

**IN THE SUPREME COURT OF THE STATE OF NEVADA**

---

NUVEDA, LLC, A NEVADA LIMITED LIABILITY COMPANY; SHANE M. GOLDSTEIN, A NEVADA RESIDENT; AND JENNIFER M. GOLDSTEIN, A NEVADA RESIDENT, Appellants,  
v.  
PEIMAN BADY; AND POUYA MOHAJER, Appellees.

---

Supreme Court Case No. 69648  
District Court Case No. A-15-728510-B, Department XI (Elizabeth Gonzales)

---

**APPELLANT'S OPENING BRIEF**

---

JENNIFER GOLDSTEIN  
Nevada Bar No. 12583  
jennifer@xanthussports.com  
200 Hoover Avenue Suite 1113  
Las Vegas, NV 89131  
Tel: (416) 517-6464  
Fax: (866) 303-3067  
*Pro Se*

## **NRAP 26.1 DISCLOSURE**


Appellant certifies that the following are persons and entities as described in NRAP 26.1(a), and must be disclosed. These representations are made in order that the judges of this court may evaluate possible disqualification or recusal.

Appellant Jennifer Goldstein (“Goldstein”) is an individual and therefore there is no parent corporation or publicly held company to disclose. Goldstein’s complaint was filed in her individual capacity as well as derivatively on behalf of NuVeda, LLC, a Nevada limited liability company (“NuVeda”).

Appellant was represented in District Court by Erika Pike Turner of Garman Turner Gordon, LLP and now is *pro se*.

Dated this 3<sup>rd</sup> day of January, 2017.

By \_\_\_\_\_



JENNIFER GOLDSTEIN  
Nevada Bar No. 12583  
jennifer@xanthussports.com  
200 Hoover Avenue Suite 1113  
Las Vegas, NV 89131  
Tel: (416) 517-6464  
Fax: (866) 303-3067  
*Pro Se*

## **TABLE OF CONTENTS**

### Contents

<b>NRAP 26.1 DISCLOSURE .....</b>	<b>ii</b>
<b>I. JURISDICTIONAL STATEMENT .....</b>	<b>1</b>
<b>II. ROUTING STATEMENT .....</b>	<b>1</b>
<b>III. ISSUES ON APPEAL.....</b>	<b>2</b>
<b>IV. STATEMENT OF THE CASE.....</b>	<b>2</b>
<b>V. STANDARD OF REVIEW .....</b>	<b>4</b>
<b>VI. FACTUAL BACKGROUND .....</b>	<b>4</b>
<b>A. SPECIFIC BAD ACTS BY BADY AND MOHAJER.....</b>	<b>7</b>
<b>1. ....Bady and Mohajer Misrepresented the Source of the Start-Up Funding to the State and Local Governments, and to the Other Members. ....</b>	<b>7</b>
<b>2. ....Bady and Mohajer Pledged Membership Interests in NuVeda in Violation of the Law and the Operating Agreement.....</b>	<b>8</b>
<b>3. .... Mohajer Facilitated Bady’s Usurping of Corporate Opportunities/Self-Dealing. ....</b>	<b>9</b>
<b>4. ....Bady and Mohajer Improperly Shifting Tax Losses to One Another. ....</b>	<b>10</b>
<b>B. ...Bady and Mohajer’s Membership Interests Were Terminated Under Section 6.2 of the Operating Agreement. ....</b>	<b>10</b>
<b>1. ....Without Terry and Goldstein’s Knowledge, Bady and Mohajer Sold NuVeda’s Licenses. ....</b>	<b>11</b>
<b>I. LEGAL ARGUMENT .....</b>	<b>11</b>
<b>A. .... The Court Erroneously Applied the Legal Standard for “Civil Conspiracy,” Rather than “Interestedness.” .....</b>	<b>12</b>
<b>1.. Bady and Mohajer Could Not Exercise “Independent Business Judgment” in Voting on Each Other’s Membership Interests .....</b>	<b>14</b>
<b>A. .... The District Court Abused Its Discretion In Not Entering A Preliminary Injunction.....</b>	<b>16</b>
<b>1.The Record Establishes Irreparable Harm to Appellants if the Injunction is not Issued. ....</b>	<b>17</b>
<b>II. CONCLUSION .....</b>	<b>19</b>
<b>CERTIFICATE OF SERVICE .....</b>	<b>22</b>

## **TABLE OF AUTHORITIES**

### **Cases**

<u>Benihana of Tokyo, Inc. v. Benihana, Inc.</u> , 891 A.2d 150, 175 (Del. Ch. 2005), <u>aff'd</u> , 906 A.2d 114 (Del. 2006) .....	14
<u>Boulder Oaks Cmty. Ass'n v. B &amp; J Andrews Enters.</u> , 125 Nev. 397, 403, 215 P.3d 27, 31 (2009).....	4
<u>Cohen v. Mirage Resorts, Inc.</u> , 119 Nev. 1, 28, 62 P.3d 720, 738 (2003).....	17
<u>Com. v. Yameen</u> , 401 Mass. 331, 516 N.E.2d 1149, 1151 (1987).....	18
<u>Dixon v. Thatcher</u> , 103 Nev. 414, 415, 742 P.2d 1029, 1029 (1987).....	17
<u>Excellence Cmty. Mgmt. v. Gilmore</u> , 131 Nev. Adv. Op. 38, 351 P.3d 720, 722 (2015).....	17
<u>Farmers Ins. Exchange v. Neal</u> , 119 Nev. 62, 64, P.3d 472, 473 (2003).....	4
<u>Finkel v. Cashman Pron., Inc.</u> , 128 Nev. 1259, 1262, 270 P.3d 1259, 1262 (2012). ....	4
<u>Foster v. Arata</u> , 74 Nev. 143, 155, 325 P.2d 759, 765 (1958) .....	17
<u>Hamm v. Arrowcreek Homeowners' Ass'n</u> , 124 Nev. 290, 297, 183 P.3d 895, 901 (2008) .....	17
<u>In re Amerco Derivative Litig.</u> , 127 Nev. 196, 221, 252 P.3d 681, 699 (2011). ....	14
<u>Pickett v. Comanche Const., Inc.</u> , 108 Nev. 422, 426, 836 P.2d 42, 44 (1992); .....	17
<u>Shoen v. SAC Holding Corp.</u> , 122 Nev. 621, 642, 137 P.3d 1171, 1185 (2006). ....	14
<u>Sobol v. Capital Management</u> , 102 Nev. 444, 446, 726 P.2d 335, 337 (1986). ....	17
<u>State, Dep't of Bus. &amp; Indus. v. Check City</u> , 130 Nev. Adv. Op. 90, 337 P.3d 755, 758 (2014);	18

### **Statutes**

NAC 453A .....	18
NAC 453A. ....	5
NRS 38.222.....	1, 3
NRS 453A.....	5
NRS 453A.324.....	18

## **I. JURISDICTIONAL STATEMENT**

This appeal arises from the District Court's denial of a request for an injunction filed by Appellants Jennifer Goldstein and Shane Terry ("Terry" and together with Goldstein, "Appellants"). This Court therefore has jurisdiction over this matter pursuant to NRAP 3A(b)(3).

The District Court issued its Findings of Fact and Conclusions of Law ("FFCL") on January 13, 2016, denying both the Motion for Preliminary Injunction filed by Appellants, and the Countermotion for Preliminary Injunction filed by Appellees Pejman Bady ("Bady") and Pouya Mohajer ("Mohajer" and together with Bady, "Appellees"), and entering provisional remedies pursuant to NRS 38.222.

Appellants filed a Notice of Appeal on January 19, 2016. JA001775. Appellees did not appeal the denial of their motion. The Notice of Entry of the FFL was entered on January 27, 2016. JA001784. Appellants filed an Amended Notice of Appeal on January 28, 2016 and a Second Amended Notice of Appeal was filed on January 29, 2016. JA001792, JA001797. Therefore, the notice of appeal was timely under NRAP 4(a).

## **II. ROUTING STATEMENT**

This case originates from Department XI of the Eighth Judicial District Court of Nevada, before the Honorable Elizabeth Gonzalez, and was assigned to Business

Court pursuant to the Eighth Judicial District Court Rules. Accordingly, this matter should be assigned to the Nevada Supreme Court pursuant to NRAP 17(a)(10).

### **III. ISSUES ON APPEAL**

1. Whether the District Court applied the wrong legal standard when it required proof of a “civil conspiracy” to determine who was a “Disinterested Member” of a limited liability company.
2. Whether the District Court abused its discretion when it held that the language of a written Operating Agreement regarding the vote of “disinterested members” was unambiguous, yet implied into the agreement the burden of proving an actual “civil conspiracy” to establish that a member was “interested” in a transaction.
3. Whether the District Court abused its discretion by refusing to enter the requested injunctive relief while the matter was proceeding through arbitration.

### **IV. STATEMENT OF THE CASE**

NuVeda, LLC, a Nevada limited liability company, owns an interest in unique and valuable medical marijuana certifications, which are subject to administrative oversight by the state of Nevada and certain of its subdivisions. JA000314. On November 20, 2015, the disinterested voting members of NuVeda (defined in the NuVeda Operating Agreement as “those members whose membership in the Company is not then being voted upon”) voted to expel Bady and Mohajer from the Company for their bad acts that jeopardized NuVeda and its MME registration

certificates. (JA00074, at ¶ 9.) Bady and Mohajer refused to recognize their expulsion, and on November 23, 2015, expressed their intent to sell NuVeda's MME registration certificates. (JA00075, at ¶ 13.)

On December 3, 2015, Appellants filed a Complaint in the Business Court of the Eighth Judicial District Court, seeking declaratory and injunctive relief pursuant to NRS 38.222 while the matter was being arbitrated in accordance with the arbitration provision in the Operating Agreement. JA000001. Appellants filed their Complaint against Bady and Mohajer in their individual capacity as well as derivatively on behalf of NuVeda. JA000002.

Simultaneously with the filing of the Complaint, Appellants filed a Motion for Preliminary Injunction ("MPI") and Application for Order Shortening Time ("OST"). JA000042. After reassignment of the departments, the hearing on the MPI was delayed, necessitating a second Application for OST. JA000137. On December 14, 2015, Bady and Mohajer opposed Appellants' MPI and filed a Countermotion for a Preliminary Injunction. JA000151-JA000312.

On or about December 15, 2015, the District Court held a telephonic hearing on the MPI and Opposition to MPI and entered a Temporary Restraining Order. JA000313 (the "TRO"). The TRO recognized the MME licenses as "unique and valuable," and ordered an evidentiary hearing on Motion and Countermotion for Preliminary Injunction. (JA000314.)

Beginning on December 28, 2015, and continuing on January 6, 7, and 8, 2016, the District Court held an evidentiary hearing on the counter motions for preliminary injunction. JA00465-JA001184.

On January 13, 2016, the District Court entered its FFCL denying both sides' requested injunctive relief. JA001787. Notice of entry of the FFCL was entered on January 27, 2016. JA001784. Appellants thereafter appealed the FFCL. JA001775, JA001792, JA001797.

## **V. STANDARD OF REVIEW**

The Nevada Supreme Court will review a District Court's determination regarding the issuance or dissolution of an injunction for abuse of discretion. See Finkel v. Cashman Pron., Inc., 128 Nev. 1259, 1262, 270 P.3d 1259, 1262 (2012). Accordingly, the Supreme Court will reverse such a decision if it is based on: (1) an incorrect legal standard; or (2) clearly erroneous findings of fact. *Id.*, citing Boulder Oaks Cmty. Ass'n v. B & J Andrews Enters., 125 Nev. 397, 403, 215 P.3d 27, 31 (2009). Questions of law within this context, including the construction of a contract, are reviewed de novo. *Id.* and see, Farmers Ins. Exchange v. Neal, 119 Nev. 62, 64, P.3d 472, 473 (2003).

## **VI. FACTUAL BACKGROUND**

NuVeda is a Nevada limited liability company formed by the Appellants and Appellees in 2014 and governed by a written Operating Agreement. (Exh. 1, § 1.6,



JA001185.) NuVeda, through its subsidiaries, sought to obtain licenses to sell medical marijuana in the State of Nevada, and after a lengthy and competitive application process, was awarded six medical marijuana establishment (“MME”) registration certificates. (JA00002, at ¶ 4.)

MME registration certificates are strictly regulated under NRS 453A and NAC 453A. Applicable law provides that the number of registration certificates are limited in number and geographic distribution. (JA00010, at ¶ 40.)

Pursuant to the Operating Agreement, a Member’s ownership interest in NuVeda may be terminated by a vote of 60% or more of Disinterested Voting Interests “if the expelled Member was not acting in the best interest of the Company or was otherwise acting in a manner that was contrary to the purpose of the Company.” (JA001196 at § 6.2.)

Over the course of the 2015, it become evident to Appellants and the Company’s outside counsel, Pantea Stevenson, that a continuing pattern of wrongdoing committed by Bady and Mohajer was threatening the Company with irreparable harm and jeopardizing its MME licenses. (See JA000064 – JA000131.)

After reviewing corporate documents, including the emails from multiple parties, Counsel Stephenson determined that Bady and Mohajer “had acted fraudulently and put the company at risk. They had also engaged in multiple breaches of fiduciary duties and self-dealing. *Inter alia*, Bady and Mohajer had made

representations and promises to third parties and members that were untrue or that they could not fulfill relating to the transfer of interest in NuVeda. In addition, it was discovered that Bady had usurped corporate opportunities and breached his financial duties by engaging in self-dealing transactions where he actively misled the company and its members about his involvement with Mohajer's assistance. Specifically, Bady negotiated both sides of those business relationships to the detriment of Nevada and to the benefit of his own personal interests. In addition, Bady and Mohajer changed loss distributions of K-1 filings of NuVeda giving Mohajer's losses to Bady in violation of the NuVeda Operating Agreement thereby exposing NuVeda to tax fraud and audit risks." (JA00074, at ¶ 8.)

Counsel Stevenson concluded, "Bady and Mohajer's actions have jeopardized NuVeda and its medical marijuana certificates" (JA00074, at ¶ 9) and "[i]n my legal opinion, Bady and Mohajer's actions were not in the best interest of NuVeda and were contrary to the stated purpose of NuVeda in section 1.6 of its Operating Agreement." (JA00075, at ¶ 10.)

Based on Counsel Stevenson's legal opinion, "[o]n November 20th, 2015, the disinterested voting members, defined as "those members whose membership in the Company is not then being voted upon" by section 6.2 of the operating agreement, executed a valid written consent pursuant to section 4.2 of the operating agreement to expose Bady and Mohajer's membership interest in NuVeda." (JA00074, at ¶ 9.)

**A. SPECIFIC BAD ACTS BY BADY AND MOHAJER**

MME licenses in the State of Nevada are privileged licenses (similar to gaming licenses), which require full disclosure of all funding sources, and comprehensive background checks on all owners at the state, county and local levels. (JA001022.) Thus, MME applicants are subject to a high level of scrutiny, similar to that imposed on gaming license applicants. (JA001023.)

**1. Bady and Mohajer Misrepresented the Source of the Start-Up Funding to the State and Local Governments, and to the Other Members.**

As part of the rigorous application process, NuVeda had to disclose to the State and Local jurisdictions the sources of all funds each of its members agreed to invest into the Company. (JA001022.) Bady fronted the initial investment, and loaned Mohajer enough money to stake Mohajer's investment in the Company. (JA001109.) Mohajer executed a promissory note in favor of Bady for the loan. (JA001109.)

Bady represented in the applications that his investment was from the proceeds of the sale of his business; in fact, had Bady borrowed \$600,000 from an undisclosed funding source, his friend Majid Golpa. JA000604-JA000609; JA000629; JA000679; JA001234. (D1, 140:1-145:8, 165:22-25; D2, 4:17-25; Exh. 6). Only after NuVeda received the MME licenses did Bady eventually admit that the money that both he and Mohajer had invested was not from a prior business, but rather to fund his and Mohajer's initial investment in the Company, he had borrowed

\$600,000. (JA000604-JA000609; JA000629; JA000679; JA001234; D1, 140:1-145:8, 165:22-25; D2, 4:17-25; Exh. 6.)

**2. Bady and Mohajer Pledged Membership Interests in NuVeda in Violation of the Law and the Operating Agreement.**

Bady and Mohajer entered into clandestine and wrongful side deals, pursuant to which Defendants attempted to allocate ownership interests to their friends, and shroud the true source of Bady's initial capital contribution, Majid Golpa and Mohsen Bahri (“Golpa and “Bahri” respectively). (JA00006, at ¶ 23; JA000679-680.) These clandestine investor-friends have each demanded that the Company give them an ownership interest, asserting that Mohajer and/or Bady had taken money from them and, in exchange, pledged interests in NuVeda to them. *Id.* Not only would such a surreptitious “investment” and subsequent pledge be legally indefensible, it directly contravenes the Operating Agreement, which requires unanimous approval. (JA000023). Bady and Mohajer accepted the funds in exchange for a promise to provide 5.5% interest in NuVeda, despite the Operating Agreement’s requirement of unanimous approval of the Voting Members. (JA00005, at ¶ 22.) Bady made a deal with Bahri to provide Bahri a 4% interest in NuVeda. These deals were undisclosed or misrepresented to Appellants. *Id.* Further, stringent regulatory requirements must be met before any new ownership in NuVeda can be granted to a third party (i.e., disclosure, fingerprinting, etc.). *Id.*

Ultimately, both Golpa and Bahri claimed ownership in NuVeda and threatened to sue NuVeda. (JA000680 (D2, 5:1-8.) and JA000006, at ¶ 24.)

### **3. Mohajer Facilitated Bady's Usurping of Corporate Opportunities/Self-Dealing.**

Bady surreptitiously obtained interest in an entity, 2113 Investors, LLC, formed for the purpose of acquiring property located at 2113 North Las Vegas Boulevard that had been approved by the City of North Las Vegas for use as a dispensary by NuVeda. JA000583-584; JA000854; JA000960-JA000961; JA001759. (D1, 119:17-120:9; D2, 179:2-21; D3, p. 64:11-16; 65:3-14; Exh. 206, p. 2.)

NuVeda was in escrow on the property, having already executed a purchase contract and paid the deposit. JA000584; JA001127-JA001128; JA001767 (D1, p. 120:10-14; D4, p. 128:16-129:4; Exh. 209.) Mohajer had the authority to close the escrow on behalf of NuVeda. JA001757 (D3, Exh. 204.) Instead of working to close the escrow on behalf of NuVeda, Mohajer assigned the escrow to 2113 Investors on behalf of NuVeda for no consideration, resulting in NuVeda losing the property, losing its deposit and being forced to rent the property from 2113 Investors, LLC, all to the benefit of 2113 and its owners, Bady and Joe Kennedy, and to the clear detriment of NuVeda. JA000582-JA00586; JA000590; JA000633; JA000634; JA000852; JA000966. (D1, 118:19-122:24; 126:18-21; 169:19-25, 170:14-19; D2, 177:2-14; D3, 70:4-12, 70:20-24.) When NuVeda could not afford the lease

payments, 2113 Investors, LLC promptly brought a lawsuit to enforce the lease remedies against NuVeda, again benefitting 2113 Investors, LLC, in which Bady had an interest. JA000591; JA000535 (D1, 127:16-22; 71:7-14.)

**4. Bady and Mohajer Improperly Shifting Tax Losses to One Another.**

Section 5.1 of the Operating Agreement requires all profits and losses be allocated among the Members in proportion to their ownership interest. Bady and Mohajer changed their loss distributions, and Mohajer allocated his losses to Bady, requiring the Company to restate and reissue its K-1s and leaving it susceptible to tax fraud and audit risks. JA000074, at ¶8, JA001106-JA001107; JA000901-JA000902; JA000903. (D4, 107:15-108:6, D3, 5:24-6:4, 7:13-25.)

**B. Bady and Mohajer's Membership Interests Were Terminated Under Section 6.2 of the Operating Agreement.**

Under the direction of Counsel Stevenson, on November 20, 2015, 60% or more of the Disinterested Members expelled Bady and Mohajer's membership interest in NuVeda. Bady and Mohajer purported to vote and terminate Terry and Goldstein's interest in NuVeda, including all their membership interest, Terry's role as Chief Executive Officer and Goldstein's role as General Counsel. JA001262; JA001268. (Exh. 15 and 16.) The cited basis for the vote was Terry and Goldstein's November 20, 2015 decision to vote to terminate Bady and Mohajer. (Id.)

Included in the resolution purporting to expulse Terry and Goldstein from NuVeda, Bady, Mohajer and Joe Kennedy approved a Letter of Intent to sell NuVeda's assets to CW Nevada, LLC. Id. (Exh. 15, p. 1, and p. 16, p. 1.)

**1. Without Terry and Goldstein's Knowledge, Bady and Mohajer Sold NuVeda's Licenses.**

Days after they were expelled from the Company, on December 5, 2015, Bady and Mohajer, acting on behalf of NuVeda, entered into a formal Membership Interest Purchase Agreement with CW Nevada, LLC, which essentially sells NuVeda's valuable licenses to cultivate, process and dispense medical marijuana. JA001306 (Exh. 22.)

The District Court ultimately concluded that the parties' attempts at expulsion of each other, if allowed to continue, would cause irreparable harm to NuVeda. JA001790 (FFCL, p. 4, Sect. 19.) However, the District Court refused to set aside the Membership Purchase Agreement or otherwise disturb the decision by Bady and Mohajer to transfer the NuVeda assets to CW Nevada, LLC. JA001790 (FFCL, p. 4, ll. 20.) The District Court denied the MPI. JA001791 (FFCL, p. 5, Order.)

**I. LEGAL ARGUMENT**

The District Court denied Appellants' injunction on the grounds that "in order for a civil conspiracy to be found, two or more persons act together to accomplish an unlawful objective" JA001790 (FFCL at p. 4:9-19), and that Appellants had failed to establish "a reasonable probability that [Bady and Mohajer] attempted to

accomplish an unlawful objective.” JA001790 (FFCL at p.4:9-19.) The FFCL states no other reason for denying the MPI. JA001787 (FFCL).

**A. The Court Erroneously Applied the Legal Standard for “Civil Conspiracy,” Rather than “Interestedness.”**

The District Court applied an erroneous legal standard by requiring Appellants meet the burden of establishing a “civil conspiracy.” The plain language of Section 6.2 of the Operating Agreement states that a member may be terminated by a vote of “60% or more of the Disinterested Voting Interests that the expelled member was not acting in the best interest of the Company or was otherwise acting in a manner that was contrary to the purpose of the Company.” JA001195 (Exh. 1, Sect. 6.2) (emphasis added).<sup>i1</sup>

Simply, the District Court supplanted the express language of the Operating Agreement (“not acting in the best interest of the Company or was otherwise acting in a manner that was contrary to the purpose of the Company”) with the heightened and erroneous legal standard of “legal conspiracy.”

The legal definition of “civil conspiracy” is not interchangeable with “interested member.” One need not have conspired with another member to be interested in the outcome of a vote under Section 6.2. “If the same conduct that is

---

<sup>1</sup> Any action that may be taken at a meeting of Voting Member can be “taken without a meeting by written consent.” JA001192 (Operating Agreement at Section 4.3).



the basis for voting out a member is the conduct that's subject to both of them [being voted out], you can't be disinterested.” JA001157 (D4 at 158:20-25.) The same acts underlie the expulsion of both Bady and Mohajer; if Bady were deemed “disinterested” in evaluating Mohajer’s conduct, he would have a clear interest in the outcome of that vote. There is no requirement that the Disinterested Members prove “two or more persons act together to accomplish an unlawful objective” as the District Court erroneously required.

Outside counsel for NuVeda, Pantea Stevenson, determined that pursuant to the terms of the Operating Agreement, Bady could not be disinterested in the vote to expel Mohajer, and vice versa. (See JA000064 – JA000131.) She did not testify that she had analyzed the expulsions under a standard for “civil conspiracy” because such an analysis would be irrelevant to, and inconsistent with, the express language of the Operating Agreement. All disinterested members, aside from Joe Kennedy, voted for the expulsion. *Id.* and see JA001237; JA000494; JA000074-JA000075 (Exh. 7 to Hearing; D1 at p.30:14-18; MPI Exh. 2, at ¶¶ 8-12.)

Joe Kennedy, NuVeda’s Chief Financial Officer and co-founder of 2113 Investors with Bady, agrees with Appellants: if the members of NuVeda were seeking to expel two members based on actions that they took together; the members would not be disinterested under the Operating Agreement. JA00972 (D3 at p. 76: 2-10.)

Shareholder derivative actions provide guidance on who is “interested” versus “disinterested.” Whether a demand on a board or other shareholders would be futile depends on whether the board and/or shareholders were incapable of making an independent and disinterested decision. See generally In re Amerco Derivative Litig., 127 Nev. 196, 221, 252 P.3d 681, 699 (2011).

**1. Bady and Mohajer Could Not Exercise “Independent Business Judgment” in Voting on Each Other’s Membership Interests**

In assessing disinterestedness, a court must determine whether the alleged wrongdoer “exercise its independent and disinterested business judgment.” In re Amerco Derivative Litig., 127 Nev. at 219, 252 P.3d 681, 698; Shoen v. SAC Holding Corp., 122 Nev. 621, 642, 137 P.3d 1171, 1185 (2006).

A director cannot be impartial when he or she is “beholden to directors who would be liable” or when “a majority of the board members would be ‘materially affected, either to [their] benefit or detriment, by a decision of the board, in a manner not shared by the corporation and the stockholders.’” *Id.* This Court has further recognized that when one director has close ties to another it may support interestedness. In re Amerco Derivative Litig., 127 Nev. at 220–21, 252 P.3d at 698–99. Relevant factors include, the loaning of money to buy an interest, close personal relationships, and the manipulation of actions. *Id.*; Benihana of Tokyo, Inc. v. Benihana, Inc., 891 A.2d 150, 175 (Del. Ch. 2005), aff’d, 906 A.2d 114 (Del. 2006)

(“Entrenchment, self-dealing, or financial interest can indicate that a director is interested or lacks independence.”)

In this case, Mohajer borrowed his initial investment money from Bady (JA000605), who had borrowed it from Golpa and Bahri. Bady and Mohajer had been friends for 15 years. JA000561; JA000605 (D1 at 97:19-23, 141:18-19). This is a clear-cut case of interest on behalf of both Bady and Mohajer.

The evidence of misconduct introduced at the evidentiary hearing shows Bady and Mohajer were expelled for the same bad acts—neither would have been independent or objective in their vote on the other’s shares. Mohajer surreptitiously assigned NuVeda’s escrow for its dispensary property to 2113 Investors, LLC, an entity owned by Bady. Mohajer assigned Bady his tax losses in violation of Section 5.1 of the Operating Agreement, Bady and Mohajer together secretly borrowed investment money and pledged interests in NuVeda, and, ultimately, both Bady and Mohajer negotiated and approved selling NuVeda’s valuable licenses to its rival and competitor CW Nevada. These acts, *inter alia*, amounted to breaches of Bady and Mohajer’s duties to NuVeda, were not in the best interest of NuVeda, and were in a manner contrary to the purpose of NuVeda, such that proper grounds existed under Section 6.2 of the Operating Agreement to expel Bady and Mohajer.

The District Court erred in requiring proof of the elements of a “civil conspiracy” rather than determining whether Bady and Mohajer were “disinterested”

versus “interested” in the outcome of the membership vote. Because both Bady and Mohajer’s conduct provided the basis for the expulsion of Bady and Mohajer, and each would have therefore been materially affected by the outcome of the vote on the other’s shares, they were not “Disinterested” under the terms of the Operating Agreement. Thus, the District Court employed an erroneous standard of law in construing Section 6.2 of the Operating Agreement to require a “civil conspiracy” between Bady and Mohajer for them to be deemed “interested.”

**A. The District Court Abused Its Discretion In Not Entering A Preliminary Injunction.**

The law on injunctions in Nevada is well settled. City of Reno v. Metley, 79 Nev. 49, 61, 378 P.2d 256, 262 (1963) (“It is settled beyond question that equity has jurisdiction in a proper case to compel affirmative performance of an act as well as to restrain it, and that it is its duty to do so, especially where it is the only remedy which will meet the requirements of the case.”); see also Memory Gardens of Las Vegas, Inc. v. Pet Ponderosa Memorial Gardens, Inc., 88 Nev. 4, 377 P.2d 622 (1963) (entering mandatory injunction for the purpose of restoring the status quo even though the damage appears to have been done). NRS 33.010.

A “preliminary injunction is proper where the moving party can demonstrate that it has a reasonable likelihood of success on the merits and that, absent a preliminary injunction, it will suffer irreparable harm for which compensatory

damages would not suffice.” Excellence Cmty. Mgmt. v. Gilmore, 131 Nev. Adv. Op. 38, 351 P.3d 720, 722 (2015); Boulder Oaks Cmty. Ass'n v. B & J Andrews Enterprises, LLC, 125 Nev. 397, 403, 215 P.3d 27, 31 (2009); Hamm v. Arrowcreek Homeowners' Ass'n, 124 Nev. 290, 297, 183 P.3d 895, 901 (2008); Pickett v. Comanche Const., Inc., 108 Nev. 422, 426, 836 P.2d 42, 44 (1992); Dixon v. Thatcher, 103 Nev. 414, 415, 742 P.2d 1029, 1029 (1987).

Nevada courts grant injunctions when fiduciaries breach their duty of loyalty by taking self-interested actions that expose the company to a risk of significant harm. Controlling shareholders owe fiduciary duties to the corporation and its other shareholders. See Cohen v. Mirage Resorts, Inc., 119 Nev. 1, 28, 62 P.3d 720, 738 (2003), see also Foster v. Arata, 74 Nev. 143, 155, 325 P.2d 759, 765 (1958) (noting that a dominant or controlling stockholder's dealings with the company are "subject to rigorous scrutiny"). At issue here is Appellants’ (and NuVeda’s) ability to operate a medical marijuana establishment in compliance with governmental requirements.

**1. The Record Establishes Irreparable Harm to Appellants if the Injunction is not Issued.**

In Nevada’s seminal case on preliminary injunctions in a business context, the Supreme Court held that “acts committed without just cause which unreasonably interfere with a business or destroy its credit or profits, may do an irreparable injury.” Sobol v. Capital Management, 102 Nev. 444, 446, 726 P.2d 335, 337 (1986).

The Supreme Court extended that analysis to include licensure, finding that the loss or suspension of a license amounts to irreparable harm for purposes of granting a preliminary injunction. State, Dep't of Bus. & Indus. v. Check City, 130 Nev. Adv. Op. 90, 337 P.3d 755, 758 (2014); Com. v. Yameen, 401 Mass. 331, 516 N.E.2d 1149, 1151 (1987) (“A licensee whose license has been revoked or suspended immediately suffers the irreparable penalty of loss of [license] for which there is no practical compensation.”).

The District Court found that NuVeda’s licenses were “unique and valuable.” (JA000314.) Licenses to operate a medical marijuana establishment in the State of Nevada are scarce, valuable, geographically limited and irreplaceable, and thus the District Court erred in not granting Appellants’ injunction. NRS 453A.324; NAC 453A.

Bady and Mohajer leveraged and disposed of NuVeda’s key assets in “a clear violation [of the laws surrounding medical marijuana establishments]” and created “concern for the protection of [NuVeda’s] licenses.” JA000684 (D2, 9:10-24).

Bady and Mohajer were obligated to use their best efforts to optimize NuVeda’s strategic options. Instead, they engaged in secret loans, made illegal and undisclosed promises of shares to third parties, created clandestine companies and negotiated with themselves on behalf of the Company, committed tax irregularities

that, at best, would invite audit scrutiny, and took for themselves corporate opportunities.

In light of the actions of Bady and Mohajer, there has been a fundamental breakdown of the corporate governance of this highly regulated company. While the fiduciary breaches to date have already served significant damage upon NuVeda, the only way to mitigate further harm to NuVeda is to allow the Company to move forward without Pejman Bady and Pouya Mohajer. Therefore, the District Court erred in refusing to enter a preliminary injunction pending resolution of arbitration.

## **II. CONCLUSION**

Appellant Jennifer Goldstein respectfully requests that this Court determine that the District Court abused its discretion by applying an erroneous standard of law when construing the Operating Agreement, resulting in the denial of Appellants' request for injunctive relief. The requested relief is necessary for Appellants to avoid irreparable harm, and Appellant requests that the requested injunction issue, and for such other and further relief as the Court deems just and appropriate.

## **CERTIFICATE OF COMPLIANCE**

1. I hereby certify that this brief complies with the formatting requirements of NRAP 32(a)(4), the typeface requirements of NRAP 32(a)(5) and the type style requirements of NRAP 32(a)(6) because this brief has been prepared in a proportionally spaced typeface using Microsoft Word 2007 in 14-point Times New Roman font.

2. I further certify that this brief complies with the page- or type-volume limitations of NRAP 32(a)(7) because, excluding the parts of the brief exempted by NRAP 32(a)(7)(C), it is either:

☒ proportionally spaced, has a typeface of 14 points or more and contains 5186 words; or


☐ does not exceed \_\_\_\_\_ pages.

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



accompanying brief is not in conformity with the requirements of the Nevada Rules of Appellate Procedure.

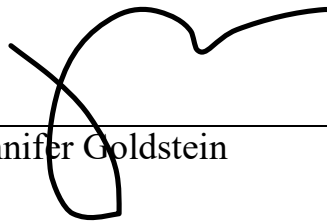
Dated this 3<sup>rd</sup> day of January, 2017.

By   
JENNIFER GOLDSTEIN  
Nevada Bar No. 12583  
jennifer@xanthussports.com  
200 Hoover Avenue Suite 1113  
Las Vegas, NV 89131  
Tel: (416) 517-6464  
Fax: (866) 303-3067  
*Pro Se*

## **CERTIFICATE OF SERVICE**

I hereby certify that the foregoing **APPELLANT'S OPENING BRIEF** was filed electronically with the Nevada Supreme Court on January 3, 2017. Electronic Service of the foregoing document shall be made in accordance with the Master Service List as follows:

A. Maupin  
Dylan Ciciliano  
Erika Pike Turner  
Jennifer Goldstein  
John Naylor  
Matthew Dushoff  
Vincent Aiello



---

Jennifer Goldstein