21:** Identify each and every fact, document, and witness upon  
21 which You rely for Your denial of the allegations in Paragraph 49 of the Second Amended  
22 Complaint.

23           **INTERROGATORY NO. 22:** Identify each and every fact, document, and witness upon  
24 which You rely for Your denial of the allegations in Paragraph 50 of the Second Amended  
25 Complaint.

26           **INTERROGATORY NO. 23:** Identify each and every fact, document, and witness upon  
27 which You rely for Your denial of the allegations in Paragraph 51 of the Second Amended  
28 Complaint.

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**INTERROGATORY NO. 26:** Describe your relationship with NeighborMD, including, without limitation: any and all title(s) You have held with that company; whether You (or any entity of which You are an owner) are a shareholder in that company; and any income You (or any entity of which You are an owner) has received from that company.

**REQUEST TO PRODUCE NO. 1:** Produce any and all documents, including, without limitation, any and all Communications, relating to a potential or actual investment in Hygea by RIN Capital, LLC, Nevada 5, Inc., or N5HYG, LLC.

**REQUEST TO PRODUCE NO. 2:** Produce any and all documents relating to meetings of the Board of Directors of Hygea since January 1, 2014 in which the Financial Status of Hygea was a topic of discussion or the subject of a resolution or other action of the Board of Directors.

**REQUEST TO PRODUCE NO. 3:** Produce any and all documents regarding the Financial Status of Hygea between January 1, 2014 through the present, including without limitation: quality of earnings reports; confidential information memoranda; sell side due diligence reports; state and federal income tax returns; profit and loss statements; income statements; financial statements (audited and unaudited); financial summaries; and email Communications in which representations were made regarding the company's Financial Status.

**REQUEST TO PRODUCE NO. 4:** Produce any and all documents relating to meetings of the Board of Directors of Hygea in which the disposition of any portion of Nevada 5's \$30 million payment or the related stock purchase was the topic of discussion or the subject of a resolution or other action of the Board of Directors.

1           **REQUEST TO PRODUCE NO. 5:** Produce any and all documents relating to the  
2 disposition of any portion of Nevada 5's \$30 million payment to Hygea.

3           **REQUEST TO PRODUCE NO. 6:** Produce any and all documents relating to meetings  
4 of the Board of Directors of Hygea in which a potential or actual investment by Nevada 5, RIN  
5 Capital, or N5HYG was the topic of discussion or the subject of a resolution or other action of the  
6 Board of Directors.

7           **REQUEST TO PRODUCE NO. 7:** Produce any and all documents describing or relating  
8 to the document retention measures You have implemented since January 1, 2014.

9           **REQUEST TO PRODUCE NO. 8:** To the extent that Your answer to any of Plaintiff's  
10 Requests for Admission was anything other than an unequivocal admission, produce all documents  
11 that support, negate or otherwise refer or relate to any of the allegations that You have denied.

12           **REQUEST TO PRODUCE NO. 9:** Produce any and all documents in which any person  
13 represented to You that Hygea was suitably positioned for listing on any public stock exchange  
14 between fall 2016 and spring 2017.

15           **REQUEST TO PRODUCE NO. 10:** Produce any and all documents in which You  
16 represented to Nevada 5, RIN Capital, or N5HYG, LLC that Hygea was suitably positioned for  
17 listing on any public stock exchange between fall 2016 and spring 2017.

18           **REQUEST TO PRODUCE NO. 11:** Produce any and all documents supporting Your  
19 contention of the total fair market value of Hygea on October 5, 2016.

20           **REQUEST TO PRODUCE NO. 12:** Produce any and all documents supporting Your  
21 Affirmative Defense No. 1.

22           **REQUEST TO PRODUCE NO. 13:** Produce any and all documents supporting Your  
23 Affirmative Defense No. 2.

24           **REQUEST TO PRODUCE NO. 14:** Produce any and all documents supporting Your  
25 Affirmative Defense No. 3.

26           **REQUEST TO PRODUCE NO. 15:** Produce any and all documents supporting Your  
27 Affirmative Defense No. 4.

1           **REQUEST TO PRODUCE NO. 16:** Produce any and all documents supporting Your  
2 Affirmative Defense No. 5.

3           **REQUEST TO PRODUCE NO. 17:** Produce any and all documents supporting Your  
4 Affirmative Defense No. 6.

5           **REQUEST TO PRODUCE NO. 18:** Produce any and all documents supporting Your  
6 Affirmative Defense No. 7.

7           **REQUEST TO PRODUCE NO. 19:** Produce any and all documents supporting Your  
8 Affirmative Defense No. 8.

9           **REQUEST TO PRODUCE NO. 20:** Produce any and all documents supporting Your  
10 Affirmative Defense No. 9.

11           **REQUEST TO PRODUCE NO. 21:** Produce any and all documents supporting Your  
12 Affirmative Defense No. 10.

13           **REQUEST TO PRODUCE NO. 22:** Produce any and all documents supporting Your  
14 Affirmative Defense No. 11.

15           **REQUEST TO PRODUCE NO. 23:** Produce any and all documents supporting Your  
16 Affirmative Defense No. 12.

17           **REQUEST TO PRODUCE NO. 24:** Produce any and all documents supporting Your  
18 Affirmative Defense No. 13.

19           **REQUEST TO PRODUCE NO. 25:** Produce any and all documents supporting Your  
20 Affirmative Defense No. 14.

21           **REQUEST TO PRODUCE NO. 26:** Produce any and all documents supporting Your  
22 Affirmative Defense No. 15.

23           **REQUEST TO PRODUCE NO. 27:** Produce any and all documents supporting Your  
24 Affirmative Defense No. 16.

25           **REQUEST TO PRODUCE NO. 28:** Produce any and all documents supporting Your  
26 Affirmative Defense No. 17.

27           **REQUEST TO PRODUCE NO. 29:** Produce any and all documents supporting Your  
28 Affirmative Defense No. 18.

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1           **REQUEST TO PRODUCE NO. 30:** Produce any and all documents supporting Your  
2 Affirmative Defense No. 19.

3           **REQUEST TO PRODUCE NO. 31:** Produce any and all documents supporting Your  
4 Affirmative Defense No. 20.

5           **REQUEST TO PRODUCE NO. 32:** Produce any and all documents supporting Your  
6 Affirmative Defense No. 21.

7           **REQUEST TO PRODUCE NO. 33:** Produce any and all documents supporting Your  
8 Affirmative Defense No. 22.

9           **REQUEST TO PRODUCE NO. 34:** Produce any and all documents supporting Your  
10 Affirmative Defense No. 23.

11           **REQUEST TO PRODUCE NO. 35:** Produce any and all documents supporting Your  
12 Affirmative Defense No. 24.

13           **REQUEST TO PRODUCE NO. 36:** Produce any and all documents supporting Your  
14 Affirmative Defense No. 25.

15           **REQUEST TO PRODUCE NO. 37:** Produce any and all documents supporting Your  
16 Affirmative Defense No. 26.

17           **REQUEST TO PRODUCE NO. 38:** Produce any and all documents supporting Your  
18 Affirmative Defense No. 27.

19           **REQUEST TO PRODUCE NO. 39:** Produce any and all documents supporting Your  
20 Affirmative Defense No. 28.

21           **REQUEST TO PRODUCE NO. 40:** Produce any and all documents supporting Your  
22 Affirmative Defense No. 29.

23           **REQUEST TO PRODUCE NO. 41:** Produce any and all documents supporting Your  
24 Affirmative Defense No. 30.

25           **REQUEST TO PRODUCE NO. 42:** Produce any and all documents supporting Your  
26 Affirmative Defense No. 31.

27           **REQUEST TO PRODUCE NO. 43:** Produce any and all documents supporting Your  
28 Affirmative Defense No. 32.

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**REQUEST TO PRODUCE NO. 44:** Produce any and all documents supporting Your Affirmative Defense No. 33.

**REQUEST TO PRODUCE NO. 45:** Produce any and all documents supporting Your Affirmative Defense No. 34.

**REQUEST TO PRODUCE NO. 46:** Produce any and all documents supporting Your Affirmative Defense No. 35.

**REQUEST TO PRODUCE NO. 47:** Produce any and all documents upon which You rely for Your denial of the allegations in Paragraph 48 of the Second Amended Complaint.

**REQUEST TO PRODUCE NO. 48:** Produce any and all documents upon which You rely for Your denial of the allegations in Paragraph 49 of the Second Amended Complaint.

**REQUEST TO PRODUCE NO. 49:** Produce any and all documents upon which You rely for Your denial of the allegations in Paragraph 50 of the Second Amended Complaint.

**REQUEST TO PRODUCE NO. 50:** Produce any and all documents upon which You rely for Your denial of the allegations in Paragraph 51 of the Second Amended Complaint.

**REQUEST TO PRODUCE NO. 51:** Produce any and all documents upon which You rely for Your denial of the allegations in Paragraph 52 of the Second Amended Complaint.

**REQUEST TO PRODUCE NO. 52:** Produce any and all documents upon which You rely for Your denial of the allegations in Paragraph 53 of the Second Amended Complaint.

#### REQUESTS FOR ADMISSION

**REQUEST FOR ADMISSION NO. 1:** Admit that Nevada 5 paid, and Hygea received, \$30 million on or about October 5, 2016 for a purchase of shares of Hygea.

**REQUEST FOR ADMISSION NO. 2:** Admit that You voted to approve the stock purchase by which Nevada 5 paid, and Hygea received, \$30 million on or about October 5, 2016.

**REQUEST FOR ADMISSION NO. 3:** Admit that as part of the executive management of Hygea, You negotiated, finalized, and executed agreements relating to the sale of shares of Hygea for which Nevada 5 paid \$30 million.

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1           **REQUEST FOR ADMISSION NO. 4:** Admit that the 2016 EBITDA of Hygea did not  
2 exceed \$46 million.

3           **REQUEST FOR ADMISSION NO. 5:** Admit that the value of Hygea did not exceed  
4 \$349 million as of October 5, 2016.

5           **REQUEST FOR ADMISSION NO. 6:** Admit that as part of Nevada 5's due diligence  
6 prior to paying the \$30 million for the stock purchase, You knew and consented to Moffly providing  
7 Nevada 5 with access to a "data room" containing documents with representations of Hygea's  
8 Financial Status.

9           **REQUEST FOR ADMISSION NO. 7:** Admit that as part of Nevada 5's due diligence  
10 prior to paying the \$30 million for the stock purchase, with Moffly's knowledge, You provided  
11 Nevada 5 with access to a "data room" containing documents with representations of Hygea's  
12 Financial Status.

13           **REQUEST FOR ADMISSION NO. 8:** Admit that among the documents provided to  
14 Nevada 5 through the "data room" was a Confidential Information Memorandum ("CIM") for  
15 Hygea Holdings Corp. which included: a 2014 earnings before interest, tax, depreciation, and  
16 amortization ("EBITDA") of \$3,692,173 based on \$52,897,640 in revenue; a 2015 EBIDTA of  
17 \$28,003,053 based on \$239,053,726 in revenue; and projected a 2016 EBITDA of \$46,489,715.

18           **REQUEST FOR ADMISSION NO. 9:** Admit that on or about August 2, 2016, with Your  
19 knowledge and consent, Moffly provided Nevada 5 representative Dan Miller with a final quarterly  
20 work file being used by third party financial analysts to perform a Quality of Earnings Report  
21 ("QoE") and a purported audit of Hygea Holdings Corp.'s finances.

22           **REQUEST FOR ADMISSION NO. 10:** Admit that on or about September 14, 2016, with  
23 Your knowledge and consent, in response to a request from Miller, Moffly transmitted to Miller a  
24 CIM that included financial performance figures for 2013 through 2015 including a 2014 EBITDA  
25 of \$3.7 million based on \$52.9 million in revenue and a 2015 EBITDA of \$27.1 million based on  
26 \$239.1 in revenue.

27           **REQUEST FOR ADMISSION NO. 11:** Admit that on or about or about September 16,  
28 2016, with Your knowledge and consent, Moffly sent to Miller a proposed deal structure,  
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1 representing a purported valuation of Hygea, and claimed that the company was actually ahead of  
2 that valuation figure, including: “We have an enterprise valuation done by Cormark in Canada (who  
3 you can speak with if you like) of approximately \$560MM, which is based on a 10x multiple of  
4 2016 (T9M+F3M – approximately) EBITDA of \$56.9MM (BTW we are ahead of that number and  
5 are pushing for \$60MM). Subtracting out all debt of a little less than \$50MM we have a net value  
6 of \$510MM.”

7 **REQUEST FOR ADMISSION NO. 12:** Admit that on or about September 20-21, 2016,  
8 with Your knowledge and consent, Moffly stated to Miller that the final trial balances for June 30,  
9 2016 would be finished in a matter of hours with the “consolidation done by CLA (Clifton Larson  
10 Allen, LLP) [. . .] but assembled by our accounting team.”

11 **REQUEST FOR ADMISSION NO. 13:** Admit that on or about September 20, 2016, with  
12 Your knowledge and consent, Moffly sent to Miller a copy of financials, containing balance sheets,  
13 income statements, and a statement of cash flows, done by CPA firm Rodriguez, Trueba & Co,  
14 showing, among other figures, a 2014 EBITDA of \$3,692,172 and a 2015 EBITDA of \$27,093,697.

15 **REQUEST FOR ADMISSION NO. 14:** Admit that on or about September 27, 2016, with  
16 Your knowledge and consent, Moffly provided Miller with an Offering Memorandum with  
17 additional representations as to Hygea’s financial situation, including a 2014 EBITDA of \$3.7  
18 million on \$52,897,000 in revenue, and a 2015 EBITDA of \$27.1 million on \$246,129,000 in  
19 revenue.

20 **REQUEST FOR ADMISSION NO. 15:** Admit that on or about September 29, 2016, with  
21 Your knowledge and consent, Moffly sent to Miller an email attaching a capital table structure  
22 analysis; the email stated that this attachment was approved by Cormark and Hygea’s Board; it  
23 indicated “Hygea 2016 FYE EBITDA – Low: \$54.5 [million] – High: \$65.0 [million] – Expected:  
24 \$57.5 [million];” and indicated that “EBITDA Is (*sic*) ahead of schedule used 4 months ago with  
25 Cormark.”

26 **REQUEST FOR ADMISSION NO. 16:** Admit that on or about October 4, 2016, with  
27 Your knowledge and consent, Moffly sent to Miller a copy of Hygea Holdings Corp.’s Quality of  
28 Earnings Report dated October 3, 2016, which included: a 2014 EBITDA of \$4,542,000 on  
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1 \$52,897,000 in revenue; a 2015 EBITDA of \$20,449,000 million on \$185,411,000 in revenue; and  
2 showed for Hygea in the “trailing twelve months” from June 30, 2015 through June 30, 2016 an  
3 adjusted EBITDA of \$39,091,000 over that period on \$291,276,000 in revenue.

4 **REQUEST FOR ADMISSION NO. 17:** Admit that on or about October 5, 2016, You  
5 and Moffly provided to Miller and others a verification of Hygea’s QoE at the following figures: a  
6 2014 EBITDA of \$4,542,000 on \$52,897,000 in revenue, and a 2015 EBITDA of \$20,449,000  
7 based on \$185,411,000.

8 **REQUEST FOR ADMISSION NO. 18:** Admit that at no time during Your  
9 communications with Nevada 5 prior to its \$30 million payment did You inform any representative  
10 of Nevada 5 that Hygea’s financial growth would come from new investors, as opposed to earnings.

11 **REQUEST FOR ADMISSION NO. 19:** Admit that at no time during Your  
12 communications with Nevada 5 prior to its \$30 million payment did You inform any representative  
13 of Nevada 5 that the financial growth represented with respect to Hygea was based upon non-  
14 standard, non-GAAP (Generally Accepted Accounting Principles) accounting methods applied to  
15 new medical practice acquisitions.

16 **REQUEST FOR ADMISSION NO. 20:** Admit that at no time during Your  
17 communications with Nevada 5 prior to its \$30 million payment did You inform any representative  
18 of Nevada 5 that an RTO for Hygea was not feasible or not likely.

19  
20 DATED August 5, 2021

21 LEWIS ROCA ROTHGERBER CHRISTIE LLP

22 By: /s/ Ogonna Brown  
23 Ogonna M. Brown, Esq.  
24 Nevada Bar No. 7589  
25 3993 Howard Hughes Parkway, Suite 600  
26 Las Vegas, Nevada 89169  
27 *Attorneys for Plaintiff Nevada 5, Inc.*  
28

**CERTIFICATE OF SERVICE**

Pursuant to NEFCR 9, NRCF 5(b), and EDCR 7.26, I certify that on August 5, 2021, I served a copy of **PLAINTIFF NEVADA 5'S FIRST DISCOVERY REQUESTS TO DEFENDANT IGLESIAS** 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;

*Attorneys for Nevada 5, Inc.*

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☐ 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/ Nicole N. Lord

An employee of Lewis Roca Rothgerber  
Christie LLP