IN THE SUPREME COURT OF THE STATE OF NEVADA

NUVEDA, LLC, A NEVADA LIMITED LIABILITY COMPANY; SHANE M. TERRY, 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

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NRAP 26.1 DISCLOSURE

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

Appellant Shane Terry ("Terry") is an individual and therefore there is no parent corporation or publicly held company to disclose. Terry's complaint was filed in his individual capacity as well as derivatively on behalf of NuVeda, LLC, a Nevada limited liability company ("NuVeda").

Appellant's only law firm of record in this matter has been Garman Turner Gordon, LLP.

Dated this 3rd day of January, 2017.

GARMAN TURNER GORDON

By /s/ Erika Pike Turner

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I. JURISDICTIONAL STATEMENT

This appeal concerns the District Court's refusal to grant an injunction. The Appellate Court therefore has jurisdiction over this matter pursuant to NRAP 3A(b)(3).

On January 13, 2016, the District Court entered its Findings of Fact and Conclusions of Law ("FFCL") denying Terry's Motion for Preliminary Injunction and denying the Countermotion for Preliminary Injunction filed by Appellees Pejman Bady ("Bady") and Pouya Mohajer ("Mohajer"), and entering provisional remedies pursuant to NRS 38.222. Terry filed a Notice of Appeal on January 19, 2016. (JA001775-JA001783). Subsequently, Notice of Entry of the FFCL was entered on January 27, 2016. (JA001784-JA001791). Terry filed an Amended Notice of Appeal on January 28, 2016 and a Second Amended Notice of Appeal was filed on January 29, 2016. (JA001792-JA001796 and JA001797-JA001808). 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 abused its discretion when construing the parties' written contract. Specifically, whether the District Court abused its discretion when it found that a relevant term of a written contract was unambiguous, but then applied the term inconsistent with its plain language.
2. Whether the District Court abused its discretion by refusing to enter requested injunctive relief pending resolution of arbitration.

IV. STATEMENT OF THE CASE

On December 3, 2015, Terry, together with Co-Appellant, Jennifer Goldstein ("Goldstein"), filed a Complaint in the Business Court of the Eighth Judicial District Court, which requested declaratory and injunctive relief pending the resolution of arbitration, pursuant to NRS 38.222. (JA000001-JA000041). Terry filed the Complaint against Bady and Mohajer in his individual capacity as well as derivatively on behalf of NuVeda. (JA000002 ll. 19-22).

Simultaneously with the filing of the Complaint, Terry filed a Motion for Preliminary Injunction ("MPI") and Application for Order Shortening Time ("OST")). (JA000042-JA000136). After reassignment of the departments, the hearing on the MPI was delayed, necessitating a second Application for OST. (JA000137-JA000142). On December 14, 2015, Bady and Mohajer opposed

Terry's MPI and counter-moved 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-JA000315).

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

On January 13, 2016, the District Court entered its FFCL denying the MPI. (JA001787-JA001791). Notice of entry of the FFCL was entered on January 27, 2016. (JA001784-JA001791). Terry thereafter appealed the FFCL. (JA001775-JA001783, JA001792-JA001796, JA001797-JA001808).

V. STANDARD OF REVIEW

This appeal originates from the District Court's denial of injunctive relief following construction of a written contract. The Nevada Supreme Court reviews a district court order denying injunctive relief for abuse of discretion. Douglas Disposal, Inc. v. Wee Haul, LLC, 123 Nev. 552, 557, 170 P.3d 508, 512 (2007). To the extent that the review involves the construction of a contract, the standard of review is *de novo*. Id.; Farmers Ins. Exchange v. Neal, 119 Nev. 62, 64, P.3d 472, 473 (2003).

VI. FACTUAL BACKGROUND

NuVeda was formed for any and all lawful purposes, including the specific purposes of lawfully cultivating, processing and/or dispensing medical marijuana in the State of Nevada. (JA001187 § 1.6). In 2014, following a rigorous application process, NuVeda obtained valuable medical marijuana establishment registration certificates to cultivate, process and dispense medical marijuana in the State of Nevada under NRS Chapter 453A's regulatory scheme. (JA00066, at ¶ 4).

Since July 2014, NuVeda has been governed by a written Operating Agreement. (JA001185-JA001212). Terry, Goldstein, Bady and Mohajer were all Managers and Voting Members of NuVeda until November 20, 2015. (JA001188 at §§ 2.2 and 2.5). Under the Operating Agreement, the parties' membership interests in NuVeda were as follows: Bady had a 46.5% interest, Mohajer had a 21% interest, Terry had a 21% interest, Goldstein had a 7% interest.[1] (JA001211).

A. Bady and Mohajer's Membership Interest in NuVeda Was Terminated Under Section 6.2 of the Operating Agreement.

The NuVeda Operating Agreement provides that a Member's interest in NuVeda may be terminated or expulsed upon agreement of the "Disinterested Voting Members" by a vote of 60% or more of "Disinterested Voting Interests."

[1] Non-parties Joe Kennedy, Ryan Winmill and John Penders have a 1%, 1.75% and 1.75% interest, respectively. There is a dispute regarding whether these non-parties were ever vested. (JA000817 at ll. 12-21). In addition, there is a dispute regarding whether the membership percentages were re-aligned subsequent to the Operating Agreement. (JA000820 at ll. 5-14; JA000823 l. 15 – JA00824 l. 25, JA000828 at ll. 22-24). These disputes are not dispositive of the issues at hand.

(JA001196 at § 6.2). Expulsion can occur "if the expulsed Member was not acting in the best interest of [NuVeda] or was otherwise acting in a manner that was contrary to the purpose of the [NuVeda]." (Id.).

During 2015, Terry, Goldstein and Pantea Stevenson (outside counsel for NuVeda) discovered numerous bad acts by Bady and Mohajer that threatened NuVeda and the other Members with irreparable harm. (See JA000064 – JA000131). These bad acts included:

Usurpation of Corporate Opportunities- 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. (JA000583 l. 17-JA000584 l. 9; JA000854 ll. 2-21; JA000960 ll. 11-16; JA000961 ll. 3-14; JA001758-JA001763). NuVeda had executed a purchase contract for the property and had already paid a deposit. (JA000584 l. 10-14; JA001127 l. 16 - JA001128 l. 4; JA001767-JA001769). Mohajer was provided the authority to close the escrow on behalf of NuVeda. (JA001757). Instead of working to close the escrow on behalf of NuVeda, Mohajer assigned the escrow to 2113 Investors, LLC on behalf of NuVeda for no consideration, resulting in NuVeda losing the deposit, having to rent the property based on an as-developed price, and paying for all of the development, which benefitted 2113 Investors, LLC, to NuVeda's detriment.

(JA000582 l. 19 - JA00586 l. 24; JA000590 ll. 18-21; JA000633 ll. 19-25; JA000634 ll. 14-19; JA000852 ll. 2-14; JA000966 ll. 4-12; JA000966 ll. 20-24). As NuVeda could not afford the lease term, 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, to the detriment of NuVeda. (JA000591 ll. 16-22; JA000535 ll. 7-14).

Pledging Membership Interest and Misrepresenting Source of Funds- The government entities that issue the privilege licenses for medical marijuana establishments require transparency on source of funds and ownership of equity. See NAC 453A.532(1)(b)(3) (No false or misleading information can be provided to the State); Application for Medical Marijuana Establishment Certification dpbh.nv.gov/forms/fillableform-MMEregistrationrenewal3-17-16.pdf. Bady represented to the government that his funding came from the sale of a business; however, in fact, Bady borrowed $600,000 from a third party, Majid Golpa, who was undisclosed as a funding source. (JA000604 l. 1 - JA000609 l. 8; JA000629 ll. 22-25; JA000679 ll. 17-25; JA001234-JA001236). Bady and Mohajer were both obligated to repay the loan so, together, they promised Mr. Golpa a 5.5% interest in NuVeda. (Id.). Ultimately, Golpa claimed ownership in NuVeda and threatened to sue NuVeda – to enforce his interest. (JA000680 ll. 1-8).

Shifting Tax Losses- 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 disregarded this requirement and Mohajer shifted his losses to Bady. (JA001106 l. 15 - JA001107 l. 6; JA000901 l. 24 - JA000902 l. 4; JA000903 ll. 13-25).

On November 20, 2015, Terry, Goldstein, Ryan Winmill, and John Penders voted together to terminate Bady and Mohajer's membership interests in NuVeda based on Bady and Mohajer's conduct contrary to NuVeda's best interests and its purposes as a highly-regulated participant in the medical marijuana industry. (JA000072-JA000131; JA001237; JA000494 ll. 14-18). As Bady and Mohajer engaged in the same conduct, and were therefore "interested parties,"[2] Terry, Goldstein, Ryan Winmill and John Pender's voting interests, (i.e., the "Disinterested Voting Interests") were in excess of the 60% of disinterested votes needed to expulse Bady and Mohajer under Section 6.2 of the Operating Agreement.

B. <u>Bady and Mohajer Retaliated Against Terry and Goldstein</u>.

On November 24, 2015, in retaliation for the November 20, 2015 resolution expulsing Bady and Mohajer's membership interest in NuVeda, Bady and Mohajer purported to vote and terminate Terry and Goldstein's interest in NuVeda,

[2] Members interested in the expulsion because of their own conduct were not "Disinterested Voting Members."

including all their membership interest, Terry's role as Chief Executive Officer and Goldstein's role as General Counsel. (JA001262-JA001267; JA001268-JA001279). The cited basis for Bady and Mohajer's 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.).

C. Without Terry and Goldstein's Involvement, Bady and Mohajer Sold NuVeda's Valuable Assets.

Immediately after purporting to vote out Terry and Goldstein, on November 25, 2015, Bady and Mohajer filed amended membership lists for NuVeda with the Nevada Secretary of State. (JA000069 at ¶ 25). Therein, they removed Terry and Goldstein as Managers of NuVeda from the Secretary of State's files. (JA000132-JA000136).

Then, on December 5, 2015, Bady and Mohajer, acting on behalf of NuVeda without Terry or Goldstein's involvement, 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-JA001346).

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 at ¶ 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 that was without the involvement of Terry or Goldstein. (JA001790 at ¶ 20). Despite that the Membership Purchase Agreement purports to transfer interest in NuVeda owned by Terry and Goldstein, and under the Operating Agreement, Terry and Goldstein would have a right of participation at the very least (JA001188 at §2.5 and JA001196 at § 6.3), the District Court denied the MPI. (JA001791 at ll. 9-14).

VII. LEGAL ARGUMENT

A. Section 6.1 of the Operating Agreement was erroneously construed by the District Court.

Contract interpretation is a question of law. Farmers Ins. Exch. v. Neal, 119 Nev. 62, 64, 64 P.3d 472, 473 (2003). An unambiguous contract is interpreted according to the plain and ordinary meaning of its terms. See e.g. id.; Traffic Control Servs., Inc. v. United Rentals Nw., Inc., 120 Nev. 168, 174, 87 P.3d 1054, 1058 (2004). Where the terms of the contract are clear and unambiguous, the contract "will not be rewritten." Neal, 119 Nev. at 64, 64 P.3d at 473 (citing Farmers Insurance Group v. Stonik, 110 Nev. 64, 67, 867 P.2d 389, 391 (1994)); Am. First Fed. Credit Union v. Soro, 131 Nev. Adv. Op. 73, 359 P.3d 105, 106

(2015). Accordingly, courts should not read requirements into contracts that are not evidenced by the plain meaning of that contract's terms. Eagle Materials, Inc. v. Stiren, 127 Nev. 1131, 373 P.3d 911 (2011) ("But his interpretation reads language into the contract that is not present and contravenes our long established jurisprudence of enforcing a contract as written.")

In pertinent part, Section 6.2 of the Operating Agreement provides that:

> A Member's interest in the Company may be terminated or expulsed only upon agreement of the Disinterested Voting Members by a vote of 60% or more of Disinterested Voting Interests. Expulsion may only be made by a majority vote of 60%, or more of the Disinterested Voting Interests that the expulsed 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**. For purposes of this provision, the "Disinterested Voting Members" shall be those Members who's membership in the Company is not then being voted upon, and "Disinterested Voting Interests" shall be the total percentage of the Ownership Interests held by the Disinterested Voting Members." (JA001195 (emphasis added)).[3]

Thus, any member can be expelled from NuVeda when they fail to act in the best interest of NuVeda and when greater than 60% of the **non-interested** voting interests vote for the exclusion of that member.

The District Court construed the Operating Agreement and found that Section 6.2 was not ambiguous and should be construed from its plain language

[3] Any action that may be taken at a meeting of Voting Member, can be "taken without a meeting by written consent." (JA001192 at ¶4.3).

without parol evidence, recognizing only limited factual issues related to who was interested versus disinterested. (JA000894 ll. 1-20; JA001790 at ¶ 14).

The District Court then erroneously construed Section 6.2 of the Operating Agreement to read in a requirement that only those parties to a conspiracy could be "interested"[4] under Section 6.2 of the Operating Agreement. In the FFCL, the District Court found that while it was shown that Mohajer and Bady "acted together in accomplishing" certain activities, "in order for a civil conspiracy to be found, two or more persons act together to accomplish an unlawful objective."[5] (JA001790 at ¶ 16). The District Court compounded its error by then finding that Terry failed to demonstrate "a reasonable probability that [Bady and Mohajer] attempted to accomplish an unlawful objective." (JA001790 at ¶ 17). The District Court failed to identify or explain any support for the conclusion that Section 6.2 of the Operating Agreement required the demonstration of a conspiracy, as opposed to interestedness. There was absolutely no testimony that the Operating Agreement's interestedness provision required a conspiracy and the record is otherwise deficient of any authority for the standard imposed by the Court.

[4] It is axiomatic that in order to determine the "Disinterested Voting Interests," there needs to be a determination of who is "interested."

[5] Dow Chemical Co. v. Mahlum, 114 Nev. 1468, 1488, 970 P.2d 98, 111 (1998), *abrogated on other grounds*; Sutherland v. Gross, 105 Nev. 192, 196, 772 P.2d 1287, 1290 (1989).

The failure to show a civil conspiracy was the only cited basis for denying the MPI. (JA001787).

"Conspiracy" is not required for two members to be "interested," and therefore excluded from the "Disinterested Voting Interests" under Section 6.2. Succinctly, "if the same conduct that is 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 ll. 21-23). If Bady were permitted to evaluate Mohajer's conduct, or vice versa, he would have been evaluating his own conduct, the *non sine qua* of interestedness. Therefore, it was appropriate to exclude Bady and Mohajer's voting interests when determining if the expulsion of Bady and Mohajer met the 60% threshold. All disinterested members, aside from Joe Kennedy, voted for the expulsion. As such, there was 99% support from disinterested members voting their membership interests for the expulsion of Bady and Mohajer.

While Bady and Mohajer chose not to testify at the preliminary injunction hearing, they had Joe Kennedy testify. Joe Kennedy agreed that 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 ll. 2-10). Likewise, NuVeda's outside counsel, who was retained by Bady on behalf of NuVeda, agreed that Bady and Mohajer's voting interests were

properly excluded from the vote on their own interests. (JA001237-JA001241; JA000494 ll. 14-18; JA000074-JA000075).

Concepts surrounding "interested" versus "disinterested" commonly arise in shareholder derivative actions. There, whether a demand on a board or other shareholders would be useless 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). The determination of interestedness in a shareholder derivative lawsuit is relevant in determining interestedness under NuVeda's Operating Agreement.

Under prevailing law, a district court should look to whether a director is able to "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.")

Also relevant to the analysis of interestedness is the business judgment rule, which considers the interestedness of directors and members. Nevada codifies the business judgment rule in NRS 78.138. Montgomery v. eTrepped Technologies, LLC, 548 F.Supp.2d 1175, 1179 (D. Nev. 2008) (recognizing the application of corporate law regarding the business judgment rule to limited liability companies). The business judgment rule applies "only to directors whose conduct falls within its protections," that is only "in the context of valid interested director action, or the valid exercise of business judgment by disinterested directors in light of their fiduciary duties." Shoen v. SAC Holding Corp., 122 Nev. at 635–36, 137 P.3d at 1181 (2006); see also Nutraceutical Dev. Corp. v. Summers, 127 Nev. 1163, 373 P.3d 946 (2011); In re Trados Inc. S'holder Litig., 73 A.3d 17, 35–36 (Del. Ch. 2013) (analyzing interestedness in the context of the duty of loyalty and care).

As set forth during the evidentiary hearing, both Bady and Mohajer acted in conjunction with another when Mohajer assigned NuVeda's interest to acquire property for a dispensary 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 were secretly pledging interests in NuVeda, and, ultimately, both Bady and Mohajer negotiated and approved selling NuVeda's valuable licenses to its rival and competitor CW Nevada, LLC. 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.

Furthermore, the evidence demonstrated Bady enjoyed significant control over Mohajer. Inclusive, Mohajer obtained his ownership interest in NuVeda through a loan from Bady and Bady and Mohajer had been friends for 15 years. (JA000561 ll. 19-23; JA000605 ll. 18-19).

The District Court should have evaluated these facts regarding influence and personal interest when determining whether Bady and Mohajer were disinterested versus interested. Because both Bady and Mohajer's conduct provided the basis for the expulsion of Bady and Mohajer, and they would have therefore both been materially affected, either to their benefit or detriment, by a decision of the other disinterested members, they were interested under the terms of the Operating Agreement.

As set forth above, when a party will be materially affected by a decision, he or she is not disinterested. As such, interestedness does not depend upon a

conspiracy, but rather a director or members interest in the transaction or personal gain. Here, both Bady and Mohajer's membership interests were being voted on based on similar conduct. Clearly, they were interested in the outcome of the vote, such that they were interested under the Operating Agreement. Thus, the District Court abused its discretion when construing Section 6.2 of the Operating Agreement and determining that in order to be disinterested, there must be a demonstrated conspiracy between Bady and Mohajer.

B. The District Court Abused Its Discretion In Not Entering A Preliminary Injunction In Favor Of Terry Pending Resolution Of Arbitration.

Pursuant to NRS 33.010, a court is authorized to enter injunctive relief in the following circumstances:

1. When it shall appear by the complaint that the plaintiff is entitled to the relief demanded, and such relief or any part thereof consists in restraining the commission or continuance of the act complained of, either for a limited period or perpetually.

2. When it shall appear by the complaint or affidavit that the commission or continuance of some act, during the litigation, would produce great or irreparable injury to the plaintiff.

3. When it shall appear, during the litigation, that the defendant is doing or threatens, or is about to do, or is procuring or suffering to be done, some act in violation of the plaintiff's rights respecting the subject of the action, and tending to render the judgment ineffectual.

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).

The District Court erred in refusing to grant a preliminary injunction. As set forth above, by establishing that Bady and Mohajer "acted together at certain times," Terry demonstrated a reasonable likelihood of success on the claim that Bady and Mohajer were appropriately expulsed from NuVeda. The district court failed to apply the correct standard for the reasonability of success on the merits of NuVeda's arbitration claim and inappropriately required that Bady and Mohajer succeed on a claim of conspiracy, as opposed to lesser conduct demonstrating interestedness. The clear and unrebutted evidence is that Bady and Mohajer were both interested members, such that their voting interests were properly excluded under Section 6.2 of the Operating Agreement. (JA001196). Moreover, Terry demonstrated that it was reasonably probable that he would prevail on the grounds for the Bady and Mohajer expulsion, as the improper actions taken by Bady and Mohajer were not in the best interests of NuVeda, usurped NuVeda's corporate

opportunity, and/or were in derogation of the procedures set forth in the Operating Agreement.

Furthermore, "a preliminary injunction is available when the moving party can demonstrate that the nonmoving party's conduct, if allowed to continue, will cause irreparable harm for which compensatory relief is inadequate." Boulder Oaks Cmty. Ass'n v. B & J Andrews Enterprises, LLC, 125 Nev. 397, 403, 215 P.3d 27, 31 (2009). At issue here is Terry (and NuVeda's) ability to operate a medical marijuana establishment in compliance with governmental requirements.

This "loss of opportunity to pursue [Plaintiffs'] chosen profession[s]" constitutes irreparable harm." Arizona Dream Act Coal. v. Brewer, 757 F.3d 1053, 1068 (9th Cir. 2014). 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 has subsequently extended that analysis to 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); Dep't of Bus. & Indus., Fin. Insts. Div. v. Nev. Ass'n Servs., Inc., 128 Nev. Adv. Op. 34, 294 P.3d 1223, 1228 (2012) (citing 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."). Undoubtedly, a privileged license to operate a medical marijuana establishment is both scarce, valuable, geographically limited and irreplaceable. NRS 453A.324; NAC 453A.

Bady and Mohajer threatened and acted to dispose of NuVeda's assets, including the valuable medical marijuana establishment registration certificates. Phantom interests to Mr. Golpa is "a clear violation [of the laws surrounding medical marijuana establishments]" and created "concern for the protection of [NuVeda's] licenses." (JA000684 ll. 10-24). In addition, absent an injunction, Bady and Mohajer would be permitted to sell NuVeda's interests without Member input or approval in contravention of those Members' interests under the Operating Agreement.

Therefore, the District Court erred in refusing to enter a preliminary injunction pending resolution of arbitration.

VIII. CONCLUSION

Terry respectfully requests that this Court determine that the District Court abused its discretion when construing the Operating Agreement and, based thereon, denying the requested injunctive relief necessary for Terry to avoid

irreparable harm, and for such other and further relief as the Court deems just and appropriate.

Dated this 3rd day of January, 2017.

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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:

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☐ 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 3rd day of January, 2017.

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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:

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/s/ Julia Melnar
Julia Melnar, an employee of
Garman Turner Gordon