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

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Elizabeth A. Brown
Clerk of Supreme Court

Case No. 83157

APPENDIX TO ANSWER OF REAL PARTIES IN INTEREST VOLUME 1, PART 1

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CHRONOLOGICAL INDEX TO APPENDIX

TRANSCRIPT(S)

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DISTRICT COURT

CLARK COUNTY, NEVADA

N5HYG, LLC and NEVADA 5, INC.,

Plaintiffs,

vs.

HYGEA HOLDINGS CORP.; MANUEL IGLESIAS; EDWARD MOFFLY; DANIEL T. McGOWAN; FRANK KELLY; MARTHA MAIRENA CASTILLLO; LACY LOAR; RICHARD WILLIAMS, ESQ., GLENN MARICHI, M.D.; KEITH COLLINS, M.D.; JACK MANN, M.D.; the ESTATE OF HOWARD SUSSMAN, M.D.; JOSEPH CAMPANELLA; CARL ROSENCRANTZ; and RAY GONZALEZ; DOES I-X; and ROES 1-X,

Defendants.

CASE NO.: A-17-762664-B
DEPT. NO.: 25

NOTICE OF ENTRY OF CERTIFIED COPY OF ORDER REMANDING CASE TO DISTRICT COURT

NOTICE IS HEREBY GIVEN that, on June 7, 2018, an Order remanding the instant case to District Court was entered by the United States District Court for the District of Nevada in Case No. 2:17-cv-2870. A certified copy of said Order is attached hereto.

DATED this 8 day of June, 2018.

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CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b), I certify that I am an employee of Albright, Stoddard, Warnick & Albright, and that on the 8 day of June, 2018, I served a true and correct copy of the foregoing **NOTICE OF ENTRY OF ORDER REMANDING CASE TO DISTRICT COURT** upon all counsel of record by electronically serving the document using the Court's electronic filing system.

Barbara Clark

An employee of Albright, Stoddard, Warnick & Albright

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UNITED STATES DISTRICT COURT

DISTRICT OF NEVADA

* * *

N5HYG, LLC, et al., Plaintiff(s), v. HYGEA HOLDINGS CORP., et al., Defendant(s).	Case No. 2:17-CV-2870 JCM (PAL) ORDER

Presently before the court is N5HYG, LLC, and Nevada 5, Inc.'s ("plaintiffs") motion to remand. (ECF No. 7). Defendant Ray Gonzalez ("Gonzalez") filed a response (ECF No. 23), to which plaintiffs replied (ECF No. 42).

I. Facts

The instant case arises from plaintiffs' investment in a medical holding company, Hygea Holdings, Corp. ("Hygea"). (ECF No. 7). Plaintiffs allege that they were misled into investing $30 million into Hygea, and that the named defendants breached the underlying contract. *Id.*

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I hereby attest and certify on 6/8/18 that the foregoing document is a full, true and correct copy of the original on file in my legal custody.

CLERK, U.S. DISTRICT COURT
DISTRICT OF NEVADA

By R Danker Deputy Clerk

UNITED STATES DISTRICT COURT FOR THE DISTRICT OF NEVADA

James C. Mahan
U.S. District Judge

Plaintiffs filed their complaint in state court on October 5, 2017. *Id.* In their complaint, plaintiffs assert twenty-one (21) causes of action. (ECF No. 1, Ex. A). Three of these causes of action—federal statutory securities fraud, failure to comply with federal registration requirements, and control person liability—arise under federal law, namely the Securities Act of 1933.[1] *Id.* The remainder of plaintiffs' claims invoke state statutory and common law.[2] *Id.*

Gonzalez filed a petition for removal on November 15, 2017. (ECF No. 1). In this petition, Gonzalez claims that this court has federal question jurisdiction over plaintiffs' claims alleged under the Securities Act of 1933 pursuant to 28 U.S.C. § 1331. *Id.* Gonzalez further asserts that this court has supplemental jurisdiction over plaintiffs' claims alleged under state law pursuant to 28 U.S.C. § 1367 because these state claims form part of the same case or controversy as is created by the federal causes of action. *Id.* Invoking 28 U.S.C. § 1441, Gonzalez argues that he has the right to remove this instant case to federal court. *Id.* The other active defendants consented to removal. (ECF No. 1, Ex. C).

Arguing that removal was inappropriate because the Securities Act of 1933 includes a non-removal provision, plaintiffs move to remand their case to state court. (ECF No. 7).

II. Legal Standard

Under 28 U.S.C. § 1441(a), "any civil action brought in a [s]tate court of which the district courts of the United States have original jurisdiction, may be removed by the defendant or the defendants, to the district court of the United States for the district and division embracing the place where such action is pending."

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[1] While Gonzalez maintains that plaintiffs' fourth cause of action arises under Regulation D, a federal regulation promulgated under the Securities Act of 1933, the complaint makes it clear that plaintiffs maintain only that defendants were ineligible for the Regulation D exception, which affects their compliance with federal registration requirements under the Securities Act of 1933. (ECF Nos. 1, 23).

[2] Plaintiffs also assert state statutory securities fraud; failure to comply with state registration requirements; control person liability under the Nevada Uniform Securities Act; common law fraud; negligent misrepresentation; silent fraud and material omissions; breach of contract; rescission of contract; breach of fiduciary duty and waste of corporate assets; breach of the duty of candor; breach of the duty of loyalty; minority shareholder oppression; tortious interference with contract; civil conspiracy; concert of action; unjust enrichment; constructive fraud; and a claim for accounting. *Id.*

Removal of a case to a United States district court may be challenged by motion. 28 U.S.C. § 1441(c). A federal court must remand a matter if there is a lack of subject matter jurisdiction. 28 U.S.C. § 1447(c); *see also Knutson v. Allis-Chalmers Corp.*, 358 F. Supp. 2d 983, 988 (D. Nev. 2005). Removal statutes are construed restrictively and in favor of remanding a case to state court. *See Shamrock Oil & Gas Corp. v. Sheets*, 313 U.S. 100, 108–09 (1941); *Gaus v. Miles, Inc.*, 980 F.2d 564, 566 (9th Cir. 1992). "On a motion to remand, the removing defendant faces a strong presumption against removal, and bears the burden of establishing that removal was proper by a preponderance of evidence." *Knutson*, 358 F. Supp. 2d at 988 (citing *Sanchez v. Monumental Life Ins. Co.*, 102 F.3d 398, 403–04 (9th Cir. 1996); *Gaus*, 980 F.2d at 567).

An action filed in state court may be removed to federal court only if the federal court would have had original subject matter jurisdiction over the action. 28 U.S.C. § 1441(a). This court has original subject matter jurisdiction over two types of cases. First, pursuant to 28 U.S.C. § 1331, this court has federal question jurisdiction over "all civil actions arising under the Constitution, laws, or treaties of the United States." Second, pursuant to its diversity jurisdiction, the court may preside over suits between citizens of different states where the amount in controversy exceeds the sum or value of $75,000. 28 U.S.C. § 1332(a).

Pursuant to 28 U.S.C. § 1367, "in any civil action of which the district courts have original jurisdiction, the district courts shall have supplemental jurisdiction over all other claims that are so related to claims in the action within such original jurisdiction that they form part of the same case or controversy under Article III of the United States Constitution."

III. Discussion

Gonzalez's notice of removal asserts that this court has federal question and supplemental jurisdiction because the plaintiffs brought three federal claims under the Securities Act of 1933 and eighteen state claims that form the same case or controversy. (ECF No. 1). However, in his response to plaintiffs' motion to remand, Gonzalez argues that while plaintiffs brought their claims under the Securities Act of 1933, they are actually seeking relief under the Securities Exchange

Act of 1934, which provides federal courts with exclusive subject matter jurisdiction.[3] (ECF No. 23).

Addressing the arguments contained in Gonzalez's notice of removal, plaintiffs argue that removal of this case was improper because all of plaintiffs' federal claims are brought under the Securities Act of 1933, which includes a non-removal provision. (ECF No. 7). Plaintiffs further maintain that since thirty days have passed since the initial filing of Gonzalez's notice of removal, Gonzalez cannot amend his notice to add a new basis for removal jurisdiction via his response to plaintiffs' motion to remand. (ECF No. 42).

The Securities Act of 1933 provides for concurrent jurisdiction but does not allow for the removal of claims filed in state court to a federal court. 15 U.S.C. § 77v(a) ("Except as provided in section 77p(c) of this title, no case arising under this subchapter and brought in any State court of competent jurisdiction shall be removed to any court of the United States."); *F.D.I.C. v. Banc of Am. Sec. LLC*, No. 2:12-CV-532 JCM RJJ, 2012 WL 2904310, at *3 (D. Nev. July 16, 2012) ("the clear language of the [Securities Act of 1933] requires that this court remand the claims arising under [that] Act").

While a defendant may amend its notice of removal to correct "jurisdictional facts" after thirty days of the initial filing, a defendant may not amend its notice of removal "to add a separate basis for removal jurisdiction after the thirty day period." *ARCO Envtl. Remediation, L.L.C. v. Dep't of Health & Envtl. Quality of Montana*, 213 F.3d 1108, 1117 (9th Cir. 2000); 28 U.S.C. § 1653.

The non-removal provision contained in the Securities Act of 1933 mandates remand of claims brought under that Act. *F.D.I.C. v. Banc of Am. Sec. LLC*, No. 2:12-CV-532 JCM RJJ, 2012 WL 2904310, at *3 (D. Nev. July 16, 2012). Here, plaintiffs' federal causes of action are brought under the Securities Act of 1933. (ECF No. 1, Ex. A). Accordingly, they must be remanded to state court. As Gonzalez's arguments that this court has exclusive jurisdiction based upon the Securities

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[3] The Securities Exchange Act of 1934 provides federal courts with exclusive jurisdiction over "violations of this chapter or the rules and regulations thereunder, and of all suits in equity and actions at law brought to enforce any liability or duty created by this chapter or the rules and regulations thereunder." 15 U.S.C. § 78aa(a).

Exchange Act of 1934 are time-barred, they will not be considered here.[4] Gonzalez relies on supplemental jurisdiction as the basis for removal of state court claims. (ECF No. 1). However, because this court does not have original jurisdiction over the plaintiffs' federal claims, it does not have supplemental jurisdiction over the remaining state law claims. *See* 28 U.S.C. § 1367. Remand of the entire case is therefore appropriate.

IV. Conclusion

Accordingly,

IT IS HEREBY ORDERED, ADJUDGED, and DECREED that N5HYG, LLC and Nevada 5, Inc.'s motion to remand (ECF No. 7) be, and the same hereby is, GRANTED.

IT IS FURTHER ORDERED that this case be, and the same hereby is, REMANDED to the Eighth Judicial District Court for Clark County, Nevada.

The clerk shall close the case.

DATED June 7, 2018.

James C. Mahan
UNITED STATES DISTRICT JUDGE

[4] As was the case in *ARCO Environmental Remediation*, Gonzalez's "amendment is more than a correction of a 'defective allegation of jurisdiction'" because he is not simply providing factual support for previously made legal arguments, but rather making entirely new legal arguments. *Compare Cohn v. Petsmart, Inc.*, 281 F.3d 837, 839–40 (9th Cir. 2002) (allowing defendant to amend their notice of removal by including a demand letter from the plaintiff in its response to plaintiff's motion to remand in order to support the defendant's initial claim that the matter at controversy exceeded $75,000 and the court therefore had diversity jurisdiction) *with ARCO Envtl. Remediation*, 213 F.3d at 1117 (holding that defendant could not amend its notice of removal by asserting for the first time in its response to plaintiff's motion to remand that the court had supplemental jurisdiction or jurisdiction under the All Writs Act, which gives district courts in some circuits the authority to remove an otherwise un-removable case in extraordinary circumstances).

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CLARK COUNTY, NEVADA

N5HYG, LLC, a Michigan limited liability company; and NEVADA 5, INC., a Nevada corporation, Plaintiffs, vs. HYGEA HOLDINGS CORP., a Nevada corporation; MANUEL IGLESIAS; EDWARD MOFFLY; DANIEL T. MCGOWAN; FRANK KELLY; MARTHA MAIRENA CASTILLO; LACY LOAR; RICHARD WILLIAMS, ESQ.; GLENN MARICHI, M.D.; KEITH COLLINS, M.D.; JACK MANN, M.D.; THE ESTATE OF HOWARD SUSSMAN, M.D.; JOSEPH CAMPANELLA; CARL ROSENCRANTZ; and RAY GONZALEZ; DOES I-XXX; and ROES I-XXX, inclusive, Defendants.	CASE NO.: A-17-762664-B DEPT. NO.: 27 Hon. Judge Nancy L. Allf **PLAINTIFFS' OPPOSITION TO MOTION TO DISMISS ON BEHALF OF DEFENDANT RAY GONZALEZ** **[ORAL ARGUMENT REQUESTED]** Hearing Date: October 3, 2018 Hearing Time: 10:30 a.m.

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Statutes and Court Rules

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Other Authorities

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Plaintiffs N5HYG, LLC, a Michigan limited liability company, and NEVADA 5, INC., a Nevada corporation ("Plaintiffs'), by and through their undersigned counsel of record, hereby file with this Court Plaintiffs' Opposition to Motion to Dismiss ("Opposition") to Motion to Dismiss Amended Complaint on Behalf of Defendant Ray Gonzalez. This Opposition is made and based upon the memorandum of points and authorities, as well as pleadings and records of this case, and any oral argument this Court entertains on the hearing for the Motion.

MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

Defendant Gonzalez joined his co-conspirators to mislead Plaintiffs into entering into a $30 million Stock Purchase Agreement ("SPA") to purchase over 8.5% of a failing company. He joined in approving a grossly misleading earnings figure, and he signed off on an SPA reflecting a wildly inflated $350 million value. These financial representations were entirely off the mark; the true valuation of the company is a small fraction of what was represented; and the "business" is based primarily on inaccurate and fanciful accounting. Now that Plaintiffs seek to protect their rights, he asks this Court to grant him immunity.

First, even though he approved the SPA with a Nevada forum selection clause, he says he is immune from Nevada jurisdiction. But he was a director of a Nevada corporation, he expressly authorized the sale of wildly inflated stock through a transaction with another Nevada corporation, and he did so through the SPA that acknowledged his knowledge of the warranted "facts" as to the company's supposed success. Moreover, as a "control person" under the Securities Acts, he is not entitled to bifurcate the case against himself from the claims that must be litigated in Nevada under the forum selection clause in the SPA he approved.

Mr. Gonzalez also claims immunity based on a misapplication of the relevant statutes he violated, and because he claims he is not on notice of the claims against him. In fact, though, the First Amended Complaint ("FAC") is replete with specific details of the misconduct – even though he and his fellow Defendants concealed, and continue to conceal, the true depths of their misrepresentations. Mr. Gonzalez approved holding the company out as worth over $350 million, when in fact its true value is a fraction of a fraction of that.

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1Ans.App.16

Mr. Gonzalez and Hygea's Board of Directors (the "Board"), comprised of wealthy and sophisticated professionals, oversaw and directed all of this unlawful conduct: they signed off on the misleading financial figures, and approved the SPA with its inflated valuation, all in order to secure a windfall $30 million from Plaintiffs that clearly served as an existential lifeline to Defendants' scheme, and which has been an outright loss for Plaintiffs. He is not entitled to close the courthouse door. [1]

II. FACTUAL BACKGROUND

Plaintiffs incorporate by reference their statement of facts presented in opposition to the other Defendants' Motion to Dismiss. *See* Pl. Opposition at § II. To summarize, Defendants presented and warranted financial information to Plaintiffs to induce Plaintiffs' $30 million stock purchase in Defendants' medical practice holding company, Hygea. The numbers turned out to be wildly inflated, and the company now seems to be struggling to remain afloat.

The entire campaign of misrepresentations undertaken to induce Plaintiffs' investment came at the direction and authorization of Mr. Gonzalez and his fellow Board members. ¶ 17.[2] He knew or should have known Hygea's true condition, given that such knowledge was within his obligations as a director. *See* Nev. Rev. Stat. Ann § 78.138(3); *Shoen v. SAC Holding Corp.*, 122 Nev. 621, 633, 137 P.3d 1171, 1178 (Nev. 2006)("In essence, the duty of care consists of an obligation to act on an informed basis."). Nonetheless, he approved the vastly inflated EBITDA figure given to the Plaintiffs. ¶ 41(k). He also approved the SPA. **Exhibit "1".** This included approval of the SPA's valuation of Hygea, which works out to about $350 million, ¶ 47 and **Exhibit "2"** at Ex. C, attachment to Declaration of Christopher Fowler (Board Resolution with valuation figures) attached hereto. However the company's true performance was *less than one-seventh* of what they represented ¶ 60. Doing the math, this means that Mr. Gonzalez intentionally approved selling more than eight percent of a company apparently worth far less than $50 million to Plaintiffs for $30

[1] For all the reasons set forth herein, Plaintiffs' First Amended Complaint states strong *prima facie* claims against Mr. Gonzalez. But at the very least, should the Court find that any claims are improperly pled or any facts inadequately alleged, Plaintiffs respectfully request leave to amend the FAC. *See* NRCP 15(a)(leave to amend should be freely granted in the interest of justice).

[2] Throughout, "¶" refers to a paragraph in Plaintiffs' First Amended Complaint.

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million. Moreover, the SPA he approved contained a mandatory forum selection clause in Clark County, Nevada. Stock Purchase Agreement at 8.11.1.[3]

III. ARGUMENT

A. This Court Has Personal Jurisdiction Over Mr. Gonzalez

1. Overview

For all of the reasons set forth in opposition to the other Director Defendants' jurisdiction arguments, which are adopted herein by reference, Nevada has personal jurisdiction over Mr. Gonzalez.[4] In short, the idea that a Board member like Mr. Gonzalez was unaware that the numbers were off by more than a factor of seven before he approved the SPA, or was uninvolved in an existential campaign to induce the investment, is implausible. Though Mr. Gonzalez has submitted an affidavit, it does not contradict or even address the FAC's *prima facie* showing, supported by the affidavit of Chris Fowler, attached hereto as **Exhibit "2"**, that jurisdiction is proper. Rather, he made the meaningless conclusory averment that he "did not engage in any action or omission related to Plaintiffs' claims," and that "Plaintiffs do not allege that [he] did so." Gonzalez Declaration at ¶ 22. The latter misreads the FAC which, as shown in both briefs, is replete with allegations against the Board. And the former is demonstrably untrue, as Mr. Gonzalez voted to approve the SPA and its inflated financial specifications. *See* **Exhibit "2"** at Ex. C, attachment to Declaration of Christopher Fowler (Board Resolution). Accordingly, as with all of the other Director Defendants,[5] Nevada has specific jurisdiction over the Mr. Gonzalez.[6]

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[3] Despite all of this, Mr. Gonzalez dismissively claims that "the entirety of Plaintiffs' allegations specific to Mr. Gonzalez consist only of" the allegations as to his identity and Board membership. Def's Br at 2. This is a red herring, as the FAC makes these specific allegations regarding the Board through which Mr. Gonzalez injured Plaintiffs.

[4] Mr. Gonzalez implies that this case could easily have been brought in Florida, an argument he made more explicitly to the U.S. District Court for the District of Nevada. Def's Br. at 6–7. However, SPA Mr. Gonzalez approved contained a mandatory Nevada forum selection clause.

[5] As defined in the opposition to the other Defendants' Motion to Dismiss, the "Director Defendants" are the Defendants who served on the Board, other than Mr. Iglesias and Mr. Moffly.

[6] Nevada's "long arm statute" extends its courts' jurisdiction to the fullest extent permitted by the Due Process Clause. *See Arbella Mut. Ins. Co. v. Eighth Judicial Dist. Court*, 122 Nev. 509, 134 P.3d 710, 712 (Nev. 2006) (citing Nev. Rev. Stat. § 14.065). Nevada's long-arm statute goes to the limits of both the U.S. and Nevada Constitutions. *See* Nev. Rev. Stat. § 14.065(1). But because the two due process clauses are substantively the same, *see, e.g., Wyman v. State*, 125 Nev. 592, 217 P.3d 572, 578 (2009), the court need only address federal due process standards. *See Boschetto v. Hansing*, 539 F.3d 1011, 1015 (9th Cir. 2008). For Nevada to exercise jurisdiction, it must have either general personal jurisdiction or specific personal jurisdiction. *See, e.g., Trump v. Eighth Judicial Dist. Court of State of Nev. In and For County of Clark*, 109 Nev. 687, 699, 857 P.2d 740, 748 (Nev. 1993) ("This court's opinions have separated the personal jurisdiction due process inquiry into two separate areas: general personal jurisdiction and specific personal

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2. **Mr. Gonzalez was Served in Nevada**

At the outset, personal jurisdiction exists because Mr. Gonzalez and the other Director Defendants were served "within" Nevada. "It is well-settled that personal jurisdiction may be asserted over an individual who is served with process while present within the forum state," *Cariaga v. Eighth Judicial Dist. Court of State*, 104 Nev. 544, 546, 762 P.2d 886, 887 (1988). NRS 75.160 provides that:

> Every nonresident of this State who . . . accepts election or appointment… as a management person of an entity, or who ... serves in such capacity ... shall be deemed, by the acceptance or by the service, to have consented to the appointment of the registered agent of the entity as an agent upon whom service of process may be made in … in this State ….. The acceptance or the service by the management person shall be deemed to be signification of the consent of the management person that any process so served has the same legal force and validity as if served upon the management person within this State."

NRS 75.160(1). *See also, Advanced Vision Sols., Inc. v. Lehman*, No. 2:14-CV-01597-APG, 2015 WL 316951, at *2 (D. Nev. Jan. 26, 2015)(statute applies to nonresident directors). Here, Mr. Gonzalez and his fellow Director Defendants were served both individually *and* by and through the registered agent. **Exhibit "3"**, Proof of Service. Consequently, because the statute operates to place the Defendants "within" Nevada for purposes of service, and because "[i]t is well-settled that personal jurisdiction may be asserted over an individual who is served with process while present within the forum state," *Cariaga*, 104 Nev. at 546, 762 P.2d at 887, this Court has personal jurisdiction over Mr. Gonzalez.

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jurisdiction"). Here, Nevada has specific jurisdiction over all of the Director Defendants, including Mr. Gonzalez, by virtue of their consent and by virtue of their contacts with this forum.

In order for specific personal jurisdiction to obtain:

> First, the defendant must "purposefully avail[ ] himself of the privilege of serving the market in the forum or of enjoying the protection of the laws of the forum," or the defendant must "purposefully establish [ ] contacts with the forum state and affirmatively direct[ ] conduct toward the forum state." Second, the cause of action must arise "from that purposeful contact with the forum or conduct targeting the forum." Third, "a court must consider whether requiring the defendant to appear in the action would be reasonable" or, in the United States Supreme Court's terminology, whether the exercise of jurisdiction comports with fair play and substantial justice. *Catholic Diocese, Green Bay v. John Doe 119*, 349 P.3d 518, 520 (Nev. 2015)(quoting *Arbella*, 122 Nev. at 513, 134 P.3d at 712–13).

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3. **Nevada otherwise has Specific Jurisdiction over Mr. Gonzalez**

a. Mr. Gonzalez purposefully availed himself of Nevada activity.

Even without NRS 75.160, Plaintiffs need only show that Mr. Gonzalez and the other Director Defendants purposefully availed themselves of Nevada activity *or* that they directed activities to Nevada; they easily show both.[7] As Directors of a Nevada corporation, they consented to be sued in Nevada. As discussed above, "[u]nder Nev. Rev. Stat. 75.160, a nonresident who 'accepts' a position as director of a Nevada corporation ... consents to service of process for claims relating to her director position," and such director-consent statutes "create personal jurisdiction in the forum for any claims related to the directorship." *Advanced Vision Sols., Inc. v. Lehman*, No. 2:14-CV-01597, 2015 WL 316951, at *2 (D. Nev. Jan. 26, 2015).[8]

Thus, for example, in *Consipio Holding, BV v. Carlberg*, 128 Nev. 454, 282 P.3d 751 (Nev. 2012), the shareholders of a Nevada corporation, with its principal place of business in Spain, brought a derivative action in the Nevada district court against the former CEO and other officers and directors of the company. *Id.* at 456–59. The court held that Nevada courts can exercise personal jurisdiction over the "nonresident officers and directors." *Id.* at 461. This conclusion has been widely adopted. *See, e.g., Advanced Vision Sols., Inc. v. Lehman*, No. 2:14–CV–01597–APG, 2015 WL 316951, *3 (D. Nev. Jan. 26, 2015) ("I find persuasive the Supreme Court of Nevada's reasoning in *Consipio*")(Gordon, J.); *HPEV, Inc. v. Spirit Bear Ltd.*, No. 2:13–CV–01548–JAD, 2014 WL 6634838, *3–4 (D. Nev. Nov. 21, 2014) (Dorsey, J.). *See also Pittsburgh Terminal Corp. v. Mid Allegheny Corp.*, 831 F.2d 522, 529 (4th Cir. 1987) ("a director of a corporation has created a continuing obligation between himself and the corporation, one which inures significantly to the director's benefit, not to mention that of the corporation;" thus, jurisdiction in West Virginia over nonresident directors of a West Virginia corporation was appropriate, even though those directors were never actually in West Virginia).[9]

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[7] Admittedly, courts appear to merge the formally disjunctive inquiries. In any event, both standards are easily met.

[8] Although the United States Supreme Court has suggested that directorship in a state's corporation may be insufficient to vest that state with jurisdiction, it did so in the context of *in rem* jurisdiction based on a property sequestration statute, which is inapplicable to this case. *Shaffer v. Heitner*, 433 U.S. 186, 215–16 (1977).

[9] Mr. Gonzalez cites an outlier, *Southport Lane Equity II, LLC v Downey*, 177 F. Supp. 3.d 1286 (D. Nev. 2016), in which the United States District Court declined to extend *Consipio* to instances where the directorship was the sole basis for jurisdiction. Even if this Court finds this non-authoritative case persuasive, Plaintiffs have shown extensive involvement by the Director Defendants in the stock purchase at issue. As another Judge for the District of Nevada has

In addition, Mr. Gonzalez and his fellow Director Defendants intentionally directed activity towards Nevada. "[P]urposeful availment is satisfied even by a defendant 'whose only 'contact' with the forum state is the 'purposeful direction' of a foreign act having effect in the forum state.'" *Dole Food Co., Inc. v. Watts*, 303 F.3d 1104, 1111 (9th Cir. 2002). The defendant must have "(1) committed an intentional act, (2) expressly aimed at the forum state, (3) causing harm that the defendant knows is likely to be suffered in the forum state." *Schwarzenegger v. Fred Martin Motor Co.*, 374 F.3d 797, 803 (9th Cir. 2004)(citing *Calder v. Jones*, 465 U.S. 783 (1984)). *See also, Yahoo! v. La Ligue Contre Le Racisme,* 433 F.3d 1199, 1205-1206 (9th Cir. 2006).

Thus, for example, in *Davis v. Metro Productions, Inc.*, 885 F.2d 515 (9th Cir. 1989), the Ninth Circuit upheld the exercise of specific personal jurisdiction over two individual defendants who were each 50% shareholders of the corporate defendant and its officers and directors. *Id*. at 520, 522-524. The Court explained that the individual defendants purposefully directed their activities towards the forum when the entity they controlled solicited business from forum residents. *See also, Rio Props., Inc. v. Rio Int'l Interlink*, 284 F.3d 1007, 1020-1021 (9th Cir. 2002)(finding purposeful availment of Nevada where defendant "specifically targeted consumers in Nevada") (internal quotation marks omitted); *Gentry v. Empire Med. Training*, No. 13-CV-02254, 2013 WL 4647530, at *7 (N.D. Cal. Aug. 29, 2013). Moreover, in *Dole Food Co.*, the Ninth Circuit held that the test is satisfied where the defendants knew that the plaintiff was in the forum state when the alleged wrongful conduct occurred. 303 F.3d at 1111.

Likewise, the Nevada Supreme Court was clear in *Consipio*: Nevada courts "can exercise personal jurisdiction over nonresident officers and directors who directly harm a Nevada corporation." *Consipio*, 282 P.3d at 757. It reasoned that "[w]hen officers or directors directly harm a Nevada corporation," as the Director Defendants did here, "they are harming a Nevada citizen." *Id.* at 755. "By purposefully directing harm towards a Nevada citizen, officers and directors establish contacts with Nevada and affirmatively direct conduct toward Nevada. Further, officers or directors cause important consequences in Nevada when they directly harm a Nevada corporation." *Id.* (internal quotation omitted). In short, these Defendants have "performed some type of

noted, *Southport* conflicts with *Consipio* through reasoning based in *Shaffer, supra*, which *Consipio* specifically distinguished. This Court is bound to follow *Consipio*, which "remains the law in Nevada." *Sonoro Invest S.A. v. Miller*, 2017 WL 359172 n. 50 (D. Nev. Jan. 24, 2017).

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affirmative conduct which allows or promotes the transaction of business within the forum state," vesting Nevada with jurisdiction. *Sher v. Johnson*, 911 F.2d 1357, 1362 (9th Cir. 1990) (quotation omitted).

Here, Mr. Gonzalez and his colleagues on the Board were involved in and apprised of the effort to induce Nevada 5's investment. ¶¶ 17, 27-42, 46-52. They knew or should have known of Hygea's true financial condition, given that such knowledge was within their obligations as directors. *See* Nev. Rev. Stat. Ann § 78.138(3); *Shoen*, 122 Nev. at 632, 137 P.3d at 1178 ("In essence, the duty of care consists of an obligation to act on an informed basis."). Nonetheless, they approved a wildly inflated EBITDA figure given to Plaintiffs. ¶ 41.[10] They also approved the SPA. **Exhibit "1"**. This unanimous approval included approval of the SPA's valuation of Hygea, which works out to about $350 million, ¶ 47 and **Exhibit "2"** at Ex. C, attachment to Declaration of Christopher Fowler (Board Resolution with financial details), even though the company's true performance was *less than one-seventh* what they represented. ¶ 60. Doing the math, this means that they intentionally approved selling more than eight percent of a company apparently worth far less than $50 million to Plaintiffs for $30 million. They knew full well that doing so would harm the Nevada investor.

This easily meets the test. For example, in *In re Infosonics Corp. Derivative Litig.*, No. 06CV1336 BTM(WMC), 2007 WL 2572276, *4 (S.D. Cal. Sept. 4, 2007), directors of a California corporation who were "involved" in the alleged misconduct "were expressly aimed at and caused harm in California." *Id.* Likewise, in *Mehlenbacher ex rel. Asconi Corp. v. Jitaru*, No. 6:04CV1118ORL-22KRS, 2005 WL 4585859, *10-11, 14 (M.D. Fla. June 6, 2005), the court found jurisdiction over a director of a Florida corporation, even though he had never visited the state. Similarly, in *Simmons v. Templeton*, 684 So. 2d 529, 534 (La. App. 4 Cir. 1/27/96) *writ denied* 688 So. 2d 508 (La. 1997), the court found jurisdiction when "the directors approved a transaction whereby Louisiana residents were to become owners of preferred stock" and the corporation became indebted to them, as Hygea is indebted to Plaintiffs. *See also Harbourvest Int'l Private Equity*

[10] Plaintiffs have not attached this email because, they anticipate, Mr. Gonzalez and/or his co-Defendants would argue that it is confidential. In fact, throughout their multiple cases, Defendants have consistently taken a hard line on the use of arguably confidential materials. In any event, the email is available for the Court's review, and it is further described in Mr. Fowler's declaration.

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Partners II-Direct Fund, L.P. v. Axent Techs., Inc., No. 99-2188, 2000 WL 1466096, *5 (Mass. Super. Aug. 31, 2000)(jurisdiction over board with control over stock sale directed at state).

Moreover, in approving the SPA, Mr. Gonzalez and the rest of the Director Defendants also intentionally accepted its Nevada forum selection clause. "[T]he fact that Defendants themselves were not signatories to the contract containing the forum selection clause does not alter its enforceability against them," because their "alleged conduct" of approving the sale of eight percent of the company to Plaintiffs "is so closely related to the contractual relationship [that] the forum selection clause applies to all defendants." *First Choice Bus. Brokers, Inc. v. Ken Dobbs Moneyline, Inc.*, No. 2:08-CV-01487-RLH-RJJ, 2009 WL 1652185, *5 (D. Nev. June 9, 2009) (quoting *Manetti–Farrow, Inc. v. Gucci Am., Inc.*, 858 F.2d 509, 514 n. 5 (9th Cir.1988)). *See also First Choice*, 2009 WL 1652185, *5 (forum selection clause applied to non-parties.); *Mao v. Sanum Investments, Ltd.*, No. 2:14-CV-00721-RCJ-PAL, 2014 WL 5292982, *3 n.4 (D. Nev. Oct. 15, 2014) (same).

Further, Mr. Gonzalez and the other Director Defendants are subject to Nevada jurisdiction because, as shown in Section IV(A)(4), *supra*, they are liable as control persons. *See San Mateo County Transit Dist. v. Dearman, Fitzgerald and Roberts, Inc.*, 979 F.2d 1356, 1358 (9th Cir. 1992) (standard for personal jurisdiction is met if plaintiff makes nonfrivolous allegation that defendant is controlling person); *see also Chassin Holdings Corp. v. Formula VC Ltd.*, No. 15-CV-02294, 2016 WL 1569986, *5 (N.D. Cal. Apr. 19, 2016); *Kairalla v. Advanced Med. Optics, Inc.*, No. CV-07-05569 SJO (PLAx), 2008 WL 2879087, *15 (C.D. Cal. June 6, 2008) ("Any challenges to whether [the Board Member Defendants] *actually constitute* control persons is not particularly germane to the present jurisdictional inquiry."); *Motorcar Parts of Am., Inc. v. FAPL Holdings Inc.*, No. CV 14-1153 GW (CWX), 2015 WL 12746204, *3 (C.D. Cal. Feb. 6, 2015) (citation omitted).[11]

b. "But for" the conduct, Plaintiffs would not have been injured.

The second prong focuses on the connection between the defendant's acts and the harm caused. *Ballard v. Savage*, 65 F.3d 1495, 1500 (9th Cir. 1995).[12] Nevada courts have described

[11] Although this caselaw largely concerns control person liability under the Exchange Act, as opposed to the Securities Act, the analyses are analogous. *See Hollinger v. Titan Capital Corp.*, 914 F.2d 1564, 1568, n. 4 (9th Cir. 1990).

[12] Likewise, Courts in the Ninth Circuit have not applied the but-for test stringently. *See generally In re JPMorgan Chase Derivative Litig.*, No. 2:13-CV-02414, 2014 WL 5430487, at *11–12 (E.D. Cal. Oct. 24, 2014)(collecting cases).

this prong as requiring only that the claims "have 'a specific and direct relationship or be intimately related to the forum contacts.'" *Arbella Mut. Ins. Co. v. Eighth Dist. Court*, 134 P.3d 710, 122 Nev. 509, 516–17 (2006) (quoting *Munley v. Second Jud. Dist. Court*, 761 P.2d 414, 416, 104 Nev. 492, 496 (1988)). Accordingly, it is well established under Nevada law that by "purposefully directing harm towards a Nevada citizen, officers and directors establish contacts with Nevada" sufficient for this State's courts to assert jurisdiction over them, regardless of those directors' or officers' physical locations at the time the harm is caused. *Consipio*, 128 Nev. at 459 (citing *Trump*, 109 Nev. at 700). Here, there is no question that, had the Board not directed the campaign of misinformation; had it not signed off on the faulty EBITDA figures; or if it had not approved the SPA, Plaintiffs would not have lost their $30 million.

To the extent Mr. Gonzalez argues that in order to meet this prong of the test under *Consipio*, a plaintiff must allege something more than the nonresident director's position as a director of a Nevada corporation, he misreads *Consipio* by cutting short its holding: as the U.S. Court for the District of Nevada has stated, the "something more" that is required is "whether it is reasonable to exercise personal jurisdiction"—the third prong of the purposeful availment test, addressed immediately below. *Sonoro Invest S.A. v. Miller*, 2017 WL 359172, *5–6 (D. Nev. Jan. 24, 2017) (quoting *Consipio*, 282 P.3d at 756–57, n. 4).

c. It would be reasonable to litigate in Nevada.

For all the reasons discussed above, it is reasonable for Mr. Gonzalez to defend himself in Nevada. *See Trump*, 109 Nev. at 703; *Dole Food Co.*, 303 F.3d at 1114. He purposefully injected himself into Nevada's affairs. He took part in governing a Nevada corporation that he knew or should have known was severely distressed, yet he oversaw a campaign to induce a different Nevada corporation to invest $30 million. He approved an inflated EBITDA figure and the SPA's price-per-share clearly reflected rosy misrepresentations as opposed to the actual distress. It can hardly surprise him to be sued here. Moreover, Nevada has a strong interest in enforcing its securities regulations and resolving this dispute between two Nevada corporations. And it would be highly

In fact, rather than a "but-for" relationship, the majority of Ninth Circuit courts have held that only a "direct nexus" is required, *see In re W. States Wholesale Nat. Gas Antitrust Litig.*, 715 F.3d 716, 742 (9th Cir. 2013), or merely "*some* nexus between the cause of action and defendant's contact with the forum," *Planned Parenthood of Columbia/Willamette, Inc. v. Am. Coal. of Life Activists*, 945 F. Supp. 1355, 1368 (D. Or. 1996)(citation omitted)(emphasis added), even without a strong showing of causation.

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*un*reasonable to bifurcate this case between some claims, which *must* be litigated here under the forum selection clause, and piecemeal litigation of other claims throughout the United States.

Nevada jurisdiction is proper. At the very least, jurisdictional discovery is warranted before any dismissal, especially given Plaintiffs' inherent inability to glean additional details of the conspiracy at the pleading stage. *See Asiarim Corp. v. Hovers*, No. 65453, 2015 WL 5734457, *1 (Nev. Sept. 28, 2015); *Laub v. U.S. Dep't of Interior*, 342 F.3d 1080, 1093 (9th Cir. 2003).

B. Plaintiffs Have Stated A Claim Against Mr. Gonzalez

1. **Plaintiffs have Exceeded the Requirements of NRCP 9(b)**

a. Plaintiffs have pled a *prima facie* claim.

Nevada pleading standards are to be construed liberally. *Brown v. Kellar*, 97 Nev. 582, 583 636 P.2d 874, 874 (Nev. 1981) ("On a motion to dismiss for failure to state a claim for relief, the trial court and this court must construe the pleading liberally and draw every fair intendment in favor of the plaintiff.") (citations omitted). Nevada courts interpret Nev. R. Civ. P. 9(b) in a manner consistent with Federal Rule of Civil Procedure 9(b). *See Davenport v. Homecomings Fin., LLC*, No. 56322, 2014 WL 1318964, *3 (Nev. Mar. 31, 2014) (citing *Swartz v. KPMG LLP*, 476 F.3d 756, 764–65 (9th Cir. 2007). "While mere conclusory allegations of fraud will not suffice, statements of the time, place and nature of the alleged fraudulent activities will." *Bosse v. Crowell Collier & Macmillan*, 565 F.2d 602, 611 (9th Cir. 1977) (citations omitted). Rule 9(b)'s requirements should not be read as a formalism, decoupled from the general rules of notice pleading. *US ex rel. SNAPP, Inc v. Ford Motor Co*, 532 F.3d 496, 502-504 (6th Cir. 2008) (citation omitted). "Instead, Rule 9(b) should be interpreted in harmony with Rule 8's statement that a complaint must only provide 'a short and plain statement of the claim' made by "simple, concise, and direct allegations." *Id.* (citation omitted). *See also U.S. ex rel. Bledsoe v. Cmty. Health Sys., Inc.* 501 F.3d 493, 503 (6th Cir. 2007) ("[I]t is clear that the purpose of Rule 9 is not to reintroduce formalities to pleading, but is instead to provide defendants with a more specific form of notice as to the particulars of their alleged misconduct"). Once again, these standards are not meant to impose an artful pleading requirement.

While "allegations of 'date, place, and time' fulfill these functions [of the rule,] nothing in the rule requires them. Plaintiffs are free to use alternative means of injecting precision and some

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measure of substantiation into their allegations of fraud." *Seville Indus. Mach. Corp. v. Southmost Mach. Corp.*, 742 F.2d 786, 791 (3rd Cir. 1984). In short, the complaint must merely state what is false or misleading and why it is false, which "can be satisfied 'by pointing to inconsistent contemporaneous statements or information (such as internal reports) which were made by or available to the defendants.'" *Rubke v. Capitol Bancorp Ltd,* 551 F.3d 1156, 1161 (9th Cir. 2009) (quoting *Yourish v. Cal. Amplifier*, 191 F.3d 983, 993 (9th Cir. 1999)).

Moreover, "Rule 9(b) does not ... require plaintiffs in a securities fraud case to set forth facts which, because no discovery has yet occurred, are in the exclusive possession of the defendants." *Deutsch v. Flannery*, 823 F.2d 1361, 1366 (9th Cir. 1987). *See also Neubronner v. Milken*, 6 F.3d 666, 672 (9th Cir. 1993)(relaxed standard applicable for allegations of fraud with respect to matters within the opposing party's knowledge or control); *Rocker v. KPMG LLP*, 122 Nev. 1185, 1194-95, 148 P.3d 703 (Nev. 2006), *overruled on other grounds*, *Buzz Stew, LLC v. City of N. Las Vegas*, 124 Nev. 224, 181 P.3d 670 (Nev. 2008) (adopting relaxed pleading standards in situation where "facts necessary for pleading with particularity 'are peculiarly within the defendant's knowledge or are readily obtainable by him'").

The FAC goes well beyond these requirements in several respects, despite the fact that much of the relevant information remains solely – and improperly – in Defendants' possession. ¶ 77.[13] *First*, many of the representations were set forth, warranted, or adopted in the SPA itself, which Mr. Gonzalez approved. *See* ¶ 47 (in the SPA, the parties agreed that the price per share "reflected the fair market value" of the company and that Plaintiffs were buying shares reflecting 8.57 percent of the company). ¶ 50 (the SPA also reflected many of the representations that Defendants had made throughout the negotiations; warranted the financial information provided under Section 4.6.1; and assured that the company's books were accurate under Section 4.25).

[13] The elements of a common law fraud claim are "1. A false representation made by the defendant; 2. Defendant's knowledge or belief that the representation is false (or insufficient basis for making the representation); 3. Defendant's intention to induce the plaintiff to act or to refrain from acting in reliance upon the misrepresentation; 4. Plaintiff's justifiable reliance upon the misrepresentation; and 5. Damage to the plaintiff resulting from such reliance." *Bulbman, Inc. v. Nevada Bell*, 825 P.2d 588, 592 (Nev. 1992). Moreover, "a defendant may be found liable for misrepresentation even when the defendant does not make an express misrepresentation, but instead makes a representation which is misleading because it partially suppresses or conceals information." *Blanchard v. Blanchard*, 839 P.2d 1320, 1322 (Nev. 1992)(quotations omitted).

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Second, the SPA expressly provides that the extensively cited and warranted "Sellers Knowledge" is imputed to all of the Defendants, including the Board – and, therefore, Mr. Gonzalez. It is defined to mean:

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

Exhibit "1" (SPA) - Definitions, page 9 (emphasis added). Mr. Gonzalez, who approved the SPA, is thus estopped from denying knowledge now. The goal of warranties such as the Sellers Knowledge representation "is to assure one or both parties to an agreement that there are no facts known to one and not the other that might affect the desirability of entering into the agreement, and to prevent the assertion of different facts at a later date." *1st Commerce Bank v. James J. Stevinson*, No. 54713, 2013 WL 593686, at *5 (Nev. Feb. 13, 2013) (*quoting Lawyers Title Ins. v. Honolulu Fed. S & L*, 900 F.2d 159, 163 (9th Cir. 1990) (additional citations omitted).

Third, despite Defendants' concealment, Plaintiffs have exceeded their obligations by pleading misrepresentations extending well beyond those encompassed in the SPA itself. These are set forth in detail in the opposition to the other Defendants' Motion to Dismiss, and incorporated here by reference. In particular, several of the allegations pertain to Mr. Gonzales and his fellow Board Members:

> • Despite representing that Hygea would issue shares on a public stock exchange, all Defendants—including the Board—knew or should have known that Hygea's then-existing financial situation made a public-exchange offering impossible at the time Plaintiffs acquired the shares. ¶¶ 34, 56.
>
> • The Board member Defendants approved Hygea's entry into the SPA and such approval explicitly referenced some of the financial figures reflecting the false representations. ¶ 45.
>
> • At the time of Plaintiffs investment, the Board knew or should have known that Plaintiffs were investing based on false information. *Id*.
>
> • The board represented an EBITDA figure that proved to be false, as the actual EBIDTA fell far short of all indicated figures; and represented additional misleading valuation information as well. ¶ 41(k).

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> • As discussed above, the SPA expressly provides that the extensively cited and warranted "Sellers Knowledge" is imputed to *all* of the Defendants, including the Board of Directors. *See* Stock Purchase Agreement, Definitions, page 9. Thus, Defendants had knowledge of the misrepresentations contained within the Agreement.

In opposition, Mr. Gonzalez argues facts, claiming that it is "on its face implausible" that he and his Board colleagues paid close attention to the efforts to solicit Plaintiffs' $30 million investment. Def's Br. at 9. But it is Mr. Gonzalez's inference that is implausible. The campaign culminated in Plaintiffs paying $30 million for over eight percent of Hygea, even though the company in its entirety was probably only worth about this much. ¶¶ 47, 60. In other words, Plaintiffs' investment was a central issue for the company Mr. Gonzalez helped direct. In fact, Defendants claimed that they intended for Plaintiffs' investment to immediately begin the process of an exchange listing. ¶ 42. This was hardly a matter of "day-to-day corporate management" that might escape "director attention." Def's Br. at 8–9 n.9–10. Contrary to Mr. Gonzalez's protestations, Plaintiffs' allegations in the FAC regarding the Board's approval of an investment of such substantial size—and the substantial stake in Hygea that came with it—serve to illustrate the implausibility of the improper inference he wishes this Court to make.

Moreover, several of Plaintiffs' claims, including all of the statutory securities claims, survive even if, *arguendo*, Plaintiffs have not satisfied Fed.R.Civ.P. 9(b) as to Mr. Gonzalez. A complaint stating such claims need not comply with Rule 9(b) in order to state a claim. *See Knollenberg v. Harmonic, Inc.*, 152 F. App'x 674, 683–84 (9th Cir. 2005)(claim under federal securities act not subject to Rule 9(b)). *See also Sec'y of State v. Tretiak*, 22 P.3d 1134, 1140 (2001) (reliance and scienter do not apply to NRS 90.570(2)). Thus, "where," as here, "averments of fraud are made in a claim in which fraud is not an element, an inadequate averment of fraud does not mean that no claim has been stated." *In re Daou Sys., Inc.*, 411 F.3d 1006, 1027 (9th Cir. 2005)(internal citation and quotation omitted). Rather, "[t]he proper route is to *disregard* averments of fraud not meeting Rule 9(b)'s standard and then ask whether a claim has been stated." *Id.* (emphasis in original). In other words, where, as here, there are allegations of untrue facts for which Defendants are inherently liable and, on top of that, claims of culpable misconduct, the former survive any failure to properly plead the latter. Thus, while the FAC more than adequately alleges fraud as to

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Mr. Gonzalez and his fellow Defendants, its statutory "securities fraud" claims survive any finding to the contrary. *See also* NRCP 8(e) (pleading in the alternative permitted).

b. Mr. Gonzalez's "group pleading" argument fails.

Mr. Gonzalez claims that he is nonetheless entitled to dismissal because, he says, the FAC inappropriately utilizes group pleading. This argument fails for several reasons. *First*, Plaintiffs have included specific allegations regarding Defendant Gonzalez and the Director Defendants: these include their express approval of the transmission to Plaintiffs of fraudulent 2016 Hygea company financials, ¶ 41(k); and their approval of a SPA representing a fraudulent $350 million valuation and including an imputation of Hygea's knowledge to its Board. ¶¶ 45, 47. *Second*, the majority of the information regarding the specifics of Defendants' fraud is in the exclusive possession of Defendants and will only be learned by Plaintiffs through discovery. *Third*, group pleading is permissible to allege a presumption of collective action in corporate fraud cases. "A plaintiff may satisfy Fed.R.Civ.P. 9(b) through reliance upon a presumption that the allegedly false and misleading 'group published information' complained of is the collective action of officers and directors." *In re GlenFed, Inc. Sec. Litig.*, 60 F.3d 591, 593 (9th Cir. 1995) (citations omitted). "Under such circumstances, a plaintiff fulfills the particularity requirement of Rule 9(b) by pleading the misrepresentations with particularity *and where possible* the roles of the individual defendants in the misrepresentations." *Wool v. Tandem Computers Inc.*, 818 F.2d 1433, 1440 (9th Cir. 1987) (emphasis added) *overruled on other grounds as stated in Flood v. Miller*, 35 Fed. App'x. 701, 703 n.3 (9th Cir. 2002).[14]

Here, Plaintiffs have specifically stated the various misrepresentations; the Director Defendants' knowledge, direction, consent, and authorization of those primarily conveying the

[14] Although some courts have concluded that the Private Securities Litigation Reform Act (the "PSLRA") abrogated the group pleading doctrine for securities fraud class actions, this case is not a class action, so the PSLRA is arguably inapplicable. *See, e.g., Higginbotham v. Baxter International*, 495 F.3d 753, 756 (7th Cir. 2007) (the "PSLRA applies only to a 'suit that is brought as a plaintiff class action[']" (citation omitted)). Even if the PSLRA did apply, Nevada Courts recognize that group pleading has not been abrogated by the PSLRA. *See, e.g., In re AgriBio Tech Securities Litigation*, 2000 WL 1277603, *3 (D. Nev. 2000) ("This Court has previously ruled consistently with those who have recognized the group pleading doctrine in post-PSLRA actions … and continues to adhere to that view," citing *In re Stratosphere Corp. Sec. Litig.*, 1 F.Supp.2d 1096, 1104 (D. Nev. 1998) (applying group pleading doctrine to officers and members of executive committee after enactment of PSLRA)). Moreover, the reason the claim in *Davenport v. GMAC Mortg.*, No. 56697, 2013 WL 5437119 (Nev. Sup. Ct. Sept. 25, 2013) was dismissed was because it "lacked facts supporting the elements of a claim for intentional infliction of emotional distress" and, more specifically, failed to describe what the "extreme and outrageous" conduct was, *id* at *6, not because of group pleading.

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misrepresentations; as well as the Director Defendants' roles in the preparation and dissemination of documents containing fraudulent financial information and a fraudulent company valuation. ¶¶ 17, 41(k), 47. Thus, Plaintiffs are clearly entitled to the collective action presumption, and Mr. Gonzalez's effort to argue the facts only underscores the impropriety of dismissal on the pleadings. Put simply: Mr. Gonzalez and his fellow conspirators cannot join together behind closed doors to mislead Plaintiffs into giving them $30 million, and then claim that they can evade accountability because Plaintiffs do not know exactly what happened behind these closed doors.[15]

2. **Plaintiffs have Exceeded the Requirements of NRCP 8**

Because Plaintiffs exceed the requirements of NRCP 9(b), they likewise far exceed the requirements of NRCP 8. Nevada Rule of Civil Procedure 8 requires only "a short and plain statement of the claim showing that the pleader is entitled to relief." NRCP 8(a). A "complaint cannot be dismissed for failure to state a claim unless it appears beyond a doubt that the plaintiff could prove no set of facts which, if accepted by the trier of fact, would entitle him to relief." *Washoe Med. Center, Inc. v. Reliance Ins. Co.*, 112 Nev. 494, 496, 915 P.2d 288 (1996) (quoting *Edgar v. Wagner*, 101 Nev. 226, 228, 699 P.2d 110, 112 (1985)). "All factual allegations of the complaint must be accepted as true." *Vacation Village, Inc. v. Hitachi Am., Ltd.*, 110 Nev. 481, 484, 874 P.2d 744 (1994) (citing *Capital Mortg. Holding v. Hahn*, 101 Nev. 314, 315, 705 P.2d 126 (1985)). The "court's 'task is to determine whether ... the challenged pleading sets forth allegations sufficient to make out the elements of a right to relief.'" *Id.* (quoting *Edgar*, 101 Nev. at 227). "The test for determining whether the allegations of a complaint are sufficient to assert a claim for relief is whether the allegations give fair notice of the nature and basis of a legally sufficient claim and the relief requested." *Id.* (citing *Ravera v. City of Reno*, 100 Nev. 68, 70, 675 P.2d 407, 408 (1984)). [16]

[15] As Defendant's *Swartz* case notes, "there is no absolute requirement that where several defendants are sued in connection with an alleged fraudulent scheme, the complaint must identify false statements made by each and every defendant." *Swartz v. KPMG LLP*, 476 F.3d 756, 764 (9th Cir. 2007). And Mr. Gonzalez concedes that a complaint is sufficient where, as here, it alleges facts regarding "his… participation in the fraud," such as joining with the other Director Defendants to direct the campaign to induce Plaintiffs' investment, approving the false EBITDA figures, and approving the sale itself with its false financial representations. *See* Def's Br at 8 (citing *Swartz*, 476 F.3d at 764-765).

[16] The Nevada Supreme Court "has not adopted" the more defendant-friendly federal standard that "[a] motion to dismiss for failure to state a claim should be granted only if the party asserting the claim is unable to articulate 'enough facts to state a claim to relief that is plausible on its face.'" *Garcia v. Prudential Ins. Co. of Am.*, 129 Nev. 15, 18, 293 P.3d 869, 871 (Nev. 2013) (referencing *Garcia*, 2009 WL 5206016, *4 (quoting *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 570, 127 S. Ct. 1955, 167 L.Ed.2d 929 (2007) for the federal standard).

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The issue of pleading standards is further discussed in Plaintiffs' Opposition to the other Defendants' Motion, which is incorporated here by reference. *See* Pl. Opposition at § (VI)(B)(2).

As set forth throughout, Plaintiffs have sufficiently pled facts to support all of their claims, exceeding both the requirements of NRCP 8 and 9(b). Mr. Gonzalez simply ignores his approval of the false EBITDA figures and the SPA itself. More generally, despite his several failures in this regard, it is hardly "implausible" that Mr. Gonzalez adhered to some semblance of his duties as a Board member; knew Hygea's performance and value within a factor of seven; and oversaw an existential transaction that supposedly would lead to a public exchange listing.

C. Nevada 5 Has Stated Claims

Having taken $30 million from Nevada 5, Mr. Gonzalez claims that one of his victims cannot sue him because the stock is titled in the name of the other victim, N5HYG. This argument fails for several reasons.

First, Mr. Gonzalez made his pre-SPA misrepresentations to Nevada 5. ¶¶ 27-44, 52. Indeed, had Nevada 5 not appeared as a Plaintiff, Mr. Gonzalez would no doubt be arguing that N5HYG could not plead all the elements of a fraud claim, as it was not in existence to receive the pre-SPA misrepresentations.

Second, Nevada 5 formed N5HYG for the sole purpose of purchasing stock of the company Mr. Gonzalez helped run, Hygea. Where a party forms an entity for the purpose of a fraudulently induced transaction, it has standing to challenge the transaction. *See Sutter v. General Petroleum Corp*., 170 P.2d 898, 901-902 (Cal. 1946) (holding individual who, by reason of defendants' false statements, was induced "to form and invest in a corporation," had injury distinct from injury suffered by corporation). *See also Lu v. Chi*, 86 F.3d 1162, 1996 WL 287254, *1 (9th Cir. 1996), *as amended* (Aug. 8, 1996)("[a]s to fraud, plaintiffs correctly argue that the duty not to defraud them did not require any privity"). Nevada 5 was injured as soon as it moved forward with the purchase, as the mere execution of an agreement "[gives] rise to the cause of action of fraud in the inducement." *Mendenhall v. Tassinari*, 403 P.3d 364, 371 (Nev. 2017). Put another way, Nevada 5 would never have created N5HYG and used it to purchase Hygea stock were it not for the fraud.

Third, Nevada 5 has met its burden to plead the elements of each claim it makes and, aside from his general NRCP 8 and 9(b) arguments, addressed in Section II, *supra*, Mr. Gonzalez does

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not argue otherwise. *Fourth*, for the statutory counts, Nevada 5 clearly falls within the expanded conception of "buyer." "The statutory terms ["offer" and "sell"] are expansive enough to encompass the entire selling process," *Pinter v Dahl*, 486 U.S. 622, 643 (1988) (quotation omitted) (alterations in original), and both the Nevada and the federal Securities Act leave the terms "buy" and "buyer" undefined. Nev. Rev. Stat. Ann. §§ 90.211 – 90.309, 15 U.S.C.A. § 77*b*.

D. Plaintiffs Have Stated A Strong *Prima Facie* Securities Fraud Claim

1. Plaintiffs have Stated Claims under the Federal Securities Act of 1933

a. Plaintiffs have stated a claim under Section 12(a)(2).

Section 12(a)(2) of the Securities Act of 1933 provides for rescission and civil liability against any person who "offers or sells a security ... by means of a prospectus or oral communication, which includes an untrue statement of a material fact or omits to state a material fact necessary in order to make the statements, in the light of the circumstances under which they were made, not misleading." 15 U.S.C. § 77*l* (emphasis added). Neither scienter nor reliance need to be pled or shown. *See Gustafson v. Alloyd Co.*, 513 U.S. 561, 582 (1995). As set forth throughout, Plaintiffs have stated a strong *prima facie* claim under the Act. Defendants have misrepresented Hygea's financial condition, and represented that the company would soon be listed on a public exchange when in fact they clearly knew the corporation's hidden distress made such a development essentially impossible. *See, e.g.*, ¶ 34. Even though he was on the Board that managed Hygea as it secured this ill-gotten $30 million windfall; the Board directed and oversaw the campaign to induce Plaintiffs to part with their money; the Board approved the misleading EBITDA figures; the Board approved the SPA under which Plaintiffs invested at a wildly inflated valuation; and the approved SPA imputed knowledge of Hygea's finances to Mr. Gonzalez, he asks this Court to dismiss him from the case. His arguments lack merit.[17]

i. Mr. Gonzalez is liable as a "seller" under Section 12(a)(2).

First, Mr. Gonzalez claims that he was not a "seller" under the federal Securities Act. But under the Act, terms such as "buyer" and "seller" are read broadly to encompass participants in the market process such as the parties here. As the Supreme Court explained, "[t]he statutory terms

[17] Mr. Gonzalez's "private cause of action" argument regarding Section 17a is a red herring. He seems to suggest that, because Plaintiffs correctly noted that the he violated Section 17(a) of the federal Securities Act, 15 U.S.C. 77q, he should be immune from the statute's liability provisions, which is addressed at Section II(A)(2) herein.

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["offer" and "sell"] are expansive enough to encompass the entire selling process." *Pinter v. Dahl*, 486 U.S. 622, 643 (1988) (quotation omitted) (alterations in original). *See also Maybank v. BB & T Corp, Branch Banking & Trust* Co., No. 6:12-CV-00214, 2012 WL 3157006, *5 (DSC Aug. 3, 2012) (analogous conclusion under state Uniform Act statute); *Cortec Indus., Inc. v. Sum Holding LP*, 949 F.2d 42, 49 (2nd Cir. 1991) ("the range of persons potentially liable… is not limited to persons who pass title") (quotation omitted); *Bozsi Ltd. P'ship. v. Lynott*, 676 F. Supp. 505, 509-10 (S.D.N.Y. 1987) (third party participants are within definition of seller) (citation omitted); *Craighead v. EF Hutton & Co., Inc.*, 899 F.2d 485, 493 (6th Cir. 1990) (key is a party playing a "substantial role" in causing the transaction) (citations omitted). Here, where Mr. Gonzalez oversaw the campaign to induce the investment, approved grossly misleading EBITDA and valuation figures, and approved the contract for the sale itself, he clearly played a "substantial role" and falls well within the broad definition.[18]

ii. The misstatements at issue were contained in a "prospectus or oral communication."

Mr. Gonzalez also claims immunity because, he says, there was no "prospectus or oral communication." This too is wrong. Section 12(a)(2) imposes liability against any person who sells securities "by means of a prospectus or oral communication" that contains a materially false or misleading statement. 15 U.S.C.A. § 77*l* (emphasis added). Mr. Gonzalez claims that a prospectus can only encompass documents that are or contain the items that would be found in a SEC-filed registration statement. But "a document's content or lack of it is not what is used to classify it as a prospectus for Section 12(a)(2)." *Bridges v. Geringer*, No. 5:13-CV-01290-EJD, 2015 WL 2438227, at *5 (N.D. Cal. May 21, 2015) *citing Gustafson*, 513 U.S. at 569 (explaining that a document does not cease to be a prospectus whenever it omits a piece of information required by Section 10 of the Securities Act).

Rather, the Supreme Court has defined the word "prospectus" for the purposes of Section 12(a)(2) as "a document that describes a public offering of securities by an issuer or controlling

[18] The question in *Yi Xiang v. Inovalon Holdings, Inc.*, 254 F. Supp. 3d 635 (S.D.N.Y. 2017) was whether merely signing a registration statement was sufficient to constitute, as a matter of law, solicitation of a sale. In this case, Mr. Gonzalez did more than just sign a registration statement – in fact, unlike in *Yi Xiang*, the securities in this case were not even registered as required.

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shareholder." *Gustafson*, 513 U.S. at 584. Mr. Gonzalez's argument that the offering was not public does not accurately reflect the law and, moreover, is inappropriate at the pleading stage. "Public offering" is not used in the popular sense of an "offering on a public exchange." *See West v. Innotrac Corp.*, 463 F. Supp. 2d 1169, 1177 (D. Nev. 2006) ("[t]here is no language in *Gustafson* indicating that a public offering should be strictly defined as an offering made to the public at large.") (internal citations and quotations omitted). Rather, "[c]ourts have developed flexible tests to determine whether a transaction involves a public offering," which focuses on "four factors: (1) the number of offerees; (2) the sophistication of the offerees; (3) the size and manner of the offering; and (4) the relationship of the offerees to the issuer." *Id.* at 1176 (citing *S.E.C. v. Murphy*, 626 F.2d 633, 644–45 (9th Cir. 1980)). "For an offering to be private, the test must be met with respect to *each* purchaser and offeree." *Id.* (citing *Murphy*, 626 F.2d at 645).

Plaintiffs easily meet this test. They allege that Hygea's offering was made to investors at large without any pre-existing relationship to Hygea,¶ 27; an investment bank, CEA, was involved in soliciting Hygea's offering, ¶ 28; and Plaintiffs' $30 million investment in exchange for shares of Hygea's common stock was clearly significant, ¶ 46. The "relationship" factor alone is dispositive in Plaintiffs' favor: "[a] court may only conclude that the investors do not need the protection of the Act if all the offerees have relationships with the issuer affording them access to or disclosure of the sort of information about the issuer that registration reveals," *id.* at 1179 (citing *Murphy*, 262 F.2d at 647), whereas here, Defendants pervasively misled Plaintiffs and withheld information from them. Moreover, at least one of the factors, the size and manner of the offering, entails within it multiple fact-sensitive subfactors. *Id.* at 1178 (citing *Murphy* at 645). Choosing to focus on the far-from-dispositive fact that the prospectus at issue here was labeled "confidential," Mr. Gonzalez fails to address any of these complex issues; but, again, such an analysis would be inapt at this stage of the case. *See id.* at 1179 (issue is fact-sensitive and could not be decided on a motion to dismiss).[19]

[19] Mr. Gonzalez's argument that Plaintiffs have attempted to create a "new category of offerings," which is neither public nor private, is made without citation to authority and does not reflect the allegations of the FAC. As shown, Plaintiffs have alleged a public offering under federal and Nevada law, even if the company was not "public" in the colloquial sense of being listed on a public exchange.

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Moreover, as set forth below, Mr. Gonzalez and his co-conspirators violated the federal Securities Act when they failed to file a registration statement. He cannot seek to benefit from this violation by claiming that it absolves him of liability for his participation in the fraud.[20]

b. Plaintiffs have stated a federal registration claim.

As Mr. Gonzalez correctly notes, Section 12(a)(1) of the Securities Act of 1933 (the "Federal Act" or "Securities Act") provides that any person who offers or sells a security in violation of Section 5 of the 1933 Act is liable to the person purchasing such security from him. 15 U.S.C. § 77*l*(a). Plaintiffs allege that the Defendants have failed to register the securities as required by the Federal Act, which provides for rescission and civil liability for these violations. ¶ 103.

Pursuant to Section 5 of the Securities Act of 1933, an offer or sale of securities must be registered with the SEC or qualify for an exemption from the registration requirements. 15 U.S. Code § 77e(c) provides in relevant part that "[i]t shall be unlawful for any person, directly or indirectly, to make use of any means or instruments of transportation or communication in interstate commerce or of the mails to offer to sell or offer to buy through the use or medium of any prospectus or otherwise any security, *unless a registration statement has been filed* as to such security." *Id* (emphasis added).

Mr. Gonzalez concedes that the offering was not registered, but claims that it is a "private placement" exempt from registration pursuant to both Section 4(a)(2) of the Securities Act, 15 USC § 77d(a)(2), and "Regulation D," which is itself a codification of the 4(a)(2) exemption. *See* 17 C.F.R. § 230.500. His bare announcement of this position is entirely inadequate to merit dismissal, as it is "[t]he defendant [who] bears the burden of proving a private-offering-exemption affirmative defense." *In re Enron Corp. Sec., Derivative & "ERISA" Litig.*, 310 F. Supp. 2d 819, 862 (S.D. Tex. 2004) *citing SEC v. Ralston Purina Co.*, 346 U.S. 119, 126, 73 S. Ct. 981, 97 L. Ed. 1494 (1953) ("Keeping in mind the broadly remedial purposes of federal securities legislation, imposition of the burden of proof on an issuer who would plead the exemption seems to us fair and reasonable."); *See also* 6 A.L.R. Fed. 536 (Originally published in 1971)("the determination of whether a transaction involves a public offering involves a thorough development of the factual situation surrounding the

[20] Mr. Gonzalez also claims that the reverse takeover, or "RTO," representations are "forward-looking statements of intent," and that he left the Board before it decided not to pursue the exchange listing. Def's Br at 14. But while on the Board he knew or should have known that, given Hygea's distress, an imminent RTO was out of the question.

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transaction and the offerees," and "[i]t behooves him who claims that the transaction does not involve a public offering to prove such claim"); Securities Act Release No. 33-4552, Nov. 6, 1962, CCH Fed Secur L Rep ¶2770, 27 Fed Reg 11316 (whether a transaction is one not involving any public offering is essentially a question of fact and necessitates a consideration of all surrounding circumstances, including such factors as the relationship between the offerees and the issuer, and the nature, scope, size, type, and manner of the offering); *Strahan v. Pedroni*, 387 F.2d 730, 732 (5th Cir.1967). In fact, "since the private offering exemption is an exception to the general policy of disclosure underlying the Securities Act, such exemption is strictly construed against the claimant." 6 A.L.R. Fed. 536 (Originally published in 1971). *See also Hirtenstein v. Tenney*, 252 F. Supp. 827 (S.D.N.Y. 1966); *Central Trust Co. v. Robinson*, 326 P.2d 82 (Colo. 1958); *Shimer v. Webster*, 225 A.2d 880 (D.C. 1967); *Altman v. American Foods, Inc.*, 138 S.E.2d 526 (N.C. 1964); *SEC v. North American Research & Development Corp.*, 424 F.2d 63, 71 (2d Cir. 1970); *SEC v. Galaxy Foods, Inc.*, 417 F. Supp. 1225, 1242 (E.D.N.Y. 1976), aff'd, 556 F.2d 559 (2d Cir.), *cert. denied*, 434 U.S. 855 (1977).

At the very least, Courts deny summary disposition as to the issue, let alone requests for dismissal on the pleadings. *See, e.g., Hirtenstein*, (issue of whether transaction was part of a public offering required factual development at trial); *Knapp v. Kinsey*, 249 F.2d 797 (6th Cir. 1957) (decision of the issue whether or not the transaction was exempt as not involving any public offering involved a thorough development of the factual situation); *Central Bank & Trust Co. v. Robinson*, 326 P.2d 82 (Colo. 1958) (trial required as to nature of offering); *Western Federal Corp. v. Erickson*, 739 F.2d 1439 (9th Cir. 1984) (silver mine promoters who failed to establish number and identity of offerees and requisite relationship with offerees to establish that offerees had access to information that registration would reveal are not entitled to private-offering exemption).

In any event, the argument fails on its merits. As Plaintiffs have set forth in their FAC, Defendants are ineligible for either exemption, in light of their provision of false information; withholding of critical information; failure to file the requisite documentation; and use of Regulation D to facilitate a plan or scheme to evade registration provisions. ¶¶ 83, 110-112. Mr. Gonzalez does not substantively challenge this claim, but instead reiterates his argument that Plaintiffs have failed to allege misrepresentations or omissions. Once again, given that Mr. Gonzalez bears the burden of

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proof and persuasion on his eligibility for the exemption, this is entirely inadequate for a motion to dismiss. *In re Enron Corp.*, 310 F. Supp. 2d at 862.

In fact, Plaintiffs have stated a strong *prima facie* case that the offering was indeed public. *First*, they have alleged that the offering was a public offering, made through an investment bank, to numerous investors previously unaffiliated with Hygea. ¶¶ 27-29. Taken as true, this renders the Section 4 exemption unavailable.[21]

Second, as set forth throughout, Plaintiffs have stated a strong *prima facie* claim of misrepresentations. "[O]nly where an offering is to those who are shown to be able to fend for themselves may the transaction be deemed a private offering," and "'sophistication' is not a substitute for access to the kind of information which registration would disclose." *U.S. v. Custer Channel Wing Corp*., 376 F.2d 675 (4th Cir. 1967). Rather, "every offeree must have *accurate* information equivalent to that which registration statement would disclose regarding corporation in which investment is solicited." *Woolf v. S. D. Cohn & Co*., 515 F.2d 591 (1975) *vacated on other grounds by* 426 U.S. 944 (1976) (emphasis added). *See also Lundquist v. Turner*, 407 F.2d 857 (9th Cir. 1969)

Third, Defendants' claims of an allegedly forthcoming RTO also precludes a finding that the offering was private. Where the issuer knows or should know that the purchasers are in fact acquiring the security with a view to its public distribution, this suggests a "public offering" requiring registration. *See Custer Channel Wing Corp*., 376 F.2d 675, infra § 8; *Altman*, 138 S.E.2d 526. *See also* Securities Act Release No. 3825, 1957 WL 7724 (August 12, 1957), cited with approval in *Altman v. American Foods, Inc*., *supra* (an important factor to be considered in determining whether transactions by an issuer involve any public offering within the meaning of the statute is whether the securities offered have come to rest in the hands of the initially informed group or whether the purchasers are merely conduits for a wider distribution).

[21] Even if Mr. Gonzalez or his fellow Defendants dispute this point, any defense would require a fact sensitive analysis. "What may appear to be a separate offering to a properly limited group will not be so considered if it is one of a related series of offerings, for a person may not separate parts of a series of related transactions, the sum total of which is really one offering, and claim that a particular part is a nonpublic transaction. Thus in the case of offerings of fractional undivided interests in separate oil or gas properties where the promoters must constantly find new participants for each new venture, the entire series of offerings will be considered to determine the scope of this solicitation." 6 A.L.R. Fed. 536 (Originally published in 1971)(citing Securities Act Release No. 33-603, Dec. 16, 1935, CCH Fed Secur L Rep ¶2750, 11 Fed Reg 10955).

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c. Mr. Gonzalez is liable as a "control person."

To plead control person liability, a plaintiff must allege that: (1) there is a primary violation of federal securities law, and (2) the defendant exercised actual power or control over the primary violator. *Howard v. Everex Systs., Inc.*, 228 F.3d 1057, 1065 (9th Cir. 2000).[22] It "is an intensely factual question, involving scrutiny of the defendant's participation in the day-to-day affairs of the corporation and the defendant's power to control corporate actions." *Kaplan v. Rose*, 49 F.3d 1363, 1382 (9th Cir. 1994) (internal quotation marks and citations omitted). "[I]t is not necessary to show actual participation or the exercise of actual power ... ." *Howard*, 228 F.3d at 1065.

In addition, Plaintiffs need not show that the control persons had scienter or that they culpably participated in the wrongdoing. *Paracor Finance, Inc. v. General Elec. Capital Corp.*, 96 F.3d 1151, 1161 (9th Cir. 1996). Thus, "[t]o establish the liability of a controlling person, the plaintiff does not have the burden of establishing that person's scienter distinct from the controlled corporation's scienter." *Arthur Children's Trust v. Keim*, 994 F.2d 1390, 1398 (9th Cir. 1993). "But a defendant who is a controlling person of an issuer with scienter may assert a good faith defense by proving the absence of scienter and a failure to directly or indirectly induce the violations at issue." *Howard*, 228 F.3d at 1065 (quotations omitted). Obviously, Mr. Gonzalez's implicit assertion of such a defense is insufficient to merit dismissal.[23]

Mr. Gonzalez cannot seriously argue that he lacked control over Hygea. The role of directors is "to 'oversee' or 'monitor' the conduct of the corporation's business and to approve major corporate plans and actions." *Bins v. Exxon Co. U.S.A.*, 220 F.3d 1042, 1051 (9th Cir. 2000) (citation omitted). Directors' full control over the corporation is codified in Nevada's statutes. *Berman v. Riverside Casino Corp.*, 247 F. Supp. 243, 245 (D. Nev. 1964) (citing NRS § 78.120 which states that subject only to the articles of incorporation or limited statutory exceptions, "the board of directors has full control over the affairs of the corporation"). In *Howard*, the Ninth Circuit found control person liability where the CEO and Chairman of the Board had authority over the

[22] *Howard* addressed control person liability under the Exchange Act, whereas Plaintiffs allege control person liability under the Securities Act, but the controlling person analysis is the same. *Hollinger v. Titan Capital Corp.*, 914 F.2d 1564, 1578 (9th Cir. 1990) (citing *Buhler*, 807 F.2d at 835).

[23] Plaintiffs have more than pled "actual participation in the corporation's operation or some influence" over the investment at issue. *Burgess v. Premier Corp.*, 727 F.2d 826, 832 (9th Cir. 1984). If nothing else, Mr. Gonzalez approved the SPA.

process of preparing and releasing financial statements and could not show an undisputed lack of scienter. *Howard*, 228 F.3d at 1065-66. The Ninth Circuit has also found control person liability where director oversight and involvement in financial statements at issue were sufficient to presume control. *Wool*, 818 F.2d at 1441.

Here, once again, Mr. Gonzalez was a member of Hygea's Board with authority over its executive team. He directed, approved, and oversaw the campaign of misrepresentation designed to induce Plaintiffs' investments. He approved misleading EBITDA figures, a grossly inflated valuation, and the transaction selling the stock itself. He is not entitled to dismissal.

Even if there *was* a legitimate dispute as to whether Mr. Gonzalez was a control person, the fact that control person liability can be "intensely factual" militates against a dismissal of Plaintiffs' claims against Mr. Gonzalez. *Arthur Children's Tr.*, 994 F.2d at 1396.

2. **Plaintiffs have Stated Nevada Securities Act ("NSA") Claims**

a. Plaintiffs have stated claims under the NSA.

i. The NSA prohibits the conduct at issue.

Pursuant to the Nevada Securities Act ("NSA"),"[i]n connection with the offer to sell, sale, offer to purchase or purchase of a security, a person shall not, directly or indirectly:

> 1. Employ any device, scheme or artifice to defraud;
>
> 2. Make an untrue statement of a material fact or omit to state material fact necessary in order to make the statements made not misleading in the light of the circumstances under which they are made; or
>
> 3. Engage in an act, practice or course of business which operates or would operate as a fraud or deceit upon a person."

NRS 90.570. *See also* NRS 90.580 (manipulation of sale prohibited). Mr. Gonzalez claims that the NSA is inapplicable to this transaction because, he says, there is no allegation that any offer to sell Hygea securities occurred in Nevada. However, the NSA provides that an "offer to sell or to purchase is made in [Nevada], *whether or not either party is present in this State,* if the offer ... [o]riginates in this State." NRS 90.830 (emphasis added). Courts in jurisdictions that, like Nevada, have adopted the Uniform Securities Act have held that an offer "originates" where the issuer is located. *See, e.g., In re Trade Partners, Inc.*, 627 F. Supp. 2d 772 (W.D. Mich. 2008) (allegations that issuer was from Michigan and out-of-state defendants acted as its agents satisfied "originating

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in" requirement of Michigan Securities Act); *Rome v. Reyes*, 2017 COA 84, ¶ 20, 401 P.3d 75, 81 (reasonable inference that out-of-state defendants had violated Colorado's Uniform Securities Act where it was alleged that the securities originated and were executed in Colorado.); *Cromeans v. Morgan Keegan & Co.*, 303 F.R.D. 543, 557 (W.D. Mo. 2014) (court liberally and broadly construes state securities fraud statute to ensure that the state's territory is not used as a basis of operation for purveyors of fraudulent securities). Hygea is a Nevada corporation that issued stock that was then sold through a transaction with another Nevada corporation. The argument that Nevada's securities law does not apply to such a transaction is meritless.

Indeed, Mr. Gonzalez claims that the "internal affairs doctrine" applies in this case, and provides for Nevada law to govern the rights of Hygea's shareholders because Hygea is a Nevada corporation. Def's Br at 22 n. 26. The doctrine extends to securities claims such as this. *See City of Sterling Heights Police v. Abbey Nat'l, PLC*, 423 F.Supp.2d 348, 363–64 (S.D.N.Y.2006) (internal affairs doctrine in securities fraud action).

In fact, as discussed below, one of the leading cases on this issue is *Simms Inv. Co. v E.F. Hutton, infra.* The Court in *Sims* identified Louis Loss as a leading authority on the issue and viewed his commentary as authoritative. He concluded that the state of a corporation's incorporation – coincidentally in his example, Nevada – can obviously apply its Act to a transaction of the corporation's stock. Louis Loss, *The Conflict of Laws and the Blue Sky Laws*, 71 Harv. L. Rev. 209, 231 (1957)("incorporate[ion] in Nevada… should certainly make Nevada reasonably connected with the transaction" such that Nevada's statute or, at the time, lack thereof, would apply).[24]

ii. It is irrelevant if Nevada law does not apply because alternatively, another state's analogous securities statute would apply.

"[S]o long as there is some territorial nexus to a particular transaction, the [securities] laws of two or more states may simultaneously apply" to a transaction. *Lintz v. Carey Manor Ltd.*, 613 F. Supp. 543, 550-551 (W.D. Va. 1985) (if a portion of a securities transaction occurs in a state, even if aimed only at non-residents, that state has a legitimate interest in applying its securities law

[24] Mr. Gonzalez cites *Prime Mover Capital Partners, L.P. v. Elixir Gaming Techs., Inc.*, 793 F. Supp. 2d 651, 669 (S.D.N.Y. 2011), in which the Court cursorily ruled that the "plaintiffs have not alleged that defendants offered to sell, or that plaintiffs received and accepted an offer to buy, [defendant's] stock in Nevada." *Id.* The present controversy is distinguishable from *Prime Mover* because Nevada 5, as a Nevada corporation, would have inherently "received and accepted an offer to buy in Nevada." *Id.*; *see also* NRS 90.830(b).

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to the transaction). In other words, Plaintiffs need not predicate their claims on the laws of one specific state in order to be entitled to relief. Thus, *even if*, arguendo, the NSA did not apply, another state's statute would. *See Simms Inv. Co.*, 699 F. Supp. 543, 545 (M.D.N.C. 1988) (again, "the securities laws of two or more states may be applicable to a single transaction without presenting a conflict of laws question" and further noting "this conclusion is in accord with persuasive authority and secondary sources," citing Unif. Sec. Act § 414, Comment 2, 7B U.L.A. (1958) (Act anticipates situation where "more than one state statute will apply to any single transaction")). Moreover, the two other states to have any apparent relationship to the sale, Florida and Michigan, have also adopted the Uniform Securities Act, and their operative provisions are substantially similar to the NSA's. *See* Section 517.301 of the Florida Statutes; Mich. Comp. Laws Ann. § 451.2501. The conduct alleged in the FAC entitles the Plaintiffs to relief under *any* of these similar state provisions.

b. Mr. Gonzalez is liable for securities fraud under the NSA.

Mr. Gonzalez and his co-conspirators violated the NSA by employing a device scheme or artifice to defraud; making at least one untrue statement of a material fact or omitting to state at least one material fact necessary in order to make the statements made not misleading in light of the circumstances under which they are made; engaging in an act, practice or course of business which operates or would operate as a fraud or deceit upon a person; and by manipulating the sale process. NRS 90.570. More specifically, Mr. Gonzalez was aware that representations, documents, and other information that Defendants made or gave to Plaintiffs would be relied upon by Plaintiffs in deciding whether to make a substantial capital investment in Defendant Hygea. ¶ 33. Furthermore, the Defendants (including Mr. Gonzalez) intended that Plaintiffs would rely on those representations, documents, and other information. *Id*. It was only after Plaintiffs invested a significant sum that Plaintiffs learned that the representations and documents provided to them were incorrect. ¶ 53. Pursuant to NRS 90.660(1), a violator of NRS 90.570 is liable to the person purchasing the security.

Mr. Gonzalez claims again that he is not a "seller," and that Nevada 5 is not a "buyer." These arguments fail under the Nevada statute for the same reason they fail under the federal statute. Mr. Gonzalez then cites *Janus Capital Grp., Inc. v. First Derivative Traders,* 564 U.S. 135 (2011) for the proposition that he should not be considered a "maker" of any fraudulent statement. However, in *Janus* the Supreme Court merely held that the "maker" of a statement is a "person or entity *with*

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ultimate authority over the statement, including its content and whether and how to communicate it." *Id.* at 135 (emphasis added). And, "*Janus* did not change the longstanding rule that corporate officials are liable for misstatements to which they give their imprimatur." *In re Smith Barney Transfer Agent Litig.*, 884 F. Supp. 2d 152, 164 (S.D.N.Y. 2012) (citation omitted). Furthermore, "[n]othing in *Janus* precludes a single statement from having multiple makers." *Glickenhaus & Co. v. Household Int'l, Inc.*, 787 F.3d 408, 427 (7th Cir.2015); *see also City of Pontiac Gen. Emps. Ret. Sys. v. Lockheed Martin Corp.*, 875 F. Supp. 2d 359, 374 (S.D.N.Y. 2012). Directors have "ultimate authority" over a statement and are thus its "makers." Even Mr. Gonzalez concedes that such authority makes him a "maker." Def's Br. at 19 (citing *Janus*, 564 US at 144 for the proposition that a "maker" includes "the person or entity with ultimate authority over the statement"). Here, the SPA – including its representations – required and secured the approval of Mr. Gonzalez and the Board, which shows his authority. Furthermore, the Board approved the faulty EBITDA figures provided to Plaintiffs. ¶ 41(k). And as discussed above, the SPA warranted Mr. Gonzalez's knowledge. Even if Mr. Gonzalez did not say anything to Plaintiffs personally, that does not absolve him of liability. *See, e.g., WPP Luxembourg Gamma Three Sarl v. Spot Runner, Inc.*, No. CV09CV02487DMGPLAX, 2013 WL 12203024, *7 (C.D. Cal. Apr. 4, 2013).[25] Moreover, under NRS 90.660(3), he is liable as "[a] person who willfully participates in any act or transaction in violation of [the anti-manipulation provision]," any one of whom "is liable to a person who purchases or sells a security."[26]

c. Mr. Gonzalez is liable for non-registration of a security under the NSA.

Pursuant to NRS 90.460, it is "unlawful for a person to offer to sell or sell any security in [Nevada] unless the security is registered or the transaction is exempt." Also, pursuant to 90.660(1)(b), if a security is not registered or otherwise exempt the offeror or seller is "liable to the person purchasing the security." Even though the securities here were unregistered, Mr. Gonzalez asks the Court to dismiss the claim. But, again, "the burden of demonstrating the availability and

[25] Unlike in *Tsutsumi v. Advanced Power Techs., Inc.*, No. 2:12-CV-01784, 2013 WL 1953716, *6 (D. Nev. Jan. 24, 2014), Plaintiffs here have alleged which fraudulent statements were made by which defendants to plaintiffs, and that Mr. Gonzalez and his fellow directors approved the fraudulent EBITDA figures and the SPA with its misrepresentations.

[26] Mr. Gonzalez also suggests he is immune because, he claims, the FAC does not cite each applicable statutory provision, yet provides no authority suggesting such citation would be necessary.

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applicability of … an exemption [to the registration requirement] is on the person claiming the exemption." Nev. Admin. Code 90.495(3). Mr. Gonzalez claims that Hygea has qualified for an exemption pursuant to NRS 90.530(11). Once again, though, he fails to make any argument or showing beyond this bare assertion. Furthermore, and as Mr. Gonzalez notes, Nevada securities law is generally interpreted in a manner consistent with parallel federal law. *See In re Stratosphere Corp.*, 1 F. Supp. 2d 1096, 1123 (D. Nev. 1998). As discussed above, Mr. Gonzalez bears the burden of proving the existence of an exemption from registration—a burden which he has not met.

Nor can he. By way of one example, the exemption does not apply if any "commission or other similar compensation is paid or given, directly or indirectly, to a person, other than a broker-dealer licensed or not required to be licensed under this chapter, for soliciting a prospective purchaser in this State." NRS 90.530(11)(c). Here, at least one investment bank was involved in soliciting Plaintiffs. ¶¶ 37, 41. Presumably, it was not working for free, and in fact it has sued Hygea for "commission or similar compensation." *See CEA Atlantic Advisors, LLC v. Hygea Holdings Corp.*, Hillsborough County Circuit Court Case No. 16-CA-11256 (filed December 9, 2016), attached hereto as **Exhibit "4."** The chance that, after discovery, Mr. Gonzalez will be able to show that all of these criteria were met is minimal at best.

d. Mr. Gonzalez is a "control person" under the NSA.

Pursuant to NRS § 90.660(4), which, as shown above, applies to the transactions at issue here, a person who "directly or indirectly controls" a primary violator of Nevada securities law is jointly and severally liable for the securities violation, as is a "a partner, officer or director of the person [directly] liable." Mr. Gonzalez does not contest that he is a "control person" under Nevada law. The Nevada Administrative Code defines a "control person" as an individual who "[i]s an officer or *director* of a corporation." N.A.C. § 90.035 (emphasis added). It is undisputed that Mr. Gonzalez was a director of Hygea during the relevant time period. ¶ 16. As a result, and for all of the reasons that he is also a control person under the federal Securities Act, he is jointly and severally liable for Hygea's violations of Nevada Securities Laws.

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E. Nevada's "Corporate Liability Protections" Do Not Immunize Mr. Gonzalez

At various points, Mr. Gonzalez suggests that, because corporate officers and directors are often protected by the corporate veil, they are immune from liability for nearly any misconduct they commit as directors. This is wrong for several reasons.

First of all, the fact that corporate officials are not *per se* liable for corporate debts does not immunize them from liability for their own misconduct. Moreover, under Nevada's "director exculpation statute," Mr. Gonzalez is liable because, for all of the reasons set forth throughout, he has engaged in "a breach of his or her fiduciary duties as a director or officer" involving "intentional misconduct, fraud or a knowing violation of law." NRS 78.138(7). Once again, at the very least, this presents a fact issue. *See Brinkerhoff v Foote*, No. 68851, 2016 WL 7439357, *4 (Nev. Sup. Ct. Dec. 22, 2016) ("*[a]fter hearing all the evidence*, the fact-finder must determine" culpability under NRS 78.138") (emphasis added). *See also Stewart v. Kroecker*, No. CV04-2130L, 2005 WL 3466543, at *2 (W.D. Wash. Dec. 19, 2005) (denying motion for summary disposition as to NRS 78.138 argument due to factual inquiry into circumstances of stock issuance).

This leaves the business judgment rule, which does not exculpate Mr. Gonzalez for multiple reasons. *First,* the rule is inapplicable to a case such as this in which the directors have breached their fiduciary duty. The statutory codification "provides that the business judgment rule does not apply to a 'director's or officer's act or failure to act [which] constitute a breach of his or her fiduciary duties' and involve 'intentional misconduct, fraud or a knowing violation of law,'" as alleged here. *Nutraceutical Dev. Corp. v. Summers*, No. 53565, 2011 WL 2623749, *4 (Nev. Sup. Ct. July 1, 2011) (citing NRS 78.138(7)). Mr. Gonzalez concedes that Plaintiffs may overcome any protective presumption by pleading enough to "raise (1) a reason to doubt that the action was taken honestly and in good faith or (2) a reason to doubt that the board was adequately informed in making the decisions." *Louisiana Mun. Police Employees' Ret. Sys. v. Wynn*, 829 F.3d 1048, 1062 (9th Cir. 2016). And the rule is particularly irrelevant to fraud claims, which are an express exception to the rule. *See Weinfeld v. Minor*, No. 3:14-CV-00513, 2016 WL 4487844, *5 (D. Nev. Aug. 24, 2016) (citing Nev. Rev. Stat. § 78.138(7)(a)–(b)). Here, the fact that the entire transaction was induced by wildly inaccurate financial figures raises *at the very least* a clear inference that either the Board knew about the misrepresentations but allowed the deal to go forward, that it was woefully (or even

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purposely) underinformed, or some combination of the two. Discovery is the proper mechanism by which to explore this dynamic – not summary proceedings on the pleadings.

Second, the rule is a "presumption that in making a *business decision* the directors of a corporation acted on an informed basis, in good faith and in the honest belief that the action taken was in the best interests of the company." *Shoen*, 122 Nev. 621, 137 P.3d at 1178–79 (citation omitted)(emphasis added). Nevada's rule is codified at NRS 78.138, which provides that "[d]irectors and officers, in deciding upon *matters of business*, are presumed to act in good faith, on an informed basis and with a view to the interests of the corporation." NRS 78.138(3) (emphasis added).[27] Quite simply, a director's violation of his or her duties towards shareholders in the corporation's internal governance is not a "business decision."

Third, even if the rule applied to this sort of case (it does not), it would not protect Mr. Gonzalez. Courts analyzing a business decision otherwise protected by the rule can nonetheless "'inquir[e] into the procedural indicia of whether the directors resorted in good faith to an informed decision making process.'" *Matter of DISH Network Derivative Litig.*, 401 P.3d 1081, 1092 (Nev. 2017)(quoting *Wynn Resorts, Ltd. v. Eighth Judicial Dist. Court*, 399 P.3d 334, 343 (Nev. 2017)). Here, given the true nature of Hygea's failing business, any plausible "informed decision making process" on the part of Mr. Gonzalez and his colleagues would have revealed that Hygea's true financial position was nothing like that represented to Plaintiffs. The alternative inference is implausible: that Hygea was tremendously successful up until October 2016, after which its performance turned on a dime for no apparent reason other than its receipt of Plaintiffs' $30 million. *See, e.g.*, *Weinfeld*, 2016 WL 4487844, at *1, *5 (plaintiffs sufficiently pled "intentional conduct and even fraud" to "survive the business judgment rule at the pleading stage," where the defendants sold shares by misrepresenting company prospects, lied about imminent deals that did not exist, used fraudulent stock transfer documents, used $15-20 million of new investor money to pay dividends, and failed to properly account for the company's finances, among other things).

[27] The question of whether or not Mr. Gonzalez's misconduct fell within the scope of his director duties also remains outstanding. Plaintiffs need not stake out a position at the pleading stage on this fact-sensitive issue. *See* Nev. R. Civ. P. 8(a) & (e)(2) (pleading in the alternative permitted).

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F. Plaintiffs Have Stated Other Actionable Claims Against Mr. Gonzalez

1. Plaintiffs have Stated Fiduciary Duty and Unjust Enrichment Claims which are Direct, not Derivative, in Nature

Although Mr. Gonzalez indeed owed a fiduciary duty to Hygea itself, he also owed one to the shareholders as shareholders. *See In re Amerco Derivative Litig.*, 127 Nev. 196, 252 P.3d 681, 700–01(Nev. 2011); *See also Pareto v. F.D.I.C.*, 139 F.3d 696, 699 (9th Cir. 1998) ("mere presence of an injury to the corporation does not necessarily negate the simultaneous presence of an individual injury"); *Jones v. H.F. Ahmanson & Company*, 460 P.2d 464, 471 (Cal. 1969) (majority shareholders "have a fiduciary responsibility to the minority *and* to the corporation")(emphasis added).[28] Thus, "an injury may affect a substantial number of stockholders and still support a direct action if it is not incidental to an injury to the corporation.... the key requirement is an injury distinct from the injury to the corporation, rather than distinct from the injury to the other shareholders." 19 Am. Jur. 2d Corporations § 1927. *See also Parametric Sound Corp. v. Eighth Judicial Dist. Court in & for Cty. of Clark*, 401 P.3d 1100, 1102 (Nev. 2017) (Court adopted the "direct harm test ... which allows a direct claim when shareholder injury is independent from corporate injury");[29] *Harmsen v. Smith*, 693 F.2d 932, 941 (9th Cir. 1982)(plaintiff shareholders' breach of fiduciary duty injury was distinct and greater than mere diminution in stock value because they were fraudulently induced to purchase worthless stock).

Mr. Gonzalez directly harmed Plaintiffs during his time on the Board, including after their purchase. *First*, his continued failure to reveal the truth about Hygea's distress violates duties owed directly to them as shareholders. ¶¶ 59-60 (even "disclosure" of prior misstatement overstated performance by a factor of seven). *Second*, he contributed to the breach of multiple contractual obligations owed to Plaintiffs as shareholders, such as the provision of certain financial information. ¶¶ 68-69. *Third*, the post-investment conduct imperiled the Plaintiffs' investment.¶ 73. In other words, just as he violated his duties to Plaintiffs as prospective investors, he continued to violate his

[28] Of course, shareholder class actions frequently aggregate direct and common shareholder claims. *See, e.g., Pittiglio v Michigan Nat Corp*, 906 F Supp 1145, 1154–55 (ED Mich 1995) (denying motion to dismiss putative shareholder class action where plaintiff shareholders "sufficiently pled allegations of fraud [which would] constitute a breach of fiduciary duty by the defendant directors" and "pled a sufficient basis for their individual breach of fiduciary duty claims[.]").

[29] Footnote 10 of *Parametric Sound*, which Mr. Gonzalez cites for a contrary proposition at Page 23 of his brief, actually provides that directors *can* owe duties directly to the shareholders. 401 P.3d at 1105, n.10.

duties to them as shareholders after their purchase. It is likely true that he also violated his obligations to Hygea, but this hardly immunizes him. Because the claims are direct, the issue of "demand" is irrelevant, and for all the reasons set forth above, Mr. Gonzalez's conduct is not exculpated.

Likewise, Plaintiffs have stated claims for violation of Mr. Gonzalez's duty of candor and duty of loyalty.[30] Immediately upon Plaintiffs' investment (and, indeed, before), the Board should have disclosed to them the truth about Hygea's distress. Instead, it doubled-down on the earlier misrepresentations, as Defendants "issued, caused to be issued, and/or disseminated false and misleading information regarding, among other things, the finances of Hygea, Hygea's business model, and the conduct of Hygea's officers and directors" discussed throughout. ¶ 159. Given that this state of affairs improperly enriched Defendants' operation by $30 million, there is a clear inference that all Defendants refrained from disclosing the truth to Plaintiffs for their own benefit.[31]

Mr. Gonzalez's argument that Plaintiffs' claim for unjust enrichment is derivative in nature is also without merit. As with Plaintiffs' claims for breach of fiduciary duty, the actions of Mr. Gonzalez and his fellow Director Defendants harmed Plaintiffs directly, and the benefit of any recovery would run to Plaintiffs. The money and attendant value which Plaintiffs invested in Hygea vested in Defendants personally. The harm from the loss from this investment is felt most acutely by innocent investors such as Plaintiffs. In such circumstances, a direct claim is stated.[32]

Plaintiffs have therefore adequately pled that their claims are all direct, not derivative, in nature, and that they may therefore be brought by Plaintiffs in their own right. However, in the alternative, and for all of the reasons set forth in opposition to the other Director Defendants' arguments, which are incorporated herein by reference, Plaintiffs have adequately pled that pre-suit demand would have been futile and is therefore excused. *See* Pl. Opposition at § VI(D)(3). In summary, the FAC shows that demand was futile in several ways. *First*, as a practical matter,

[30] Contrary to Mr. Gonzalez's assertion, *Cohen v. Mirage Resorts, Inc*, 119 Nev. 1, 62 P.3d 720, 731 (Nev. 2003) never disavows a claim for violation of the duty of candor or limits it to merger situations.

[31] As noted in Schedule 4.5.1 of the SPA, all of the Director Defendants except for Messrs. Campanella and Gonzalez appear as Hygea shareholders. It remains a fact question whether they own shares through one of the many trusts or corporate entities that own Hygea's shares. That information is not apparent from the face of Schedule 4.5.1, and Plaintiffs anticipate they will learn Messrs. Campanella and Gonzalez's respective shareholder status through discovery.

[32] Mr. Gonzalez cites only a single inapposite case, *Compartment IT2, LP v. Fir Tree, Inc.*, No. 17-cv-1035, 2018 WL 1567842, *5 (D. Nev. Mar. 30, 2018), to support his argument. That case concerned a breach of fiduciary duty claim, and the Court did not address unjust enrichment. *Id.*

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Defendants were not going to agree to direct Hygea to sue themselves. *Second*, Plaintiffs have pled facts and circumstances sufficient for a court to infer that Hygea's directors consciously failed to act after learning about evidence of illegality, or red flags. As the Board, including Mr. Gonzalez, ignored those red flags, this Court may infer demand futility. *Third*, Plaintiff's allegations do not relate to Board action which would implicate the business judgment rule, but rather to wholesale abandonment of responsible corporate stewardship—a fact issue on demand futility which makes dismissal on the pleadings inappropriate.

2. **Plaintiffs have stated common law claims against Mr. Gonzalez.**

Fraud. For all of the reasons set forth in the opposition to the other Directors' arguments for immunity for their fraudulent conduct, Mr. Gonzalez is not immune either. *See, e.g.*, Pl. Opposition at § VI(D)(3).

Negligent Misrepresentation. Mr. Gonzalez has cited no Nevada law in support of his argument that he cannot be liable for negligent misrepresentations, except to misapply the protections afforded directors in their role as corporate managers, which are inapplicable to their inducement of outside investors. Nor is his conduct exculpated, for the reasons explained above.[33]

Conspiracy and Concert of Action. As set forth throughout, and for all of the reasons set forth in opposition to the other Director Defendants' arguments on these points, which are incorporated herein by reference. *See* Pl. Opposition at § (VI)(J). Plaintiffs have more-than adequately pled both the entirety of the fraudulent scheme, and the role of Mr. Gonzalez and his fellow Board members. The intra-corporate conspiracy doctrine is inapplicable where one of the underlying torts is a securities fraud claim. *See Solyom v. World Wide Child Care Corp.*, No. 14-80241-CIV, 2015 WL 6167411, *2 (S.D. Fla. Oct. 15, 2015)(citations omitted). Moreover, the doctrine only bars civil conspiracy and concert of action claims as to agents and representatives of

[33] In fact, Mr. Gonzalez's own cited case makes clear that, even assuming that the jurisprudence regarding the business judgment rule applies, Plaintiffs survive his motion by invoking the entire fairness test. "[A] plaintiff can survive a motion to dismiss by that director defendant by pleading facts supporting a rational inference that the director harbored self-interest adverse to the stockholders' interests, acted to advance the self-interest of an interested party from whom they could not be presumed to act independently, or acted in bad faith." *In re Cornerstone Therapeutics Inc, Stockholder Litig.*, 115 A.3d 1173, 1179–80 (Del. 2015). "When that standard is invoked at the pleading stage, the plaintiffs will be able to survive a motion to dismiss by interested parties regardless of the presence of an exculpatory charter provision because their conflicts of interest support a pleading-stage inference of disloyalty." *Id.* at 1180–81 (Del. 2015). Plaintiffs have alleged the application of the entire fairness test through the Defendants' self-interest and bad faith acts.

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a company who act in their official capacities on behalf of the corporation. *Collins v. Union Fed. Sav. & Loan Ass'n*, 99 Nev. 284, 662 P.2d 610, 622 (Nev. 1983); *U-Haul Co. of Nevada v. United States*, No. 2:08-CV-729-KJD-RJJ, 2012 WL 3042908, *3 (D. Nev. July 25, 2012). Again, Plaintiffs need not determine the capacity in which Mr. Gonzalez acted at this point in the case, and indeed cannot determine the outcome of this legal conclusion without additional information. At a minimum, these claims are pled in the alternative.[34]

Tortious Interference. Plaintiffs have pled that Mr. Gonzalez and the Director Defendants intentionally acted to disrupt Plaintiffs' Stock Purchase Agreement with Hygea. ¶ 178, 181. Following the SPA and Plaintiffs' payment of $30 million, Defendants acted in concert to avoid, or in a manner which inhibited Hygea's exchange listing, ¶ 54, and to run up an $8 million American Express bill, ¶ 57, despite Hygea's apparent financial distress. ¶ 61. Their conduct deprived Plaintiffs of any benefit from the SPA. These actions have enabled Defendants to provide the appearance of a legitimate business while diverting Plaintiffs' $30 million. Mr. Gonzalez claims he had left the Board by the time much of this had happened. *See* Def's Br. at 21 n. 21. But the precise timeline and circumstances of his departure are unclear, and this presents a fact issue for discovery. Mr. Gonzalez's remaining arguments are addressed in Plaintiffs' Opposition to the Motion to Dismiss of the remaining Defendants. *See* Pl. Opposition at § (VI)(L)-(M).

Unjust Enrichment. Mr. Gonzalez was a Hygea insider and director at the time Plaintiffs paid $30 million to the company, even though it was probably worth less than that in total. The inference that Mr. Gonzalez benefitted from this windfall is clear. Although he approved the SPA, and although the SPA imputed Mr. Gonzalez's knowledge, he was not a signatory. But it is a commonsense inference that he benefitted from the SPA and the $30 million payment by virtue of his Board seat: the seat surely had some value to him; Plaintiffs' cash infusion allowed the corporation to survive; and Mr. Gonzalez's position on the Board is a *prima facie* indication that he had a stake in the corporation beyond the seat itself. In other words, his service for Hygea was probably not *gratis*. Moreover, he approved the SPA and thereby approved its imputation of his

[34] Mr. Gonzalez cites *GES, Inc. v. Corbitt*, 117 Nev. 265, 21 P.3d 11 (Nev. 2001) for the proposition that a concert of action claim must include an inherently dangerous act. However, *GES* only applied to the assertion of a concerted action theory in order to qualify for a joint and several liability exception to "action[s] to recover damages for death or injury to persons or for injury to property *in which comparative negligence* is asserted as a defense," NRS § 41.141(1) (emphasis added), and is therefore inapplicable here.

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knowledge regarding the various (false) factual assurances set forth therein. This presents a strong occasion for application of the equitable unjust enrichment doctrine, and at the very least dismissal would be entirely premature. *See Leasepartners Corp. v. Robert L. Brooks Tr. Dated Nov. 12, 1975*, 113 Nev. 747, 942 P.2d 182, 187 (Nev. 1997) (question of fact on unjust enrichment claim against non-party to contract).

Accounting. Accounting is an equitable remedy available in Nevada. *See State v. Callahan*, 229 P. 702, 703-04, 48 Nev. 265 (Nev. 1924) (accounting an available equitable remedy for payment on securities). "[A] plaintiff 'may join either as independent or as alternate claims as many claims either legal or equitable or both as he may have against an opposing party.'" *Dairy Queen, Inc. v. Wood*, 369 U.S. 469, 471 (1962) (quoting Fed. R. Civ. P. 18(a)). Plaintiffs are entitled to pursue both monetary and equitable remedies, and their claims for accounting should not be dismissed.

G. The Complaint Supports Punitive Damages

There is no dispute that Plaintiffs can obtain punitive and exemplary damages pursuant to NRS § 42.005. Instead, Mr. Gonzalez merely repackages his arguments that Plaintiffs failed to meet NRCP 9(b). Under Nevada law, these damages are available where a "defendant has been guilty of oppression, fraud or malice, express or implied." NRS § 42.005. As Plaintiffs demonstrated above, the FAC is replete with specific allegations of Defendants' fraud, and they are entitled to pursue statutory punitive damages available to them in connection with that fraud.

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III. CONCLUSION

For all the reasons set forth herein, Defendant's Motion should be denied.

DATED this 18th day of September, 2018.

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CERTIFICATE OF SERVICE

I hereby certify that I am an employee of ALBRIGHT, STODDARD, WARNICK & ALBRIGHT, and that on the 18th day of September, 2018, I served a true and correct copy of the foregoing **PLAINTIFFS' OPPOSITION TO MOTION TO DISMISS ON BEHALF OF DEFENDANT RAY GONZALEZ [ORAL ARGUMENT REQUESTED]** upon all counsel of record by electronically serving the document using the Court's electronic filing system.

On the same date, September 18th, 2018, I also placed a true and correct copy of the foregoing **PLAINTIFFS' OPPOSITION TO MOTION TO DISMISS ON BEHALF OF DEFENDANT RAY GONZALEZ [ORAL ARGUMENT REQUESTED],** enclosed in a sealed envelope, in the United States Mail at Las Vegas, Nevada, with first class postage thereon prepaid, addressed to the following:

Richard Williams
8110 SW 78th Street
Miami, Florida 33143

On the same date, September 18th, 2018, I also served a true and correct copy of the foregoing **PLAINTIFFS' OPPOSITION TO MOTION TO DISMISS ON BEHALF OF DEFENDANT RAY GONZALEZ [ORAL ARGUMENT REQUESTED]** via email, to Richard Williams at the following email address: rich1947@bellsouth.net.

An employee of Albright, Stoddard, Warnick & Albright

1Ans.App.52

EXHIBIT “1”

STRICTLY CONFIDENTIAL

EXECUTION VERSION

STOCK PURCHASE AGREEMENT

by and among

N5HYG LLC,

HYGEA HOLDINGS CORP.,

and

THE SELLER PRINCIPALS NAMED HEREIN,

Dated as of October 5, 2016

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EXHIBITS

STOCK PURCHASE AGREEMENT

This Stock Purchase Agreement (as amended or otherwise modified in accordance with the terms hereof, this "Agreement"), dated as of October 5, 2016 (the "Effective Date"), is entered into by and among **N5HYG LLC**, a Michigan limited liability company ("Buyer"), **HYGEA HOLDINGS CORP.**, a Nevada corporation ("Seller"), and the Seller Principals (defined below). Buyer, Seller and the Seller Principals are sometimes referred to in this Agreement collectively as the "Parties" or individually as a "Party." Any reference to "Seller" herein shall include any predecessor of Seller. Unless the context otherwise requires, terms used in this Agreement that are capitalized and not otherwise defined in context will have the meanings set forth or cross-referenced in Article 1.

RECITALS

WHEREAS, the Seller Principals each own (directly and indirectly, as applicable) common stock of Seller ("Common Stock") which in the aggregate constitutes 30.36% of the issued and outstanding Common Stock (not taking into account the exercise of any warrants, options or similar rights to acquire Common Stock, and prior to taking into account the Contemplated Transactions);

WHEREAS, Seller owns (directly and indirectly, as applicable) 100% of the issued and outstanding capital stock or other equity interests of each of the entities listed on Exhibit A hereto (collectively, the "Subsidiaries," and each, a "Subsidiary");

WHEREAS, through the Subsidiaries, Seller owns and operates a health care business focused primarily on the delivery of primary-care-based health care to patients (currently numbering approximately 175,000 patients) through its integrated group practices and through the Palm Network, Seller's independent practice association and managed services organization (collectively, the "Business") throughout Florida and Georgia;

WHEREAS, Seller and the Seller Principals have determined it is in their collective best interest that Seller issue to Buyer an amount of Common Stock such that immediately following such issuance Buyer shall own Twenty-Three Million Four Hundred Thirty-Seven Thousand Five Hundred (23,437,500) shares of Common Stock, constituting 8.57% of all of the issued and outstanding Common Stock, not taking into account the exercise of any warrants, options or similar rights to acquire Common Stock, but taking into account the Contemplated Transactions (the "Acquired Stock");

WHEREAS, as payment for the Acquired Stock, Buyer shall contribute the Consideration to Seller;

WHEREAS, Buyer, Seller and Seller Principals have determined that the Consideration, which reflects a price per share of Acquired Stock equal to $1.28 (the "Per-Share Price"), is consistent with the fair market value of the Acquired Stock and includes a payment for the goodwill inherent in the Acquired Stock;

WHEREAS, Seller Principals will receive an indirect financial benefit from the Contemplated Transactions; and

WHEREAS, the Buyer, Seller and Seller Principals desire to make certain representations, warranties, covenants and agreements in connection with this Agreement.

AGREEMENT

NOW THEREFORE, in consideration of the premises and mutual promises herein made, and in consideration of the representations, warranties, covenants and agreements herein contained, the Parties, intending to be legally bound, hereby agree as follows:

1. **DEFINITIONS**.

As used herein, the following terms shall have the following meanings:

"1934 Act" is defined in Section 4.26.

"2013 Yearly Financials" is defined in Section 4.6.1.

"2014 & 2015 Yearly Financials" is defined in Section 4.6.1.

"409A Plan" is defined in Section 4.17.8.

"Acquired Stock" is defined in the Recitals.

"Action" means any claim, action, cause of action, law suit (whether in contract or tort or otherwise) or audit, litigation (whether at law or in equity and whether civil or criminal), assessment, grievance, arbitration, investigation, hearing, mediation, charge, complaint, inquiry, demand, notice or proceeding to, from, by or before any Governmental Authority or any mediator.

"Affiliate" means, with respect to any specified Person at any time, (a) each Person directly or indirectly controlling, controlled by or under direct or indirect common control with such specified Person at such time, (b) each Person who is at such time an officer, manager (with respect to a limited liability company), or a member of a board of directors of, or direct or indirect beneficial holder of at least 5% of any class of the capital stock of, such specified Person, (c) if such specified Person is an individual, the Family Members of such Person and (d) the Family Members of each officer, manager, director, or holder described in clause (b) above.

"Agreement" is defined in the Preamble.

"AJCA" is defined in Section 4.17.8.

"Ancillary Agreements" means each agreement, document, instrument or certificate contemplated by this Agreement or to be executed by Buyer, Seller, or any Seller Principal in connection with the consummation of the Contemplated Transactions, in each case only as applicable to the relevant party or parties to such Ancillary Agreement, as indicated by the context in which such term is used.

"Business" is defined in the Recitals.

"Business Day" means any day, other than a Saturday, Sunday or any other day on which banks located in New York are authorized or required by applicable Legal Requirement to be closed.

"Business Employee" is defined in Section 4.21.3.

"Buyer" is defined in the Preamble.

"Buyer Indemnified Persons" is defined in Section 7.1.

"Buyer Investor Protections" is defined in Section 6.4.

"Center" is defined in Section 4.15.1.

"Closing" is defined in Section 3.2.

"Closing Date" is defined in Section 3.2.

"Code" means the U.S. Internal Revenue Code of 1986, as amended.

"Common Stock" is defined in the Recitals.

"Compensation" means, with respect to any Person, all wages, earnings, salaries, commissions, compensation, remuneration, incentives, bonuses, or benefits of any kind or character whatsoever (including issuances or grants of equity interests or the right to acquire equity interests or compensation based on the value or increase in value of equity interests), required to be made or that have been made directly or indirectly by any Seller to such Person or Affiliates of such Person.

"Consideration" is defined in Section 3.3.

"Contemplated Transactions" means, collectively, the transactions contemplated by this Agreement, including (a) the transfer by Seller of the Acquired Stock to Buyer in exchange for the Consideration and (b) the execution, delivery, and performance of this Agreement and the Ancillary Agreements.

"Contractual Obligation" means, with respect to any Person, any contract, agreement, deed, mortgage, lease, sublease, license, sublicense or other legally enforceable commitment, promise, undertaking, obligation, arrangement, instrument or understanding, whether written or oral, to which or by which such Person is a party or otherwise subject or bound or to which or by which any property, business, operation or right of such Person is subject or bound.

"Data Room" means that certain virtual data room hosted by Seller in connection with the Contemplated Transactions using Sharepoint Online/Microsoft Office 365 under the folder name "Investors."

"Debt" means, with respect to any Person, all Liabilities of such Person, without duplication (a) for borrowed money (including overdraft facilities) or in respect of loans or advances (including, in any case, any prepayment premiums due or arising as a result of the consummation of the Contemplated Transactions), (b) evidenced by notes, bonds, debentures, or similar Contractual Obligations, (c) for deferred rent or the deferred purchase price of property, goods, or services (other than trade payables or accruals incurred in the Ordinary Course of Business, but in any case including any deferred purchase price Liabilities, earnouts, contingency payments, installment payments, deferred revenue, customer deposits, seller notes, promissory notes, or similar Liabilities, in each case related to past acquisitions and whether or not contingent), (d) under capital leases or synthetic obligations which would be required to be capitalized in accordance with GAAP, (e) in respect of letters of credit and bankers' acceptances (in each case whether or not drawn, contingent, or otherwise), (f) for obligations arising under any interest rate, commodity, or other similar swap, cap, collar, futures contract, or other hedging arrangement, (g) for any credit card payables with respect to charges having a transaction date of 30 days or more prior to the Closing Date or related to non-business related activities, (h) all accrued interest expense, (i) accounts payable over 60 days, (j) accounts payable to any of such Person's Affiliates, directors, shareholders, officers, employees, or Representatives, (k) overdrawn or negative balance cash accounts, (l) all

obligations of the type referred to in clauses (a) through (k) above of other Persons secured by any Encumbrance on any property or asset of such Person, whether or not such obligation is assumed by such Person all obligations of the type referred to in clauses (a) through (k) above of any other Person the payment of which such Person has Guaranteed, and (n) accrued but unpaid interest, fees, penalties, premiums (including in respect of prepayment) arising with respect to any of the items described in clauses (a) through (l) above).

"Direct Owners" is defined in Section 4.5.1.

"Disclosed Contract" is defined in Section 4.19.2.

"Disclosure Schedules" is defined in Section 2.2.

"Effective Date" is defined in the Recitals.

"Encumbrance" means any charge, claim, community or other marital property interest, condition, equitable interest, lien, lease, license, option, pledge, security interest, mortgage, deed of trust, right of way, easement, encroachment, servitude, preemptive right, anti-dilution right, right of first offer or first refusal, or buy/sell agreement and any other restriction, encumbrance, or covenant with respect to, or condition governing the use, construction, voting (in the case of any security or equity interest), transfer or exercise of or receipt of income from, any other attribute of ownership.

"Environment" means soil, surface waters, groundwater, land, stream sediments, surface or subsurface strata, ambient air, or indoor air, including any material or substance used in the physical structure of any building or improvement.

"Environmental Laws" means any Legal Requirement relating to (a) releases or threatened releases of Hazardous Substances, (b) pollution or protection of health or the environment or natural resources, or (c) the manufacture, handling, transport, use, treatment, storage, recycling or disposal of or exposure to Hazardous Substances.

"Equity Value" means the enterprise value of Seller (including all of its subsidiaries) less Debt, all calculated in accordance with GAAP.

ERISA" is defined in Section 4.17.1.

"ERISA Affiliate" is defined in Section 4.17.1.

"ERISA Employer" is defined in Section 4.17.1.

"Family Member" means, with respect to any individual, (a) such Person's spouse, (b) each parent, brother, sister or natural or adopted child of such Person or such Person's spouse, (c) each trust created for the benefit of one or more of the Persons described in clauses (a) and (b) above and (d) each custodian or guardian of any property of one or more of the Persons described in clauses (a) through (c) above in his or her capacity as such custodian or guardian.

"Federal Health Care Program" means any plan or program that provides health benefits, whether directly, through insurance, or otherwise, which is funded directly, in whole or in part, by the United States Government or a state health care program, including, but not limited to, the Medicare and Medicaid programs.

"Financials" is defined in Section 4.6.1.

"Fundamental Representations" means the representations and warranties of Seller set forth in Section 4.1 (Organization), Section 4.2 (Power and Authorization), Section 4.5 (Capitalization; Subsidiaries), Section 4.10 (Ownership of Assets), Section 4.14 (Legal Compliance; Illegal Payments; Permits), Section 4.15 (Compliance with Healthcare Laws), Section 4.16 (Tax Matters), Section 4.17 (Employee Benefit Plans), Section 4.21 (Employees) and Section 4.24 (No Brokers).

"GAAP" means generally accepted accounting principles in the United States, as in effect on the Closing Date or as of the period(s) indicated.

"Government Order" means any order, writ, judgment, injunction, decree, stipulation, ruling, determination, or award entered by or with any Governmental Authority.

"Governmental Authority" means any United States federal, state, or local or any foreign government, or political subdivision thereof, or foreign state, or any multinational organization or authority or any authority, agency, or commission entitled to exercise any administrative, executive, judicial, legislative, police, or regulatory power, any court or tribunal (or any department, bureau or division thereof), or any arbitrator or arbitral body.

"Guarantee" by any Person means any obligation, contingent or otherwise, of such Person directly or indirectly guaranteeing or otherwise supporting in whole or in part the payment of any Debt or other obligation of any other Person and, without limiting the generality of the foregoing, any obligation, direct or indirect, contingent or otherwise, of such Person (a) to purchase or pay (or advance or supply funds for the purchase or payment of) such Debt or other obligation of such other Person (whether arising by virtue of partnership arrangements, by agreement to keep well, to purchase assets, goods, securities or services, to take or pay, or to maintain financial statement conditions or otherwise) or (b) entered into for the purpose of assuring in any other manner the obligee of such Debt or other obligations of the payment of such Debt or to protect such obligee against loss in respect of such Debt (in whole or in part). The term "Guarantee" used as a verb has a correlative meaning.

"Hazardous Substance" means and includes each substance designated as a hazardous waste, hazardous substance, hazardous material, pollutant, contaminant or toxic substance or as designated with words of similar meaning and regulatory effect under any Environmental Law, petroleum and petroleum products or derivatives, asbestos and urea formaldehyde, polychlorinated biphenyls, Medical Waste, and any other substance for which liability or standards of conduct may be imposed under Environmental Law.

"Healthcare Laws" means all federal and state laws, rules or regulations, and published program instructions relating to the regulation, provision or administration of, or payment for, healthcare products or services, including, but not limited to (a) the federal Anti-Kickback Statute (42 U.S.C. §1320a-7b(b)), the Physician Self-Referral Law, commonly known as the "Stark Law" (42 U.S.C. §1395nn), the criminal health care fraud statute (18 U.S. Code § 1347, the civil False Claims Act (31 U.S.C. §3729 et seq.), the Federal Food, Drug, and Cosmetics Act (21 U.S. Code §301 et. seq.), the Federal Controlled Substances Act (21 U.S. Code §801 et. seq.), the Clinical Laboratory Improvement Amendments of 1988 (42 U.S. Code §263a et. seq.), TRICARE (10 U.S.C. Section 1071 et seq.), Sections 1320a-7, 1320a-7a and 1320a-7b of Title 42 of the United States Code and the regulations promulgated pursuant to such statutes; (b) the Health Insurance Portability and Accountability Act of 1996 (Pub. L. No. 104-191) and the regulations promulgated thereunder; (c) Medicare (Title XVIII of the Social Security Act) and the regulations and program instructions and other legally enforceable requirements promulgated thereunder; (d) Medicaid (Title XIX of the Social Security Act) and the regulations and other legally enforceable

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

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

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

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

"Indirect Owners" is defined in Section 4.5.1.

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

"IRS" means the Internal Revenue Service.

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

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

"Litigation Conditions" is defined in Section 7.6.2.

"Losses" is defined in Section 7.1.

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

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

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

"Most Recent Financials" is defined in Section 4.6.1.

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

"Party" is defined in the Preamble.

"Payment Date" is defined in Section 6.3.

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

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

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

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

"Physician Owner" is defined in Section 4.5.1.

"Plan" is defined in Section 4.17.1.

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

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

"Pro Rata Share" is defined in Section 7.4.2.

"Put Notice" is defined in Section 6.3.

"Put Option" is defined in Section 6.3.

"Put Price" is defined in Section 6.3.

"Real Property" is defined in Section 4.12.

"Real Property Leases" is defined in Section 4.12.

"Reimbursed Transaction Expenses" is defined in Section 6.2.

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

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

"SEC" is defined in Section 4.26.

"SEC Documents" is defined in Section 4.26.

"Seller" is defined in the Preamble.

"Seller Indemnification Obligations" is defined in Section 7.4.

"Seller Indemnified Parties" is defined in Section 7.2.

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

"Seller Owners" is defined in Section 4.5.1.

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

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

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

"Subsidiary" is defined in the Recitals.

"Subsidiary Equity Interests" is defined in Section 4.5.2.

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

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

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

"Third Party Claim" is defined in Section 7.6.1.

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

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

"Trigger Event" is defined in Section 6.3.

"Yearly Financials" is defined in Section 4.6.1.

2. GENERAL RULES OF INTERPRETATION; SCHEDULES.

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

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

3. STOCK PURCHASE.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

4. **REPRESENTATIONS AND WARRANTIES OF SELLER**.

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

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

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

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

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

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

4.5. Capitalization; Subsidiaries.

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

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

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

4.6. Financial Matters.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

4.14. Legal Compliance; Illegal Payments; Permits.

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

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

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

4.15. Compliance with Healthcare Laws.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

4.17. Employee Benefit Plans.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

4.19. Contracts.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

4.21. Employees.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

5. REPRESENTATIONS AND WARRANTIES OF BUYER.

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

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

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

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

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

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

6. **COVENANTS**.

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

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

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

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

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

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

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

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

activity likely to cause material variations in budget (quarterly, or more frequently as needed).

6.5. Revised Physician Compensation Arrangements; Billing & Coding Audit. As promptly as practicable after the Closing Date, but in no event later than December 31, 2016, Seller shall (or shall cause the applicable Subsidiary to) enter into new or amended employment agreements with all of its contracted physicians and medical service providers (and shall promptly make available to Buyer true and correct copies of all such agreements), which new or amended employment agreements (x) shall reflect a revised "best practices" bonus compensation structure in full compliance with all Healthcare Laws, but (y) shall otherwise remain substantially unchanged from the current agreements with such contracted physicians and medical service providers. Without limiting any of Buyer's rights pursuant to Section 6.4, upon Buyer's request at any time and from time to time, Seller shall (and/or shall cause the Subsidiaries to, as appropriate) promptly direct an independent third-party auditor to conduct a billing and coding audit of Seller and/or any of its Subsidiaries (at Buyer's expense) and shall fully cooperate with the auditor in conducting such an audit. In the event of any such audit (whether directed by Buyer or otherwise), Seller shall keep Buyer reasonably informed of the progress of any such audit, shall promptly provide Buyer with the results and reports of any such audit, and shall consult with Buyer on the findings of any such audit and take any actions as reasonably requested by Buyer to ensure continued "best practices" compliance with all Healthcare Laws.

6.6. 2014 & 2015 Financials. As promptly as practicable upon their completion, but in no event later than November 30, 2016, Seller shall deliver true, correct and complete copies of the 2014 & 2015 Financials to Buyer, which 2014 & 2015 Financials shall comport in all respects with the provisions set forth in Section 4.6.

6.7. SEC Compliance. As promptly as practicable after the Closing Date, but in no event later than December 31, 2016, Seller shall take all necessary actions and file all necessary documents to ensure that it is compliant in all material respects with the 1934 Act.

6.8. Stock Certificate. As promptly as practicable after the Closing, but in no event later than five (5) Business Days after the Closing, Seller shall deliver to Buyer (or cause Seller's transfer agent to deliver to Buyer) a stock certificate evidencing Buyer's ownership of the Acquired Stock, duly issued and executed by the appropriate officers of Seller and otherwise in accordance with Seller's Articles of Incorporation and Bylaws.

6.9. Compliance with Laws. At all times from and after the Closing Date, Seller and each Seller Principal shall, and shall cause the business of Seller (including the Business) and each of the subsidiaries of Seller (including the Subsidiaries) to, comply with all Laws.

6.10. Further Assurances. From and after the Closing Date, upon the request of either Seller or Buyer, each of the Parties shall do, execute, acknowledge, and deliver all such further acts, assurances, deeds, assignments, transfers, conveyances, and other instruments and papers as may be reasonably required or appropriate to carry out and/or evidence the Contemplated Transactions.

7. **INDEMNIFICATION**.

7.1. Indemnification by Seller. Subject to the provisions of this Article 7, Seller shall indemnify and hold harmless Buyer and its Affiliates, and each of the directors, officers, stockholders, partners, members, managers, employees, agents, consultants, advisors, and Representatives of each of the foregoing Persons (the "Buyer Indemnified Persons,") from, against, and in respect of any and all Actions, Liabilities, Government Orders, Encumbrances, losses, damages, bonds, assessments, fines, penalties, Taxes, fees, costs (including reasonable costs of investigation, defense, and enforcement of this

Agreement), expenses (including actual and reasonable attorneys' and experts fees and expenses), or amounts paid in settlement (collectively referred to as "Losses") that any Buyer Indemnified Person may suffer, incur, sustain, or become subject to as a result of, arising out of, or directly or indirectly relating to:

7.1.1. any breach of, or inaccuracy in, any representation or warranty made by Seller in this Agreement, in any Ancillary Agreement, or in any certificate delivered pursuant to this Agreement;

7.1.2. any breach or violation of, or any failure to perform, any covenant or agreement of Seller or any Seller Principal in this Agreement, the Ancillary Agreements, or in any certificate delivered pursuant to this Agreement, but excluding any such covenant or other agreement that by its nature is required to be performed at, by or prior to the Closing;

7.1.3. any Losses attributable to (i) Taxes of Seller for any period ending on or before the Closing Date; (ii) Taxes of any other Person imposed on Seller (A) pursuant to Treasury Regulation § 1.1502-6 or any analogous or similar state, local, or foreign Law or regulation, with respect to any group of which Seller is or was a member on or prior to the Closing Date, or (B) as a result of any Tax sharing, Tax indemnification or Tax allocation agreement, arrangement, or understanding (other than customary Tax indemnification provisions contained in commercial contracts entered into in the ordinary course of business, a principal subject matter of which is not Taxes), or (iii) Taxes of any Person, which Taxes relate to an event or transaction occurring before the Closing, imposed on Seller as a transferee or successor or otherwise pursuant to any Law; or

7.1.4. any Losses related to any Liabilities that arise out of or relate to (in whole or in part) Seller, any subsidiary of Seller (including any Subsidiary), any business of Seller or its subsidiaries (including the Business) and/or the operation of any Center, in each case on or prior to the Closing, including but not limited to any Losses arising out of any failure to get any consent and approval of, or any failure to file any required notice with, any Person as may be necessary for Seller or any Seller Owner to consummate any of the Contemplated Transactions (and in all cases including, for the avoidance of doubt, all such Losses or Liabilities that arise out of or relate to, in whole or in part, matters, circumstances, information or documentation set forth, described or referenced on any of the Disclosure Schedules or otherwise disclosed or made available to Buyer prior to the Closing).

7.2. Indemnification by Buyer. Subject to the provisions of this Article 7, Buyer shall indemnify and hold harmless Seller and its Affiliates, and the directors, officers, stockholders, partners, members, managers, employees, agents, consultants, advisors, and Representatives of each of the foregoing Persons (the "Seller Indemnified Parties") from, against, and in respect of any and all Losses which any of them may suffer, incur, sustain, or become subject to as a result of, arising out of, or directly or indirectly relating to:

7.2.1. any breach of, or inaccuracy in, any representation or warranty made by Buyer in this Agreement, the Ancillary Agreements, or in any certificate delivered pursuant to this Agreement; or

7.2.2. any breach or violation of, or any failure to perform, any covenant or agreement of Buyer in this Agreement, or in any certificate delivered pursuant to this Agreement, but excluding any such covenant or other agreement that by its nature is required to be performed at, by or prior to the Closing.

7.3. Certain Limitations. The indemnification provided for in Section 7.1 and Section 7.2 shall be subject to the following limitations:

7.3.1. For purposes of this Article 7, any inaccuracy in or breach of any representation or warranty (and the amount of any Losses) shall be determined without regard to any materiality, Material Adverse Effect or other similar qualification contained in or otherwise applicable to such representation or warranty; and

7.3.2. With respect to Buyer Indemnified Persons, Losses shall specifically include diminution in value of the Acquired Units, including any diminution in value of the Acquired Units as a result of Seller being required to satisfy any indemnification obligation hereunder.

7.4. Personal Guarantees of Seller Principals.

7.4.1. Guarantee of Post-Closing Monthly Payments. Notwithstanding anything herein to the contrary, each Seller Principal hereby absolutely and unconditionally guarantees, jointly and severally with all other Seller Principals, the prompt and punctual payment by Seller of 100% of Seller's payment obligations under Section 6.3. Each Seller Principal's liability under this Section 7.4.1 is primary, direct and unconditional and shall not require Buyer to resort to any other Person, including Seller, or any other right, remedy or collateral, whether held as collateral for satisfaction of obligations set forth herein.

7.4.2. Guarantee of Seller Indemnification Obligations. Each Seller Principal hereby absolutely and unconditionally guarantees, jointly and severally with all other Seller Principals, the prompt and punctual payment by Seller of each indemnification obligation of Seller pursuant to Section 7.1 (a "Seller Indemnification Obligation"); provided, however, that in no event shall any Seller Principal's liability with respect to any Seller Indemnification Obligation exceed such Seller Principal's pro-rata portion thereof, determined in accordance with the percentage set forth for such Seller Principal on Exhibit B, which reflects such Seller Principal's approximate pro rata percentage share of the Common Stock immediately prior to the Contemplated Transactions ("Pro Rata Share"). Each Seller Principal's liability under this Section 7.4.2 is primary, direct and unconditional and shall not require Buyer to resort to any other Person, including Seller, or any other right, remedy or collateral, whether held as collateral for satisfaction of obligations set forth herein.

7.5. Survival. No claim may be made or suit instituted seeking indemnification pursuant to Section 7.1.1 or Section 7.2.1 for any breach of, or inaccuracy in, any representation or warranty (and no indemnity obligation shall arise with respect to any such claim) unless a written notice describing such breach or inaccuracy in reasonable detail in light of the circumstances then known to the Indemnified Party is provided to the Indemnifying Party: (a) at any time, in the case of any breach of, or inaccuracy in, the Fundamental Representations, the representations and warranties set forth in Section 5.1 (Organization), Section 5.2 (Power and Authorization), Section 5.5 (No Brokers), and/or in the case of any claim or suit based upon fraud, intentional misrepresentation or willful misconduct; and (b) at any time prior to the sixty (60) month anniversary of the Closing Date, in the case of any breach of, or inaccuracy in, any other representation and warranty in this Agreement. For clarity, all of the other covenants and agreements of the Parties set forth in this Agreement shall survive the Closing in accordance with their respective terms or, if no such term is specified, indefinitely; provided that no claim may be made or suit instituted seeking indemnification pursuant to Section 7.1 or Section 7.2 unless a written notice describing such claim in reasonable detail in light of the circumstances then known to the Indemnified Party, is provided to the Indemnifying Party at any time prior to the sixtieth (60^{th}) day after

such claim is barred by the statute of limitations under applicable Law (taking into account the survival periods set forth in this Section 7.5, any tolling periods and other extensions).

7.6. Third Party Claims.

7.6.1. Notice of Third Party Claims. Promptly after receipt by an Indemnified Person of written notice of the assertion of a claim by any Person who is not a party to this Agreement (a "Third Party Claim") that may give rise to an Indemnity Claim against an Indemnifying Party under this Article 7, the Indemnified Person shall give written notice thereof to the Indemnifying Party; provided that, no delay on the part of the Indemnified Person in notifying the Indemnifying Party will relieve the Indemnifying Party from any obligation under this Article 7, except to the extent such delay actually and materially prejudices the Indemnifying Party.

7.6.2. Assumption of Defense, etc. The Indemnifying Party will be entitled to participate in the defense at its sole cost and expense of any Third Party Claim that is the subject of a notice given by or on behalf of any Indemnified Person pursuant to Section 7.6.1. In addition, the Indemnifying Party will have the right to defend the Indemnified Person against the Third Party Claim with counsel of its choice reasonably satisfactory to the Indemnified Person so long as (i) the Indemnifying Party gives written notice that they or it will defend the Third Party Claim to the Indemnified Person within thirty (30) days after the Indemnified Person has given notice of the Third Party Claim under Section 7.6.1 stating that the Indemnifying Party will, and thereby covenants to, indemnify, defend and hold harmless the Indemnified Person from and against the entirety of any and all Losses the Indemnified Person may suffer resulting from, arising out of, relating to, in the nature of, or caused by the Third Party Claim, (ii) the Third Party Claim involves only money damages and does not seek an injunction or other equitable relief against the Indemnified Person, (iii) counsel to the Indemnified Person does not determine in good faith that an actual or potential conflict exists between the Indemnified Person and the Indemnifying Party in connection with the defense of the Third Party Claim that would make separate counsel advisable, (iv) the Third Party Claim does not relate to or otherwise arise in connection with Taxes or any criminal or regulatory enforcement Action, (v) defense of the Third Party Claim by the Indemnifying Party will not, in the reasonable judgment of the Indemnified Person, have a material adverse effect on the Indemnified Person, and (vi) Indemnifying Party has sufficient financial resources, in the reasonable judgment of the Indemnified Person, to satisfy the amount of any adverse monetary judgment that is reasonably likely to result ((i) through (vi) are collectively referred to as the "Litigation Conditions"). If (i) any of the Litigation Conditions ceases to be met or (ii) the Indemnifying Party fails to take reasonable steps necessary to defend diligently the Third Party Claim, the Indemnified Person may assume its own defense, and the Indemnifying Party will be liable for all reasonable costs or expenses paid or incurred in connection with such defense. The Indemnified Person may retain separate co-counsel at its sole cost and expense and participate in the defense of the Third Party Claim; provided that, the Indemnifying Party will pay the fees and expenses of separate counsel retained by the Indemnified Person that are incurred prior to the Indemnifying Party's assumption of control of the defense of the Third Party Claim. The Indemnified Person shall make available to the Indemnifying Party or its agents, upon the reasonable request of the Indemnifying Party, all records and other materials in the Indemnified Person's possession at the time of such request, as may be reasonably required by the Indemnifying Party for its use in contesting any Third Party Claim and shall otherwise reasonably cooperate.

7.6.3. Limitations on Indemnifying Party Control. The Indemnifying Party will not consent to the entry of any judgment or enter into any compromise or settlement with respect to the Third Party Claim without the prior written consent of the Indemnified Person unless such judgment, compromise or settlement (i) provides for the payment by the Indemnifying Party of money as sole relief for the claimant, (ii) results in the full and general release of all Indemnified Persons from all Liabilities arising out of or relating to, or in connection with, the Third Party Claim and (iii) involves no finding or admission of any violation of Legal Requirements or the rights of any Person and no effect on any other claims that may be made against the Indemnified Person. If (w) a firm written offer is made to settle any Third Party Claim for which the sole relief provided is monetary damages, (x) the amount of such monetary damages (plus all indemnifiable expenses of the Indemnified Party related to such Third Party Claim) would not exceed any of the limitations on the Indemnifying Party's indemnification obligations set forth in Article 7, (y) the Indemnifying Party agrees in writing to accept such settlement and pay all such monetary damages (plus all indemnifiable expenses of the Indemnified Party related to such Third Party Claim), and (z) the Indemnified Party refuses to consent to such settlement, then: (I) the Indemnifying Party shall be excused from, and the Indemnified Party shall be solely responsible for, all further defense of such Third Party Claim (but no party shall be excused from its indemnification obligations hereunder until the maximum liability set forth in the immediately succeeding subsection (II) has been satisfied); and (II) the maximum liability of the Indemnifying Party relating to such Third Party Claim shall be the amount of the proposed settlement (plus indemnifiable expenses of the Indemnified Party related to such Third Party Claim to the date of such refusal to consent to settlement), if the amount thereafter recovered from the Indemnified Party on such Third Party Claim is greater than the amount of the proposed settlement.

7.6.4. Indemnified Person's Control. If the Indemnifying Party does not deliver the notice contemplated by clause (i) of Section 7.6.2 within thirty (30) days after the Indemnified Person has given notice of the Third Party Claim pursuant to Section 7.6.1 (or is not permitted to assume control), the Indemnified Person may defend, and may consent to the entry of any judgment or enter into any compromise or settlement with respect to, the Third Party Claim in any manner it may deem appropriate (and the Indemnified Person need not consult with, or obtain any consent from, the Indemnifying Party in connection therewith) provided, however, that in such circumstance the Indemnifying Person may retain separate co-counsel at its sole cost and expense and participate in the defense of the Third Party Claims and have access to all information from the Indemnified Party related thereto. If such notice and evidence is given on a timely basis and the Indemnifying Party conducts the defense of the Third Party Claim but any of the other conditions in Section 7.6.2 is or becomes unsatisfied, the Indemnified Person may defend, and may consent to the entry of any judgment or enter into any compromise or settlement with respect to, the Third Party Claim; provided that, the Indemnifying Party will not be bound by the entry of any such judgment consented to, or any such compromise or settlement effected, without its prior written consent (which consent will not be unreasonably withheld, conditioned or delayed). In the event that the Indemnified Person conducts the defense of the Third Party Claim pursuant to this Section 7.6.4, the Indemnifying Party will (i) advance the Indemnified Person promptly and periodically for the costs of defending against the Third Party Claim (including reasonable attorneys' fees and expenses) and (ii) remain responsible for any and all other Losses that the Indemnified Person may incur or suffer resulting from, arising out of, relating to, in the nature of or caused by the Third Party Claim to the fullest extent provided in this Article 7.

7.6.5. Consent to Jurisdiction Regarding Third Party Claim. Each of the Parties hereby consents to the non-exclusive jurisdiction of any court in which any Third Party Claim

may be brought against any Indemnified Person for purposes of any claim which such Indemnified Person may have against any such Indemnifying Party pursuant to this Agreement in connection with such Third Party Claim, and in furtherance thereof, the provisions of Section 8.11 are incorporated herein by reference, mutatis mutandis.

7.7. Direct Claims. In the event that any Indemnified Person wishes to make a claim for indemnification under this Article 7, the Indemnified Person shall give written notice of such claim to each Indemnifying Party. For the avoidance of doubt, where the Indemnifying Party is a Seller under this Article 7, such notice shall be to Seller. Any such notice shall describe the breach or inaccuracy and other material facts and circumstances upon which such claim is based and the estimated amount of Losses involved, in each case, in reasonable detail in light of the facts then known to the Indemnified Person; provided that, no defect in the information contained in such notice from the Indemnified Person to any Indemnifying Party will relieve such Indemnifying Party from any obligation under this Article 7, except to the extent such failure to include information actually and materially prejudices such Indemnifying Party.

7.8. Manner of Payment. Any payment to be made by Seller or Buyer, as the case may be, pursuant to this Article 7 will be effected by wire transfer of immediately available funds from Seller or Buyer, as the case may be, to an account designated by Seller or Buyer, as the case may be, within five (5) Business Days after the determination thereof.

7.9. No Contribution. Neither Seller nor any of the Seller Owners will have any right of contribution from any of Buyer Indemnified Persons with respect to any Loss claimed by a Buyer Indemnified Person.

7.10. Effect of Investigation. The representations, warranties and covenants of the Indemnifying Party, and each Indemnified Person's right to indemnification with respect thereto, shall not be affected or deemed waived by reason of any investigation made by or on behalf of the Indemnified Person (including by any of its agents, advisors, counsel or representatives) or by reason of the fact that the Indemnified Person (or any of its agents, advisors, counsel or representatives) knew or should have known that any such representation or warranty is, was or might be inaccurate or by reason of the Indemnified Person's waiver of any condition to the Closing of the Contemplated Transactions.

7.11. Remedies Cumulative. The rights of each Buyer Indemnified Person and Seller Indemnified Party under this Article 7 are cumulative, and each Buyer Indemnified Person and Seller Indemnified Party will have the right in any particular circumstance, in its sole discretion, to enforce any provision of this Article 7 without regard to the availability of a remedy under any other provision of this Article 7. Except as set forth in the Schedules, the Buyer Indemnified Persons' right to indemnification under this Article 7 is not adversely affected by whether or not the possibility of any Loss was disclosed to the Buyer Indemnified Persons on the date of this Agreement. The representations and warranties of Seller shall not be affected or deemed waived by reason of any investigation made by or on behalf of any Buyer Indemnified Person (including any Representatives of any Buyer Indemnified Person) or by reason of the fact that any Buyer Indemnified Person or any Representatives of any Buyer Indemnified Person knew or should have known that any representation or warranty is or might be inaccurate.

7.12. Tax Treatment. All indemnification and other payments under this Article 7 shall, to the extent permitted by applicable Legal Requirements, be treated for all income Tax purposes as adjustments to the aggregate consideration paid hereunder. None of the Parties shall take any position on any Tax Return, or before any Governmental Authority, that is inconsistent with such treatment unless otherwise required by any applicable Legal Requirement.

8. **MISCELLANEOUS**.

8.1. Notices. All notices, requests, demands, claims, and other communications required or permitted to be delivered, given, or otherwise provided under this Agreement must be in writing and must be delivered, given, or otherwise provided: (a) by hand (in which case, it shall be effective upon delivery); (b) by facsimile (in which case, it shall be effective upon receipt of confirmation of good transmission); or (c) by overnight delivery by a nationally recognized courier service (in which case, it shall be effective on the Business Day after being deposited with such courier service), in each case, to the address (or facsimile number) listed below:

If to Seller or either Seller Principal:

Hygea Holdings Corp.
8750 NW 36 Street, Suite 300
Miami, FL 33178
Attention: Manuel E. Iglesias, President & Chief Executive Officer
Facsimile: 866-852-0454

with a copy (which shall not constitute notice) to:

Hygea Holdings Corp.
8750 NW 36 Street, Suite 300
Miami, FL 33178
Attention: Richard L. Williams, Esq., Chief Legal Officer
Facsimile: 866-852-0454

If to Buyer:

N5HYG LLC
38955 Hills Tech Drive
Farmington Hills, MI 48331
Attention: Chris Fowler
Facsimile: (248) 536-0869

with a copy (which shall not constitute notice) to:

Oakland Law Group PLLC
38955 Hills Tech Dr.
Farmington Hills, MI 48331
Attention: Alan Gocha
Facsimile: (248) 536-1859

Each of the Parties to this Agreement may specify a different address, email address or facsimile number by giving notice in accordance with this Section 8.1 to each of the other Parties hereto.

8.2. Succession and Assignment; No Third-Party Beneficiary. Subject to the immediately following sentence, this Agreement shall be binding upon and inure to the benefit of the Parties hereto and their respective successors and permitted assigns and all such successors and permitted assigns shall be deemed to be a Party hereto for all purposes hereof. No Party may assign, delegate, or otherwise transfer either this Agreement or any of his, her or its rights, interests, or obligations hereunder without the prior written consent of Buyer and Seller; except that Buyer may assign this Agreement (a) to one or more of its Affiliates, or (b) after the Closing, in connection with any disposition or transfer of all or

substantially all of the equity interests of Buyer in any form of transaction. Except for the provisions of Section 7.1 and this Section 8.2, this Agreement is for the sole benefit of the Parties hereto and their successors and permitted assigns and nothing herein expressed or implied shall give or be construed to give any Person, other than the Parties hereto and such successors and permitted assigns, any legal or equitable rights hereunder.

8.3. Amendments and Waivers. No amendment or waiver of any provision of this Agreement shall be valid and binding unless it is in writing and signed, in the case of an amendment, by Buyer and Seller, or in the case of a waiver, by the Party against whom the waiver is to be effective. No waiver by any Party of any breach or violation of, default under, or inaccuracy in any representation, warranty, covenant, or agreement hereunder, whether intentional or not, shall be deemed to extend to any prior or subsequent breach, violation, default of, or inaccuracy in, any such representation, warranty, covenant, or agreement hereunder or affect in any way any rights arising by virtue of any prior or subsequent such occurrence. No delay or omission on the part of any Party in exercising any right, power, or remedy under this Agreement shall operate as a waiver thereof.

8.4. Entire Agreement. This Agreement, together with the Ancillary Agreements and any documents, Schedules, instruments, or certificates referred to herein or delivered in connection herewith, constitutes the entire agreement among the Parties hereto with respect to the subject matter hereof and supersedes any and all prior discussions, negotiations, proposals, undertakings, understandings, and agreements (including any draft agreements) with respect thereto, whether written or oral, none of which shall be used as evidence of the Parties' intent. In addition, each Party hereto acknowledges and agrees that all prior drafts of this Agreement contain attorney work product and shall in all respects be subject to the foregoing sentence.

8.5. Schedules. Nothing in any Schedule attached hereto shall be adequate to modify, qualify, or disclose an exception to a representation or warranty made in this Agreement unless such Schedule identifies the modification, qualification, or exception. Any modifications, qualifications, or exceptions to any representations or warranties disclosed on one Schedule shall constitute a modification, qualification, or exception to any other representations or warranties made in this Agreement if it is reasonably apparent that the disclosures on such Schedule should apply to such other representations and warranties.

8.6. Counterparts; Electronic Signature. This Agreement may be executed in multiple counterparts, all of which shall be considered one and the same agreement, and shall become effective when one or more counterparts have been signed by each of the Parties and delivered to the other Parties, it being understood that all Parties need not sign the same counterpart. This Agreement may be executed by facsimile or pdf signature by any Party and such signature shall be deemed binding for all purposes hereof without delivery of an original signature being thereafter required.

8.7. Severability. Any term or provision of this Agreement that is invalid or unenforceable in any situation in any jurisdiction shall not affect the validity or enforceability of the remaining terms and provisions hereof or the validity or enforceability of the offending term or provision in any other situation or in any other jurisdiction. In the event that any provision hereof would, under applicable Legal Requirements, be invalid or unenforceable in any respect, each Party hereto intends that such provision shall be construed by modifying or limiting it so as to be valid and enforceable to the maximum extent compatible with, and possible under, applicable Legal Requirements and to otherwise give effect to the intent of the Parties.

8.8. Headings. The headings contained in this Agreement are for convenience purposes only and shall not in any way affect the meaning or interpretation hereof.

8.9. Construction. The Parties hereto have participated jointly in the negotiation and drafting of this Agreement. In the event an ambiguity or question of intent or interpretation arises, this Agreement shall be construed as if drafted jointly by the Parties hereto and no presumption or burden of proof shall arise favoring or disfavoring any Party by virtue of the authorship of any of the provisions of this Agreement. The Parties hereto intend that each representation, warranty, covenant, and agreement contained herein shall have independent significance. If any Party hereto has breached or violated, or if there is an inaccuracy in, any representation, warranty, covenant, or agreement contained herein in any respect, the fact that there exists another representation, warranty, covenant, or agreement relating to the same subject matter (regardless of the relative levels of specificity) which the Party has not breached or violated, or in respect of which there is not an inaccuracy, shall not detract from or mitigate the fact that the Party has breached or violated, or there is an inaccuracy in, the first representation, warranty, covenant, or agreement.

8.10. Governing Law. This Agreement, the negotiation, terms, and performance of this Agreement, the rights of the Parties under this Agreement, and all Actions arising in whole or in part under or in connection with this Agreement, shall be governed by and construed in accordance with the domestic substantive laws of the State of Nevada, without giving effect to any choice or conflict of law provision or rule that would cause the application of the laws of any other jurisdiction.

8.11. Jurisdiction; Venue; Service of Process.

8.11.1. Jurisdiction. Each Party to this Agreement, by his, her, or its execution hereof, (a) hereby irrevocably submits to the exclusive jurisdiction and venue of the Nevada state and/or United States federal courts located in Clark County, Nevada for the purpose of any Action between any of the Parties hereto arising in whole or in part under or in connection with this Agreement, any Ancillary Agreement, the Contemplated Transactions, or the negotiation, terms or performance hereof or thereof, (b) hereby waives to the extent not prohibited by applicable Legal Requirements, and agrees not to assert, by way of motion, as a defense or otherwise, in any such Action, any claim that he or she is not subject personally to the jurisdiction of the above-named court, that venue in such court is improper, that his, her or its property is exempt or immune from attachment or execution, that any such Action brought in the above-named court should be dismissed on grounds of *forum non conveniens* or improper venue, that such Action should be transferred or removed to any court other than the above-named court, that such Action should be stayed by reason of the pendency of some other Action in any other court other than the above-named court or that this Agreement or the subject matter hereof may not be enforced in or by such court, and (c) hereby agrees not to commence or prosecute any such Action other than before the above-named court. Notwithstanding the foregoing, (i) a Party hereto may commence any Action in a court other than the above-named court solely for the purpose of enforcing an order or judgment issued by the above-named court, and (ii) the dispute resolution procedures set forth in this Section 8.11.1 shall be the sole and exclusive means by which the Parties may resolve any disputes arising thereunder and any resolution of any such dispute in accordance with such dispute resolution procedures shall be valid and binding on all of the Parties hereto.

8.11.2. Service of Process. Each Party hereto hereby (a) consents to service of process in any Action between any of the Parties hereto arising in whole or in part under or in connection with this Agreement, any Ancillary Agreement, the Contemplated Transactions, or the negotiation, terms or performance hereof or thereof, in any manner permitted by Nevada law, (b) agrees that service of process made in accordance with clause (a) or made by overnight delivery by a nationally recognized courier service at his or her address specified pursuant to Section 8.1 shall constitute good and valid service of process in any such Action, and (c)

waives and agrees not to assert (by way of motion, as a defense or otherwise) in any such Action any claim that service of process made in accordance with clause (a) or (b) does not constitute good and valid service of process.

8.12. Waiver of Jury Trial. TO THE EXTENT NOT PROHIBITED BY APPLICABLE LAW THAT CANNOT BE WAIVED, EACH OF THE PARTIES HERETO HEREBY WAIVES, AND COVENANTS THAT HE OR IT SHALL NOT ASSERT (WHETHER AS PLAINTIFF, DEFENDANT, OR OTHERWISE), ANY RIGHT TO TRIAL BY JURY IN ANY ACTION ARISING IN WHOLE OR IN PART UNDER OR IN CONNECTION WITH THIS AGREEMENT, ANY ANCILLARY AGREEMENT, THE CONTEMPLATED TRANSACTIONS, OR THE NEGOTIATION, TERMS OR PERFORMANCE HEREOF OR THEREOF, WHETHER NOW EXISTING OR HEREAFTER ARISING, AND WHETHER SOUNDING IN CONTRACT, TORT, OR OTHERWISE. THE PARTIES HERETO AGREE THAT ANY OF THEM MAY FILE A COPY OF THIS PARAGRAPH WITH ANY COURT AS WRITTEN EVIDENCE OF THE KNOWING, VOLUNTARY, AND BARGAINED-FOR AGREEMENT AMONG THE PARTIES HERETO. THE PARTIES HERETO FURTHER AGREE TO IRREVOCABLY WAIVE THEIR RIGHT TO A TRIAL BY JURY IN ANY PROCEEDING AND ANY SUCH PROCEEDING SHALL INSTEAD BE TRIED IN A COURT OF COMPETENT JURISDICTION BY A JUDGE SITTING WITHOUT A JURY.

[*Remainder of the page intentionally left blank – signature pages follow*]

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

BUYER:

N5HYG LLC,
a Michigan limited liability company

By: _____
Name: Manoj Bhargava
Title: Manager

SELLER:

HYGEA HOLDINGS CORP.,
a Nevada corporation

By: _____
Name: Manuel Iglesias
Title: Chief Executive Officer

SELLER PRINCIPALS:

By signing below, each of the undersigned individuals agrees to be bound by all of the obligations of the Seller Principals under this Agreement, including without limitation the personal guaranty obligations set forth in Section 7.4.

_____
Manuel Iglesias, individually

_____
Edward Moffly, individually

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

BUYER:

N5HYG LLC,
a Michigan limited liability company

By: _____
Name: Manoj Bhargava
Title: Manager

SELLER:

HYGEA HOLDINGS CORP.,
a Nevada corporation

By: _____
Name: Manuel Iglesias
Title: Chief Executive Officer

SELLER PRINCIPALS:

By signing below, each of the undersigned individuals agrees to be bound by all of the obligations of the Seller Principals under this Agreement, including without limitation the personal guaranty obligations set forth in Section 7.4.

_____
Manuel Iglesias, individually

_____
Edward Moffly, individually

EXHIBIT A

List of Subsidiaries

Name of Subsidiary:	Jurisdiction of Incorporation/ Formation:	Direct Owner of 100% of Subsidiary Equity Interests:
Hygea of Delaware, LLC	Delaware	Seller
Hygea Health Holdings, Inc.	Florida	Hygea of Delaware, LLC
All Care Management Services, LLC	Florida	Hygea of Delaware, LLC
Physicians Group Alliance, LLC	Florida	Hygea of Delaware, LLC
Physicians Group Alliance of Atlanta, LLC	Florida	Hygea of Delaware, LLC
Physicians Group Alliance of Georgia, LLC	Florida	Hygea of Delaware, LLC
Physicians Group Alliance of South Florida, LLC	Florida	Hygea of Delaware, LLC
Physicians Group Management of Orlando, LLC	Florida	Hygea of Delaware, LLC
Florida Group Healthcare, LLC	Florida	Hygea of Delaware, LLC
Palm Medical Network, LLC	Florida	Hygea of Delaware, LLC
Hygea of Georgia, LLC	Georgia	Hygea of Delaware, LLC
AARDS II, INC	Florida	Hygea of Delaware, LLC
Gemini Healthcare Fund, LLC	Florida	Hygea Health Holdings, Inc.
Palm PGA MSO, Inc.	Florida	Hygea Health Holdings, Inc.
Palm Allcare MSO, Inc.	Florida	Hygea Health Holdings, Inc.
Palm Allcare Medicaid MSO, Inc.	Florida	Hygea Health Holdings, Inc.
Mobile Clinic Services, LLC	Florida	Hygea Health Holdings, Inc.
Hygea IGP of Central Florida, Inc.	Florida	Hygea Health Holdings, Inc.
Hydrea Acquisition Orlando, LLC	Florida	Hygea Health Holdings, Inc.

Name of Subsidiary:	Jurisdiction of Incorporation/ Formation:	Direct Owner of 100% of Subsidiary Equity Interests:
Hygea Acquisition Atlanta, LLC	Georgia	Hygea Health Holdings, Inc.
Hygea Acquisition Longwood, LLC	Florida	Hygea Health Holdings, Inc.
Physician Management Associates SE, LLC	Florida	Hygea Health Holdings, Inc.
Physician Management Associates East Coast, LLC	Florida	Hygea Health Holdings, Inc.
Hygea South Florida, Inc.	Florida	Hygea Health Holdings, Inc.
Palm MSO System, Inc.	Florida	Hygea Health Holdings, Inc.
Med Plan Clinics, Inc.	Florida	Hygea Health Holdings, Inc.
Med Plan Clinic, LLC	Florida	Gemini Healthcare Fund, LLC
Medcare Quality Medical Centers, LLC	Florida	Gemini Healthcare Fund, LLC
Med Plan Health Exchange, LLC	Florida	Gemini Healthcare Fund, LLC
Medcare Westchester Medical Center, LLC	Florida	Gemini Healthcare Fund, LLC
Med Scripts, LLC	Florida	Gemini Healthcare Fund, LLC
Med Plan, LLC	Florida	Gemini Healthcare Fund, LLC
Mid Florida Adult Medicine, LLC	Florida	Hygea Acquisition Longwood, LLC

Exhibit B

Pro Rata Share of Seller Principals

Name of Seller Principal:	Pro Rata Share:
Manuel Iglesias	20.75%
Edward Moffly	9.61%
TOTAL:	**30.36%**

EXHIBIT “2”

G. MARK ALBRIGHT, ESQ.
Nevada Bar 001394
D. CHRIS ALBRIGHT, ESQ.
Nevada Bar No. 004904
ALBRIGHT, STODDARD, WARNICK & ALBRIGHT
801 South Rancho Drive, Suite D-4
Las Vegas, Nevada 89106
Tel: (702) 384-7111
Fax: (702) 384-0605
gma@albrightstoddard.com
dca@albrightstoddard.com

E. POWELL MILLER, ESQ. (pro hac vice pending)
CHRISTOPHER D. KAYE, ESQ. (pro hac vice pending)
THE MILLER LAW FIRM, P.C.
950 W. University Dr., Ste. 300
Rochester, Michigan 48307
Tel: (248) 841-2200
epm@millerlawpc.com
cdk@millerlawpc.com
Attorneys for Plaintiffs

DISTRICT COURT
CLARK COUNTY, NEVADA

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

Plaintiffs,

vs.

HYGEA HOLDINGS CORP., a Nevada corporation; MANUEL IGLESIAS; EDWARD MOFFLY; DANIEL T. MCGOWAN; FRANK KELLY; MARTHA MAIRENA CASTILLO; LACY LOAR; RICHARD WILLIAMS, ESQ.; GLENN MARICHI, M.D.; KEITH COLLINS, M.D.; JACK MANN, M.D.; THE ESTATE OF HOWARD SUSSMAN, M.D.; JOSEPH CAMPANELLA; CARL ROSENCRANTZ; and RAY GONZALEZ; DOES I-XXX; and ROES I-XXX, inclusive,

Defendants.

CASE NO.: A-17-762664-B

DEPT. NO.: 27

Hon. Judge Nancy L. Allf

DECLARATION OF CHRISTOPHER FOWLER

I, Christopher Fowler, having been first duly sworn on oath, depose and state as follows:

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

2. I am competent and willing to testify in court to the same if necessary.

3. I am familiar with the closing of the "Stock Purchase Agreement by and among N5HYG LLC, Hygea Holdings Corp., and the Seller Principles Named [Therein] Dated as of October 5, 2016" and documents associated therewith.

4. Attached is a true and accurate copy of the "Hygea Holdings Corp Certificate of Approval, Authority, and Incumbency" dated October 5, 2016 that a person affiliated with Hygea Holdings Corp provided in connection with the closing.

5. I am also familiar with the email that Mr. Moffly sent to Dan Miller on September 29, 2016, as well as its attachment, as described in Paragraph 41(k) of the First Amended Complaint in the above-captioned matter. The text of the email's body was "As promised this is what has been approved by Cormark and our board. Let me know if that answer your question. T" The purported EBIDTA and valuation figures were set forth in the attachment.

6. At the time of this email, Dan Miller worked for RIN Capital and reported to me. RIN Capital served at that time as Nevada 5, Inc.'s authorized agent, and its agency on behalf of Nevada 5, Inc. had been disclosed.

Dated this 13th day of September, 2018.

Christopher Fowler

LAW OFFICES
ALBRIGHT, STODDARD, WARNICK & ALBRIGHT
A PROFESSIONAL CORPORATION
QUAIL PARK, SUITE D-1
801 SOUTH RANCHO DRIVE
LAS VEGAS, NEVADA 89106
LAS VEGAS, NEVADA 89106

1Ans.App.109

HYGEA HOLDINGS CORP

CERTIFICATE OF APPROVAL, AUTHORITY AND INCUMBENCY

OCTOBER 5, 2016

The undersigned Secretary of Hygea Holdings Corp, a Nevada corporation (the "Company"), pursuant to Sections 3.4.2 and 3.4.3 of that certain Stock Purchase Agreement, dated as of the date hereof (the "Purchase Agreement"), by and among N5HYG LLC, a Michigan limited liability company ("Buyer"), the Company, and the Seller Principals, (as defined therein), hereby certifies on behalf of the Company to Buyer, as of the date first set forth above, as follows that:

1. The undersigned Richard L. Williams is the duly elected, qualified and acting incumbent of the office of Secretary and of Chief Legal Officer of the Company.

2. The undersigned Richard L. Williams is qualified to make this certification and is authorized to give this certificate.

3. Manuel E. Iglesias is the duly elected and qualified Chief Executive Officer of the Company, and the signature set forth opposite his name below is his genuine signature or a true and correct copy thereof. Mr. Iglesias is authorized to execute and deliver, in the name of the Company, the Purchase Agreement and any and all other Ancillary Agreements to which the Company is a party. All governance approvals necessary to consummate the transactions contemplated by the Purchase Agreement (and by the Ancillary Agreements to which the Company is a party) have been obtained.

Name:	Title:	Specimen Signature:
MANUEL E. IGLESIAS	CHIEF EXECUTIVE OFFICER	

4. The Board of Directors of the Company has duly authorized Manuel E. Iglesias on behalf of the Company to enter and execute the Stock Purchase Agreement and Ancillary Agreements for the sale of stock of the Company to Buyer (as the designee of RIN Capital).

5. Attached hereto as Exhibit A is a correct and complete copy of the Articles of Incorporation of the Company, together with all amendments thereto through the date hereof, which Articles of Incorporation are in full force and effect on and as of the date hereof without revocation, modification or amendment in any respect.

6. Attached hereto as Exhibit B is a correct and complete copy of the duly adopted Bylaws of the Company, together with all amendments thereto through the

date hereof, which Bylaws are in full force and effect on and as of the date hereof without revocation, modification or amendment in any respect.

7. Attached hereto as Exhibit C is a correct and complete copies of the resolution duly adopted by the Board of Directors of the Company as of the date set forth thereon, evidencing the approval of the Stock Purchase Agreement and Ancillary Agreements to which the Company is a party and the transactions contemplated thereby, which resolutions are in full force and effect on and as of the date hereof without revocation, modification or amendment in any respect.

Capitalized terms not defined herein shall have the meanings given to them in the Purchase Agreement.

IN WITNESS WHEREOF, the undersigned has executed this Certificate of Approval, Authority and Incumbency on behalf of Hygea Holdings Corp as of the date first written above.

Richard L. Williams
Secretary, Hygea Holdings Corp

Sworn to and subscribed before me this 5th day of October, 2016.

MELISSA BUZEK
MY COMMISSION # FF213247
EXPIRES March 24, 2019
FloridaNotaryService.com

Notary public

Exhibit A

Articles of Incorporation – Hygea Holdings Corp

Attached hereto

EX-3.1 2 ex31.htm EXHIBIT 3.1
Exhibit 3.1

Dean Heller
Secretary of State
206 North Carson Street
Carson City, NV 89701-4288
778-684-8708

Document Number 20080570516-84
Filing Date and Time:
8/26/08 9:45 AM
Entity Number E0550162008-5

Articles of Incorporation
Pursuant to NRS 78

1.	Name of Corporation:	Piper Acquisition II, Inc.
2.	Resident Agent Name and Street Address	Vcorp Services, LLC 1409 Bonita Avenue, Las Vegas, NV 89104
3.	Shares	Number of shares with par value: 260,000,000 Par value: $.0001 Number of shares without par value: -0-
4.	Name & Address of Board of Directors/Trustees	Stephen c/o Fleming PLLC, 403 Merrick Ave, 2nd Fl E. Meadow, NY 11554
5.	Purpose	The purpose of this Corporation shall be: To engage in any lawful activity.
6.	Name, Address and Signature of Incorporator	Stephen M. Fleming /s/Stephen M. Fleming c/o Fleming PLLC, 403 Merrick Ave, 2nd Fl E. Meadow, NY 11554
7.	Certificate of Acceptance of Appointment of Resident Agent:	/s/ 8/26/08

Exhibit A

EIGHT: The Corporation is authorized to issue two classes of stock. One class of stock shall be common stock, par value $0.0001, of which the Corporation shall have the authority to issue 250,000,000 shares. The second class of stock shall be preferred stock, par value $0.0001, of which the corporation shall have the authority to issue 10,000,000 shares. The preferred stock, or any series thereof, shall have such designations, preferences and relative, participating, optional or other special rights and qualifications, limitations or restrictions thereof as shall be expressed in the resolution or resolutions providing for the issue of such stock adopted by the board of directors and may be made dependent upon facts ascertainable outside such resolution or resolutions of the board of directors, provided that the matter in which such facts shall operate upon such designations, preferences, rights and qualifications; limitations or restrictions of such class or series of stock is clearly and expressly set forth in the resolution or resolutions providing for the issuance of such stock by the board of directors.

NINTH: The governing board of this corporation shall be known as the Board of Directors, and the number of directors may from time to time be increased or decreased in such manner as shall be provided by the bylaws of this corporation, providing that the number of directors shall not be reduced to less than one (1).

TENTH: After the amount of the subscription price, the purchase price, of the par value of the stock of any class or series is paid into the corporation, owners or holders of shares of any stock in the corporation may never be assessed to pay the debts of the corporation.

ELEVENTH: The Corporation is to have a perpetual existence.

TWELFTH: No director or officer of the corporation shall be personally liable to the corporation or any of its stockholders for damages for breach of fiduciary duty as a director or officer of for any act or omission of any such director or officer; however, the foregoing provision shall not eliminate or limit the liability of a director or officer for (a) acts or omissions which involve intentional misconduct, fraud or a knowing violation of law; or (b) the payment of dividends in violation of Section 78.300 of the Nevada Revised Statutes. Any repeal or modification of this Article by the stockholders of this corporation shall be prospective only and shall not adversely affect any limitation on the personal liability of a director or officer of the corporation for acts or omissions prior to such repeal or modification.

THIRTEENTH: No shareholder shall be entitled as a matter of right to subscribe for or receive additional shares of any class of stock of the corporation, whether now or hereafter authorized, or any bonds, debentures or securities convertible into stock, but such additional shares of stock or other securities convertible into stock may be issued or disposed of by the Board of Directors to such persons and on such terms as in its discretion it shall deem advisable.

FOURTEENTH: This Corporation reserves the right to amend, alter, change or repeal and provision contained in the Articles of Incorporation, in the manner now or hereafter prescribed by statute, or by the Articles of Incorporation, and all rights conferred upon the Stockholders herein are granted subject to this reservation.

Dean Heller
Secretary of State
206 North Carson Street
Carson City, NV 89701-4288
778-684-8708

Document Number
Filing Date and Time:

Entity Number E0550162008-5

Certificate of Amendment
(Pursuant to NRS 78.385 and 78.390)

Certificate of Amendment to Articles of Incorporation
For Nevada Profit Corporations
(Pursuant to NRS 78.385 and 78.390 – After Issuance of Stock)

1. Name of Corporation

Piper Acquisition II, Inc.

2. The articles have been amended as follows: (provide article numbers, if available)

Article ONE NAME: the complete name of the Corporation shall be Hygea Holdings Corp.

3. The vote by which he stockholders holding shares in the corporation entitling them to classes or series, or as may be required by the provisions of he articles of incorporation

4. Effective date of filing (optional) 5/16/11 (must not be later than 90 days after the certif

5. Signature: (required)

x/s/Tim Betts, CEO

Exhibit B

Bylaws – Hygea Holdings Corp

Attached hereto

BY-LAWS

HYGEA HOLDINGS CORP

ARTICLE I - OFFICES

Section 1. The registered office of the corporation in the State of Florida shall initially be at: 8095 NW 12th St, Suite 105, Miami, Florida 33126, or as further directed by the Board of Directors. The registered agent in charge thereof shall be Lacy Loar.

Section 2. The corporation may also have offices at such other places as the Board of Directors may from time to time appoint or the business of the corporation may require.

ARTICLE II-SEAL

Section 1. The corporate seal shall have inscribed thereon the name of the corporation, the year of its organization and the words "Corporate Seal, Nevada".

ARTICLE III - STOCKHOLDERS' MEETINGS

Section 1. Meetings of stockholders shall be held at the registered office of the corporation in this state or at such place, either within or without this state, as may be selected from time to time by the Board of Directors.

Section 2. ANNUAL MEETINGS: The annual meeting of the stockholders shall be held on the 29th of December in each year if not a legal holiday, and if a legal holiday, then on the next secular day following at 10:00 o'clock A.M., when they shall elect a Board of Directors and transact such other business as may properly be brought before the meeting. If the annual meeting for election of directors is not held on the date designated therefor, the directors shall cause the meeting to be held as soon thereafter as convenient.

Section 3. ELECTION OF DIRECTORS: Elections of the directors of the corporation shall be by written or verbal ballot.

Section 4. SPECIAL MEETINGS: Special meetings of the stockholders may be called at any time by the Presidency, or the Board of Directors, or stockholders entitled to

Initial Initial

cast at least one-fifth of the votes which all stockholders are entitled to cast at the particular meeting. At any time, upon written request of any person or persons who have duly called a special meeting, it shall be the duty of the Secretary to fix the date of the meeting, to be held not more than sixty days after receipt of the request, and to give due notice thereof. If the Secretary shall neglect or refuse to fix the date of the meeting and give notice thereof, the person or persons calling the meeting may do so. Business transacted at all special meetings shall be confined to the objects stated in the call and matters germane thereto unless all stockholders entitled to vote are present and consent.

Written notice of a special meeting of stockholders stating the time and place and object thereof, shall be given to each stockholder entitled to vote thereat at least 10 days before such meeting, unless a greater period of notice is required by statute in a particular case.

Section 5. QUORUM: A majority of the outstanding shares of the corporation entitled to vote, represented in person or by proxy, shall constitute a quorum at a meeting of stockholders. If less than a majority of the outstanding shares entitled to vote is represented at a meeting, a majority of the shares so represented may adjourn the meeting from time to time without further notice. At such adjourned meeting at which a quorum shall be present or represented, any business may be transacted which might have been transacted at the meeting as originally noticed. The stockholders present at a duly organized meeting may continue to transact business until adjournment, notwithstanding the withdrawal of enough stockholders to leave less than a quorum.

Section 6. PROXIES: Each stockholder entitled to vote at a meeting of stockholders or to express consent or dissent to corporate action in writing without a meeting may authorize another person or persons to act for him by proxy, but no such

Initial Initial

proxy shall be voted or acted upon after three years from its date, unless the proxy provides for a longer period.

A duly executed proxy shall be irrevocable if it states that it is irrevocable and if, and only as long as, it is coupled with an interest sufficient in law to support an irrevocable power. A proxy may be made irrevocable regardless of whether the interest with which it is coupled is an interest in the stock itself or an interest in the corporation generally. All proxies shall be filed with the Secretary of the meeting before being voted upon.

Section 7. NOTICE OF MEETINGS: Whenever stockholders are required or permitted to take any action at a meeting, a written notice of the meeting shall be given which shall state the place, date and hour of the meeting, and, in the case of a special meeting, the purpose or purposes for which the meeting is called.

Unless otherwise provided by law, written notice of any meeting shall be given not less than ten nor more than sixty days before the date of the meeting to each stockholder entitled to vote at such meeting.

Section 8. CONSENT IN LIEU OF MEETINGS: Any action required to be taken at any annual or special meeting of stockholders of a corporation, or any action which may be taken at any annual or special meeting of such stockholders, may be taken without a meeting, without prior notice and without a vote, if a consent in writing, setting forth the action so taken, shall be signed by the holders of outstanding stock having not less than the minimum number of votes that would be necessary to authorize or take such action at a meeting at which all shares entitled to vote thereon were present and voted. Prompt notice of the taking of the corporate action without a meeting by less than unanimous written consent shall be given to those stockholders who have not consented in writing.

_____ Initial _____ Initial

Section 9. LIST OF STOCKHOLDERS: The officer who has charge of the stock ledger of the corporation shall prepare and make, at least ten days before every meeting of stockholders a complete list of the stockholders entitled to vote at the meeting, arranged in alphabetical order, and showing the address of each stockholder and the number of shares registered in the name of each stockholder. No share of stock upon which any installment is due and unpaid shall be voted at any meeting. The list shall be open to the examination of any stockholder, for any purpose germane to the meeting, during ordinary business hours for a period of at least ten days prior to the meeting, either at a place within the city where the meeting is to be held, which place shall be specified in the notice of the meeting, or, if not so specified, at the place where the meeting is to be held. The list shall also be produced and kept at the time and place of the meeting during the whole time thereof, and may be inspected by any stockholder who is present.

ARTICLE IV - DIRECTORS

Section 1. The business and affairs of this corporation shall be managed by its Board of Directors, at least two (2) in number. The board may be expanded to a total of fifteen (15) upon adoption of such a resolution by the majority of the directors. The directors need not be residents of this state or stockholders in the corporation. They shall be elected by the stockholders at the annual meeting of stockholders of the corporation, and each director shall be elected for the term of one year, and until his successor shall be elected and shall qualify or until his earlier resignation or removal.

Section 2. REGULAR MEETINGS: Regular meetings of the Board shall be held without notice at the registered office of the corporation, or at such other time and place as shall be determined by the Board

Section 3. SPECIAL MEETINGS: Special Meetings of the Board may be called by the President with 1 day notice to each director, either personally, by telephone, by

_____ Initial _____ Initial

mail, or by telegram. Special meetings shall be called by the President or Secretary in like manner and on like notice on the written request of a majority of the directors in office.

Section 4. QUORUM: A majority of the total number of directors shall constitute a quorum for the transaction of business.

Section 5. CONSENT IN LIEU OF MEETING; Any action required or permitted to be taken at any meeting of the Board of Directors, or of any committee thereof, may be taken without a meeting if all members of the Board or committee, as the case may be, consent thereto in writing, and the writing or writings are filed with the minutes of proceedings of the Board or committee. The Board of Directors may hold its meetings, and have an office or offices, outside of this state.

Section 6. CONFERENCE TELEPHONE: One or more directors may participate in a meeting of the Board, of a committee of the Board or of the stockholders, by means of conference telephone or similar communications equipment by means of which all persons participating in the meeting can hear each other; participation in this manner shall constitute presence in person at such meeting.

Section 7. COMPENSATION: Directors as such, shall not receive any stated salary for their services, but by resolution of the board, a fixed sum and expenses of attendance, if any, may be allowed for attendance at each regular or special meeting of the Board PROVIDED, that nothing herein contained shall be construed to preclude any director from serving the corporation in any other capacity and receiving compensation therefor.

Section 8. REMOVAL: Any director or the entire Board of Directors may be removed, with or without cause, by the holders of a majority of the shares than entitled to vote at an election of directors, except that when cumulative voting is permitted, if less than the entire Board is to be removed, no director may be removed without cause if the votes cast against his removal would be sufficient to elect him if then cumulatively voted

_____ Initial _____ Initial

at an election of the entire Board of Directors, or, if there be classes of directors, at an election of the class of directors of which he is a part.

ARTICLE V - OFFICERS

Section 1. The executive officers of the corporation shall be chosen by the directors and shall consist of a President, Secretary and Treasurer. The Board of Directors may also choose a Chairman, one or more Vice Presidents and such other officers as it shall deem necessary. Any number of offices may be held by the same person.

Section 2. SALARIES: Salaries of all officers and agents of the corporation shall be fixed by the Board of Directors.

Section 3. TERM OF OFFICE: The officers of the corporation shall hold office for one year and until their successors are chosen and have qualified. Any officer or agent elected or appointed by the Board may be removed by the Board of Directors whenever in its judgment the best interest of the corporation will be served thereby.

Section 4. PRESIDENT: The President shall be the chief executive officer of the corporation; he shall preside at all meetings of the stockholders and directors; he shall have general and active management of the business of the corporation shall see that all orders and resolutions of the Board are carried into effect, subject; however, to the right of the directors to delegate any specific powers, except such as may be by statute exclusively conferred on the President, to any other officer or officers of the corporation. He shall execute bonds, mortgages and other contracts requiring a seal, under the seal of the corporation. He shall be EX-OFFICIO a member of all committees, and shall have the general power and duties of supervision and management usually vested in the office of President of a corporation.

Section 5. SECRETARY: The Secretary shall attend all sessions of the Board and all meetings of the stockholders and act as clerk thereof, and record all the votes of the corporation and the minutes of all its transactions in a book to be kept for that purpose, and shall perform like duties for all committees of the Board of Directors when required. He

_____ Initial _____ Initial

shall give, or cause to be given, notice of all meetings of the stockholders and of the Board of Directors, and shall perform such other duties as may be prescribed by the Board of Directors or President, and under whose supervision he shall be. He shall keep in safe custody the corporate seal of the corporation, and when authorized by the Board, affix the same to any instrument requiring it.

Section 6. TREASURER: The Treasurer shall have custody of the corporate funds and securities and shall keep full and accurate accounts of receipts and disbursements in books belonging to the corporation, and shall keep the moneys of the corporation in a separate account to the credit of the corporation. He shall disburse the funds of the corporation as may be ordered by the Board, taking proper vouchers for such disbursements, and shall render to the President and directors, at the regular meetings of the Board, or whenever they may require it, an account of all his transactions as Treasurer and of the financial condition of the corporation.

ARTICLE VI - VACANCIES

Section 1. Any vacancy occurring in any office of the corporation by death, resignation, removal or otherwise, shall be filled by the Board of Directors. Vacancies and newly created directorships resulting from any increase in the authorized number of directors may be filled by a majority of the directors then in office, although less than a quorum, or by a sole remaining director. If at any time, by reason of death or resignation or other cause, the corporation should have no directors in office, then any officer or any stockholder or an executor, administrator, trustee or guardian of a stockholder, or other fiduciary entrusted with like responsibility for the person or estate of a stockholder, may call a special meeting of stockholders in accordance with the provisions of these By-Laws.

Section 2. RESIGNATIONS EFFECTIVE AT FUTURE DATE; When one or more directors shall resign from the Board, effective at a future date, a majority of the directors then in office, including those who have so resigned shall have power to fill such

_____ Initial _____ Initial

vacancy or vacancies, the vote thereon to take effect when such resignation or resignations shall become effective.

ARTICLE VII - CORPORATE RECORDS

Section 1. Any stockholder of record, in person or by attorney or other agent, shall, upon written demand under oath stating the purpose thereof, have the right during the usual hours for business to inspect for any proper purpose the corporation's stock ledger, a list of its stockholders, and its other books and records, and to make extracts therefrom. A proper purpose shall mean a purpose reasonably related to such person's interest as a stockholder. In every instance where an attorney or other agent shall be the person who seeks the right to Inspection, the demand under oath shall be accompanied by a power of attorney or such other writing which authorizes the attorney or other agent to so act on behalf of the stockholder. The demand under oath shall be directed to the corporation at its registered office in this state or at its principal place of business.

ARTICLE VIII – SHARES, STOCK CERTIFICATES, DIVIDENDS, ETC.

Section 1. AUTHORIZED SHARES. The Company is authorized to issue up to 500 million shares of stock; 490 million shares of Common Stock and 10 million shares of 'blank check' Preferred Stock.

Section 2. CERTIFICATES. The stock certificates of the corporation shall be numbered and registered in the share ledger and transfer books of the corporation as they are issued. They shall bear the facsimile of the corporate seal and shall bear the facsimile of the President; and be countersigned by the Transfer Agent.

Section 3. TRANSFERS: Transfers of shares shall be made on the books of the corporation upon surrender of the certificates therefor, endorsed by the person named in

_____ Initial _____ Initial

the certificate or by attorney, lawfully constituted in writing with signature guaranteed. No transfer shall be made which is inconsistent with law.

Section 4. LOST CERTIFICATE: The corporation may issue a new certificate of stock in the place of any certificate therefore signed by it, alleged to have been lost, stolen or destroyed, and the corporation may require the owner of the lost, stolen or destroyed certificate, or his legal representative to give the corporation a bond sufficient to indemnify it against any claim that maybe made against it on account of the alleged loss, theft or destruction of any such certificate or the issuance of such new certificate.

Section 5. RECORD DATE: In order that the corporation may determine the stockholders entitled to notice of or to vote at any meeting of stockholders or any adjournment thereof, or to express consent to corporate action in writing without a meeting, or entitled to receive payment of any dividend or other distribution or allotment of any rights, or entitled to exercise any rights in respect of any change, conversion or exchange of stock or for the purpose of any other lawful action, the Board of Directors may fix, in advance, a record date, which shall not be more than sixty nor less than ten days before the date of such meeting, nor wore than sixty days prior to any other action,

If no record date is fixed:

(a) The record date for determining stockholders entitled to notice of or to vote at a meeting of stockholders shall be at the close of business on the day next preceding the day on which notice is given, or, if notice is waived, at the close of business on the day next preceding the day on which the meeting is held.

(b) The record date for determining stockholders entitled to express consent to corporate action in writing without a meeting, when no prior action by the Board of Directors is necessary, shall be the day on which the first written consent is expressed.

_____ Initial _____ Initial

(c) The record date for determining stockholders for any other purpose shall be at the close of business on the day on which the Board of Directors adopts the resolution relating thereto.

(d) A determination of stockholders of record entitled to notice of or to vote at a meeting of stockholders shall apply to any adjournment of the meeting; provided, however, that the Board of Directors may fix a new record date for the adjourned meeting.

Section 6. DIVIDENDS: The Board of Directors may declare and pay dividends upon the outstanding shares of the corporation, from time to time and to such extent as they deem advisable, in the manner and upon the terms and conditions provided by statute and the Certificate of Incorporation.

Section 7. RESERVES: Before payment of any dividend there may be set aside out of the net profits of the corporation such sum or sums as the directors, from time to time, in their absolute discretion, think proper as a reserve fund to meet contingencies, or for equalizing dividends, or for repairing or maintaining any property of the corporation, or for such other purpose as the directors shall think conducive to the interests of the corporation, and the directors may abolish any such reserve in the manner in which it was created.

ARTICLE IX - MISCELLANEOUS PROVISIONS

Section 1. CHECKS: All checks or demands for money and notes of the corporation shall be signed by such officer or officers as the Board of Directors may from time to time designate.

Section 2. FISCAL YEAR: The fiscal year shall begin on the first day of January and end December 31st each year.

Section 3. NOTICE: Whenever written notice is required to be given to any person, it may be given to such person, either personally or by sending a copy thereof through the mail, or by telegram, charges prepaid, to his address

Initial Initial

appearing on the books of the corporation, or supplied by him to the corporation for the purpose of notice. If the notice is sent by mail or by telegraph, it shall be deemed to have been given to the person entitled thereto when deposited in the United States mail or with a telegraph office for transmission to such person. Such notice shall specify the place, day and hour of the meeting and, in the case of a special meeting of stockholders, the general nature of the business to be transacted.

Section 4. WAIVER OF NOTICE: Whenever any written notice is required by statute, or by the Certificate or the By-Laws of this corporation a waiver thereof in writing, signed by the person or persons entitled to such notice, whether before or after the time stated therein, shall be deemed equivalent to the giving of such notice. Except in the case of a special meeting of stockholders, neither the business to be transacted at nor the purpose of the meeting need be specified in the waiver of notice of such meeting. Attendance of a person either in person or by proxy, at any meeting shall constitute a waiver of notice of such meeting, except where a person attends a meeting for the express purpose of objecting to the transaction of any business because the meeting was not lawfully called or convened.

Section 5. DISALLOWED COMPENSATION: Any payments made to an officer or employee of the corporation such as a salary, commission, bonus, interest, rent, travel or entertainment expense incurred by him, which shall be disallowed in whole or in part as a deductible expense by the Internal Revenue Service, shall be reimbursed by such officer or employee to the corporation to the full extent of such disallowance. It shall be the duty of the directors, as a Board, to enforce payment of each such amount disallowed. In lieu of payment by the officer or employee, subject to the determination of the directors, proportionate amounts may he withheld from his future compensation payments until the amount owed to the corporation has been recovered.

Section 6. RESIGNATIONS: Any director or other officer may resign at any time, such resignation to be in writing and to take effect from the time of its receipt by the

_____ Initial _____ Initial

corporation, unless some time be fixed in the resignation and then from that date. The acceptance of a resignation shall not be required to make it effective.

ARTICLE X - ANNUAL STATEMENT

Section 1. The President and the Board of Directors shall present at each annual meeting a full and complete statement of the business and affairs of the corporation for the preceding year. Such statement shall be prepared and presented in whatever manner the Board of Directors shall deem advisable and need not be verified by a Certified Public Accountant.

ARTICLE XI - INDEMNIFICATION AND INSURANCE

Each person who was or is made a party or is threatened to be made a party or is involved in any action, suit or proceeding, whether civil, criminal, administrative or investigative (hereinafter a "proceeding"), by reason of the fact that he or she, or a person of whom he or she is the legal representative, is or was a director or officer, of the Corporation or is or was serving at the request of the Corporation as a director, officer, employee or agent of another corporation or of a partner ship, joint venture, trust or other enterprise, including service with respect to employee benefit plans whether the basis of such proceeding is alleged action in an official capacity as a director, officer, employee or agent or in any other capacity while serving as a director, officer, employee or agent, shall be indemnified and held harmless by the Corporation to the fullest extent authorized by the Florida Business Corporation Act, or such other state rules that may be the most expansive in a state in which the Company is doing business as the same exists or may

hereafter be amended (but, in the case of any such amendment, only to the extent that such amendment permits the Corporation to provide broader indemnification rights than said law permitted the Corporation to provide prior to such amendment), against all expense, liability

_____ Initial _____ Initial

and loss (including attorneys' fees, Judgments, fines, ERISA excise taxes or penalties and amounts paid or to be paid in settlement) reasonably incurred or suffered by such person in connection therewith and such indemnification shall continue as to a person who has ceased to be a director, officer, employee or agent and shall inure to the benefit of his or her heirs, executors and administrators; provided, however, that, except as provided in paragraph (b) hereof, the Corporation shall indemnify any such person seeking indemnification in connection with a proceeding (or part thereof) initiated by such person only if such proceeding (or part thereof) was authorized by the Board of Directors of the Corporation.

Section 1. (a) RIGHT TO INDEMNIFICATION. The Company shall advance all sums required to indemnify and hold the Members harmless as provided herein from the initiation of any claim against such Member, The right to indemnification conferred in this Section shall be a contract right and shall include the right to be paid by the Corporation the expenses incurred in defending any such proceeding in advance of its final disposition: provided, however, that, if the Florida Business Corporation Act or the laws of another state in which the Company conducts business requires the payment of such expenses incurred by a director or officer in his or her capacity as a director or officer (and not in any other capacity in which service was or is rendered by such person while a director or officer, including, without limitation, service to an employee benefit plan) in advance of the final disposition of a proceeding, shall be made only upon delivery to the corporation of an undertaking, by or on behalf of such director or officer, to repay all amounts so advanced if it shall ultimately be determined that such director or officer is not entitled to be indemnified under this Section or otherwise. The Corporation may, by action of its Board of Directors, provide indemnification to employees and agents of the Corporation with the same scope and effect as the foregoing indemnification of directors and officers.

(b) RIGHT OF CLAIMANT TO BRING SUIT:

If a claim under paragraph (a) of this Section is not advanced and paid in full by the Corporation, the claimant may at any time bring suit against the Corporation to recover the unpaid amount of the claim and, if successful in whole or in part, the claimant shall be entitled to be paid also the expense of prosecuting such claim. It shall be a defense to any

Initial Initial

such action (other than an action brought to enforce a claim for expenses incurred in defending any proceeding in advance of its final disposition where the required undertaking, if any is required, has been tendered to the Corporation) that the claimant has not met the standards of conduct which make it

permissible under the Florida Business Corporation Act or any law in such state as the Company is doing business for the Corporation to indemnify the claimant for the amount claimed, but the burden of proving such defense shall be on the Corporation. Neither the failure of the Corporation (including its Board of Directors, independent legal counsel, or its stockholders) to have made a determination prior to the commencement of such action that indemnification of the claimant is proper in the circumstances because he or she has met the applicable standard of conduct set forth in the Florida Business Corporation Act, nor an actual determination by the Corporation (including its Board of Directors, independent legal counsel, or Its stockholders) that the claimant has not met such applicable standard or conduct, shall be a defense to the action or create a presumption that the claimant has not met the applicable standard or conduct.

(c) Notwithstanding any limitation to the contrary contained in sub-paragraphs (a) and (b) of this section, the corporation shall to the fullest extent permitted by the Florida Business Corporation Act, as the same may be amended and supplemented, or under any state laws in which the Company conducts business, whichever is favorable, indemnify any and all persons whom it shall have power to indemnify under said section from and against any and all of the expenses, which it shall advance and pay as incurred, liabilities or other matters referred to in or covered by said section, and the indemnification provided for herein shall not be deemed exclusive of any other rights to which those indemnified may be entitled under any By-law, agreement, vote of stockholders or disinterested Directors or otherwise both as to action in his official capacity and as to action in another capacity while holding such office, and shall continue as to a person who

_____ Initial _____ Initial

has ceased to be director, officer, employee or agent and shall inure to the benefit of the heirs, executors and administrators of such a person.

(d) INSURANCE:

The Corporation may maintain insurance, at its expense, to protect itself and any director, officer, employee or agent of the Corporation or another corporation, partnership, joint venture, trust or other enterprise against any such expense, liability or loss, whether or not the Corporation would have the power to indemnify such person against such expense, liability or loss under the Florida Business Corporation Act.

ARTICLE XII – AMENDMENTS

Section 1. These by-laws may be amended or repealed by the vote of stockholders entitled to cast at least a majority of the votes which all stockholders are entitled to cast thereon, at any regular or special meeting of the stockholders, duly convened after notice to the stockholders of that purpose.

Initial Initial

Exhibit C

Board Resolution – Hygea Holdings Corp

Attached hereto

C.11

HYGEA HOLDINGS CORP
BOARD OF DIRECTORS
OCTOBER 4, 2016

RESOLUTION
RIN CAPITAL

PURSUANT TO NOTICE, the President and Chief Executive Officer of the Company called a meeting of the Board of Directors for 9:45 a.m., October 4, 2016. The meeting began at 9:45 a.m.

In attendance were:

Dan McGowan, Chairman
Frank Kelly, Vice Chairman
Manuel Iglesias, President and CEO
Ted Moffly, CFO
Richard Williams, Secretary
Lacy Loar, Assistant Secretary
Keith Collins, M.D.
Ray Gonzalez
Joe Campanella
Jack Mann
Martha Castillo
Glenn Marichi
and John Brecker and Rudy Rodriguez as observers

The Chairman advised that pursuant to the By-Laws there was a quorum.

On motion by Board Member Keith Collins and second by Vice Chairman Frank Kelly and opportunity for discussion, the Board resolved unanimously with no abstentions as follows

"That the executive management of Hygea Holdings Corp be authorized to negotiate, finalize and execute agreements for the sale of shares of the Company to RIN Capital or its designee on the following terms:

*$30 million (USD) pre IPO
*10% discount to IPO price
*Board and Observers seat to be determined
*price estimated at approximately $1.25 (US) per share including discount
and
That Manuel E. Iglesias, as President and Chief Executive Officer is authorized to execute all documents necessary or desirable to accomplish the foregoing."

RESOLVED by unanimous vote of the Board of Directors on October 4, 2016.

Richard L. Williams
Secretary

EXHIBIT “3”

AFFIDAVIT OF SERVICE

Summons and Complaint and Jury Demand

Case Number: A-17-762664-B

Plaintiff:
N5HYG, LLC, a Michigan limited liability company; and NEVADA 5, INC., a Nevada corporation

vs.

Defendant:
HYGEA HOLDINQS CORP., a Nevada corporation, et al.

Received by E.P.I. Bureau, Inc. on the 16th day of October, 2017 at 10:00 pm to be served on **RAY GONZALEZ, 2766 NW 62ND STREET, Miami, FL 33147**.

I, Miguel Marino, being duly sworn, depose and say that on the **25th day of October, 2017** at **8:05 pm, I:**

SUBSTITUTE served by delivering a true copy of the **Summons and Complaint and Jury Demand** with the date and hour of service endorsed thereon by me, to: **SANDRA VELOZ** as **CO-RESIDENT (LIVE-IN NANNY)** at the address of: **12350 SW 47TH STREET, Miami, FL 33175**, the within named person's usual place of **Abode**, who resides therein, who is fifteen (15) years of age or older and informed said person of the contents therein, in compliance with state statutes.

Description of Person Served: Age: 47, Sex: F, Race/Skin Color: HISPANIC, Height: 5'3", Weight: 115, Hair: BRW, Glasses: N

I certify that I have no interest in the above named action, I am of legal age and I am a certified appointed process server in good standing in the judicial circuit in which the process was served. Under Penalty of perjury, I declare the forgoing to be true.

Miguel Marino
CPS# 1613

E.P.I. Bureau, Inc.
P.O. Box 161208
Hialeah, FL 33016
(305) 639-2599

Our Job Serial Number: EIB-2017000256

Subscribed and Sworn to before me on the 2nd day of November, 2017 by the affiant who is personally known to me.

NOTARY PUBLIC

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11/2/2017 3:05 PM
Steven D. Grierson
CLERK OF THE COURT

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Attorneys for Plaintiff

DISTRICT COURT

CLARK COUNTY, NEVADA

N5HYG, LLC, a Michigan limited liability company; and NEVADA 5, INC., a Nevada corporation, Plaintiffs, vs. HYGEA HOLDINGS CORP., a Nevada corporation; MANUEL IGLESIAS; EDWARD MOFFLY; DANIEL T. MCGOWAN; FRANK KELLY; MARTHA MAIRENA CASTILLO; LACY LOAR; RICHARD WILLIAMS, ESQ.; GLENN MARICHI, M.D.; KEITH COLLINS, M.D.; JACK MANN, M.D.; THE ESTATE OF HOWARD SUSSMAN, M.D.; JOSEPH CAMPANELLA; CARL ROSENCRANTZ; and RAY GONZALEZ; DOES I-XXX; and ROES I-XXX, inclusive, Defendants.	CASE NO.: A-17-762664-B DEPT. NO.: 25 **AFFIDAVIT OF SERVICE (HYGEA HOLDINGS CORP.)**

STATE OF NEVADA)
) ss.
COUNTY OF WASHOE)

DECLARATION OF SERVICE

Robert Deale, declares and says: That at all times herein declarant was and is a citizen of the United States, over 18 years of age, not a party to nor interested in the proceedings in which this declaration is made. That declarant received 1 copy(ies) of the SUMMONS; COMPLAINT AND JURY DEMAND in Case No. A-17-762664-B on the 26th day of October, 2017 and served the same at 2:02 PM on the 26th day of October, 2017 by:

(Declarant must complete the appropriate paragraph)

1. delivering and leaving a copy with the defendant _____ at _____

2. serve the defendant _____ by personally delivering and leaving a copy with _____, a person of suitable age and discretion residing at the defendant's usual place of abode located at _____

(Use paragraph 3 for serve upon agent, completing A or B)

3. serving the defendant HYGEA HOLDINGS CORP by personally delivering and leaving a copy at Vcorp Services, LLC, Registered Agent, 701 S. Carson St, Ste 200, Carson City, Nevada 89701

a. With _____ as _____, an agent lawfully designated by statute to accept service of process;

b. With Macie Tuell, pursuant to NRS 14.020 as a person of suitable age and discretion at the above address, which address is the address of the registered agent as shown on the current certificate of designation filed with the Secretary of State.

4. personally depositing a copy in a mail box of the United States Post Office, enclosed in a sealed envelope postage prepaid (check appropriate method):

_____ ordinary mail
_____ certified mail, return receipt requested
_____ registered mail, return receipt requested

addressed to the defendant _____ at the defendant's last known address which is _____

Per NRS 53.045: I declare under penalty of perjury that the foregoing is true and correct.

Executed on: October 28, 2017.

Signature of Declarant

American Process Service
10580 N. McCarran Blvd., Suite 115-130
Reno, Nevada 89503
775-337-1117
Nevada License 1088A

EXHIBIT “4”

Filing # 49872549 E-Filed 12/09/2016 04:53:11 PM

IN THE CIRCUIT COURT OF THE THIRTEENTH JUDICIAL CIRCUIT
IN AND FOR HILLSBOROUGH COUNTY, FLORIDA
CIVIL DIVISION

CEA ATLANTIC ADVISORS, LLC,

Plaintiff,

v.

Case No.:
Division:

HYGEA HOLDINGS CORP.,

Defendant.
_____/

COMPLAINT

Plaintiff CEA ATLANTIC ADVISORS, LLC ("CEA") sues Defendant, HYGEA HOLDINGS CORP ("HYGEA") as follows.

The Parties, Jurisdiction and Venue

1. CEA is a limited liability company in good standing with the Florida Department of State, Division of Corporations, and CEA conducts business through its principal place of business in Tampa, Hillsborough County, Florida.

2. HYGEA is a for-profit corporation that maintains offices in Florida and is duly registered with the Florida Department of State, Division of Corporations.

3. The parties have contractually stipulated that venue is proper in Hillsborough County, Florida, and have waived any jurisdictional challenges to this forum.

4. Venue and jurisdiction are also proper in this Court because the payment that is the subject of this dispute is due in Hillsborough County, Florida.

5. The damages sought by CEA against HYGEA are $1,500,000 in addition to costs and attorneys' fees, all well in excess of this Court's jurisdictional requirements.

12/09/2016 4:53 PM Electronically Filed: Hillsborough County/13th Judicial Circuit Page 1

General Allegations

6. CEA and HYGEA entered into a Financing Representation Agreement dated August 19, 2015 ("the Agreement"), and a copy of that Agreement, which was duly executed by authorized representatives of the parties, is attached as Exhibit 1.

7. Under the express terms of the Agreement, HYGEA exclusively engaged CEA to arrange equity and/or debt financing in exchange for a fee.

8. Under paragraph 4 of the Agreement, that fee is "immediately due and payable to CEA following the closing of any Financing or Financing related transaction."

9. CEA introduced an entity known as RIN Capital ("RIN") to HYGEA, and CEA solicited from RIN an equity investment for HYGEA.

10. CEA worked with HYGEA to pursue an equity investment from RIN.

11. CEA and its representatives did all that was requested of them by HYGEA, and performed all tasks necessary to successfully advance the RIN investment for HYGEA.

12. On or about October 16, 2016, CEA's efforts on HYGEA's behalf produced a $30,000,000 equity investment from RIN.

13. Under paragraph 4.b.a. of the Agreement, the fee due to CEA from HYGEA for facilitating that RIN investment is a cash fee of $1,500,000, an amount equal to five percent of the $30,000,000 HYGEA received from RIN.

14. HYGEA has failed and refused to pay the fee due to CEA, despite CEA's demand, resulting in this lawsuit.

15. All conditions precedent to the bringing of this action have occurred, or been satisfied or waived.

12/09/2016 4:53 PM Electronically Filed: Hillsborough County/13th Judicial Circuit Page 2

Count I – Breach of Contract

16. All allegations prior to Count I are realleged and are incorporated by reference.

17. This is an action for HYGEA's breach of the Agreement.

18. The Agreement constitutes a valid and binding contract between CEA and HYGEA.

19. HYGEA has breached its contractual obligations to CEA by failing to pay the fee required by the Agreement, and CEA, which is due $1,500,000 exclusive of interest, attorneys' fees and costs, has been damaged.

20. The Agreement provides for an award of attorneys' fees and costs incurred in the context of any court proceeding.

WHEREFORE, CEA demands judgment against HYGEA for damages, interest, attorneys' fees, costs, and such other relief as this Court deems just.

Count II – Quantum Meruit

21. All allegations prior to Count I are realleged and incorporated by reference.

22. This is an action by CEA against HYGEA for quantum meruit, and CEA's damages should be measured by the fee anticipated in the Agreement.

23. CEA was the procuring cause of the RIN investment in HYGEA.

24. CEA conferred a benefit on HYGEA by providing services as anticipated in the Agreement, and HYGEA acquiesced in the provision of those services, knowing that CEA expected to be compensated.

25. HYGEA accepted the services CEA provided, and HYGEA has been unjustly enriched by receiving services for which it has not.

WHEREFORE, CEA demands judgment against HYGEA for damages, interest, attorneys' fees, costs, and such other relief as this Court deems just.

Count III – Unjust Enrichment

26. All allegations prior to Count I are realleged and incorporated by reference.

27. This is an action by CEA against HYGEA for unjust enrichment, and CEA's damages should be measured by the fee anticipated in the Agreement.

28. CEA was the procuring cause of the RIN investment in HYGEA.

29. CEA conferred a benefit on HYGEA by providing valuable services.

30. HYGEA voluntarily accepted and retained the services CEA provided to it.

31. The circumstances are such that it would be unfair for HYGEA to retain the benefit of CEA's services, which resulted in $30,000,000 of equity invested in HYGEA by RIN, without paying.

WHEREFORE, CEA demands judgment against HYGEA for damages, interest, attorneys' fees, costs, and such other relief as this Court deems just.

Dated: December 9, 2016

/s/ Guy M. Burns
Guy M. Burns
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Attorneys for Plaintiff

DISTRICT COURT

CLARK COUNTY, NEVADA

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

Plaintiffs,

vs.

HYGEA HOLDINGS CORP., a Nevada corporation; MANUEL IGLESIAS; EDWARD MOFFLY; DANIEL T. MCGOWAN; FRANK KELLY; MARTHA MAIRENA CASTILLO; LACY LOAR; RICHARD WILLIAMS, ESQ.; GLENN MARICHI, M.D.; KEITH COLLINS, M.D.; JACK MANN, M.D.; THE ESTATE OF HOWARD SUSSMAN, M.D.; JOSEPH CAMPANELLA; CARL ROSENCRANTZ; and RAY GONZALEZ; DOES I-XXX; and ROES I-XXX, inclusive,

Defendants.

CASE NO.: A-17-762664-B

DEPT. NO.: 27

PLAINTIFFS' OPPOSITION TO MOTION TO DISMISS OF RICHARD L. WILLIAMS SUBMITTED VIA JOINDERS

Date of hearing: October 3, 2018
Time of hearing: 10:30 a.m.

Plaintiffs N5HYB, LLC, a Michigan limited liability company, and NEVADA 5, INC., a Nevada corporation ("Plaintiffs"), by and through their undersigned counsel of record, hereby file with this Court Plaintiffs' Opposition to Motion to Dismiss of Richard L. Williams ("Opposition"). On August 27, 2018, Richard Williams, appearing pro se, served on Plaintiffs, but apparently never filed, a Joinder in the Motions to Dismiss previously filed by both Gonzalez and the other Defendants. See **Exhibit "A"** hereto. Plaintiffs hereby incorporate by reference their oppositions filed to both the Gonzalez Motion to Dismiss and the Motion to Dismiss filed by the other Defendants. Richard Williams also served, but never filed, a Motion to Dismiss on July 12, 2018, a copy of which is attached hereto as **Exhibit "B."**

This Opposition to the two Richard Williams' Joinders is made and based upon the memorandum of points and authorities, as well as pleadings and records of this case, and any oral argument this Court entertains on the hearing for the pending motions to dismiss.

MEMORANDUM OF POINTS AND AUTHORITES

Plaintiffs oppose the Motion to Dismiss of Richard L. Williams submitted via the attached joinder for the reasons set forth in (1) Plaintiffs' Opposition to the Motion to Dismiss filed herein by Defendant Ray Gonzalez, and (2) Plaintiffs' Opposition to Motion to Dismiss filed by Defendants Hygea Holdings Corp., Manual Iglesias, Edward Moffly, Daniel T. McGowan, Frank Kelly, Martha Mairene Castillo, Lacy Loar, Glenn Marrichi, Keith Collins, M.D., Jack Mann, M.D., Joseph Campanella and Carl Rosenkrantz, and incorporate both oppositions herein by reference.

[continued on Page 3]

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A PROFESSIONAL CORPORATION
QUAIL PARK, SUITE D-4
801 SOUTH RANCHO DRIVE
LAS VEGAS, NEVADA 89106

1Ans.App.144

CONCLUSION

For all the reasons set forth herein, Defendant Richard L. Williams' Joinder in the pending Motions to Dismiss should be denied.

DATED this 18th day of September, 2018.

ALBRIGHT, STODDARD, WARNICK & ALBRIGHT

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obrown@nevadafirm.com

Attorneys for Plaintiffs

1Ans.App.145

CERTIFICATE OF SERVICE

I hereby certify that I am an employee of ALBRIGHT, STODDARD, WARNICK & ALBRIGHT, and that on the 18 day of September, 2018, I served a true and correct copy of the foregoing **PLAINTIFFS' OPPOSITION TO MOTION TO DISMISS OF RICHARD L. WILLIAMS SUBMITTED VIA JOINDERS** upon all counsel of record by electronically serving the document using the Court's electronic filing system.

On the same date, September 18, 2018, I also placed a true and correct copy of the foregoing **PLAINTIFFS' OPPOSITION TO MOTION TO DISMISS OF RICHARD L. WILLIAMS SUBMITTED VIA JOINDERS,** enclosed in a sealed envelope, in the United States Mail at Las Vegas, Nevada, with first class postage thereon prepaid, addressed to the following:

Richard Williams
8110 SW 78th Street
Miami, Florida 33143

On the same date, September 18, 2018, I also served a true and correct copy of the foregoing **PLAINTIFFS' OPPOSITION TO MOTION TO DISMISS OF RICHARD L. WILLIAMS SUBMITTED VIA JOINDERS** via email, to Richard Williams at the following email address: rich1947@bellsouth.net

An employee of Albright, Stoddard, Warnick & Albright

LAW OFFICES
ALBRIGHT, STODDARD, WARNICK & ALBRIGHT
A PROFESSIONAL CORPORATION
QUAIL PARK, SUITE D-4
801 SOUTH RANCHO DRIVE
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EXHIBIT "A"

Richard L. Williams, *Pro Se*
8110 S.W. 78 Street
Miami, FL 33143
786-405-3312
RLWilliams.Law@Gmail.com

DISTRICT COURT
CLARK COUNTY, NEVADA

N5HYG, LLC and **NEVADA 5, INC.**,

Plaintiffs,

vs.

HYGEA HOLDINGS CORP, et al.

Defendants.

_____/

Case No.: A-17-762664-B

Dept. No.: XXVII

JOINDER OF RICHARD L. WILLIAMS IN OPPOSITION TO PLAINTIFFS' CLAIMS

DEFENDANT, RICHARD L. WILLIAMS, appearing *pro se*, joins the motions to dismiss or other opposition of any Defendant to the claims of the Plaintiffs in this cause, including the complaint as initially framed and all subsequent amendments.

Respectfully submitted,

/s/: Richard L. Williams

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I caused to be served a copy of the foregoing on all counsel of record, this 27th day of August, 2018.

/s/: Richard L. Williams

EXHIBIT "B"

MTD

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Miami, FL 33143
786-405-3312
RLWilliams.Law@Gmail.com

DISTRICT COURT
CLARK COUNTY, NEVADA

N5HYG, LLC and NEVADA 5, INC.,

Plaintiffs,

Vs.

HYGEA HOLDINGS CORP, et al.,

Defendants.
_____/

Case No.: A-17-762664-B
Dept. No.: XXVII

MOTION TO DISMISS OF RICHARD L. WILLIAMS

DEFENDANT, Richard L. Williams, appearing pro se, opposes the Plaintiffs' Complaint and adopts, joins and incorporates by reference all filings and submissions in opposition to the Plaintiffs' claim, including specifically but not limited to the Motion to Dismiss on Behalf of Defendant Ray Gonzalez and the Motion for Partial Dismissal of Claims and Parties filed on behalf of Defendants Hygea Holdings Corp, Manuel Iglesias, Edward Moffly, Daniel T. McGowan, Frank Kelly, Martha Mairena Castillo,

Lacy Loar, Glenn Marrichi, Keith Collins, M.D., Jack Mann, M.D., Joseph Campanella, and Carl Rosenkrantz.

Dated: July 12, 2018

Respectfully submitted,

/s/: Richard L. Williams
Pro Se

8110 SW 78 Street
Miami, FL 33178
786-405-3312
RLWilliams.Law@GMail.com

CERTIFICATE OF SERVICE

I CERTIFY that on July 12, 2018, I served a true and correct copy of the foregoing by the Court's electronic service system and separately by e-mail on

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D. Chris Albright, Esq.
Albright Stoddard Warnick & Albright
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Las Vegas, NV 89106

- And -

Patrick J. Reilly, Esq.
Sydney R. Gambee, Esq.
Holland & Hart LLP
9555 Hillwood Drive, 2nd Floor
Las Vegas, NV 89134

- And -

Maria A. Gall, Esq.
Joel F. Tasca, Esq.
Kyle A. Ewing, Esq.
Ballard Spahr
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Law Vegas, NV 89135

/s/: Richard L. Williams

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Steven D. Grierson
CLERK OF THE COURT

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

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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.: XXVII

STIPULATION AND ORDER FOR EXTENSION OF TIME FOR DEFENDANTS' TO RESPOND TO PLAINTIFFS' SECOND AMENDED COMPLAINT

(First Request for Extension)

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

STIPULATION

Plaintiffs N5HYG, LLC and Nevada 5, Inc., and Defendants Hygea Holdings Corp., Manuel Iglesias, and Edward Moffly **STIPULATE AND AGREE** to the following briefing schedule for Defendants' response to the Second Amended Complaint:

1. Defendants shall file and serve their motion to dismiss in response to the Second Amended Complaint on or before January 17, 2020;

2. Plaintiffs shall file and serve their opposition brief on or before March 2, 2020; and

3. Defendants shall file and serve their reply brief on or before March 16, 2020, or 14 days after the opposition brief is filed if filed earlier than March 2, 2020.

4. The Parties will present oral argument on the motion to dismiss on March 25, 2020, or another date approximate to March 25 if the Court is not available on March 25.

This is the first request for an extension of Defendants' deadline to respond to Plaintiffs' Second Amended Complaint. The Parties enter into this Stipulation in good faith, to account for the complexity of this case, to accommodate the schedule of counsel, and not for purposes of delay.

Dated: December 26, 2019

LEWIS ROCA ROTHBERGER CHRISTIE

By: /s/ Ogonna Brown
Ogonna Brown, Esq.
Nevada Bar No. 7589
3993 Howard Hughes Pkwy, Ste 600
Las Vegas, Nevada 89169

Attorneys for Plaintiffs

Dated: December 26, 2019

BALLARD SPAHR LLP

By: _____
Joel E. Tasca, Esq.
Nevada Bar No. 14124
Maria A. Gall, Esq.
Nevada Bar No. 14200
1980 Festival Plaza Drive, Suite 900

Attorneys for Defendants

ORDER

Based on the foregoing Stipulation, IT IS ORDERED as follows:

1. Defendants shall file and serve their motion to dismiss in response to the Second Amended Complaint on or before January 17, 2020;

2. Plaintiffs shall file and serve their opposition brief on or before March 2, 2020; and

3. Defendants shall file and serve their reply brief on or before March 16, 2020, or 14 days after the opposition brief is filed if filed earlier than March 2, 2020.

4. The Court shall hear oral argument on the motion to dismiss on March 25, 2020, at 10:30 a.m, or as soon thereafter as counsel may be heard.

Dated this 6 day of ~~December, 2019~~ Jan. 2020.

Nancy L Allf

THE HONORABLE NANCY L. ALLF
DISTRICT COURT JUDGE

Submitted by:

BALLARD SPAHR LLP

By: _____
Joel E. Tasca, Esq.
Nevada Bar No. 14124
Maria A. Gall, Esq.
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Attorneys for Defendants Hygea Holdings Corp., Manuel Iglesias, and Edward Moffly

DISTRICT COURT

CLARK COUNTY, NEVADA

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

MOTION FOR SUMMARY JUDGMENT ON ORDER SHORTENING TIME

BALLARD SPAHR LLP
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INTRODUCTION, SUMMARY, AND REQUEST FOR ORDER SHORTENING TIME

This Motion for Summary Judgment can be dispensed with promptly. It concerns the Court's Findings of Fact, Conclusions of Law, and Order Granting Defendants' Motion for Reconsideration Re: Claim Preclusion (the "Claim Preclusion Order"), entered on December 3, 2019. The Claim Preclusion Order **DISMISSED WITH PREJUDICE** Plaintiffs' First Amended Complaint ("FAC"). It further provided—in no unclear terms—that "[a]ny second amended complaint filed by [Plaintiff] N5HYG and/or Nevada 5, Inc. must ... be based on a different nucleus of operative facts from that presented in the [First] Amended Complaint." Plaintiffs' Second Amended Complaint ("SAC") violates the unambiguous terms of the Claim Preclusion Order. The SAC is not based on a different nucleus of operative facts from the FAC; rather, it regurgitates the same nucleus of facts, makes the same claims, and asserts the same causes of action as the FAC.

In short, by their SAC, Plaintiffs N5HYG and/or Nevada 5 try to allege for the third time that Defendants Hygea Holdings Corp., Manuel Iglesias, and Edward Moffly defrauded one or both Plaintiffs into purchasing Hygea stock by misrepresenting its financial condition and then subsequently breached the stock purchase agreement by failing to make post-closing monthly payments. The Court dismissed claims based on such allegations in the FAC with prejudice because Plaintiffs tried and/or had the opportunity to bring claims based on these facts in the related Receiver Action but failed to do so.[1] Plaintiffs' attempt to revive the same allegations in the SAC is inappropriate, particularly in the face of the Claim Preclusion Order, which expressly prohibits them from doing so. Accordingly, the Court should grant summary judgment in Defendants' favor on shortened time so that the Court can avoid hearing yet another motion to dismiss on allegations and claims it previously dismissed with prejudice.

[1] The Receiver Action is styled *Arellano, et al. v. Hygea Holdings Corp., et al.*, Case No. 18 OC 00071 1B (First Judicial District Court, Carson City, Nevada).

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Pursuant to the parties' earlier stipulation (which has been submitted but not yet entered as an order), Hygea's response to the SAC by way of motion to dismiss is due January 17, 2020. Hygea asks the Court to hear and decide this Summary Judgment Motion prior to that time, if possible, and if not, to extend the time for Hygea to file its motion to dismiss by 14 days following hearing and decision on this Motion, including because the Court's decision may either obviate the need for any motion to dismiss or significantly narrow its scope. By affixing her signature to this Motion, counsel swears that the statements made in regards to the shortened time request are true and that the request is made in good faith.

Dated: January 9, 2020

BALLARD SPAHR LLP

By: /s/ Maria A. Gall
Joel E. Tasca, Esq.
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Maria A. Gall, Esq.
Nevada Bar No. 14200
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Attorneys for Defendants Hygea Holdings Corp., Manuel Iglesias, and Edward Moffly

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

ORDER SHORTENING TIME

For good cause shown, the Court shortens the time of the hearing on the Motion for Summary Judgment to the 23 day of January, 2020, at 10:00 a.m. a.m./p.m., or as soon thereafter as counsel may be heard. Defendants' motion to dismiss the Second Amended Complaint shall be due 14 days after hearing and decision on the Summary Judgment Motion if it is not entirely resolved in Defendants' favor. Plaintiffs' opposition to the Summary Judgment Motion, if any, shall be filed and served on or before January 15, 2020. Defendants' reply to the Summary Judgment Motion, if any, shall be filed and served on or before January 17, 2020.

Dated this 9 day of January, 2020.

Nancy L Allf

THE HONORABLE NANCY L. ALLF
DISTRICT COURT JUDGE

JD

Submitted by:

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MEMORANDUM OF POINTS AND AUTHORITIES

I. BACKGROUND AND PROCEDURAL HISTORY

This Motion merits a brief explanation of how the parties have arrived at the Claim Preclusion Order and Second Amended Complaint that are the subject of this Motion.

A. The Filing And Removal Of This Action.

On October 5, 2017, Plaintiffs Nevada 5 and N5HYG filed this Action, which arises from N5HYG's purchase of Hygea stock. Nevada 5 is N5HYG's parent company. Plaintiffs alleged a purported fraudulent course of conduct by Defendants in connection with N5HYG's stock purchase. Plaintiffs contended that, during the course of discussions leading up to N5HYG's execution of the stock purchase agreement between it and Hygea, Defendants made two sets of misrepresentations—one as to Hygea's financial performance and the other as to the intention to take Hygea public via a reverse takeover that never occurred. Based on these allegations, Plaintiffs set forth a veritable "kitchen-sink" of claims, not only for breach of contract, but also for twenty more causes of action, including securities fraud, common law fraud, breach of fiduciary duty, and conspiracy. On November 16, 2017, former defendant Ray Gonzalez removed this Action to federal court on the basis that Plaintiffs had pled federal securities law claims. Upon removal and the filing of Defendants' motion to dismiss, the federal court automatically stayed all discovery in this Action under the Private Securities Litigation Reform Act.

B. The Filing And Trial Of The Receiver Action.

On January 26, 2018, while this Action was pending in federal court and discovery stayed, Plaintiff N5HYG filed another state court action against Hygea in which it requested the appointment of a receiver over the company. The parties refer to that case as the Receiver Action. N5HYG argued for the appointment of a receiver based upon, among other things: the supposed misrepresentations of Defendants Hygea, Iglesias, and Moffly in connection with N5HYG's purchase of Hygea stock;

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their alleged breaches of the stock purchase agreement between N5HYG and Hygea, including $175,000 in post-closing monthly payments; and their failure to provide N5HYG with Hygea's books and records. On May 14, 2018, the Receiver Action proceeded to trial. After a week-long trial, the court entered judgment in favor of Hygea and its directors on all claims.

C. Hygea's Claim Preclusion Motion And The Court's Claim Preclusion Order In This Action

On June 6, 2018, the federal court remanded this Action. Defendants subsequently filed a motion to dismiss the FAC based on claim preclusion and failure to state a claim on which relief can be granted. Although the Court dismissed a significant number of Plaintiffs' claims based on their pleading failures, the Court initially denied dismissal based on claim preclusion. On June 17, 2019, Defendants filed a motion for reconsideration, which persuaded the Court that it should vacate its decision with regard to claim preclusion and enter a new decision granting dismissal of the FAC based on claim preclusion.

On December 3, 2019, the Court issued its Claim Preclusion Order, which found that both the Receiver Action and the FAC arose from the same core allegations, namely that N5HYG purchased Hygea stock and memorialized that purchase in a stock purchase agreement; Hygea, through the misconduct of its officers and directors, misrepresented Hygea's value; and Hygea failed to provide contractually obligated audits of Hygea's financial statements and to make monthly post-closing payments. (Claim Preclusion Order ¶ 22 at p. 10:4-17).

Accordingly, the Court dismissed the FAC with prejudice and ordered that:

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

(Claim Preclusion Order ¶ 4 at p. 15:15-17) (emphasis added)). This holding is consistent with the Court's oral pronouncement at the end of the reconsideration

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hearing, where it explained that it was only allowing Plaintiffs leave to replead because "[t]here might be some other causes of action that still exist," and agreeing with defense counsel that "the causes of action that [were] previously pled, those are dismissed, then, under claim preclusion." Transcr. of Proceedings (filed July 22, 2019), pp. 35:25-36:9.

The Court also sets forth what "nucleus of operative facts" means in its Claim Preclusion Order, adopting the approaches taken by the Restatement and the federal courts in the absence of direct Nevada authority.

> 19. As the U.S. Court of Appeals for the Seventh Circuit explained, "[U]nder well-established claim-preclusion doctrine, [] common nucleus of operative facts **means the claims are the same even though they involve different legal theories**." *Matrix IV, Inc. v. Am. Nat'l Bank & Tr. Co.*, 649 F.3d 539, 548 (7th Cir. 2011). Citing to another Seventh Circuit case, the court further explained that "**a 'claim' consists of the underlying factual events** rather than the legal theories advanced." *Id.*
>
> 20. Other federal circuits are in accord. For instance, the Second Circuit, quoting from the Restatement (Second) of Judgments § 24, has held that "[t]o ascertain whether two actions spring from the same 'transaction' or 'claim,' we look to **whether the underlying facts are 'related in time, space, origin, or motivation**, and whether they form a convenient trial unit, and whether their treatment as a unit conforms to the parties' expectations ...." *Waldman v. Vill. of Kiryas Joel*, 207 F.3d 105, 108 (2d Cir. 2000).
>
> 21. The comments and illustrations to the Restatement also explain that "[t]hough no single factor is determinative, the relevance of trial convenience makes it appropriate to ask how far the witnesses or proofs in the second action would tend to overlap the witnesses or proofs relevant to the first. If there is a substantial overlap, the second action should ordinarily be held precluded. But the opposite does not hold true; **even when there is not a substantial overlap, the second action may be precluded if it stems from the same transaction or series.**" Restat 2d of Judgments, § 24.

(Claim Preclusion Order ¶¶ 19-21 at pp. 9:10-10:3 (emphasis added)).

Despite this, Plaintiffs filed their SAC that parrots in form and substance the allegations and claims made in the FAC (and in the Receiver Action.)

///

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II. LEGAL ARGUMENT

A. Nevada 5 Impermissibly Tries To Bring Claims Based On The Same Allegations Of Fraud And Misrepresentation In The FAC.

Despite the Court's clearly worded Claim Preclusion Order, Plaintiff Nevada 5 tries to assert the below fraud-based causes of action, all of which stem from allegations that Defendants misrepresented the Company's financial condition to Plaintiffs' agent, RIN Capital, LLC, in the lead-up to the Hygea stock purchase (*see* SAC ¶¶ 28-38 at pp. 4:14-10:5). These are the exact same allegations and claims made in the DISMISSED WITH PREJUDICE First Amended Complaint and that were or could have been made in the Receiver Action.

- Florida Statutory Securities Fraud
- Control Person Liability under the Florida Securities Act
- Michigan Statutory Securities Fraud
- Control Person Liability under the Michigan Securities Act
- Common Law Fraud
- Negligent Misrepresentation
- Silent Fraud/Material Omissions
- Civil Conspiracy
- Concert of Action

Hygea anticipates that Plaintiffs will argue that Nevada 5 was not a party to the Receiver Action and is thus permitted to bring the above claims, even if based on the same nucleus of facts in the FAC and/or the Receiver Action. (*See* SAC ¶¶ 19-23 at p. 3:10-25). But Plaintiffs made this same argument in their brief advocating for the entry of their competing claim preclusion order, which this Court rejected. (Plaintiffs' Brief In Opposition To Defendants' Proposed Order (filed Aug. 19, 2019), pp. 1:14:17; 1:23-4:17). In fact, the Court decided the issue when it entered Hygea's proposed Claim Preclusion Order, holding that "[a]ny second amended complaint filed by N5HYG and/or Nevada 5, must ... be based on a different nucleus of

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operative facts from that presented in the Amended Complaint." (Claim Preclusion Order ¶ 4 at p. 15:15-17) (emphasis added)). Plaintiffs' effort to include the same allegations and claims as they did in the FAC is in direct violation of that holding and an impermissible attempt to seek reconsideration of the Court's Claim Preclusion Order.

B. N5HYG Impermissibly Tries To Bring Claims Based on The Same Allegations of Breach of Contract In The FAC.

In the meantime, Plaintiff N5HYG tries to assert a claim for breach of contract based on Hygea's alleged failure to pay $175,000 in post-closing monthly payments starting in August 2017. (SAC ¶ 26 at p. 4:4-8 & ¶ 132 at p. 23:17-20). N5HYG, however, brought a breach of contract claim based on the post-closing monthly payments in the FAC, complaining that "[b]eginning in or around August, 2017, Defendants ceased making the $175,000 Post-Closing Monthly Payments to Plaintiff N5HYG, and interest thereon, requires under Section 6.3 of the Stock Purchase Agreement." (FAC ¶ 76(a) at p. 16:6-8; *see also* FAC ¶ 142 at p. 25:12-23 (stating as part of the Tenth Cause of Action for breach of contract: "they have failed to make the $175,000 Post-Closing Monthly Payments to Plaintiff N5HYG, and interest thereon (which payments and interest were personally guaranteed by Iglesias and Moffly)). N5HYG's effort to include the same allegations and claims in the SAC violates the Claim Preclusion Order.

Hygea anticipates that Plaintiffs will argue that the alleged failure to pay the post-closing payments is a continuing violation, falling outside claim preclusion resulting from the Receiver Action. (*See* SAC ¶ 26 at p. 4:4-8). Although Nevada has yet to squarely address the issue, other jurisdictions hold that the continuing violation theory "applies to avoid claims that would otherwise be barred by the statute of limitations; it does not permit a plaintiff to avoid the application of res judicata." *Carlson v. Ameriprise Fin.*, No. 08-5303 (MJD/JJK), 2009 U.S. Dist. LEXIS 132440, at *31 (D. Minn. May 21, 2009).

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C. N5HYG Impermissibly Tries To Bring A Books And Records Claim That It Tried And/Or Could Have Raised In the Receiver Action.

N5HYG also tried to bring a books and records claim based on Hygea's bylaws. Although N5HYG did not specifically make this claim in the FAC, it raised the claim at several points in the Receiver Action.

For instance, N5HYG sought books and records relief through its proposed receivership order submitted to the First Judicial District Court on May 4, 2018:

> The Receiver shall have the following powers:
>
> ...
>
> To access all of Hygea's books, records, documents, and other materials, including all financial records (the "Materials"), and to make the Materials available to the Court and to the shareholders.

(Ex. A, N5HYG's Proposed Receiver Order, p. 2:18-20). N5HYG's counsel—the same pro hac vice counsel here—also complained about how Hygea violated its charter by refusing to provide N5HYG the corporation's books and records in his opening trial statement:

> MR. KAYE: The bylaws provide for access to corporate records. Any stockholder shall have the right to inspect the corporation's stock ledger—we're going to hear about the stock ledger—a list of stockholders, and other books and records.

(Ex. B, Excerpts from Receiver Action Trial Transcript, p. 26:11-15.)

Having raised and sought relief on N5HYG's books and records allegations in the Receiver Action, N5HYG is precluded from raising them in this Action under the claim preclusion principle that prohibits it from bringing in a second case the "same claims or any part of them that were or could have been brought in the first case." *Weddell v. Sharp*, 350 P.3d 80, 82 (Nev. 2015). (*See also* Claim Preclusion Order, ¶ 18 at p. 8:24-26 (citing to this portion of *Weddell*)).

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CONCLUSION

For the foregoing reasons, Hygea asks that the Court grant summary judgment in its favor, dismissing all claims with prejudice and without leave to replead.

Dated: January 9, 2020

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EXHIBIT A

EXHIBIT A

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IN THE FIRST JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

IN AND FOR CARSON CITY

CLAUDIO ARELLANO; CROWN EQUITY'S LLC; FIFTH AVENUE 2254 LLC; HALEVI ENTERPRISES LLC; HALEVI SV 1 LLC; HALEVI SV 2 LLC; HILLCREST ACQUISITIONS LLC; HILLCREST CENTER SV I LLC; HILLCREST CENTER SV II LLC; HILLCREST CENTER SV III LLC; IBH CAPITAL LLC; LEONITE CAPITAL LLC; N5HYG LLC; and RYMSSG GROUP, LLC, Plaintiffs, v. HYGEA HOLDINGS CORP.; MANUEL	Case No.: 18 OC 00071 1B Dept. No.: II **[PROPOSED] ORDER APPOINTING RECEIVER**

HOLLEY·DRIGGS·WALCH
FINE·WRAY·PUZEY·THOMPSON

IGLESIAS, an individual; EDWARD MOFFLY, an individual; DANIEL T. MCGOWAN, an individual; FRANK KELLY; MARTHA MAIRENA CASTILLO, an individual; GLENN MARRICHI, M.D., an individual; KEITH COLLINS, M.D., an individual; JACK MANN, M.D., an individual; and JOSEPH CAMPANELLA, an individual,

Defendants.

The Court, being duly advised on the premises, hereby orders as follows:

1) The Court appoints Fredrick Waid (the "Receiver") as receiver of Hygea Holdings Corp. ("Hygea").

2) The Receiver shall have the following powers:

a) To oversee Hygea in place of Hygea's board of directors (the "Board") and to do all things that Hygea's Board is authorized to do in the absence of a receiver. Although the Board may remain in place, its position shall be inferior to that of the Receiver, whose authority shall prevail over the Board's.

b) To manage Hygea in the place of its officers; to do all things that Hygea's officers are authorized to do in the absence of a receiver; and to direct the officers as their superior.

c) To have and exercise custody, authority, and control over Hygea's personal property, including its cash and its financial accounts.

d) To access all of Hygea's books, records, documents, and other materials, including all financial records (the "Materials"), and to make the Materials available to the Court and to the shareholders. While the Receiver may take appropriate measures to preserve the confidentiality of sensitive information, including making the submission of reports to the Court under seal, such measures shall not interfere with the availability of the Materials to any shareholder.

e) To oversee, conduct, review, and verify audits for all periods of time from 2014 to the present, inclusive, so that there is a seamless period of time as to which audits have been conducted from the last audit in 2013 through the present and going forward. This authority shall entail the authority to hire auditors, including forensic auditors, on behalf of Hygea.

f) To otherwise investigate the past and current affairs of Hygea.

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g) To investigate the actual or potential diversion of assets from Hygea; to take action against or otherwise with respect to any third party (including any subsidiary or entity affiliated with any current or former Hygea officer or board member) that has potentially or actually received such assets; and to seek and receive information regarding all funds related to the operation of Hygea.

h) To exercise any rights or powers that Hygea has with respect to any other corporate entity or partnership, including any wholly-owned subsidiary.

i) To buy or sell property on Hygea's behalf, or to pledge an encumbrance on the same.

j) To collect receivables and pay payables.

k) To otherwise operate Hygea's business.

l) To maintain Hygea's corporate formalities and filings.

m) To have Hygea pay its taxes.

n) To retain professionals on Hygea's behalf.

o) To establish and maintain internal controls.

p) To do all things consistent with or necessary in order to accomplish the foregoing.

q) To use Hygea's assets for the purposes of exercising the foregoing powers.

3) The Receiver shall serve without bond, and no party or person is required to post a bond in relation to the Receiver's appointment or service.

4) The Receiver shall be entitled to compensation from Hygea in the amount of _____ per hour.

5) The Receiver shall provide a report to the Court of his activities and Hygea's status on the tenth day of each calendar quarter, unless such day falls on a Saturday, Sunday, or holiday, in which case the report shall be submitted on the next business day. The Receiver shall also provide the report to any shareholder upon request. The report shall indicate the amount of compensation paid to the Receiver during the preceding quarter at issue.

6) If at any time the Receiver is unable or unwilling to continue to serve, the Court shall appoint a replacement to serve in his place pursuant to the terms and conditions of this Order.

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7) To otherwise take all actions the Receiver deems necessary upon investigation of Hygea's operations to address and remedy any issues impairing or impeding operations of Hygea.

ENTERED this ____ day of MAY, 2018.

DISTRICT COURT JUDGE

Submitted by:

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HDW | HOLLEY·DRIGGS·WALCH | FINE·WRAY·PUZEY·THOMPSON

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EXHIBIT B

EXHIBIT B

FIRST JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
IN AND FOR CARSON CITY

CLAUDIO ARELLANO; CROWN EQUITIES LLC; FIFTH AVENUE 2254 LLC; HALEVI ENTERPRISES LLC; HALEVI SV I LLC, et al,

Plaintiffs,

-vs- Case No. 18 OC 00071 1B

HYGEA HOLDINGS CORP,

Defendant.

_____/

TRIAL TRANSCRIPT

VOLUME I

PAGES 1 - 280

DATE: Monday, May 14, 2018

TIME: 9:00 a.m.

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

REPORTER: Daren Bloxham RPR/CSR-685

FIRST JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

IN AND FOR CARSON CITY

CLAUDIO ARELLANO; CROWN EQUITIES LLC; FIFTH AVENUE 2254 LLC; HALEVI ENTERPRISES LLC; HALEVI SV I LLC, et al,

Plaintiffs,

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HYGEA HOLDINGS CORP,

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TRIAL TRANSCRIPT

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The company with allegedly $60 million in EBITDA should be better than break even on a cash basis. That's just common sense. If you're making $60 million a year, you're not living paycheck to paycheck.

The corporation has willfully violated its charter. Well, here we do have indicia that the corporation has -- corporation's leadership has violated its bylaws, one of the other governing documents.

The bylaws provide for access to corporate records. Any stockholder shall have the right to inspect the corporation's stock ledger -- we're going to hear about the stock ledger -- a list of stockholders, and other books and records.

One of the problems that has plagued Hygea and that we'll talk about is inability to get even basic rudimentary information and transparency about the corporation.

The corporation is insolvent or, although not insolvent, is for any cause not able to pay its debts or other obligations as they mature. Now, that second part there is important because it helps us to avoid having to get into a very technical discussion of solvency, technically insolvent, and what is the

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criteria, definition for that. Because there is pervasive evidence that the corporation failed to pay bills.

September 15, 2017, Bridging Finance, this is the primary lender for the corporation, we'll hear some numbers about how much Hygea owes them, very roughly speaking.

And there's a little give in the numbers because there's a -- the numbers seem to change sometimes, and also because it's a Canadian -- Canadian lender, so you have exchange rate, but about in the $60 million range.

Payments have not been made in July of 2017 and August of 2017. To put that in personal terms or family's terms, they were missing mortgage payments to their primary lender here.

Moreover, Hygea's top executives have admitted to very significant mispayments. This is from a declaration that Mr. Iglesias, Manuel Iglesias, the corporation's apparently former CEO, and we'll talk about his role in the corporation as well, but apparently former CEO made when he was CEO to the Court at the outset of this case.

Hygea has acknowledged that it continues to owe back payroll taxes for the fourth quarter of 2017

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and is incurring payroll tax liabilities for 2018. Not only were they not paying their primary lender, this shows they weren't paying their taxes.

They also admit again from the same declaration that leadership was not paying its top executives, including Mr. Miller, again, who we'll hear from.

And we're also going to hear from Dr. Norman Gaylis, who is also somewhat uniquely situated within Hygea because he's both a prominent practitioner within the Hygea network of doctors, and also was the chief medical officer for Hygea.

And this is an email that he received from a fellow doctor -- from a fellow participant in the Hygea network that purports that the most disturbing issue was when two of the employees in the office had their recent checks bounce, bounced paychecks. That's what that email indicated was the most disturbing thing.

But the Court may find that there's other things that are even more disturbing that Dr. Gaylis can talk about, because Dr. Gaylis had the very troubling experience of having Hygea fail to pay for the medication that he was providing to his -- to his patients, such that he had to cancel patient care.

The corporation is unable to conduct the

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business or conserve its assets by reasons of the neglect -- the act, neglect, or refusal to function of any of the directors or trustees, or the assets of the corporation are in danger of waste, sacrifice, or loss through attachment, foreclosure, litigation or otherwise.

Once again, it's a network of medical practitioners. If they aren't getting paid or if they're not having their medicine paid for, if their employees are not getting paid, there is a prima facia risk that they walk away. And that poses an existential risk to the corporation. If the status quo continues, it can simply unravel. And that's what we seek to prevent.

The corporation is not about to resume its business with safety to the public. Safety to the public is significant here. We already talked about how Dr. Gaylis will testify to having to cancel patient care.

How many patients are there? This is, again, from an executive declaration. Hygea currently manages over 100,000 members and patients. Over 100,000 individuals whose medical care is at risk and at risk of instability if the corporation unravels, as it will if the Court does not act we believe will be the

suspect that our -- I'm just spit balling it. I suspect that our exam for Mr. Dragelin will probably be two and a half to three hour range, although that's -- that's so unscientific. I don't know how long they would anticipate seeking to cross-examine him with. That's why to me it's almost right there in that range where --

THE COURT: Pretty close.

MR. KAYE: -- we're looking to maybe finish somewhere in the 4:00 hour.

THE COURT: Do you have any deposition testimony you're going to present?

MS. GALL: I do not.

THE COURT: If we did end early and you didn't make arrangements tonight, how much time is it going to take -- would it be possible to get somebody here if you did need to call a witness like at 4:00?

MS. GALL: I would -- I have my first witness here, Your Honor.

THE COURT: He already is here?

MS. GALL: He already is here.

THE COURT: All right.

MS. GALL: I will be prepared to go. I was merely wondering if I would be going.

THE COURT: Who knows.

MR. KAYE: Yeah. My apologies that I couldn't give a better answer. I suspect it's right there in that --

MS. GALL: Understood.

MR. KAYE: -- in that hour.

THE COURT: Okay.

MS. GALL: In that regard, can we get timings from the Court?

THE COURT: You can.

COURT CLERK: So plaintiffs are at 7 hours, 48 minutes, and 16 seconds.

THE COURT: Left?

COURT CLERK: Remaining.

MR. KAYE: What was that again?

COURT CLERK: 7 hours, 48 minutes, and 16 seconds. And then defendants are at 10 hours, 43 minutes, and 16 seconds.

THE COURT: That's pretty exact.

COURT CLERK: Give or take.

THE COURT: All right. We will be adjourned. Thank you.

MR. KAYE: Thank you.

MS. GALL: Thank you.

(The proceedings concluded at 4:55 p.m.)

C E R T I F I C A T E

STATE OF NEVADA)
COUNTY OF CLARK)

I, Daren S. Bloxham, a Certified Shorthand Reporter and Registered Professional Reporter, do hereby certify: That I reported the proceedings commencing on the 14th of May, 2018.

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

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

Witness my signature at Las Vegas, Nevada, on this 15th day of May, 2018.

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

Electronically Filed
1/17/2020 12:00 PM
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CLERK OF THE COURT

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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

STIPULATION AND ORDER FOR EXTENSION OF TIME FOR PLAINTIFFS TO RESPOND TO DEFENDANTS' MOTION FOR SUMMARY JUDGMENT ON ORDER SHORTENING TIME

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	**Case No. 83157**

APPENDIX TO ANSWER OF REAL PARTIES IN INTEREST VOLUME 1, PART 2

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

STIPULATION

Plaintiffs N5HYG, LLC and Nevada 5, Inc. ("Plaintiffs"), and Defendants Hygea Holdings Corp. Manuel Iglesias, and Edward Moffly ("Defendants"), **STIPULATE AND AGREE** to the following briefing schedule for Plaintiffs' response to the Defendants' Motion for Summary Judgment on Order Shortening Time ("Motion"):

1. The deadline for the Plaintiffs to file and serve their Opposition to the Motion is hereby extended from January 15, 2020, pursuant to the Order Shortening Time entered by this Court on January 13, 2020, to January 21, 2020;

2. The deadline for the Defendants to file and serve their reply brief is hereby extended from January 17, 2020, pursuant to the Order Shortening Time entered by this Court on January 13, 2020, to January 27, 2020; and

3. The Motion Hearing currently scheduled for January 23, 2020 at 10:00 a.m. shall be continued to January 30, 2020, or another date approximate to January 30, 2020, at the Court's convenience in the event this Court is not available on January 30, 2020.

4. Plaintiffs are not waiving any arguments regarding the propriety of abridging the opposition deadline, which is 14 days.

Dated: January 13, 2020

LEWIS ROCA ROTHBERGER CHRISTIE LLP

By: _____
Ogonna Brown, Esq.
Nevada Bar No. 7589
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Dated: January 13, 2020

BALLARD SPAHR LLP

By: _____
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1Ans.App.177

STIPULATION

Plaintiffs N5HYG, LLC and Nevada 5, Inc. ("Plaintiffs"), and Defendants Hygea Holdings Corp. Manuel Iglesias, and Edward Moffly ("Defendants"), **STIPULATE AND AGREE** to the following briefing schedule for Plaintiffs' response to the Defendants' Motion for Summary Judgment on Order Shortening Time ("Motion"):

1. The deadline for the Plaintiffs to file and serve their Opposition to the Motion is hereby extended from January 15, 2020, pursuant to the Order Shortening Time entered by this Court on January 13, 2020, to January 21, 2020;

2. The deadline for the Defendants to file and serve their reply brief is hereby extended from January 17, 2020, pursuant to the Order Shortening Time entered by this Court on January 13, 2020, to January 27, 2020; and

3. The Motion Hearing currently scheduled for January 23, 2020 at 10:00 a.m. shall be continued to January 30, 2020, or another date approximate to January 30, 2020, at the Court's convenience in the event this Court is not available on January 30, 2020.

4. Plaintiffs are not waiving any arguments regarding the propriety of abridging the opposition deadline, which is 14 days.

Dated: January 13, 2020

LEWIS ROCA ROTHBERGER CHRISTIE LLP

By: [signature] NVBN 14549
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1Ans.App.178

ORDER

Based on the foregoing Stipulation, IT IS ORDERED as follows:

1. The deadline for the Plaintiffs to file and serve their Opposition to the Motion is hereby extended from January 15, 2020 to January 21, 2020;

2. The deadline for the Defendants to file and serve their reply brief is hereby extended from January 17, 2020 to January 27, 2020; and

3. The Court shall hear oral argument on the January 30, 2020 at 10:00 a.m, or as soon thereafter as counsel may be heard.

IT IS SO ORDERED.

Dated this 15 day of January, 2020.

Nancy L. Allf

THE HONORABLE NANCY L. ALLF
DISTRICT COURT JUDGE

Submitted by:

LEWIS ROCA ROTHGERBER CHRISTIE

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DISTRICT COURT
CLARK COUNTY, NEVADA

N5HYG, LLC, a Michigan limited liability company; and, in the event the Court grants the pending Motion for Reconsideration, NEVADA 5, INC., a Nevada corporation, Plaintiffs, vs. HYGEA HOLDINGS CORP., a Nevada corporation; MANUEL IGLESIAS; EDWARD MOFFLY; and ROES I-XXX, inclusive, Defendants.	CASE NO.: A-17-762664-B DEPT. NO.: 27 **PLAINTIFFS' OPPOSITION TO DEFENDANTS' MOTION FOR SUMMARY DISPOSITION ON ORDER SHORTENING TIME**

Plaintiffs N5HYG, LLC and Nevada 5, Inc. ("Plaintiffs"), by and through their undersigned counsel, hereby bring Plaintiffs' Opposition to Defendants' Motion for Summary Disposition on Order Shortening Time ("Opposition"). This Opposition is supported by the declaration of

Declaration of Ogonna M. Brown, Esq., 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 Summary Judgment ("Motion").

MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

Defendants' Motion is procedurally improper and substantively wrong. It is untimely; it demands urgent consideration for apparently improper reasons; and it seeks a subsequent opportunity to file *another* untimely motion to dismiss. In addition, it is not properly subject to an Order Shortening Time: the Nevada Supreme Court has explicitly held that expedited briefing of summary judgment motions is expressly prohibited. This alone precludes the Court from granting the Motion, which was initially scheduled on shortened time with *just two (2) days' notice*, and even after the meager extension Defendants agreed to, still provided Plaintiff less time to respond than the rules provide, and far less time than the stipulated order dated January 6, 2020 provided. All of this reflects, at a minimum, one more effort to needlessly delay this already-old case.

The Motion is also substantively wrong. As the Second Amended Complaint expressly sets forth, the Court granted Plaintiff Nevada 5 leave to plead a fraud claim; this conclusively forecloses Defendants' argument that Nevada 5 is barred from bringing such a claim. And the Court granted Plaintiff N5HYG leave to file the Second Amended Complaint, which means that Plaintiffs must have *some* claims that are not barred by claim preclusion—most notably those which had not accrued during the period of preclusion. Yet Defendants' Motion disregards this entirely, leaving no room for any such claims. Instead, Defendants' Motion implies that any shareholder who seeks appointment of a receiver over a mismanaged corporation effectively abandons all of its shareholder rights. Under Defendants' theory, *any* claim by Plaintiffs is barred by the receivership action, which would mean that the shareholders who petitioned in that case essentially wagered their shares in doing so. Defendants offer no authority for this radical proposition, because it is incorrect. Accordingly, the Court should deny Defendants' Motion and permit this case to finally proceed beyond the pleadings stage and on to the merits.

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II. FACTUAL BACKGROUND AND PROCEDURAL HISTORY

Defendants tricked Plaintiff Nevada 5 into giving them $30 million. And there is no question that they violated their contract with Plaintiff N5HYG. But they have managed to keep this meritorious case from moving beyond the pleadings for over two years. It is time for this Court to put an end to their stalling and allow this case to go forward.

Defendant Hygea Holdings Corp. ("Hygea") is a Nevada corporation which purports to acquire and manage medical practices. ¶ 2.[1] Manuel Iglesias ("Iglesias") is its founder and former CEO, and Edward Moffly ("Moffly") was the CFO. ¶¶ 3-6.

Plaintiff Nevada 5, Inc. ("Nevada 5") is a Nevada Corporation. ¶ 9. In 2016, its agents were approached about the possibility of an investment in Hygea. ¶ 28. Defendants made two interlocking sets of misrepresentations: Hygea's supposedly-robust financial performance, and the claim that, after Nevada 5's investment, Hygea would be listed on a public stock exchange. In fact, the financial performance was dismal, and Defendants must have known that Hygea was in no shape for listing on a public exchange. ¶ 30.

The SAC details many of the misrepresentations at Paragraph 36. It summarizes them at Paragraph 37, rounded to the nearest $100,000:

- For 2014, between $3.7 and $4.5 million in EBITDA[2] based on revenue between $52.4 and $52.9 million. ¶ 37(a).
- For 2015, between $20 and $28 million in EBITDA based on revenue between $185 and $246 million. ¶ 37(b).
- For 2016, EBITDA between $46.5 and $65 million, with additional specifications that it was "at least: $56.9 million; that $54 million was the "low" amount; and that $57.5 million was "expected." ¶ 37(c).

Relying on the misrepresentations, Nevada 5 wired $30 million to Hygea. ¶ 39.[3]

[1] As used throughout, "¶" refers to a paragraph in Plaintiffs' Second Amended Complaint (the "SAC").

[2] "EBITDA" means "earnings before interest, taxes, depreciation, and amortization." ¶ 36(a). It "is an accounting metric that gauges a company's overall financial performance and is particularly useful for determining how much cash a company generates before servicing its debts." SAC fn.1. "By excluding variables such as taxes and interest, which can vary by company, it can be a useful metric of a business's 'all else being equal' performance and is therefore frequently emphasized in business valuation." *Id.*

[3] Defendants' Motion ignores the fact that Nevada 5 paid the money to Hygea.

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Nevada 5 also formed a Michigan entity called N5HYG, LLC ("N5HYG"). ¶¶ 10, 40. N5HYG executed a Stock Purchase Agreement (the "SPA") with Defendants under which N5HYG became a stockholder owning an 8.57 percent interest in Hygea. ¶¶ 40-41. Section 6.3 of the SPA requires Defendants to make "Post-Closing Monthly Payments" to N5HYG in the amount of $175,000 (plus applicable interest) on the first day of each calendar month, beginning January 1, 2017 and continuing until Hygea either "went public" through the issuance of shares on a public stock exchange or N5HYG was no longer a shareholder. ¶ 56. Defendants Iglesias and Moffly personally guaranteed these payments. ¶ 55. And "Article VII, Section 1 of Hygea's bylaws provides N5HYG an opportunity to inspect Hygea's stock ledger, a list of its stockholders, and its other books and records upon written demand." ¶ 155.

After Nevada 5 wired the $30 million, its representative "learned that Defendants had begun to backtrack on their prior representations." ¶ 50. They "purport[ed] to disclose a 'corrected' EBITDA figure for 2016, which was far less than that Defendants previously claimed." *Id.* Even this "corrected" figure was untrue: "one outside consultant, having reviewed Hygea's financials, reported … that Defendants were still misrepresenting Hygea's true financial picture," and the corporation's "actual revenue was closer to $90 million than the $300 million figure that Defendants' $50-$60 million EBITDA representations were based upon." *Id.* "Therefore, it would be virtually impossible for its EBITDA to reach $50 or $60 million in EBITDA." *Id.*

Further, for 2014, the supportable revenue number was roughly $32 million, or $17 million according to the more restrictive International Financial Reporting Standards, or "IFRS." ¶ 51. For 2015, the supportable revenue figure was $92 million, or $73 million under IFRS. *Id.* And, again, these were revenue figures, not EBITDA, which is inherently lower than revenue. *Id.*

Thus, the independent outside consultant exposed Defendants' financial representations to be untrue:

Defendants' Representations		Est. Actual	Difference
Revenue[4]	EBITDA	Revenue	Rev. over-statement

[4] All figures in millions.

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2014[5]	$52.4-52.9	$3.7-4.5	$17-32	$35.4-20.9
2015[6]	$185-246	$20-28	$73-92	$112-154
2016[7]	$300	$46-65	$90	$210

Defendants knew at the time of their representations that they were false. For example, they knew that the EBITDA figures they represented to Nevada 5 were based upon an assumed additional $130 million influx that had not materialized, and never did materialize. ¶ 53.

Moreover, "beginning in or around August 1, 2017, Defendants ceased making the mandatory Post-Closing Monthly Payments to N5HYG." ¶ 58. And when N5HYG made written demands on Hygea for books and records on April 17, 2018 and February 19, 2019, Defendants denied them access. ¶¶ 156-158.

On October 5, 2017, Plaintiffs were compelled to file the above-captioned action. Defendants immediately began to impede the proceedings. Off the bat, they improperly removed the case to Federal Court. Their theories were specious: they first claimed that the case should be removed because the Complaint raised a "federal question" through its claims under the Securities Act of 1933. When Plaintiffs pointed out that this statute had an express non-removal provision, Defendants raised a new, untimely theory: that the Complaint had "artfully pled" a claim under the Exchange Act of 1934. This argument was untimely *and* substantively baseless: not only is the "artful pleading" doctrine a narrow exception to the general rule that the plaintiff is the master of the complaint, but the United States Supreme Court has expressly rejected the argument that a case can be removed due to "artful pleading" of a claim under the Exchange Act of 1934. *See Merrill Lynch, Pierce, Fenner & Smith Inc. v. Manning*, 136 S. Ct. 1562, 1568-69 (2016).

In the meantime, Hygea's condition continued to worsen. With Defendants having improperly mired this case in Federal Court, on January 30, 2018, Plaintiff N5HYG joined thirteen other shareholders,[8] to seek a receivership primarily under the specialized statutory procedure of NRS

[5] Sources: Defendants' Representations, ¶ 37(a); Est. Actual, ¶ 51.
[6] Sources: Defendants' Representations, ¶ 37(b); Est. Actual, ¶ 51.
[7] Sources: Defendants' Representations, ¶ 50 (revenue basis for EBITDA claim) and ¶ 37(c) (EBITDA); Est. Actual, ¶ 50.
[8] Defendants' Motion ignores the fact that N5HYG was one of fourteen petitioners in the Receivership Action, and misleadingly claims that "N5HYG filed another state court action" without mentioning the other petitioners. Defs' Mot. at 5.

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78.650 (the "Receivership Action"). As Plaintiffs have previously explained, that case was narrowly tailored and did not address the issues in this case except in the most general way. In fact, as discussed below, Defendants consistently insisted that the cases were separate and asked the Receivership Court to respect the distinction between them. And Nevada 5 was *not* a part of the Receivership Action. Indeed, it could not have been, since it did not own any Hygea shares at all. At bottom, the only matter at issue in the Receivership Action was whether Hygea's management and financial position in May 2018 warranted the appointment of a receiver—not whether Nevada 5 had been defrauded out of $30 million in October 2016, and not whether Defendants were liable for committing post-Receiver Action breaches of N5HYG's rights under the SPA.

On Defendants' motion, this Court transferred the Receivership Action to Carson City. The Carson City Court found—as the Defendants argued all along—that it lacked jurisdiction over the Receivership case. The Court ruled there was insufficient evidence that the plaintiffs combined held more than ten percent of Hygea's stock, as the statute requires in order for the Court to have jurisdiction. It nonetheless observed, in dicta, that, while the Court lacked good cause to appoint a receiver in light of recent executive changes, the company had suffered mismanagement and its executives had misstated its financials. A true and correct copy of the cited excerpts of the Amended Findings of Fact and Conclusions of Law is attached to the Brown Decl. as **Exhibit "1"** at 5:22-23, 19:14-24.

Finally, in June 2018, the Federal Court remanded this case and awarded Plaintiffs' attorneys feesfor improper removal, but not before Defendants had successfully – and wrongfully – delayed the case for about six months. On July 13, 2018, Plaintiffs filed a First Amended Complaint. (First Am. Compl. and Jury Demand.) Beginning on August 17, 2018, Defendants filed nearly 100 pages of briefing asking to dismiss the case. (Mot. to Dismiss the First Am. Compl. and to Strike Supp'l Pleadings and Jury Demand; Reply) They argued, among other things, that Plaintiffs were precluded from bringing their damages claims because, as pled, they concerned the same "nucleus of operative facts" as the Receivership Action. They also argued that Nevada 5 lacked standing to bring any fraud claims because it was N5HYG, and not Nevada 5, that acquired the Hygea stock.

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On October 3, 2018, this Court heard argument on the Motion to Dismiss. On December 14, 2018, the Court issued a minute order granting the motion in part and denying it in part. The minute order was silent on the claim preclusion issue. This implied that the Court had rejected Defendants' claim preclusion theory – by allowing certain claims to proceed, it had implicitly found that the claims were not precluded. The Court also granted Defendants' Motion with respect to Nevada 5, and dismissed it with prejudice.

On June 3, 2019, Defendants filed a Motion for Reconsideration and Clarification of Order on Defendant's Motion to Dismiss Based on Claim Preclusion and, Alternatively, Motion to Stay. They claimed that the Court had failed to address their claim preclusion argument. Of course, the Court *had* addressed it by implication. Defendants' Motion was thus much more in the nature of a motion for reconsideration. On June 3, 2019, Plaintiffs filed a Motion for Reconsideration Regarding the Dismissal of Nevada 5, Inc. It argued that Nevada 5 could plead all the elements of its fraud claims for itself and was not seeking to assert them on behalf of its subsidiary N5HYG.

On July 17, 2019, the Court heard argument on these two motions and indicated that it was granting both of them. In doing so, the Court expressly granted Plaintiffs leave to file a Second Amended Complaint, and the Court made clear on the record that it anticipated an amended complaint pertaining to the fraud at issue here: "…it does seem that the [Nevada 5] dismissal should be without prejudice, but you have to be more specific if you replead. You have to differentiate the standing between the different entities. You have to have better allegations supporting fraud. And you have to remember the legal standards between parents and subsidiaries." See Brown Decl. at **Exhibit** "**2"**; *see also* ¶ 13. Thus, the Court's instructions contemplated that Nevada 5 could establish standing and that its fraud claims, as a matter of course, were not precluded.

On December 3, 2019, the Court entered an Order Granting Defendants' Motion for Reconsideration Re: Claim Preclusion (the "Claim Preclusion Order"). The Claim Preclusion Order dismissed Plaintiffs' First Amended Complaint based on Defendants' argument that N5HYG's participation in the receivership action precluded the claims made therein. But the Court also entered an Order Granting Plaintiffs' Motion for Reconsideration Re: Nevada 5, Inc. (the "Nevada 5 Order")

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on the same day as the Claim Preclusion Order, which expressly permitted Nevada 5 to replead its claims.

Plaintiffs did so on December 13, 2019. Their SAC is entirely consistent with the Court's orders. The Order found that the First Amended Complaint failed to state a fraud claim on behalf of Nevada 5; that N5HYG's claims, as stated, were precluded; and that both Plaintiffs may replead. Meanwhile, the Nevada 5 Order expressly permits Nevada 5 to plead its claims, and the Court's instructions on the record explicitly contemplated a repleading of Nevada 5's fraud claim. Accordingly, the SAC removes *any* fraud claim by N5HYG. Instead, it includes fraud claims *only* by Nevada 5, which was *not* a party to the Receivership Action, and which the Court *expressly authorized* to bring a fraud claim. And the SAC states a very strong *prima facie* case. As detailed above, Defendants knowingly and massively overstated Hygea's performance to Nevada 5, which relied on the misrepresentations and wired $30 million to Hygea.

The SAC also includes claims by N5HYG which are unaffected by the Claim Preclusion Order: breach of contract, and a shareholder claim for books and records. Defendants do not dispute that they stopped making the payments to N5HYG required by the SPA between Hygea and N5HYG, or that Hygea refused to provide N5HYG access to its books and records. Indeed, many of the missed payments, and one of the books-and-records requests, *took place after the Receivership Action.*

On December 17, 2019, Defendants reached out to Plaintiffs. They indicated that they intended to file *another* motion to dismiss and noted that it would be due on December 27, 2019. Citing the time crunch presented by the holidays, and the departure of one of their attorneys for another firm, they asked for an extension of time to respond to the SAC. Despite the severe delay that this case has already suffered, Plaintiffs were willing to accommodate Defendants out of a sense of professional courtesy. The parties stipulated to the following schedule:

1. Defendants shall file and serve their motion to dismiss in response to the Second Amended Complaint on or before January 17, 2020;
2. Plaintiffs shall file and serve their opposition brief on or before March 2, 2020; and
3. Defendants shall file and serve their reply brief on or before March 16, 2020 or 14 days after the opposition brief is filed if filed earlier than March 2, 2020.

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4. The Parties will present oral argument on the motion to dismiss on March 25, 2020, or another date approximate to March 25 if the Court is not available on March 25.

Stip. and Ord. for Extension of Time for Defs to Respond to Pls' Second Am. Compl. ("Stipulation") at 2.

But no good deed goes unpunished. On January 13, 2020, Defendants filed the present Motion for Summary Judgment, and secured an Order Shortening Time. They did not serve the Motion or the Order Shortening Time ("OST"), instead allowing them to be served through the e-filing system on January 13, 2020.

Defendants claimed that they are trying to determine whether a subsequent dispositive motion is necessary. Mot. for Summary Judgment on Ord. Shortening Time at 3. But a motion to dismiss Plaintiffs' claims in their entirety is effectively indistinguishable from a motion for summary judgment in favor of Defendants on all counts. And Plaintiffs did not grant the generous extension of two weeks to file a motion to dismiss only for Defendants to slash Plaintiffs' response time down to mere days, simply by changing the title.

Moreover, Defendants have had the SAC since December 13, 2019. They were well-aware of any purportedly dispositive arguments since that time, and they agreed to the January 17, 2020 deadline with those in mind. Any "urgency" imposed by their agreed deadline was either their own fault or, Plaintiffs must regrettably conclude, a contrivance.

Even setting aside the, at best, discourteous bait-and-switch which robbed Plaintiffs of the agreed-upon weeks to respond to Defendants' dispositive motion, under the Rule of Practice for the Eight Judicial District Court ("EDCR") 2.20(e), Plaintiffs are entitled to fourteen days to answer a summary judgment motion. But under the OST, Plaintiffs had a mere two days to respond to Defendants' dispositive Motion for Summary Judgment. And Defendants compounded the problem by failing to serve the Motion or the OST upon their filing. After Plaintiffs' counsel contacted Defendants' counsel to complain, Defendants' counsel would agree only to a six (6) day extension (for a total of eight (8) days). While better than two (2) days, this is still outside the Rule's fourteen-day guarantee.

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Moreover, Defendants' Motion clearly anticipates that, if the Court denies the Motion for Summary Disposition, then Defendants will file *another* Motion "to Dismiss" apparently on some other basis. Mot. for Summary Judgment on Ord. Shortening Time at 3. This would result in more delay. Litigants are not entitled to see how the Court will rule on a primary argument before deciding whether or not to write the secondary arguments. The court rules simply do not anticipate or allow the serial briefing of dispositive issues – and they certainly do not anticipate that Defendants may serially brief their dispositive motions after *two years* of motions on the pleadings have already elapsed.

III. LEGAL ARGUMENT

A. Standard Of Review

"Summary judgment is appropriate only when a review of the record in a light most favorable to the nonmoving party reveals no genuine issues of material fact and judgment is warranted as a matter of law." *Price v. Blaine Kern Artista, Inc.*, 111 Nev. 515, 518, 893 P.2d 367, 369 (1995) (citing *Butler v. Bogdanovich,* 101 Nev. 449, 451, 705 P.2d 662, 663 (1985)). "In determining whether summary judgment is proper, the nonmoving party is entitled to have the evidence and all inferences reasonably drawn therefrom accepted as true." *Price*, 111 Nev. at 518, 893 P.2d at 369 (citing *Wiltsie v. Baby Grand Corp.,* 105 Nev. 291, 292, 774 P.2d 432, 433 (1989)). "Accordingly, a district court may not grant summary judgment if a reasonable jury could return a verdict in favor of the non-moving party." *Price*, 111 Nev. at 518, 893 P.2d at 369 (citing *Oehler v. Humana, Inc.,* 105 Nev. 348, 350, 775 P.2d 1271, 1272 (1987)). The inquiry is factual: "A district court shall grant summary judgment 'if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law.'" *Schneider v. Cont'l Assur. Co.*, 110 Nev. 1270, 1272, 885 P.2d 572, 573 (1994) (citing NRCP 56(c)). *See also Wood v. Safeway, Inc.*, 121 Nev. 724, 121 P.3d 1026 (2005).

As these standards illustrate, Defendants' Motion is a highly unusual "motion for summary judgment," in that it does not concern factual issues. Indeed, Defendants do not cite the standard of

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review for summary judgment at all. This Motion thus seems to be mislabeled in an effort to avoid the Stipulation, and the prohibition on serial pre-answer motions to dismiss, discussed below.

B. Defendants' Motion is Procedurally Improper

1. The Motion Reflects Flagrant Gamesmanship

First, the Motion was untimely. Plaintiffs filed the SAC on December 13, 2019. Under NEV. R. CIV. P. 15(a)(3), Defendants were required to respond within fourteen days, which fell on December 27, 2019. Although Plaintiffs did stipulate to an extension as discussed above, the Court did not grant it until, apparently, January 6. *See* Stipulation at 3, **Exhibit "3"** to the Brown Decl. Yet, Defendants let the December 27 deadline pass without any follow-up with Plaintiffs or, to Plaintiffs' knowledge, the Court.

Further, the Stipulation said nothing about any serial or expedited briefing. At Defendants' request, the parties stipulated for additional time for Defendants to file a motion to dismiss by January 17, with an extended briefing schedule from there—*not for a motion for summary disposition on OST with only two days for Plaintiffs to respond*. The regrettable, but inescapable, conclusion is that Defendants asked for an extended briefing schedule and then effectively "jammed" Plaintiffs. More generally, it is regrettable that they sought and secured an extended briefing schedule, and then disrupted it with their unnecessary Motion. Defendants unilaterally reconfigured the stipulated – and ordered – briefing schedule by turning it into a dispositive motion on OST. This had the effect of robbing Plaintiffs of nearly six weeks of time to respond to a dispositive motion, cutting their time from nearly six weeks to two days. This was despite the agreed terms of the Stipulation, including that the extended briefing/hearing schedule in the Stipulation was "to account for the complexity of this case, to accommodate the schedule of counsel, and not for delay." Stipulation at 2. Indeed, Defendants never requested or conducted a meet-and-confer on the issue. If there was an impediment to filing a proper, consolidated motion to dismiss by January 17, they could have requested another extension. Plaintiffs are unable to reconcile Defendants' course of action with counsel's sworn statement in the Motion for an Order Shortening Time, that "[b]y affixing her signature to [the] Motion, counsel swears that the statements made in regard to the shortened time request are true and that the request is made in good faith." Mot. For Summary Judgment on Ord. Shortening Time at 3.

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C. Plaintiffs Are Entitled to Fourteen Days to Respond

Rule of Practice for the Eighth Judicial District Court 2.20(e) provides that Plaintiffs are entitled to fourteen (14) days' notice of a summary judgment motion: "Within 14 days after the service of the motion…the opposing party must serve and file written notice of nonopposition or opposition thereto, together with a memorandum of points and authorities and supporting affidavits, if any, stating facts showing why the motion…should be denied."

The Nevada Supreme Court has found that such deadlines may *not* be shortened through an order shortening time. In *Cheek v. FNF Const., Inc.*, 112 Nev. 1249, 924 P.2d 1347 (1996), defendant secured an order shortening time on a motion for summary judgment. *Id*. at 1250. As here, the defendant justified the order shortening time by arguing it needed to know whether fast-approaching litigation activity would be necessary – in *Cheek*, an imminent trial, as opposed to the far more modest burden here of an approaching motion to dismiss deadline. *Id.*

The Supreme Court vacated the resulting summary judgment order, finding that the trial court lacked authority to truncate the court rule's notice requirement, which was at that time ten judicial days. *Cheek*, 112 Nev. at 1252 (citing *Osbakken v. Venable,* 931 F.2d 36, 37 (10th Cir. 1991) and *Soebbing v. Carpet Barn, Inc.,* 109 Nev. 78, 83, 847 P.2d 731, 735 (1993)). The Court approvingly quoted *Osbakken*:

> the [court rule's defined] time period for service of the motion is especially important in the Rule 56 context because it provides an opportunity for the opposing party to prepare himself as well as he can with regard to whether summary judgment should be entered. In theory, the additional time ought to produce a well-prepared and complete presentation.... In addition, since opposition to a summary judgment motion often is a difficult task, usually involving preparation of both legal and factual arguments as well as affidavits, and since the results of failure are drastic, it is felt that the additional time is needed to assure that the summary judgment proceeding is fair.

Id. at 1251 (quoting *Osbakken,* 931 F.2d at 37) (additional citations omitted).

Here, Defendants secured an OST providing Plaintiff with just six (6) days to prepare a response. Then, as discussed above, Defendants failed to serve the OST on Plaintiffs, except to rely upon the Court's efiling system. As a result, Plaintiffs initially only had two (2) days to prepare a response to the dispositive motion.

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Under duress, Plaintiffs reached out to Defendants to request additional time. Defendants would only agree to a six-day extension, which is *still* inconsistent with the court rule. Plaintiffs were forced to accept this offer under duress, stipulating to the extension while reserving their right to challenge the violation of the court rule. January 13, 2020 Stipulation at ¶ 4 ("Plaintiffs are not waiving any arguments regarding the propriety of abridging the opposition deadline, which is 14 days."), **Exhibit "4"** to the Brown Decl. As the Nevada Supreme Court clearly ruled in *Cheek*, any summary judgment order derived from this expedited schedule would be improper and invalid.

D. Defendants Must Now Answer the SAC

Moreover, Defendants' effort to characterize their motion as seeking "summary disposition" as opposed to "dismissal," appears to be a transparent effort to secure two bites at the apple. Their Motion was their opportunity to avoid filing a responsive pleading, and it has passed.

Under Nev.R.Civ.P 12(b),

> Every defense to a claim for relief in any pleading must be asserted in the responsive pleading if one is required. But a party may assert the following defenses by motion:
>
> (1) lack of subject-matter jurisdiction;
> (2) lack of personal jurisdiction;
> (3) insufficient process;
> (4) insufficient service of process;
> (5) failure to state a claim upon which relief can be granted; and
> (6) failure to join a party under Rule 19.
>
> A motion asserting any of these defenses must be made before pleading if a responsive pleading is allowed. If a pleading sets out a claim for relief that does not require a responsive pleading, an opposing party may assert at trial any defense to that claim. No defense or objection is waived by joining it with one or more other defenses or objections in a responsive pleading or in a motion.

As discussed above, Defendants' Motion is a thinly-disguised 12(b)(6) motion that they have called a motion for summary disposition in an apparent effort to avoid the briefing schedule they agreed to, and to secure multiple pre-answer opportunities for dilatory motions. As also discussed above, Defendants' response to the SAC was due December 27, 2019. Even under the parties' stipulated order, it was due January 17th. Both of those days have come and gone. And nothing in Rule 12 permits Defendants to file successive pre-answer motions. Rather, under Rule 12(g)(2) of

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the Nevada Rules of Civil Procedure, "[e]xcept as provided in [an exception], a party that makes a motion under this rule must not make another motion under this rule raising a defense or objection that was available to the party but omitted from its earlier motion." And the purpose of these rules is clear: to provide a defendant with a single opportunity to file a dispositive motion before answering, followed by an answer instead of a succession of pre-answer motions. *See, e.g., U.S. Fid. & Guar. Co. v. Jepsen*, No. 90 C 6931, 1991 WL 249706, at *2 (N.D. Ill. Nov. 14, 1991) ("The purpose of [the analogous federal] Rule 12(b)(6) is to prevent litigants from interposing defenses in a piecemeal fashion for purposes of delay," citing *Eddy v. John Alden Life Ins. Co*., No. 90–C 1736, 1991 WL 78182 at p. 1 (N.D.Ill. April 18, 1991); *Chilicky v. Schweiker*, 796 F.2d 1131, 1135 (9th Cir. 1986), rev'd on other grds, 487 U.S. 412 (1988); and *Myers v. American Dental Association,* 695 F.2d 716, 720–721 (3rd Cir. 1982), *cert. denied,* 462 U.S. 1106 (1983)). Defendants must therefore proceed to respond to the SAC and proceed to litigating the merits. NEV. R. CIV. P. 12(a), 15(a)(3).

E. Nevada 5 is Not Barred from Bringing a Fraud Claim

1. The Court Expressly Permitted Nevada 5 to Bring Such a Claim

As discussed above, the Court had initially dismissed Nevada 5's claims with prejudice. But it reconsidered this decision and permitted Nevada 5 to replead its claims. The SAC describes the procedural history, discussing the Nevada 5 Order and the Claim Preclusion Order in detail. ¶ 13.

Thus, as the SAC explained, "Plaintiffs bring this Second Amended Complaint consistent with the Court's December 3, 2019 Orders and the above-described instructions underlying those Orders." ¶ 14. "[S]pecifically," the two Plaintiffs in the SAC "clarify and differentiate their respective interests, their relationship to themselves and to Defendants, and the harm done to Plaintiffs respectively." *Id.* They "also bring forth facts not previously alleged," and "Nevada 5 sets forth … more detailed allegations regarding its re-pled fraud claims." *Id.* Defendants ignore all of this in their analysis.

As the SAC further explains, "Nevada 5 is not a party to the SPA and has never been a shareholder in Hygea." ¶ 18. In addition, "Nevada 5 was not a party to the Receivership Action," ¶ 19, and, indeed, "[a]s a non-shareholder in Hygea, Nevada 5 lacked standing to join the Receivership Action." ¶ 20. Moreover, "[t]he subject matter of the Receivership Action was also not within the

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interests of Nevada 5, and Nevada 5's interests were not represented in the Receivership Action." ¶ 21. "The Receivership Action was an effort by shareholders whose interests were to address Hygea's financial peril in 2018 and stabilize the company through a court-appointed receiver." *Id.* In contrast, "Nevada 5's interests are, and have been, to obtain a more than $30 million judgment against Hygea and its management for fraudulent conduct in 2016; this claim was never asserted in the Receivership Action and was outside the scope of the Receivership Action." *Id.*

As the SAC continued, "[t]he determinative facts and timeframe in the Receivership Action (the state of financial and managerial affairs at Hygea in May 2018) are different from those determinative of Nevada 5's claims in this case (representations made to Nevada 5 in 2016)." ¶ 22. "Defendants repeatedly asserted in the Receivership Action their belief and expectation that the Receivership Action was a distinct case, unrelated in time and subject matter to this case, and to be litigated separately." ¶ 23. Moreover, "[f]rom October 5, 2017 through the present—before, during, and after the Receivership Action—Nevada 5 has been pursuing its interests and claims in this case." ¶ 24.

In the end, "Nevada 5's claims … are based upon Defendants' conduct which fraudulently induced Nevada 5 into paying Hygea $30 million on or about October 5, 2016." ¶ 25. "Nevada 5 brings its claims on behalf of itself, independently of N5HYG's claims," which "are based primarily upon Defendants' repeated breaches of the SPA occurring on and after August 1, 2017, and include breaches occurring after conclusion of the Receivership Action." ¶¶ 25-26. The two Plaintiffs' respective claims "are based upon conduct distinct from" that alleged by the other Plaintiff. ¶ 26.

Defendants disregard all of this, pretend that Plaintiffs have ignored the Court's orders, and pretend that the SAC is a restatement of the First Amended Complaint. But the SAC is a radical departure: N5HYG has not included any of its claims except for its breach of contract and books-and-records claims, which are discussed below and both of which at least partly involve post-Receivership Action events.[9] Meanwhile, Nevada 5 brings a fraud claim that distinguishes Nevada 5's position and the harm it suffered from that of N5HYG—just as the Court instructed. Given that the Nevada 5 Order explicitly permitted Nevada 5 to bring its claims, and given that the Court explicitly discussed

[9] This was and is without waiver of any appellate rights N5HYG has with respect to its previously-dismissed claims.

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Nevada 5's pleading of a "fraud" claim, it is difficult to see how Defendants can argue that Plaintiffs' SAC is "in direct violation of [the Court's] holding and an impermissible attempt to seek reconsideration of the Court's Claim Preclusion Order." Defs' Mot at 9. If anything, it is Defendants who are asking the Court to reconsider its earlier conclusions.

2. Nevada 5 Was Not a Party to the Receivership Action

Again, Nevada 5 was not a petitioner in the Receivership Action. Indeed, it could not have been a petitioner, because it was not a shareholder. Defendants have argued that Nevada 5's claims are barred because it is "in privity" with N5HYG. Defs' Mot. to Dismiss, 8/21/18 at 13. But the Court has implicitly rejected this argument by permitting Nevada 5 to replead its claims. And Defendants have throughout argued that Nevada 5 must be seen as entirely distinct from N5HYG for purposes of this case. *Id.* at 17-19. They cannot have it both ways and insist on privity between the two entities for purposes of claim preclusion. Indeed, N5HYG has not asserted any fraud claim in the SAC, and Nevada 5's fraud claim is distinct and independent of any claim that N5HYG might have had. By the same token, Nevada 5 is not bound by what happened in the Receivership Action.

3. Nevada 5's Claims Are Based on a Different Nucleus of Operative Facts Than at Issue in the Receivership Action

Nevada 5's claims fall outside the Receivership Action's core nucleus of operative facts. As discussed above, Nevada 5 was not a party to the Receivership Action, and indeed it could not have been a party to it. As Plaintiff has previously noted, and as described in the SAC at ¶ 22, the Receivership Action pertained to Hygea's *mismanagement and financial peril in 2018*, whereas Nevada 5's claim here is that it was defrauded into *paying Defendants $30 million in 2016*. These are not the same "underlying factual events" as at issue in the Receivership Action or identical claims that merely "involve different legal theories." Claim Preclusion Order at ¶¶ 19-21 (citations omitted). Indeed, to further establish the distinction between the Receivership Action and Nevada 5's claims, *the SAC specifically addresses the elements set forth in the Claim Prelusion Order at ¶ 20*: "[t]o ascertain whether two actions spring from the same 'transaction' or 'claim,' we look to whether the underlying facts are 'related in time, space, origin, or motivation, whether they form a convenient trial unit, and whether their treatment as a unit conforms to the parties' expectations…'" (citing

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Restatement (Second) of Judgments Sec. 24 and *Waldman v. Vill. Of Kiryas Joel*, 207 F.3d 105, 108 (2d Cir. 2000)). The SAC differentiates the time, space, and origin of the Receivership Action from those of Nevada 5's claims at ¶ 22:

> The determinative facts and timeframe in the Receivership Action (the state of financial and managerial affairs at Hygea in May 2018) are different from those determinative of Nevada 5's claims in this case (representations made to Nevada 5 in 2016).

The SAC differentiates the motivation of Nevada 5 from the petitioners in the Receivership Action at ¶ 21:

> The subject matter of the Receivership Action was also not within the interests of Nevada 5, and Nevada 5's interests were not represented in the Receivership Action. The Receivership Action was an effort by shareholders whose interests were to address Hygea's financial peril in 2018 and stabilize the company through a court-appointed receiver. Nevada 5's interests are, and have been, to obtain a more than $30 million judgment against Hygea and its management for fraudulent conduct in 2016; this claim was never asserted in the Receivership Action and was outside the scope of the Receivership Action.

And the SAC describes how the parties believed and expected the Receivership Action to be treated and tried separately at ¶ 23:

> Defendants repeatedly asserted in the Receivership Action their belief and expectation that the Receivership Action was a distinct case, unrelated in time and subject matter to this case, and to be litigated separately.

In short, nothing about non-party Nevada 5's particular Hygea-related loss could have fallen within the Receivership Action's core nucleus.

Moreover, the Court should narrowly draw the Receivership Action's preclusive effect. While this Court has found that the Receivership Action had *some* preclusive effect, it has not defined the scope of that effect. Put another way, while this Court has determined that the First Amended Complaint, which it found did not state a claim on behalf of Nevada 5, arose from the same nucleus of operative facts as the Receivership Action, it did not define the scope of this nucleus.

And the Court need not define the scope at the pleadings – for all the reasons discussed throughout, the Court's Claim Preclusion Order does not bar the SAC. And the Rule 12 motion process – which, despite Defendants' label, their Motion reflects – inquires whether a case may proceed beyond the pleadings, not whether claims should be narrowed. *BBL, Inc. v. City of Angola*,

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809 F.3d 317, 325 (7th Cir. 2015) (under the analogous federal rule, "The Rule 12(b)(6) analysis asks only whether or not the complaint states a plausible claim for relief; it does not permit piecemeal dismissals of parts of claims").

But to the extent the Court considers the issue, it should narrow the scope of any preclusive effect. For all the reasons Plaintiffs have previously argued, they respectfully continue to maintain that the Court should not have found that the Receivership Action barred any claims. For the same reasons, it should narrow the application of such preclusion.

For example, "claim preclusion will not be applied when the party seeking its benefit has actively encouraged the actions of the party against whom it would be invoked." *S. Cal. Edison v. First Judicial Dist. Court*, 127 Nev. 276, 286 n.5, 255 P.3d 231, 237 (2011) (citing *Campbell v. State, Dep't of Taxation*, 108 Nev. 215, 219, 827 P.2d 833, 836 (1992)). Yet as Plaintiffs have previously noted, Defendants argued at the Receivership Action that the cases should be treated as distinct, arguing time and again in the Receivership Action that the claims in this case are distinct and must only be litigated (and were being litigated) in this separate action:

- This action does not arise in connection with a stock purchase agreement. There has been no breach of contract or fraud based on the agreement. There have been no claims brought based on the agreement. *See* Feb 21, 2018 Hearing Tr. at 19:25-20:3 (emphasis added), **Exhibit "5"** to the Brown Decl.[10]

- I do know I have in my notes here that he talked about breach of the -- the SPA. Well, they have a litigation against Hygea for that. It's pending before Judge Mahan. *There's not a claim for breach of the SPA here*. And in any event a breach -- a breach of contract isn't even a basis for a receivership. *See See* Brown Decl. **Ex. "5"** at 48:45-8 (emphasis added),.

- If Plaintiff N5HYG believes it has a contractual right to an audit, *then it should seek to enforce that purported right in its breach of contract claim [then] pending in federal court. See* Defs' Trial Stmt. at 19:4-6, **Exhibit "6"** to the Brown Decl.

- Your Honor, what we will see and what we will see as a repeating theme throughout this lawsuit is that if plaintiffs had an issue about the issued and outstanding stock, they have a remedy at law. *They can bring a breach of contract action.* If they, feel that Hygea has violated that antidilution provision, which as plaintiff's counsel just stated, it merely provides a

[10] Unless indicated, these statements are from Defendants' counsel.

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preemptive right, *then they can bring a lawsuit for breach of contract against Hygea. but a receivership action is not the forum to enforce their contractual rights. See* May 14, 2018 Trial Tr. at 42:12-22 (emphasis added), **Exhibit "7"** to the Brown Decl.

- Well, the stock purchase agreement is a contract, and if they seek to enforce that contract or if they believe that Hygea has violated the contract, *then they should bring a breach of contract claim seeking to enforce that right. But a receivership action and the extraordinary and harsh remedy of a receivership is not the proper basis to enforce their rights -- their purported rights under a contract*. *See* Brown Decl. **Ex. ""7** at 48:20-49:3 (emphasis added).

- Moreover… we've heard plaintiffs complain about this purported mismanagement of the company. However, again, they have a legal remedy. *They can bring a breach of fiduciary duty action*. *See* Brown Decl. **Ex. "7"** at 49:4-8 (emphasis added).

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

  Okay. Understood, Your Honor.

  See Brown Decl., **Ex. "7"** at 108-109.

- We have heard complaints from plaintiff about the audits, a lot about the audits, which is reflected in a Stock Purchase Agreement between N5HYG and Hygea.· But, again, *that is a breach of contract claim, not a basis for the appointment of a receivership*. *See* May 16, 2018 Trial Tr. at 598:14-19, **Exhibit "8"** to the Brown Decl.

- Even if Hygea has violated the antidilution provision, which we do not admit that we have done *because that is a claim based in contract, and there is a breach of contract action that N5HYG has brought against us in another Court,* it doesn't matter because NRS 78.650 provides very – I'm going to read here, "Unambiguously provides any holder or holders of·one-tenth of the issued and outstanding stock may apply to the district court for an order dissolving the corporation and appointing a receiver to wind up its affairs." *See* May 17, 2018 Trial Tr. at 885:14-24 (emphasis added), **Exhibit "9"** to the Brown Decl.

- Indeed, the vast majority of plaintiffs' complaints stem from the Stock Purchase Agreement between the lead plaintiff, N5HYG, and the company.

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> Plaintiffs -- we have heard much testimony about the 2014 and 2015 audited financial statements. *If plaintiffs believe they have a right to these audits under their Stock Purchase Agreement, plaintiffs can seek to enforce that right through their breach of contract claim in federal court. See* May 18, 2018 Trial Tr. at 914:6-14, **Exhibit "10"** to the Brown Decl.
>
> - Plaintiffs complain that Mr. Iglesias made misrepresentations in the form of projections about the company's financials in the time leading up to N5HYG's·stock purchase. But, again, *plaintiff N5HYG can then seek damages for such misrepresentations through its securities claim [then] in federal court.*· Plaintiffs have a legal remedy for each and every one of their complaints. *See* Brown Decl., **Ex. "10"** at 914:23-915:6 (emphasis added).[11]

Thus, if claim preclusion is to be applied here, it should be applied narrowly.

Likewise, as Plaintiffs have previously noted, the Receivership Action Court expressly distinguished between the two cases. And "the general rule of claim preclusion does not apply if the court in the first action expressly reserves the right to maintain a second action" or defense, and "[t]he same rule should hold for issue preclusion." *Holt v. Reg'l Tr. Servs. Corp.*, 127 Nev. 886, 894-95, 266 P.3d 602, 607-08 (2011) (quoting 18 Federal Practice and Procedure, § 4413, at 314 and § 4424.1, at 642, and citing Restatement (Second) of Judgments § 26(1)(b)) and *Central States, SE and SW Areas Pen. v. Hunt Truck*, 296 F.3d 624, 629 (7th Cir. 2002)).

For example, the Receivership Court and Defendants agreed that the then-present day entailed the "nucleus of operative facts" for that case, as opposed to Nevada 5's claims for the earlier misrepresentations. As Defendants noted, "Your Honor, I believe that [today] is the relevant time period for this Court to consider." *See* Brown Decl. **Ex. "8"**, p. 598. The Court saw things the same way: "[THE COURT] I mean, it strikes me as correct that it doesn't really matter what went on before. What we're looking at is what's going on now. MS. GALL: Right." *See* May 15, 2018 Trial Trans. p. 288:6-9, **Exhibit "11"** to the Brown Decl. And this "court may consult the record and proceedings giving rise to another court's order," including its oral statements. *Holt*, 127 Nev. at 894-895 (citing *First Union Nat. Bank v. Pictet Overseas Trust*, 477 F.3d 616, 620 (8th Cir. 2007), *Oklahoma v. Texas*, 256 U.S. 70, 88, 41 S. Ct. 420, 65 L. Ed. 831 (1921)), and *City of Lakewood v. Pierce County*, 144 Wn.2d 118, 30 P.3d 446, 450-51 (Wash. 2001)). *See also Kirsch v. Traber*, 414 P.3d 818, 822 n.3

[11] Defendants also pervasively objected to the introduction of *any* evidence bearing any relation to damages theories. *See, e.g.,* Brown Decl., **Ex. "7"** at 87:17 ("this is not a breach of contract action").

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(Nev. 2018) (citing *Holt* approvingly for the proposition that "a court may consult the record and proceedings giving rise to another court's order, at least when the latter is ambiguous"). Because the Receivership Action Court articulated a distinction between the two cases, any claim preclusion should be narrowly drawn.

F. Claim Preclusion Does Not Bar N5HYG's Claims

1. Defendants' Theory Assumes That Unsuccessful Receivership Petitioners Effectively Forfeit Their Shares

Defendants' motion is radical. They argue that N5HYG may not bring a books-and-records claim or a breach of contract claim. But they make no distinction between such claims that may have arisen before the Receivership Action, and those that arose later. Thus, they effectively argue that N5HYG can bring *no* action against them for breaches of the SPA or violation of N5HYG's rights as a shareholder for all eternity. They offer no authority for this radical proposition. And with good reason: nothing in NRS 78.650 specifically or Nevada law generally supports it. There is no rule that shareholders that unsuccessfully petition for a receiver forfeit the right to bring a later lawsuit based on their share ownership. Any such a rule would amount to: if a shareholder loses a receivership action, that shareholder loses all of the rights to which the shares entitle it – which effectively amounts to losing the shares. The Court should decline Defendants' request to adopt such a radical and unfounded finding.

G. N5HYG May Bring its Breach of Contract Claim

1. N5HYG's Claim for Post-Closing Monthly Payments Was Not Litigated in the Receivership Action

In the SAC, N5HYG is asserting breaches of contract for Defendants' failure to pay the post-closing monthly payments, including those that Defendants failed to pay *after* the Receivership Action. This issue was mentioned in the Receivership Action, but it was not litigated. In fact, the Receivership Court noted that Hygea owed N5HYG nearly $2 million under the SPA. *See* Brown Decl., **Ex. "1"** at ¶ 3. But the Receivership Court never even suggested that this should be reduced to judgment. This Court should thus follow the Receivership Court's lead and conclude that the Receivership Case lacks any preclusive effect on this issue here. *See Holt*, *supra*, 127 Nev. at 894-895.

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2. The Receivership Action Could Not Bar a Claim for Payments Due After the Receivership Action

Defendants would graft upon N5HYG's breach of contract claim a "continuing violation" theory. But N5HYG is not asserting a "continuing violation." It is asserting a *separate* breach of contract claim for each month Defendants failed to pay the post-closing monthly payment required under the SPA.

Nevada law recognizes the widely-adopted rule that contracts may be "divisible" – that is, that the parties may agree to distinct obligations such as, here, monthly installment payments. *See Dredge Corp. v. Wells Cargo, Inc.*, 82 Nev. 69, 73–74, 410 P.2d 751, 754 (1966) (citations omitted).

See also Freeman Indus. Prods., LLC v. Armor Metal Group Acquisitions, Inc., 193 Ohio App. 3d 438, 2011 Ohio 1995, 952 N.E.2d 543, 550 (Ohio Ct. App. 2011) ("Whether a contract . . . is entire or divisible depends generally upon the intention of the parties, and this must be ascertained by the ordinary rules of construction. . . . The primary criteria in determining whether a contract is entire or divisible is the intention of the parties as determined by a fair consideration of the terms and provision of the contract itself, by the subject matter to which it has reference, and by the circumstances of the particular transaction giving rise to the question.).

This issue is frequently encountered in considering statute of limitations issues. In that context, the "universal rule [is] that when an obligation is to be paid in installments the statute of limitations runs only against each installment as it becomes due . . . ." *Pierce v. Metro. Life Ins. Co.*, 2004 DNH 39, ¶ 333, 307 F. Supp. 2d 325, 328-29 (quoting *Gen. Theraphysical, Inc. v. Dupuis*, 118 N.H. 277, 279, 385 A.2d 227 (1978) and also citing *Seasons at Attitash Owners Ass'n v. Country Gas, Inc.*, No. 96-10-B (D.N.H. Sept. 12, 1997), *available at* http://www.nhd.uscourts.gov; *Barker v. Strafford County Sav. Bank*, 61 N.H. 147, 148 (1881) (holding that separate limitations period on claim to recover usurious interest commenced with each loan payment); *Berezin v. Regency Sav. Bank*, 234 F.3d 68, 73 (1st Cir. 2000) (applying Massachusetts law); and 9 Arthur Linton Corbin, Corbin on Contracts § 951 (interim ed. 2002)). "In essence, this rule treats each missed or otherwise deficient payment as an independent breach of contract subject to its own limitations period. *Id.* (citing *Keefe Co. v. Americable Int'l, Inc.*, 755 A.2d 469, 472 (D.C. 2000)). *See also Adkins v. EQT Prod. Co.*, No. 1:11CV00031, 2011 WL 6178438, at *2, 8 (W.D. Va. Dec. 13, 2011) (unpublished)

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(holding that the alleged monthly underpayment of methane gas royalties constituted "discrete breaches of contract for which [plaintiff] can recover up to five years before her complaint was filed").

Thus, for example, in *Lutz v. Chesapeake Appalachia, L.L.C.*, 717 F.3d 459 (6th Cir. 2013), the Court recognized that the plaintiff in a lease-violation case had eschewed a "continuing violation theory" and instead "argued that their leases should be construed as divisible contracts, with each underpayment giving rise to a separate cause of action." *Id.* at 466. "Where a contract is divisible and, thus, breaches of its severable parts give rise to separate causes of action, the statute of limitations will generally begin to run at the time of each breach; in other words, each cause of action for breach of a divisible part may accrue at a different time for purposes of determining whether an action is timely under the applicable statute of limitations." *Id.* at 467 (citing 15 Williston on Contracts § 45.20 (4th ed. 2000)). "If, on the other hand, a continuing contract is entire and indivisible, an action can be maintained on it only when a breach occurs or the contract is in some way terminated, and the statute of limitations will begin to run from that time only." *Id.* "Courts have thus deemed different kinds of contracts to be divisible, with each default in a periodic or installment payment giving rise to a separate cause of action." *Lutz*, 717 F.3d at 467-70 (collecting cases).

Thus, courts have rejected the argument that a judgment on previous sums due under an installment contract bars a claim for subsequent breaches. "If a contract provides for the payment of money in installments, an action will lie for each installment as it falls due," and "[a] judgment rendered in any one of those actions will not operate as a bar to the maintenance of the others." *Keefe Co.*, 755 A.2d 469 at 472-73 (quoting 4 CORBIN ON CONTRACTS § 948 (1951 ed. & Supp.1999)). "Indeed, so embedded is this concept of distinct installment obligations that there is doubt whether an obligee even has the option, absent an acceleration clause, to bring a single suit, seeking both past-due and future payments, based solely on the obligor having missed installments." *Keefe Co.*, 755 A.2d at 472-73 (analyzing cases before concluding that a "plaintiff should not be penalized for leaving to the defendant an opportunity to retract his wrongful repudiation; and he would be so penalized if the statutory period of limitation is held to begin to run against him immediately").

Thus, here, where the parties agreed to discrete monthly payments, due each month in which Hygea had not "gone public" (provided N5HYG remained a shareholder), there is no question that

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the contract is divisible. *See, e.g., Ancala Holdings, L.L.C. v. Price*, 220 F. App'x 569, 572 (9th Cir. 2007) ("Once a party fails to pay the agreed upon amount at the time the payment is due, a separate breach occurs and a cause of action accrues. The damages for each breach is severable from the damages suffered from the original breach and any subsequent breach of the defendant's obligation to pay an agreed upon amount"); *Knight v. Columbus, Ga.*, 19 F.3d 579, 581-82 (11th Cir. 1994) (collecting cases rejecting "continuing wrong" approach to overtime cases and concluding that "the FLSA has been violated each time the City issued an officer plaintiff a paycheck that failed to include payment for overtime hours actually worked"); *Harrison v. Bass Enters. Prod. Co*., 888 S.W.2d 532, 537 (Tex. Ct. App. 1994) (holding that the claims by a royalty interest owner in oil wells for unpaid royalties "'accrued' monthly"); *Hondo Oil & Gas Co. v. Texas Crude Operator*, 970 F.2d 1433, 1440 (5th Cir. 1992) ("Where a contract provides for monthly payments and not a present sale of gas or oil, a cause of action accrues when any given monthly payment is due.") (citation and internal quotation marks omitted); *Rupe v. Triton Oil & Gas Corp*., 806 F. Supp. 1495, 1498 (D. Kan. 1992) ("a cause of action for breach of an obligation to make payments under a continuing [gas purchase] contract generally accrues at the time each payment becomes due, thus giving rise to a separate cause of action for each failure to make payment when due").

Indeed, any contrary conclusion would be irrational. N5HYG could never reasonably bring a claim for all future unpaid post-closing monthly payments, because there is no way of knowing how long the indefinite obligation with remain in place. And there is no way of knowing how long Hygea will continue to withhold the payments. *See Armstrong Petroleum Corp. v. Tri-Valley Oil & Gas Co.*, 116 Cal. App. 4th 1375, 1391 (2004) ("[b]ecause the act of paying or delivering the wrong amount constituted the breach of contract and caused damage in the amount of the underpayment or underdelivery, . . . all of the elements of a cause of action relating to a breach of that monthly obligation did not occur, and thus a cause of action did not accrue, until [defendant] made the incorrect payment or delivery for that month"). *See also Keefe*, *supra* (discussing acceleration of installment contract claims).

Even if N5HYG's claim for the post-closing monthly payments is considered a claim for a "continuing violation," the result would be the same. "[T]he continuing violation notion is an

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exception to the statute of limitations, not the rule." *Ancala Holdings, LLC*, 220 Fed.Appx. at 572. "[I]t applies to recurring payments that have become due," and permits a party to recover for subsequent breaches even if a claim for the original breach would be untimely. *Id.* Thus, "[o]nce a party fails to pay the agreed upon amount at the time the payment is due, a separate breach occurs and a cause of action accrues. The damages for each breach are severable from the damages suffered from the original breach and any subsequent breach of the defendant's obligation to pay an agreed upon amount." *Id*. Likewise, here, even if claims for the pre-Receivership Action payments are barred, claims for subsequent payments are not. At the very least, this issue precludes summary disposition. *Bacon v. Cox*, No. 60465, 2014 WL 2013447, at *1 (Nev. May 13, 2014) (district court's dismissal of case overturned where it failed to consider continuing wrong issue).

Defendants cite *Carlson v. Ameriprise Fin.*, No. CV 08-5303 (MJD/JJK), 2009 WL 10678283 (D. Minn. May 21, 2009), *aff'd*, 409 F. App'x 976 (8th Cir. 2011) for the proposition that the "continuing violation theory" does not "permit a plaintiff to avoid application of res judicata." Defs' Mot at 9. But in *Carlson*, the plaintiff was a serial wrongful termination plaintiff who tried to bring successive lawsuits based on his former employer's failure to rehire him:

> [defendant] made a discrete decision that [plaintiff] was ineligible for rehire in 2001. [Plaintiff] does not assert that [defendant]'s reasons for classifying him as ineligible for rehire have changed over time. He continues to argue, as he did in the earlier lawsuits, that [defendant] refused to hire him in retaliation for his assertions of discrimination. He also continues to allege that [defendant] did not provide him with records relevant to its decision to implement a ban on hiring him.

Id. at *11. *Carlson* is nothing like the present case, in which Defendants continue to fail to pay required monthly contract payments. As discussed throughout, N5HYG remains a Hygea shareholder and remains entitled to its rights under the SPA and Hygea's corporate documents. Had the *Carlson* plaintiff remained employed at Ameriprise, the earlier litigation would not have entitled Ameriprise to violate his rights as a continuing employee. And *Carlson* also illustrates the weakness of Defendants' argument for maximal preclusion. In *Carlson*, the issue of plaintiff's termination *was the actual issue litigated in the prior case*. That is a stark contrast to this case, in which the post-closing monthly payments were mentioned in a case about something different.

. . .

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H. The Receivership Action Does Not Bar N5HYG's Books-and-Records Claim

1. N5HYG's Books-and-Records Claim Was Not Litigated in the Receivership Action

N5HYG did not bring a books and records claim in the Receivership Action. Yet Defendants argue to the contrary, that "N5HYG raised this claim *at several points* in the Receiver Action." Defs' Mot at 10. This is misleading at best.

First, Defendants note that the proposed order in the Receivership Action would have granted the proposed Receiver access to Hygea's books and records, and given the Receiver the power to make them available to the Court and the shareholders. Defs' Mot. at 10. But *of course* the Receiver would have had access to the books and records. And it would make sense for the Receiver to be able to share them with the Court and with the shareholders – who, after all, have the right to see them under the governing documents anyway.

Next, Defendants note that the Receivership Action Plaintiffs discussed management's violation of the record-access bylaw. Defs' Mot. at 10. But this was provided as just that – evidence that management had violated the bylaws. It was not a request for books and records.

As Defendants themselves note in their Motion, quoting from the Court's Claim Preclusion Order, "it [is] appropriate to ask how far the witnesses or proofs in the second action would tend to overlap the witnesses or proofs relevant to the first." Defs' Mot at 7 (citing Order at ¶¶ 21) (citations in Order omitted). Such an inquiry would be unnecessary if, as Defendants suggest, *any* overlap bars a future claim. Put another way, the Claim Preclusion Order recognized that merely mentioning an issue in the earlier case is not enough to bar its litigation in the latter.

Unsurprisingly, Defendants took a starkly different position on this issue during the Receivership Action:

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

See Brown Decl., **Ex. "10"**, May 18, 2018 Tr. at 914:15-22 (emphasis added).

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Defendants' language is significant. They were not arguing about the theoretical possibility of a different books and records action. Rather, they argued that "plaintiffs can enforce that right," and can do so *through this very case. Id.* They are estopped from arguing the opposite now. Once again, any preclusion should be narrowly drawn.

2. The Receivership Action Could Not Bar Future Books-and-Records Claims

N5HYG's "books and records" claim also alleges conduct that post-dates the Receivership Action. *See* SAC, ¶¶ 154-161. Again, this could not have fallen within the Receivership Action's "nucleus of operative facts" because it had not happened yet. And, once again, there is no authority that suggests that a receiver action bars all future claims, regardless of subsequent behavior. N5HYG is still a shareholder and still entitled to its rights as such.

IV. CONCLUSION

For all of the reasons set forth above, Plaintiffs respectfully request that the Court deny Defendants' Motion and require them to file an answer to the SAC by no later than February 6, 2020.

DATED this 21st day of January, 2020.

LEWIS ROCA ROTHGERBER CHRISTIE

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CERTIFICATE OF SERVICE

I hereby certify that I am an employee of Lewis Roca Rothgerber Christie LLP, and that on January 21, 2020, I served a true and correct copy of the foregoing Plaintiffs' Opposition to Defendants' Motion for Summary Disposition on Order Shortening Time upon all counsel of record by electronically serving the document using the Court's electronic filing system.

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

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EXHIBIT "A"

DECL
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DISTRICT COURT
CLARK COUNTY, NEVADA

N5HYG, LLC, a Michigan limited liability company; and, in the event the Court grants the pending Motion for Reconsideration, NEVADA 5, INC., a Nevada corporation, Plaintiffs, vs. HYGEA HOLDINGS CORP., a Nevada corporation; MANUEL IGLESIAS; EDWARD MOFFLY; and ROES I-XXX, inclusive, Defendants.	CASE NO.: A-17-762664-B DEPT. NO.: 27 **DECLARATION OF OGONNA M. BROWN, ESQ. IN SUPPORT OF PLAINTIFFS' OPPOSITION TO DEFENDANTS' MOTION FOR SUMMARY DISPOSITION ON ORDER SHORTENING TIME**

I, Ogonna M. Brown, Esq., declare as follows,

1. I am a shareholder with the law firm of Lewis Roca Rothgerber Christie LLP, attorneys of record for Plaintiffs N5HYG, LLC and Nevada 5, Inc. ("Plaintiffs") in the above-referenced proceeding.

2. I have personal knowledge of the facts in this Declaration, except as to those matters based upon information and belief, and as to those matters, I believe them to be true and correct.

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

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

5. I make this Declaration in support of Plaintiffs' Opposition to Defendants' Motion for Summary Disposition on Order Shortening Time ("Opposition").

6. A true and correct copy of excerpts of the Amended Findings of Fact and Conclusions of Law in the Receivership Action discussed in the Opposition is attached hereto as **Exhibit "1"** (Receivership Action).

7. A true and accurate copy of a selection from the transcript of this Court's hearing on July 17, 2019 is attached as **Exhibit** "**2"** hereto.

8. **Exhibit "3"** hereto is a true and accurate copy of the Stipulation entered in this Court, which the Court entered on January 6, 2020.

9. Defendants secured an OST providing Plaintiff with just six (6) days to prepare a response to the Motion at issue. Then Defendants failed to serve the OST on Plaintiffs, except to rely upon the Court's efiling system. As a result, Plaintiffs initially only had two (2) days to prepare a response to the dispositive motion.

10. Plaintiffs, through my office, reached out to Defendants to request additional time. Defendants would only agree to a six-day extension as reflected in the January 13, 2020 Stipulation at ¶ 4, **Exhibit "4"** hereto.

11. In connection with Plaintiffs' Opposition, the following filings and a number of transcripts are relied upon for this Court's reference:

- February 21, 2018 Hearing Tr. (Receivership Action), **Exhibit "5"** hereto.
- Defendants' Trial Statement (Receivership Action), **Exhibit "6"** hereto.
- May 14, 2018 Trial Tr. (Receivership Action), **Exhibit "7"** hereto.

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- May 16, 2018 Trial Tr. (Receivership Action), **Exhibit "8"** hereto.
- May 17, 2018 Trial Tr. (Receivership Action), **Exhibit "9"** hereto.
- May 18, 2018 Trial Tr. (Receivership Action), **Exhibit "10"** hereto.
- May 15, 2018 Trial Trans. (Receivership Action), **Exhibit "11"** hereto.

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 21st day of January, 2020.

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

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CERTIFICATE OF SERVICE

I hereby certify that I am an employee of Lewis Roca Rothgerber Christie LLP, and that on January 21, 2020, I served a true and correct copy of the foregoing Declaration of Ogonna M. Brown, Esq. in Support of Plaintiffs' Opposition to Defendants' Motion for Summary Disposition on Order Shortening Time upon all counsel of record by electronically serving the document using the Court's electronic filing system.

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

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EXHIBIT "1"

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IN THE FIRST JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

IN AND FOR CARSON CITY

CLAUDIO ARELLANO; et. al.,

Plaintiffs,

v.

HYGEA HOLDINGS CORP.; et. al.,

Defendants.

Case No. 18 OC 00071 1B
Dept No. II

~~[PROPOSED]~~ AMENDED FINDINGS OF FACT AND CONCLUSIONS OF LAW

///

///

///

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

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

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

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

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

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

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

V. CONCLUSIONS OF LAW

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

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

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

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

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

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

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EXHIBIT "2"

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Steven D. Grierson
CLERK OF THE COURT

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,	)	
	)	**Transcript of**
Defendants.	)	**Proceedings**
	)	

BEFORE THE HONORABLE NANCY ALLF, 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. LAMBRAKOPOULOS, ESQ.

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

claim which was rejected. And, look, Your Honor, we've heard it, it's been rejected. You know, I'm here, I don't work for free, I think, you know, there's a strong suggestion that, you know, Hygea -- Hygea will live another day here.

And so, Your Honor, I would ask that for our motion that you grant reconsideration, but, again, I understand it's a hairy issue and Your Honor might be reticent to grant reconsideration based on what's before her. And so alternatively, Your Honor, we would ask for a stay. And regardless, though, we would like a full record and clarification on Your Honor's decision on the remaining elements. Thank you.

THE COURT: Thank you both. All right. So in looking at the matter, you know, in every business court case there's always a motion to dismiss. Sometimes I require amendment, and then I always second guess myself later, should I have just allowed the complaint to go forward to see, let the parties do discovery.

You know, sometimes complaints don't adequately plead a cause of action and the defendant shouldn't be required to defend under the circumstances. But in this one, it's just gone on so long. This is really the last gasp, you guys, because the case needs to go forward after this point.

I am going to grant both motions, and I know that that puts us in a somewhat procedural quandary, and I've kind of

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

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

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

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

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

THE COURT: There might be some other causes of action

CERTIFICATION

I CERTIFY THAT THE FOREGOING IS A CORRECT TRANSCRIPT FROM THE AUDIO-VISUAL RECORDING OF THE PROCEEDINGS IN THE ABOVE-ENTITLED MATTER.

AFFIRMATION

I AFFIRM THAT THIS TRANSCRIPT DOES NOT CONTAIN THE SOCIAL SECURITY OR TAX IDENTIFICATION NUMBER OF ANY PERSON OR ENTITY.

Julie Potter
Kingman, AZ 86402
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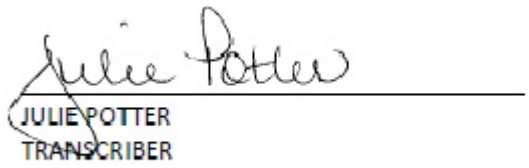

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DISTRICT COURT

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.: XXVII

STIPULATION AND ORDER FOR EXTENSION OF TIME FOR DEFENDANTS' TO RESPOND TO PLAINTIFFS' SECOND AMENDED COMPLAINT

(First Request for Extension)

STIPULATION

Plaintiffs N5HYG, LLC and Nevada 5, Inc., and Defendants Hygea Holdings Corp., Manuel Iglesias, and Edward Moffly **STIPULATE AND AGREE** to the following briefing schedule for Defendants' response to the Second Amended Complaint:

1. Defendants shall file and serve their motion to dismiss in response to the Second Amended Complaint on or before January 17, 2020;

2. Plaintiffs shall file and serve their opposition brief on or before March 2, 2020; and

3. Defendants shall file and serve their reply brief on or before March 16, 2020, or 14 days after the opposition brief is filed if filed earlier than March 2, 2020.

4. The Parties will present oral argument on the motion to dismiss on March 25, 2020, or another date approximate to March 25 if the Court is not available on March 25.

This is the first request for an extension of Defendants' deadline to respond to Plaintiffs' Second Amended Complaint. The Parties enter into this Stipulation in good faith, to account for the complexity of this case, to accommodate the schedule of counsel, and not for purposes of delay.

Dated: December 26, 2019

LEWIS ROCA ROTHBERGER CHRISTIE

By: /s/ Ogonna Brown
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Dated: December 26, 2019

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ORDER

Based on the foregoing Stipulation, IT IS ORDERED as follows:

1. Defendants shall file and serve their motion to dismiss in response to the Second Amended Complaint on or before January 17, 2020;

2. Plaintiffs shall file and serve their opposition brief on or before March 2, 2020; and

3. Defendants shall file and serve their reply brief on or before March 16, 2020, or 14 days after the opposition brief is filed if filed earlier than March 2, 2020.

4. The Court shall hear oral argument on the motion to dismiss on March 25, 2020, at 10:30 a.m, or as soon thereafter as counsel may be heard.

Dated this 6 day of ~~December, 2019~~ Jan. 2020.

Nancy L Allf

THE HONORABLE NANCY L. ALLF
DISTRICT COURT JUDGE

Submitted by:

BALLARD SPAHR LLP

By: _____
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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

STIPULATION AND ORDER FOR EXTENSION OF TIME FOR PLAINTIFFS TO RESPOND TO DEFENDANTS' MOTION FOR SUMMARY JUDGMENT ON ORDER SHORTENING TIME

Case Number: A-17-762664-B

STIPULATION

Plaintiffs N5HYG, LLC and Nevada 5, Inc. ("Plaintiffs"), and Defendants Hygea Holdings Corp. Manuel Iglesias, and Edward Moffly ("Defendants"), **STIPULATE AND AGREE** to the following briefing schedule for Plaintiffs' response to the Defendants' Motion for Summary Judgment on Order Shortening Time ("Motion"):

1. The deadline for the Plaintiffs to file and serve their Opposition to the Motion is hereby extended from January 15, 2020, pursuant to the Order Shortening Time entered by this Court on January 13, 2020, to January 21, 2020;

2. The deadline for the Defendants to file and serve their reply brief is hereby extended from January 17, 2020, pursuant to the Order Shortening Time entered by this Court on January 13, 2020, to January 27, 2020; and

3. The Motion Hearing currently scheduled for January 23, 2020 at 10:00 a.m. shall be continued to January 30, 2020, or another date approximate to January 30, 2020, at the Court's convenience in the event this Court is not available on January 30, 2020.

4. Plaintiffs are not waiving any arguments regarding the propriety of abridging the opposition deadline, which is 14 days.

Dated: January 13, 2020

LEWIS ROCA ROTHBERGER CHRISTIE LLP

By: _____

Ogonna Brown, Esq.
Nevada Bar No. 7589
3993 Howard Hughes Pkwy, Ste 600
Las Vegas, Nevada 89169
Attorneys for Plaintiffs

Dated: January 13, 2020

BALLARD SPAHR LLP

By: _____

Joel E. Tasca, Esq.
Nevada Bar No. 14124
Maria A. Gall, Esq.
Nevada Bar No. 14200
1980 Festival Plaza Drive, Suite 900
Attorneys for Defendants

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

1Ans.App.228

STIPULATION

Plaintiffs N5HYG, LLC and Nevada 5, Inc. ("Plaintiffs"), and Defendants Hygea Holdings Corp. Manuel Iglesias, and Edward Moffly ("Defendants"), **STIPULATE AND AGREE** to the following briefing schedule for Plaintiffs' response to the Defendants' Motion for Summary Judgment on Order Shortening Time ("Motion"):

1. The deadline for the Plaintiffs to file and serve their Opposition to the Motion is hereby extended from January 15, 2020, pursuant to the Order Shortening Time entered by this Court on January 13, 2020, to January 21, 2020;

2. The deadline for the Defendants to file and serve their reply brief is hereby extended from January 17, 2020, pursuant to the Order Shortening Time entered by this Court on January 13, 2020, to January 27, 2020; and

3. The Motion Hearing currently scheduled for January 23, 2020 at 10:00 a.m. shall be continued to January 30, 2020, or another date approximate to January 30, 2020, at the Court's convenience in the event this Court is not available on January 30, 2020.

4. Plaintiffs are not waiving any arguments regarding the propriety of abridging the opposition deadline, which is 14 days.

Dated: January 13, 2020

LEWIS ROCA ROTHBERGER CHRISTIE LLP

By: [signature] NVBN 14549
For Ogonna Brown, Esq.
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Attorneys for Plaintiffs

Dated: January 13, 2020

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By: [signature]
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3993 Howard Hughes Parkway, Suite 600
Las Vegas, NV 89169

1Ans.App.229

ORDER

Based on the foregoing Stipulation, IT IS ORDERED as follows:

1. The deadline for the Plaintiffs to file and serve their Opposition to the Motion is hereby extended from January 15, 2020 to January 21, 2020;

2. The deadline for the Defendants to file and serve their reply brief is hereby extended from January 17, 2020 to January 27, 2020; and

3. The Court shall hear oral argument on the January 30, 2020 at 10:00 a.m, or as soon thereafter as counsel may be heard.

IT IS SO ORDERED.

Dated this 15 day of January, 2020.

Nancy L Allf

THE HONORABLE NANCY L. ALLF
DISTRICT COURT JUDGE

Submitted by:

LEWIS ROCA ROTHGERBER CHRISTIE

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1Ans.App.230

EXHIBIT "5"

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2/22/2018 1:24 PM
Steven D. Grierson
CLERK OF THE COURT

RTRAN

DISTRICT COURT

CLARK COUNTY, NEVADA

CLAUDIO ARELLANO, et al., Plaintiff(s), vs. HYGEA HOLDINGS CORP., Defendant(s).	Case No. A-18-768510-B DEPT. XXVII

BEFORE THE HONORABLE NANCY ALLF, DISTRICT COURT JUDGE

WEDNESDAY, FEBRUARY 21, 2018

TRANSCRIPT OF PROCEEDINGS RE:
ALL PENDING REQUESTS FOR ORDERS SHORTENING TIME AND ALL PENDING MOTIONS

APPEARANCES:

For the Plaintiff(s):	CHRISTOPHER D. KAYE, ESQ. GEORGE M. ALBRIGHT, ESQ. OGONNA M. BROWN, ESQ. KEVIN WATTS, ESQ.
For the Defendant(s):	MARIA A. GALL, ESQ. KYLE A. EWING, ESQ.

RECORDED BY: BRYNN GRIFFITHS, COURT RECORDER

I would like also to point out that if we replace the word "must" in 78.650 and 630 -- I'm sorry, if we replace the word "may" with "must" in those statutory provisions, then it essentially reads like a command to an agree shareholder. A shareholder must file for an appointment of a receiver. That's not what the statutory scheme was meant to say. The statutory scheme was merely meant to provide a basis to an aggrieved shareholder or creditor to apply for a receivership as a remedy if they met certain statutory criteria, which we offer does not exist here, Your Honor.

With respect to the stock purchase agreement, that stock purchase agreement was entered into between Hygea and one of the -- I haven't even counted up all the plaintiffs, I think it's over a dozen plaintiffs.

THE COURT: I think there are 14. I did.

MS. GALL: One of those plaintiffs -- and so, one, even if the stock purchase agreement applied here, which we offer it does not, it cannot bind Hygea to litigate in Clark County with the remainder of the plaintiffs.

Secondly, to the extent the statute is subject matter jurisdiction and not venue, you can't contract around subject matter jurisdiction.

Finally, we would offer that -- that provision in the stock purchase agreement does not apply at all here, because it applies to personal jurisdiction and venue requirements when an action rises in connection with that stock purchase agreement. This action does not

arise in connection with a stock purchase agreement. There has been no breach of contract or fraud based on the agreement. There have been no claims brought based on the agreement. And the agreement clearly states that its requirements apply or the personal jurisdiction and venue requirements apply when a dispute arises in connection with the agreement.

Therefore, Your Honor, we would submit that the statutes are jurisdictional, we would ask this court to dismiss this case based on lack of subject matter jurisdiction. If this court is inclined to believe that the statutes apply to venue, we would ask this court that -- we would submit that this court cannot proceed further until it decides the venue issue.

Thank you very much.

THE COURT: Thank you.

This is the defendant's Motion to Dismiss the complaint for lack of jurisdiction. Without ruling now on any issue with regard to venue, the motion is denied. The -- the complaint itself references the stock purchase agreement, so I find that it's relevant in determining the issue of whether or not this court has jurisdiction. It does under 8.111, as well as I find also under NRS 78.650 and 630 that venue -- without determining venue, that jurisdiction at least is appropriate at this point.

So before we argue the receiver motion, I have other matters at 10:00. I'd like to recess this hearing, give you a chance to -- to regroup just a minute so that you can come in and argue the issues with regard to the receivership request. There are three matters, I think

Now, I know we're going to have an evidentiary hearing, so I'm not sure how much more -- because Plaintiffs' counsel made so many accusations, some of which weren't even in his moving papers. I'm not certain what to address. I -- I do know I have in my notes here that he talked about breach of the -- the SPA. Well, they have a litigation against Hygea for that. It's pending before Judge Mahan. There's not a claim for breach of the SPA here. And in any event a breach -- a breach of contract isn't even a basis for a receivership.

I just want to make sure, Your Honor, I address everything. And I think where that brings us, Your Honor, is -- is that it would be an unprecedented and really extraordinary remedy for this court to appoint a receiver. Even a temporary receiver or an interim receiver on the mere basis of owed back taxes.

In fact, the weighing of the equities that this court will be required to do prior to issuing a receivership shows that there is no basis to appoint a receiver. In fact, if a receiver is appointed, Hygea will be rendered insolvent nearly immediately, and the value of Hygea's shareholders will be destroyed by a loss of the HMO plan contracts. Under those contracts, once a receivership is put into place, the contracts can be cancelled.

Indeed, the only individual standing to benefit from the appointment of a receiver are Plaintiff N5HYG and its beneficial owners, Ren and Mr. Bhagvala, who we believe are trying to devalue the company and purchase it for pennies on the dollar.

Now, that is not speculation. If you look at Mr. Williams'

ATTEST: I do hereby certify that I have truly and correctly transcribed the audio/video proceedings in the above-entitled case to the best of my ability.

Shawna Ortega, CET*562

EXHIBIT "6"

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Attorneys for Defendants

IN THE FIRST JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

IN AND FOR CARSON CITY

CLAUDIO ARELLANO, et al.,

Plaintiffs,

v.

HYGEA HOLDINGS CORP., et al.,

Defendants.

Case No. 18 OC 00071 1B
Dept. No. II

DEFENDANTS' TRIAL STATEMENT PURSUANT TO FJDCR 10

1Ans.App.238

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

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

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

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/.//./

EXHIBIT "7"

FIRST JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
IN AND FOR CARSON CITY

CLAUDIO ARELLANO; CROWN EQUITIES LLC; FIFTH AVENUE 2254 LLC; HALEVI ENTERPRISES LLC; HALEVI SV I LLC, et al,

Plaintiffs,

-vs- Case No. 18 OC 00071 1B

HYGEA HOLDINGS CORP,

Defendant.

_____/

TRIAL TRANSCRIPT

VOLUME I

PAGES 1 - 280

DATE: Monday, May 14, 2018

TIME: 9:00 a.m.

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

REPORTER: Daren Bloxham RPR/CSR-685

representation that at the time that Stock Purchase Agreement was entered into, that plaintiffs on a non-fully diluted basis held 8.57 percent of the company's stock, and that time is October 2016.

However, Hygea is not a corporation frozen in time. And even if, as plaintiffs argue, Hygea should be estopped from arguing that N5HYG holds anything less than 8.57 percent of the issued and outstanding stock, it does not matter, Your Honor, because in such case, plaintiffs would at most collectively hold 9.94 percent of Hygea's issued and outstanding stock.

Moreover, Your Honor, what we will see and what we will see as a repeating theme throughout this lawsuit is that if plaintiffs had an issue about the issued and outstanding stock, they have a remedy at law. They can bring a breach of contract action.

If they feel that Hygea has violated that antidilution provision, which as plaintiffs' counsel just stated, it merely provides a preemptive right, then they can bring a lawsuit for breach of contract against Hygea. But a receivership action is not the forum to enforce their contractual rights.

Moreover, Your Honor, even if the Court were to assume that plaintiffs had standing, the evidence will demonstrate to the Court that -- that there is no

That they are disgruntled shareholders who, with respect to N5HYG, gave up their board seat and gave up the opportunity to influence the management that they now complain of and second guess.

What it will also show is that plaintiffs have less drastic remedies for their grievances, including remedies at law, such as making a proper books and records request.

We heard a lot in the opening statement about how Hygea has not been transparent. There are statutes that provide -- if you meet the standing requirements in Nevada that provide you access to certain books and records and that even provides you access to the financials of a company. Those statutes have not been properly employed by plaintiffs.

Also, we heard a lot about the audited financial -- I apologize. The 2014 and 2015 audits, which plaintiff, N5HYG, has repeatedly argued they are entitled to under the Stock Purchase Agreement.

Well, the Stock Purchase Agreement is a contract. And if they seek to enforce that contract or if they believe that Hygea has violated the contract, then they should bring a breach of contract claim seeking to enforce that right.

But a receivership action and the

extraordinary and harsh remedy of a receivership is not the proper basis to enforce their rights -- their purported rights under a contract.

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

And in Nevada, the threshold of breach of fiduciary duty is high, not mere negligence. It is looked at against the background of the business judgment role. And only if that presumption is overcome, then the Court must make a determination that the directors or officers engaged in misconduct that was intentional, that was knowing, or that constituted fraud. And there is no evidence of that here, Your Honor.

Finally, Your Honor, plaintiffs complain of debt, and they complain of the Bridging debt. But what plaintiffs do not say and what they have not been able to explain and what they will not be able to explain throughout the course of this trial is what a receiver is going to do to bring more money into a company. A receiver does not bring more money into a company.

When all the evidence is looked at together,

the stock register reflecting the names and the shareholders and amount of stock owned by each of the shareholders?

A. Not a complete stock register.

MS. GALL: Objection, Your Honor; lack of foundation.

THE COURT: Sustained.

Q. (By Mr. Viar) Have you ever been provided what was represented to you by anyone from Hygea to be a complete and accurate list of the shareholders of the company?

A. No, I did not receive one.

MR. VIAR: Your Honor, I move for the admission of just the first page of Exhibit 20.

MS. GALL: Your Honor, I object based on relevance because it's the same objection as before. This is not a breach of contract action.

MR. VIAR: Again, Your Honor -- I'm sorry.

THE COURT: Exhibit -- the first page of Exhibit 20 is admitted.

MR. VIAR: Thank you, Your Honor. I just want to go back to Exhibit 19 since we're on evidence. This was the email to and from Manuel Iglesias, the CEO at the time of Hygea, and move for entry of 19.

THE COURT: Ms. Gall?

MR. VIAR: Before I go there, Your Honor, I'd like to move for the admission of Exhibit 22 as a business record.

THE COURT: Ms. Gall?

MS. GALL: It's hearsay. I assume Mr. Viar is claiming the business record hearsay objection.

THE COURT: 22 is admitted.

Q. (By Mr. Viar) Turn to Exhibit 36 in your book.

A. Yes, I am there.

Q. What is reflected here in Exhibit 36?

A. This is a letter from myself as board observer for N5HYG to Manuel Iglesias at Hygea Holdings on October 26th, 2017.

Q. Can you just read the two middle paragraphs, please, into the record.

A. "Incredibly, despite the agreement, you denied N5HYG this promised investor protection by refusing to allow me to observe the October 23rd meeting.

"When I tried to join the call or observe, you stated that due to advice of counsel, I would not be allowed to observe, this despite the fact that the agreement is clear that I am allowed to observe.

"I tried several times to remain on the call, but you demanded that I hang up and threatened to

reschedule the meeting if I did not. This was a blatant violation of the Stock Purchase Agreement.

"In fact, it constitutes a breach of the contract by both you and by Hygea. What is more, you should not hide behind your lawyers or blame advice of counsel for the violation.

"It appears that you are breaching the contract in retaliation for N5HYG's efforts to enforce the agreement, but N5HYG's efforts to protect itself and enforce its rights certainly give you no reason to commit additional violations of the contract."

Q. Did you at the time that you wrote that letter, did you believe you had a contractual right to attend the Hygea board of directors meetings?

A. Yes, we certainly did.

Q. Has your access to Hygea financial information improved since you were excluded from the October 2017 board of directors meeting?

A. No. It's gotten worse.

Q. Has Hygea had additional board meetings since October 2017 which you have been excluded from?

A. I believe so.

Q. Has Hygea made additional promises as recently as April of this year regarding audited financial statements?

C E R T I F I C A T E

STATE OF NEVADA)

COUNTY OF CLARK)

I, Daren S. Bloxham, a Certified Shorthand Reporter and Registered Professional Reporter, do hereby certify: That I reported the proceedings commencing on the 14th of May, 2018.

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

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

Witness my signature at Las Vegas, Nevada, on this 15th day of May, 2018.

Daren Bloxham

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