

IN THE SUPREME COURT OF THE STATE OF NEVADA

Electronically Filed
Aug 24 2021 04:13 p.m.
Elizabeth A. Brown
Clerk of Supreme Court

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.

Supreme Court No. 83157

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

**OPPOSITION TO PETITIONERS'
EMERGENCY MOTION FOR STAY**

Real Parties in Interest hereby Oppose Petitioners'

Emergency Motion for Stay

I. INTRODUCTION

A stay is not appropriate. The district court has repeatedly ruled over the years that Nevada 5 has standing and the right to pursue its \$30 million claims against

Petitioners in Nevada. The district court properly denied Petitioners' motion for judgment on the pleadings (the "Issue Preclusion Motion") when it refused to apply 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 Petitioners. Petitioners provide no compelling reason for a stay.

Just as discovery is now getting underway, Petitioners moved for a stay in the district court. The court appropriately exercised its discretion and denied that motion, finding Petitioners had made "concerted efforts" to delay this four-year-old case. (Ex. 1) Prior to an order even being submitted for the district court's review, Petitioners filed this Motion. Risking fading witness memories and scattering evidence, they seek a stay based on their misguided effort to obtain extraordinary interlocutory relief and to avoid liability for fraudulently inducing Nevada 5 to pay \$30 million to the company Petitioners spearheaded. The Motion should be denied.

II. COUNTER-STATEMENT OF FACTS

Nevada 5 filed this case in October 2017 after Petitioners fraudulently induced it to pay (and lose) \$30 million as part of an ill-fated stock purchase. In the nearly four years since, Petitioners 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, Petitioners 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.

Even before denying Petitioners' Issue Preclusion Motion, and before the Florida court issued its decision, the district court had repeatedly rejected Petitioners' arguments: (a) that Nevada 5 somehow lacks standing despite being defrauded out of \$30 million, and (b) that the integration clause of the October 2016 Stock Purchase Agreement (to which Nevada 5 is not even a party) bars Nevada 5's claims. The district court correctly—and repeatedly—ruled that under Nevada law, Nevada 5 has a right to its day in a Nevada court:

This motion ... is almost identical to the motion I denied in January of 2020... **[V]ery clearly, Nevada 5 is not barred here -- clearly has standing.** ... Every cause of action is available under Nevada law. All of them have been adequately pled -- Nevada or Michigan or Florida law, and they have all been adequately pled. (**Ex. 2.** *See also, Ex. 3 and Ex. 4,* attached).

In subsequently denying the Issue Preclusion Motion, the district court correctly recognized that it had already determined those "issues" relevant to Nevada 5's claims against Petitioners in Nevada. (**Ex. 5 and Ex. 6,** attached). The court correctly recognized that those issues were *not* the same as the issues litigated in the Florida case, which involved differently-situated parties and different claims, and were subject to different substantive and procedural laws that do not comport with Nevada law on standing, fraud, or integration clauses. (*Id.*) Simply put, contrary to

Petitioners' characterization, the Florida court did not—*and could not have*—adjudicated Nevada 5's standing or right to bring its claims against Petitioners in Nevada.

Unsatisfied with the district court's March 30, 2021 order denying the Issue Preclusion Motion, Petitioners waited over three months, and then petitioned this court for a writ seeking review "as soon as possible¹."

In the meantime, the district court held a Mandatory Rule 16.1 Conference on July 29, 2021, indicating on the record that the scheduling order would include a close of discovery on January 31, 2022. Accordingly, on August 5, 2021, Nevada 5 served its First Discovery Requests on Petitioners. (Ex. 7) Petitioners' responses are due September 6, 2021. (*Id.*)

Petitioners filed a motion for a stay in the district court on August 3, 2021, advancing mainly the same arguments they advance here. At the August 13, 2021 hearing, the district court denied the motion. (Ex. 1) Although the court did mention the five-year rule in passing, Petitioners' present Emergency Motion largely mischaracterizes the lower court's findings. The district court specifically found that "there has been delay in this case, in part due to [Petitioners' former company's] bankruptcy, but also due to **concerted efforts by [Petitioners] to delay.**" (*Id.*) The

¹ Pursuant to this Court's Order, the Real Parties in Interest will soon file an answer addressing the propriety of writ relief and the merits of the petition.

district court found that a stay is not appropriate, in part because the “balance of harms weighs in favor of [Nevada 5 and N5HYG].” (*Id.*) The court further found that the object of Petitioners’ petition will not be defeated by denying a stay. (*Id.*)

III. ARGUMENT

A. Petitioners’ Emergency Motion is Procedurally Improper

Petitioners’ Emergency Motion should be denied at the outset for its procedural impropriety. Prior to filing the Emergency Motion, Petitioners did not even bother waiting for a draft order denying their motion for a stay in the district court to be *submitted* to that court, much less *entered*. Further, when filing an “emergency” motion under NRAP 27(e), a movant must certify that relief is needed in less than 14 days in order to “avoid irreparable harm.” Petitioners claim irreparable “harm will occur since Petitioners cannot determine the value of Nevada 5’s case” (Motion, p. 7). But they provide no support for why they, as opposed to the finder of fact, would need to determine the value of Nevada 5’s case, let alone how their inability to do so would constitute “irreparable harm” under the rule. Petitioners’ Motion is improper and should be denied on that basis alone.

B. Petitioners Cannot Establish a Stay Is Warranted

Petitioners also fail to demonstrate that a stay is warranted under the established factors: (1) whether the object of the writ petition will be defeated if the stay is denied; (2) whether petitioner will suffer irreparable or serious injury if the

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

Here, Petitioners seek a stay in order to avoid what they call “blatantly unfair...expensive litigation” (Motion, p. 7). Ironically, Petitioners themselves are the source of excess litigation. Petitioners were previously sanctioned for improperly removing this case to federal court; filed a “nearly identical” dispositive motion to one the district court previously denied; sought a stay through the lower court on the same arguments they now advance and were denied; have been cited by the district court for their “concerted efforts to delay” the proceedings; and now seek a stay through this Court to resolve a writ petition that is without merit.

“[A] party seeking a stay of discovery carries the heavy burden of making a strong showing why discovery should be denied.” *Trice v. Liberty Mut. Ins. Co.*, 2021 U.S. Dist. LEXIS 37203, at *1-2 (D. Nev. Mar. 1, 2021), quoting *Tradebay, LLC v. eBay, Inc.*, 278 F.R.D. 597, 601 (D. Nev. 2011). This is particularly true where, as here, Nevada 5 has been forced to wait nearly four years to get to discovery and is not the party seeking a stay. Further, a showing that “discovery may involve some inconvenience and expense” is an insufficient basis to issue a stay. *Turner Broadcasting, Inc. v. Tracinda Corp.*, 175 F.R.D. 554, 556 (D. Nev. 1997).

Petitioners must “show that the balance of equities weighs heavily in favor of granting the stay.” *Hansen*, 116 Nev. at 658-59, 6 P.3d at 986-87, quoting *Ruiz v. Estelle*, 650 F.2d 555, 565 (5th Cir. 1981).

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

1. The object of the Writ Petition will not be defeated if a stay is denied.

Petitioners say the purpose of their Writ Petition is to “enforce” in a Nevada case a Florida court’s ruling—a ruling that applied different laws relating to standing, fraud, and integration clauses to differently-situated parties and different claims. As will be detailed more thoroughly in the Answer to the Petition, that objective is baseless, as issue preclusion does not apply here. And in reality, the ultimate object of Petitioners’ writ petition is to overturn the district court’s denial of their Issue Preclusion Motion, thus avoiding accountability for their fraud. That object will not be automatically defeated if a stay is denied. Even if this Court denies their Petition, Petitioners could (arguably) prevail at trial, or appeal the district court’s decision in the normal course if Nevada 5 ultimately wins a favorable judgment.

///

2. Petitioners will not suffer irreparable or serious injury if the stay is denied.

Petitioners argue that without a stay, they may be subject to “vexation and expense,” “needless discovery requests,” “attorney’s fees, the impending trial, and a potential judgment,” and “potentially futile litigation” (Motion, pp. 6, 7). But this Court has firmly **rejected** this expense argument on multiple occasions.

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

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

3. Nevada 5 is in danger of irreparable harm or serious injury if a stay is granted.

Petitioners say “Nevada 5 will benefit by saving needless time and energy spent pursuing discovery.” (Motion, p. 8) But the real harm and expense to Nevada 5 arises from Petitioners’ evasive maneuvers as they try to artificially “run out the

clock” under the five-year rule. A stay would not result in “mere delay” (Motion, p. 8); it would unnecessarily prolong the case and continue to harm Nevada 5.

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

On balance, the harm and injury with which Nevada 5 is threatened by a stay weigh against a stay.

4. Petitioners are unlikely to prevail on the merits.

Petitioners cannot meet this final element for several reasons. As this Court has emphasized, “[a]lthough, when moving for a stay pending... 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*, at 658-59, 986-87 (internal quotation and citation omitted) (bold added). Petitioners have shown no such serious legal question nor substantial case on the merits. Rather, they attempt to misapply the doctrine of issue preclusion by overturning a Nevada court’s repeated prior rulings that Nevada 5 has standing and can pursue its claims against them—all based on a Florida court’s subsequent ruling involving differently-situated parties, and applying different laws on standing and integration clauses to different claims. This Court will be the final arbiter of the merits of Petitioners’ Writ Petition. But Petitioners’ incomplete and inaccurate characterization of the effect of the Florida court’s ruling—and the district court’s rulings preceding it—neither present a substantial case of a serious legal question on the merits, nor tip the balance of equities in their favor such that a stay is warranted in the meantime.

Petitioners claim that because the “this Court did not deny the Writ Petition and ordered Nevada 5 to answer” it is “likely that this Court will grant Petitioners’ Writ Petition.” (Motion, p. 9). The fact that this Court ordered an answer in no way reflects a likelihood of success for the Writ Petition. For example, whether a writ is issued depends, in part, on whether a “speedy and adequate remedy in the ordinary course of law” exists. NRS 34.170, 34.330. The right to appeal after a final judgment generally constitutes an adequate remedy precluding writ relief. *D.R. Horton, Inc. v. Eighth Judicial Dist. Court*, 123 Nev. 468, 474, 168 P.3d 731, 736 (2007). If this

Court had already determined that Petitioners lacked a speedy and adequate legal remedy, it would not have directed Nevada 5 to address that issue in their answer to the Petition. In any event, this Court frequently denies writ petitions after having ordered answers from real parties in interest. *E.g. Wynn Resorts v. Eighth Judicial Dist. Court*, 2017 WL 6043417 at *1 (Nev., December 4, 2017; No. 74063; unpublished disposition) (writ petition denied where answer had been ordered); *Walker v. Second Judicial Dist. Court*, 476 P.3d 1194, 1195 (Nev. 2020) (writ petition denied after answer was ordered). Petitioners fail to meet this factor as well.

IV. CONCLUSION

Petitioners fail to carry their heavy burden to show the balance of equities 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. Petitioners' rampant evasive maneuvering must end. The Emergency Motion should be denied.

Dated: Aug. 24, 2021

Robert L. Eisenberg
Robert L. Eisenberg (SBN No. 950)
LEMONS, GRUNDY & EISENBERG
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Reno, Nevada 89519
(775) 786-6868
rle@lge.net

ATTORNEY FOR REAL PARTIES IN
INTEREST N5HYG, LLC and
NEVADA 5, INC.

CERTIFICATE OF SERVICE

I certify that I am an employee of LEMONS, GRUNDY & EISENBERG and that on this date the foregoing *Opposition to Petitioners' Emergency Motion for Stay* was filed electronically with the Clerk of the Nevada Supreme Court, and therefore electronic service was made in accordance with the master service list as follows:

D. Chris Albright
Ogonna M. Brown
Kory Kaplan
G. Mark Albright

I further certify that on this date I served copies of the foregoing *Opposition to Petitioners' Emergency Motion for Stay*, postage prepaid, by U.S. mail to:

Christopher Kaye
The Miller Law Firm, P.C.
950 West University Drive, Suite 300
Rochester, MI 48307

E. Powell Miller
The Miller Law Firm, P.C.
950 West University Drive, Suite 300
Rochester, MI 48307

Hon. Nancy L. Allf, District Judge
Eighth Judicial District Court, Dept. 27
Regional Justice Center
200 Lewis Avenue
Las Vegas, NV 89155

DATED this 24th day of August, 2021.

/s/ Lelia Geppert
Employee of LEMONS, GRUNDY & EISENBERG

Index of Exhibits

<u>Exhibit</u>	<u>Description</u>	<u>Date Filed</u>
1	Order Denying Defendants Iglesias and Moffly's Motion for stay of Proceedings	8/23/21
2	Before the Honorable Nancy Allf, District Court Judge, December 9, 2020 <u>Excerpt from:</u> <i>Recorders Transcript of Proceedings re: Defendants' Motion for Summary or in the Alternative, Motion to Dismiss Mandatory Rule 16 Conference</i>	12/10/20'
3	Before the Honorable Nancy Allf, District Court Judge, Wednesday, July 19, 2019 <u>Excerpt from:</u> <i>Plaintiffs' Motion for Reconsideration regarding the Dismissal of Nevada 5, Inc. & Motion for Reconsideration and Clarification of Order on Defendants' Motion to Dismiss Based on Claim Preclusion and, Alternatively, Motion to Stay</i>	7/22/19
4	Notice of Entry of Findings of Fact, Conclusions of Law, and Order Granting Plaintiffs' Motion for Reconsideration re: Nevada 5, Inc.	12/3/19
5	Before the Honorable Nancy Allf, District Court Judge, Wednesday, March 17, 2021 <u>Excerpt from:</u> <i>Transcript of Proceedings re: All Pending Motions</i>	3/24/21
6	Order Denying Defendants' Partial Motion for Judgment on the Pleadings	3/29/21
7	Declaration of Ogonna M. Brown in Support of Plaintiffs' Opposition to Defendants' Motion for Stay of Proceedings	8/9/21 (not file-stamped)

EXHIBIT 1

EXHIBIT 1

Heather S. Linn
CLERK OF THE COURT

ORDR

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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

**ORDER DENYING DEFENDANTS
IGLESIAS AND MOFFLY'S MOTION
FOR STAY OF PROCEEDINGS**

Date of Hearing: August 13, 2021

Time of Hearing: 11:00 a.m. (OST)

Judge: Hon. Nancy Allf

This matter came on for hearing on shortened time on August 13, 2021, at 11:00 a.m.
before the Honorable Nancy Allf on Defendant Iglesias and Defendant Moffly's ("Defendants")

1 Motion for Stay of Proceedings¹ (the "Motion") and an Application for Order Shortening Time
2 filed on August 3, 2021. On August 9, 2021, Plaintiffs Nevada 5, Inc. and N5HYG, LLC²
3 ("Plaintiffs" or "Nevada 5") filed their Opposition to the Motion (the "Opposition"). Defendants
4 did not file a Reply. Ogonna M. Brown, Esq. of the law firm of Lewis Roca Rothgerber Christie
5 LLP ("Lewis Roca"), appeared at the hearing on behalf of Plaintiffs. Kory L. Kaplan, Esq., of the
6 law firm of Kaplan Cottner, appeared at the hearing on behalf of Defendants.

7 The Court, having considered the papers and pleadings on file, and the oral arguments
8 presented by counsel at the Motion hearing, and good cause appearing therefor, finds:

9 **IT IS HEREBY ORDERED** that Defendants' Motion for Stay of Proceedings is
10 **DENIED.**

11 **IT IS FURTHER ORDERED, ADJUDGED AND DECREED** that there has been
12 delay in this case, in part due to Hygea's bankruptcy, but also due to concerted efforts by
13 Defendants to delay by the filing of Motions to Dismiss;

14 **IT IS FURTHER ORDERED, ADJUDGED AND DECREED** that a stay is not appropriate for
15 the reasons stated on the record and in the interest of the five-year rule given that this case was
16 initiated in October 2017 and because the balance of harms weighs in favor of Plaintiffs; and

17 **IT IS FURTHER ORDERED, ADJUDGED AND DECREED** that the object of
18 Defendants' appeal will not be defeated by denying this stay. Defendants may seek stay relief
19 from the Nevada Supreme Court and are not left without remedy.

20 **IT IS SO ORDERED.**

21 August 23, 2021

Dated this 23rd day of August, 2021

22 Nancy L Allf
23 TW

24 828 E5F A082 531D
25 Nancy Allf
District Court Judge

26 ¹ Defendant Hygea Holdings Corp. ("Hygea") filed for bankruptcy on February 19, 2020.
27 Because the ensuing July 15, 2020 bankruptcy Reorganization Plan discharged Hygea from pre-
petition claims, this Order does not apply to or against Hygea.

28 ² This Order is entered without prejudice to the finality of N5HYG's claims. Final Judgment of
N5HYG's claims was entered on July 22, 2021.

Submitted by:

LEWIS ROCA ROTHGERBER CHRISTIE LLP

By: 

OGONNA M. BROWN, ESQ. (NBN 7589)

3993 Howard Hughes Parkway, Suite 600

Las Vegas, Nevada 89169

Telephone: (702) 949-8200

Email: OBrown@lrrc.com

Attorneys for Plaintiffs

Reviewed and approved as to form and content:

KAPLAN COTTNER

By: _____

KORY L. KAPLAN, ESQ. (NBN 13164)

850 E. Bonneville Ave.

Las Vegas, Nevada 89101

Telephone: (702) 381-8888

Email: kory@kaplancottner.com

Attorneys for Defendants Manuel Iglesias & Edward Moffly

1 **CSERV**

2
3 DISTRICT COURT
4 CLARK COUNTY, NEVADA

5
6 N5HYG, LLC, Plaintiff(s)

CASE NO: A-17-762664-B

7 vs.

DEPT. NO. Department 27

8 Hygea Holdings Corp.,
9 Defendant(s)

10
11 **AUTOMATED CERTIFICATE OF SERVICE**

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

14 Service Date: 8/23/2021

15 Las Vegas Docket LVDocket@ballardspahr.com

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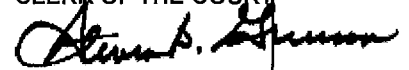
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If indicated below, a copy of the above mentioned filings were also served by mail via United States Postal Service, postage prepaid, to the parties listed below at their last known addresses on 8/24/2021

George Albright	801 S. Rancho Dr., #D-4 Las Vegas, NV, 89106
-----------------	---

EXHIBIT 2

EXHIBIT 2



1 RTRAN

2
3
4
5 DISTRICT COURT
6 CLARK COUNTY, NEVADA

7
8 N5HYG, LLC,) CASE NO: A-17-762664-B
9 Plaintiff(s),)
10 vs.) DEPT. XXVII
11 HYGEA HOLDINGS CORP.,)
12 Defendant(s).)

13 BEFORE THE HONORABLE NANCY ALLF, DISTRICT COURT JUDGE
14 WEDNESDAY, DECEMBER 9, 2020

15
16 **RECORDER'S TRANSCRIPT OF PROCEEDINGS**
17 **RE: DEFENDANTS' MOTION FOR SUMMARY JUDGMENT OR IN**
18 **THE ALTERNATIVE, MOTION TO DISMISS**
19 **MANDATORY RULE 16 CONFERENCE**

20 APPEARANCES (Via Video Conference):

21 For the Plaintiff(s): OGONNA M. BROWN, ESQ.

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

23
24 RECORDED BY: BRYNN WHITE, COURT RECORDER
25

1 The Court has already ruled on this exact same argument -- plaintiffs
2 have already argued this prior to the Claim Preclusion Order that they
3 could not have been part -- that Nevada 5 could not have been a party
4 in Receivership Action, and the Court denied it. The Court heard that
5 argument. The Court ruled against that.

6 The Court has already said, yes, you can have your day in
7 Court. You can bring new claims. But irrespective of the
8 specificity -- I don't need to address the specificity of the fraud-based
9 claims because they are grounded in the same nucleus of operative
10 fact. There is nothing different from this Second Amended Complaint
11 to the First Amended Complaint other than the theory of recovery,
12 and that is not a basis to preclude granting of summary judgment
13 based on claim preclusion.

14 And unless the Court has any other questions, I think
15 everything has been discussed and briefed in sufficient detail.

16 THE COURT: Thank you, both.

17 The matter's now submitted. This is the Defendant's
18 Motion for Summary Judgment, or in the alternative, Motion to
19 Dismiss. It will be granted in one small part only with regard to the
20 claims of loss of equity and will be denied in the balance.

21 This motion, Mr. Kaplan, is almost identical to the motion I
22 denied in January of 2020, and I'm concerned that there may be a
23 violation here of NRS 12(g)(2) by delaying the proceedings.

24 I will consider relief from Rule 41 to the plaintiff bring that
25 to my attention. In the past, I understand that this case has a long

1 and very tortured history, and unfortunately for me, I have to do a
2 new timeline every time we have a hearing because it -- it's been now
3 three or four law clerks. But very clearly, Nevada 5 is not barred
4 here -- clearly has standing. I granted leave to assert those fraud
5 claims. I compared the Second Amended Complaint with the first
6 and the specificity is appropriate. I find that there's no bar due to the
7 Receivership Action and that the Claim Preclusion Order here is not
8 applicable, because a nucleus of operative facts is very carefully been
9 written to the Second Amended Complaint. Every cause of action is
10 available under Nevada law. All of them have been adequately
11 pled -- Nevada or Michigan or Florida law, and they have all been
12 adequately pled. So for those reasons, the motion is dismissed.

13 Ms. Brown will prepare the order, and you may incorporate
14 the findings by reference if you wish. Mr. Kaplan will have the ability
15 to review and approve the order. I will not -- I will not accept or
16 review a competing order.

17 So if you have issues, Mr. Kaplan, with regard to the form
18 of order, bring that to my attention through the law clerk. I'll either
19 sign -- I always review -- I'll either sign, interlineate, or schedule a
20 telephonic if you have issues with regard to the form.

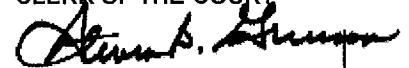
21 Any questions?

22 MR. KAPLAN: Just on that, Your Honor, to the extent there
23 are differences with respect to the proposed order and mine, you said
24 to bring to the attention to your law clerk.

25 THE COURT: Write a letter or an email to the law clerk, put

EXHIBIT 3

EXHIBIT 3



TRAN

DISTRICT COURT
CLARK COUNTY, NEVADA
* * * * *

N5HYG, et al,)	CASE NO. A-17-762664-B
)	
Plaintiffs,)	DEPT NO. XXVII
)	
vs.)	
)	
HYGEA HOLDINGS CORP., et al,)	
)	
Defendants.)	Transcript of
)	Proceedings

BEFORE THE HONORABLE NANCY ALLE, DISTRICT COURT JUDGE

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

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

WEDNESDAY, JULY 17, 2019

APPEARANCES:

FOR THE PLAINTIFFS:	CHRISTOPHER D. KAYE, ESQ.
	OGONNA M. BROWN, ESQ.
	GEORGE MARK ALBRIGHT, ESQ.
	ROBERT EISENBERG, ESQ.
FOR THE DEFENDANTS:	MARIA A. GALL, ESQ.
	KYLE A. EWING, ESQ.
	JOHN PEARSON, ESQ.
	STAVROULA E. LAMBRACOPOULOS, ESQ.

RECORDED BY: BRYNN WHITE, COURT RECORDER
TRANSCRIBED BY: JULIE POTTER, TRANSCRIBER

1 thought through that a little bit. But setting aside timeliness
2 issues, it does seem that the N5 dismissal should be without
3 prejudice, but you have to be more specific if you replead. You
4 have to differentiate the standing between the different
5 entities. You have to have better allegations supporting fraud.
6 And you have to remember the legal standards between parents and
7 subsidiaries. So that's your last gasp, Mr. Kaye.

8 With regard to the claim preclusion issue, I do find
9 Lynch versus Awada very persuasive and I have determined based
10 upon a re-reading of everything that the Wilson decision was a
11 final judgment. And I'll grant the motion also with regard to
12 clarifying the elements in accordance with your request in the
13 brief.

14 Both parties to prepare findings and conclusions.
15 Both sides to make sure that the other side has the ability to
16 review and approve before they are submitted to me.

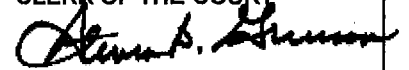
17 Now, let's talk briefly about procedural because
18 there's a request for a Rule 16 conference. If there's going to
19 be a third amended complaint, I'm prepared to set a date and a
20 date for answer, but how does this affect procedurally where we
21 go?

22 MS. GALL: Your Honor, if you've granted our motion
23 for reconsideration and you're dismissing the case based on
24 claim preclusion, I'm confused as to why there might be --

25 THE COURT: There might be some other causes of action

EXHIBIT 4

EXHIBIT 4



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Collins, M.D., Jack Mann, M.D., Joseph
Campanella, and Carl Rosenkrantz*

DISTRICT COURT

CLARK COUNTY, NEVADA

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

Plaintiffs,

v.

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

Defendants.

CASE NO.: A-17-762664-B

DEPT NO.: 27

**NOTICE OF ENTRY OF FINDINGS OF FACT, CONCLUSIONS OF LAW,
AND ORDER GRANTING PLAINTIFFS' MOTION FOR RECONSIDERATION
RE: NEVADA 5, INC.**

1 The Findings of Fact, Conclusions of Law, and Order on Plaintiffs' Motions for
2 Reconsideration Re: Nevada 5, Inc., was filed in the above-entitled matter on
3 December 3, 2019, a copy of which is attached as Exhibit A.

4 Dated: December 3, 2019

5 BALLARD SPAHR LLP

6 By: /s/ Maria A. Gall
7 Joel E. Tasca, Esq.
8 Nevada Bar No. 14124
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18 *Loar, Glenn Marrichi, Keith Collins, M.D.,*
19 *Jack Mann, M.D., Joseph Campanella, and*
20 *Carl Rosenkrantz*
21
22
23
24
25
26
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28

CERTIFICATE OF SERVICE

I certify that on December 3, 2019, a true and correct copy of the foregoing
**NOTICE OF ENTRY OF FINDINGS OF FACT, CONCLUSIONS OF LAW,
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RE: NEVADA 5, INC. was served on the following parties through the Court's e-
service system:

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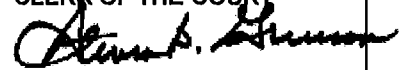
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EXHIBIT A

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13 *Attorneys for Defendants Hygea Holdings*

14 *Corp., Manuel Iglesias, and Edward Moffly*

15 **DISTRICT COURT**

16 **CLARK COUNTY, NEVADA**

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

19 Plaintiffs,

20 v.

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

23 Defendants.

CASE NO.: A-17-762664-B

DEPT NO.: 27

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25 **FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER GRANTING**
26 **PLAINTIFFS' MOTION FOR RECONSIDERATION RE: NEVADA 5, INC.**
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1 Plaintiffs' Motion for Reconsideration Regarding the Dismissal of Nevada 5,
2 Inc. (hereinafter the "Motion") came on for hearing in Department 27 of this Court
3 on July 17, 2019, with the Honorable Nancy Allf presiding. Christopher D. Kaye,
4 Esq. of The Miller Law Firm, Ogonna M. Brown, Esq., of Lewis Roca Rothberger
5 Christie LLP, and G. Mark Albright, Esq. of Albright, Stoddard, Warnick & Albright
6 appeared on behalf of Plaintiffs; Maria Gall, Esq. and Kyle A. Ewing, Esq., of Ballard
7 Spahr LLP appeared on behalf of Defendants Hygea Holdings Corp., Manuel
8 Iglesias, and Edward Moffly; and Stavroula E. Lambrakopoulos, Esq. of K&L Gates
9 LLP and Jon Pearson, Esq., of Holland & Hart LLP appeared on behalf of Defendant
10 Ray Gonzalez (collectively, "Defendants").

11 The Court, having considered the Motion, the oppositions, the replies in
12 support, and after hearing oral argument on the Motion, the Court finds as follows:

13 1. In its Findings of Fact, Conclusions of Law, and Order filed May 10,
14 2019, the Court dismissed with prejudice Plaintiff Nevada 5, Inc. ("Nevada 5") as a
15 party to this action for lack of standing; the Court granted the other Plaintiff,
16 N5HYG, LLC, leave to file a Second Amended Complaint.

17 2. Plaintiffs timely filed the Motion pursuant to Local Rule 2.24(b), which
18 provides that: "[a] party seeking reconsideration of a ruling of the court, other than
19 any order which may be addressed by motion pursuant to N.R.C.P. 50(b), 52(b), 59 or
20 60, must file a motion for such relief within 10 days after service of written notice of
21 the order or judgment unless the time is shortened or enlarged by order."

22 3. Plaintiffs' Motion principally sought for the Court to reconsider its
23 dismissal of Nevada 5 with prejudice and provide Nevada 5 the opportunity to re-
24 plead its claims by way of the Second Amended Complaint.

25 4. N.R.C.P. 15(a)(2) provides, "The court should freely give leave [to
26 amend] when justice so requires."

27 5. The Court finds that justice otherwise requires that Nevada 5 be
28 provided the opportunity to re-plead its claims in the Second Amended Complaint.

1 Therefore, IT IS HEREBY ORDERED, ADJUDGED AND DECREED:

2 1. Plaintiffs' Motion for Reconsideration Regarding the Dismissal of
3 Nevada 5 is hereby GRANTED.

4 2. The Court RECONSIDERS its dismissal of Nevada 5 with prejudice
5 and AMENDS its ruling such that Nevada 5 is dismissed WITHOUT PREJUDICE.

6 3. Plaintiffs are hereby GRANTED LEAVE to include Nevada 5 as a
7 Plaintiff in their Second Amended Complaint.

8
9 Dated this 27 day of NOV, 2019.

10
11 Nancy L. Allf
12 HONORABLE NANCY L. ALLF
13 DISTRICT COURT JUDGE
14 TP

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1 Submitted by:

2 BALLARD SPAHR LLP

3
4 By: 

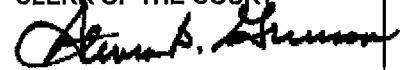
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Attorneys for Defendants Hygea Holdings Corp.,
Manuel Iglesias, and Edward Moffly

EXHIBIT 4

EXHIBIT 4



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DISTRICT COURT

CLARK COUNTY, NEVADA

N5HYG, LLC, a Michigan limited liability
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v.

HYGEA HOLDINGS CORP., a Nevada
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CASE NO.: A-17-762664-B

DEPT NO.: 27

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3 December 3, 2019, a copy of which is attached as Exhibit A.

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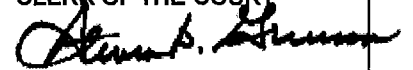
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/s/ Adam Crawford
An Employee of BALLARD SPAHR LLP

EXHIBIT A

EXHIBIT A



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16 **CLARK COUNTY, NEVADA**

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

19 Plaintiffs,

20 v.

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22 corporation, et al.,

23 Defendants.

CASE NO.: A-17-762664-B

DEPT NO.: 27

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26 **PLAINTIFFS' MOTION FOR RECONSIDERATION RE: NEVADA 5, INC.**
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3 on July 17, 2019, with the Honorable Nancy Allf presiding. Christopher D. Kaye,
4 Esq. of The Miller Law Firm, Ogonna M. Brown, Esq., of Lewis Roca Rothberger
5 Christie LLP, and G. Mark Albright, Esq. of Albright, Stoddard, Warnick & Albright
6 appeared on behalf of Plaintiffs; Maria Gall, Esq. and Kyle A. Ewing, Esq., of Ballard
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9 LLP and Jon Pearson, Esq., of Holland & Hart LLP appeared on behalf of Defendant
10 Ray Gonzalez (collectively, "Defendants").

11 The Court, having considered the Motion, the oppositions, the replies in
12 support, and after hearing oral argument on the Motion, the Court finds as follows:

13 1. In its Findings of Fact, Conclusions of Law, and Order filed May 10,
14 2019, the Court dismissed with prejudice Plaintiff Nevada 5, Inc. ("Nevada 5") as a
15 party to this action for lack of standing; the Court granted the other Plaintiff,
16 N5HYG, LLC, leave to file a Second Amended Complaint.

17 2. Plaintiffs timely filed the Motion pursuant to Local Rule 2.24(b), which
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23 dismissal of Nevada 5 with prejudice and provide Nevada 5 the opportunity to re-
24 plead its claims by way of the Second Amended Complaint.

25 4. N.R.C.P. 15(a)(2) provides, "The court should freely give leave [to
26 amend] when justice so requires."

27 5. The Court finds that justice otherwise requires that Nevada 5 be
28 provided the opportunity to re-plead its claims in the Second Amended Complaint.

1 Therefore, IT IS HEREBY ORDERED, ADJUDGED AND DECREED:

2 1. Plaintiffs' Motion for Reconsideration Regarding the Dismissal of
3 Nevada 5 is hereby GRANTED.

4 2. The Court RECONSIDERS its dismissal of Nevada 5 with prejudice
5 and AMENDS its ruling such that Nevada 5 is dismissed WITHOUT PREJUDICE.

6 3. Plaintiffs are hereby GRANTED LEAVE to include Nevada 5 as a
7 Plaintiff in their Second Amended Complaint.


8
9 Dated this 27 day of Nov, 2019.

10
11 Nancy L. Allf
12 HONORABLE NANCY L. ALLF
13 DISTRICT COURT JUDGE
14 JP

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1 Submitted by:

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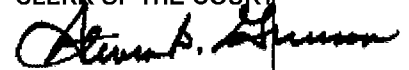
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EXHIBIT 5

EXHIBIT 5



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 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 6

EXHIBIT 6

Heather S. Lumin
CLERK OF THE COURT

ORDR

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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

**ORDER DENYING DEFENDANTS'
PARTIAL MOTION FOR JUDGMENT
ON THE PLEADINGS**

Date of Hearing: March 17, 2021

Time of Hearing: 10:30 a.m.

Judge: Hon. Nancy Allf

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

114001827.1

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

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

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

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

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

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

1 **IT IS FURTHER ORDERED** that Plaintiffs Nevada 5, Inc. and N5HYG, LLC's Counter-
2 Motion to Strike Defendants' Partial Motion for Judgment on the Pleadings, pursuant to NRC
3 12(g)(2) and NRC 41, and request for attorney's fees and costs is **DENIED**.

4 **IT IS SO ORDERED.**

5 March 29, 2021

Dated this 29th day of March, 2021

Nancy L Alif

NB

D69 170 C6DF A4BE
Nancy Alif
District Court Judge

9 Submitted by:

10 **LEWIS ROCA ROTHGERBER CHRISTIE LLP**

11 By: /s/ Ogonna Brown

12 OGONNA M. BROWN (SBN 7589)
13 3993 Howard Hughes Parkway, Suite 600
14 Las Vegas, Nevada 89169
15 (702) 949-8200

16 *Attorneys for Plaintiffs*

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

19 **KAPLAN COTTNER**

20 By: /s/ Kory Kaplan

21 Kory L. Kaplan, Esq. (NBN 13164)
22 Email: kory@kaplancottner.com
23 850 E. Bonneville Ave.
24 Las Vegas, Nevada 89101
25 Telephone: (702) 381-8888
26 Facsimile: (702) 832-5559

27 *Attorneys for Defendants Manuel Iglesias and Edward*
28 *Moffly*

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

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

[EXTERNAL]

Ogonna,

You may affix my e-signature.

Thanks,
Kory



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

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

Dear Kory:

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

Ogonna Brown
Partner
OBrown@lewisroca.com
D. 702.474.2622

LEWIS ROCA

1 **CSERV**

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3 DISTRICT COURT
CLARK COUNTY, NEVADA

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5
6 N5HYG, LLC, Plaintiff(s)

CASE NO: A-17-762664-B

7 vs.

DEPT. NO. Department 27

8 Hygea Holdings Corp.,
9 Defendant(s)

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11 **AUTOMATED CERTIFICATE OF SERVICE**

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

14 Service Date: 3/29/2021

15 D. Chris Albright	dca@albrightstoddard.com
16 Barbara Clark	bclark@albrightstoddard.com
17 Las Vegas Docket	LVDocket@ballardspahr.com
18 Las Vegas Intake	LVCTIntake@ballardspahr.com
19 Joel Tasca	tasca@ballardspahr.com
20 G. Mark Albright	gma@albrightstoddard.com
21 Maria Gall	gallm@ballardspahr.com
22 Andrea Brebbia	abrebbia@albrightstoddard.com
23 E. Powell Miller	epm@millerlawpc.com
24 Christopher Kaye	cdk@millerlawpc.com
25 William Kalas	WK@millerlawpc.com

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2	Alexis Haan	ACH@millerlawpc.com
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4	Ogonna Brown	obrown@lrrc.com
5	Kennya Pimentel	kpimentel@lrrc.com
6	Docket Clerk	DocketClerk_LasVegas@ballardspahr.com
7	Robert Eisenberg	rle@lge.net
8	Lelia Geppert	lelia@lge.net
9	Kory Kaplan	kory@kaplancottner.com
10	Sunny Southworth	sunny@kaplancottner.com
11	Carita Strawn	carita@kaplancottner.com
12	Allison Hardy	allison@kaplancottner.com
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EXHIBIT 7

EXHIBIT 7

DECL

Ogonna M. Brown, Esq.
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:

I. 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

1 captioned case.

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

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

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

8 5. A true and correct copy of pages 21-22 of the transcript of this Court's March 17,
9 2021 hearing on Defendants' Motion for Judgment on the Pleadings is attached hereto as **Exhibit**
10 **"1"**.

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

13 a. *Archon Gaming Corp. v. Eighth Judicial Dist. Court*, 132 Nev. 940, 385 P.3d
14 600 (2016) (2016 Nev. Unpub. LEXIS 952); and

15 b. *Trice v. Liberty Mut. Ins. Co.*, 2021 U.S. Dist. LEXIS 37203 (D. Nev. Mar. 1,
16 2021).

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

19 8. I declare under penalty of perjury under the laws of the United States that the
20 foregoing is true and correct to the best of my knowledge.

21 Dated this 9th day of August, 2021.

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OGONNA M. BROWN, ESQ.