

IN THE SUPREME COURT OF THE STATE OF NEVADA

NUVEDA, LLC,

Appellant,

v.

JENNIFER GOLDSTEIN,

Respondent.

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No. 79806
Elizabeth A. Brown
Clerk of Supreme Court
Supreme Court Case No: 79806
District Court Case No: A-15-728510-B

JOINT APPENDIX VOLUME VIII

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DOCUMENT INDEX

Document	Date	Vol. No.	Beginning Page No.
Affidavit of Attempted Service	12.09.2015	I	JA00087
Affidavit of Attempted Service	12.09.2015	I	JA00089
Affidavit of Attempted Service	12.09.2015	I	JA00091
Affidavit of Attempted Service	12.09.2015	I	JA00093
Affidavit of Due Diligence	12.09.2015	I	JA00095
Affidavit of Due Diligence	12.09.2015	I	JA00097
Affidavit of Service	12.09.2015	I	JA00099
American Arbitration Association Preliminary Hearing and Scheduling Order #2	10.30.2017	III	JA00445
American Arbitration Association Preliminary Hearing and Scheduling Order #6	11.1.2018	III	JA00477
Business Valuation Report for NuVeda, LLC prepared by Donald R. Parker	3.10.2016	II	JA00193
Case Appeal Statement	10.9.2019	XI	JA02406
Certified Business Appraisal of NuVeda, LLC (Fair Market Value) by Webster Business Group	8.19.2017	II	JA00435
Complaint	12.3.2015	I	JA00041
Correspondence by and between Alan Buttell and Jennifer Goldstein	8.29.2017 – 9.5.2017	II	JA00435
Correspondence from Brian R. Irvine to Jason M. Wiley	6.28.2019	VII	JA01466
Correspondence from Jason M. Wiley to Brian R. Irvine	6.19.2019	VII	JA01462
Declaration of Brian Irvine in Support of Plaintiff Jennifer M. Goldstein's Opposition to NuVeda, LLC's Motion to Vacate Arbitration Award	7.25.2019	XI	JA02331
Declaration of Brian R. Irvine in Support of Motion to Continue the July 19, 2019, Hearing Dare and Extend Briefing Deadlines	7.1.2019	VII	JA01467
Declaration of Brian R. Irvine Reply in Support of Motion to Continue Hearing on NuVeda, LLC's Motion to Vacate Arbitration Award and to Extend Briefing Deadlines	7.16.2019	VII	JA01531
Declaration of NuVeda, LLC's Opposition to Motion to Continue Hearing on NuVeda, LLC's Motion to Vacate Arbitration Award and to Extend Briefing Deadlines – and – Notice of No Opposition to Its Motion to Vacate Arbitration Award	7.11.2019	VII	JA01508
Expert Rebuttal and Rebuttal and Retrospective Summary Report prepared by Donald Parker	3.16.2018	III	JA00466
Expert Rebuttal Report <i>Shane Terry, et al. vs.</i>	11.28.2016	II	JA00352

Document	Date	Vol. No.	Beginning Page No.
<i>NuVeda, LLC, et al.</i> Case No. AAA No. A-15-728510-B prepared by Donald R. Parker			
Expert Witness Report <i>Shane Terry v NuVeda, LLC et al.</i> prepared by Anthem Forensics	11.29.2016	II	JA00376
Expert Witness Report <i>Shane Terry v. NuVeda, LLC, et al. PREPARED BY Anthem Forensics</i>	12.13.2018	III	JA00481
Final Award	3.19.2019	IV	JA00875
Findings of Fact and Conclusions of Law Denying Plaintiffs' Motion for Preliminary Injunction, Denying Defendants' Countermotion for Preliminary Injunction and Joinder, and Entering Provisional Remedy Pursuant to NRS 38.222	1.13.2016	I	JA100
Findings of Fact, Conclusions of Law and Order: (1) Granting Plaintiff Jennifer M. Goldstein's Motion to Continue Hearing on NuVeda, LLC's Motion to Vacate Arbitration Award and to Extend Briefing Deadlines; (2) Denying Defendant NuVeda, LLC's Motion to Vacate Arbitration Award; and (3) Confirming the Arbitration Award	9.9.2019	XI	JA02374
Interim Award of Arbitrator Regarding Value	2.7.2019	IV	JA00864
Judgment	11.15.2019	XI	JA02412
Motion for Entry of Judgment	9.19.2019	XI	JA02389
Motion to Continue Hearing on NuVeda, LLC's Motion to Vacate Arbitration Award and to Extend Briefing Deadlines	7.1.2019	VII	JA01467
Notice of Appearance of Brian R. Irvine and Brooks T. Westergard	6.21.2019	VII	JA01463
Notice of Entry of Order and Judgement	11.15.2019	XI	JA02415
Notice of Appeal	10.9.2019	XI	JA02397
Notice of Entry of Order of Findings of Fact, Conclusions of Law and Order: (1) Granting Plaintiff Jennifer M. Goldstein's Motion to Continue Hearing on NuVeda, LLC's Motion to Vacate Arbitration Award and to Extend Briefing Deadlines; (2) Denying Defendant NuVeda, LLC's Motion to Vacate Arbitration Award; and (3) Confirming the Arbitration Award	9.9.2019	XI	JA02374
Notice of Posting Bond	10.9.2019	XI	JA02401
NuVeda, LLC's Motion to Strike the Supplemental Valuation and Expert Report Dated December 14, 2018	12.20.2018	III	JA00514
NuVeda LLC's Motion to Vacate Arbitration Award	6.17.2019	V	JA00880
NuVeda, LLC Operating Agreement	7.9.2014	I	JA00001

Document	Date	Vol. No.	Beginning Page No.
NuVeda, LLC's Opposition to Motion to Continue Hearing on NuVeda, LLC's Motion to Vacate Arbitration Award and to Extend Briefing Deadlines – and – Notice of Opposition to Its Motion to Vacate Arbitration Award	7.11.2019	VII	JA01483
NuVeda, LLC's Reply to Plaintiff Jennifer Goldstein's Opposition to NuVeda, LLC's Motion to Vacate Arbitration Award	8.5.2019	XI	JA02333
Order Denying Respondent NuVeda's Motion to Strike Supplemental Valuation & Expert Report of Donald Parker Dated December 14, 2018	1.9.2019	III	JA00520
Order Granting Shane Terry's Motion to Substitute BCP Holding 7, LLC as the Real Party in Interest	5.18.2018	III	JA00473
Order of Affirmance in the Supreme Court of the State of Nevada Case No. 69648	10.13.2017	III	JA00441
Plaintiff Jennifer M. Goldstein's Opposition to NuVeda, LLC's Motion to Vacate Arbitration Award	7.25.2019	XI	JA01539
Reply in Support of Motion to Continue Hearing on NuVeda, LLC's Motion to Vacate Arbitration Award and to Extend Briefing Deadlines	7.16.2019	VII	JA01510
Reporter's Transcript of Proceedings Volume 1	1.15.2019	III	JA00524
Reporter's Transcript of Proceedings Volume 2	1.16.2019	IV	JA00782
Reporter's Transcript of Proceedings Volume 3	1.17.2019	IV	JA00848
Special Meeting of the Members of NuVeda, LLC	8.8.2017	II	JA00407
Summons – Pejman Bady	12.07.2015	I	JA00085
Summons – Pouya Mohajer	12.07.2015	I	JA00083
Supplemental Business Valuation and Expert Report prepared by Donald Parker	2.23.2018	III	JA00453
Supplemental Valuation and Expert Report prepared by Donald Parker	12.14.2018	III	JA00499
Transcript of NuVeda Officer Meeting	3.10.2016	I	JA00105
Transcript of Proceedings – Hearing on Motion to Continue Motion to Vacate and Motion to Vacate Arbitration Award Held on August 12, 2019	8.23.2019	XI	JA02345
Written Consent in Lieu of Special Meeting of the Members of NuVeda	11.23.2015	I	JA00030



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DISTRICT COURT

CLARK COUNTY, NEVADA

NUVEDA, LLC, a Nevada limited liability company, SHANE M. TERRY, a Nevada resident; and JENNIFER M. GOLDSTEIN, a Nevada resident,

Plaintiffs,

vs.

PEJMAN BADY; POUYA MOHAJER; DOE Individuals I-X and ROE Entities I-X, inclusive,

Defendants.

Case No.: A-15-728510-B

Dept. No.: 11

**PLAINTIFF JENNIFER M. GOLDSTEIN'S OPPOSITION TO NUVEDA, LLC's
MOTION TO VACATE ARBITRATION AWARD**

Plaintiff Jennifer M. Goldstein ("Goldstein"), by and through her counsel of record, BRIAN R. IRVINE and BROOKS T. WESTERGARD of the law firm of DICKINSON WRIGHT PLLC, hereby files her Opposition to Nuveda, LLC's ("Nuveda") Motion to Vacate Arbitration Award ("Opposition").

1 This Opposition is based upon the papers and pleadings on file herein, the attached
2 Memorandum of Points and Authorities, the Declaration of Brian R. Irvine, attached hereto as
3 **Exhibit 1**, and any oral argument this Court may require.

4 DATED this 25th day of July, 2019.

5
6 DICKINSON WRIGHT PLLC

7 /s/ Brian R. Irvine

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20 **MEMORANDUM OF POINTS AND AUTHORITIES**

21 **I. INTRODUCTION**

22 NuVeda has filed a Motion to Vacate an arbitration award, which awarded Goldstein
23 7% of her ownership interest in NuVeda based upon NuVeda's Operating Agreement.
24 NuVeda's arguments are twofold. First, NuVeda argues that the Arbitrator exceeded her
25 powers and manifested a disregard for the law when she allowed Goldstein to disclose an
26 expert witness and report, which was filed beyond the deadline set forth in the scheduling
27 orders entered by the arbitrator. Second, NuVeda argues that the arbitrator manifested a
28 disregard for the law in interpreting the Operating Agreement and determining that NuVeda
had not complied with the terms of the Operating Agreement because NuVeda's appraiser

1 calculated Goldstein's ownership interest based on NuVeda's book value, rather than its fair
2 market value.

3 Although NuVeda presents lengthy argument in support of its positions, its arguments
4 are unpersuasive. Indeed, NuVeda misconstrues the standard upon which courts review
5 arbitration decisions, and similarly relies on Nevada and Federal rules of procedure that did not
6 govern the arbitration proceedings. Indeed, the arbitration Scheduling Orders expressly provide
7 that the AAA Commercial Arbitration Rules for Large, Complex Cases would govern the
8 arbitration proceedings. In addition, NuVeda appears to argue that the sole basis for the
9 Arbitrator's determination of the value of Goldstein's interest in NuVeda was the opinion
10 testimony of Goldstein's retained expert, Donald Parker. However, this argument is belied by
11 the analysis in the Arbitrator's Award, which clearly indicates that the arbitrator based her
12 valuation of Goldstein's interest on numerous factors, including the testimony of NuVeda's
13 own experts and lay witnesses, and which was critical of a number of Parker's opinions. There
14 is nothing contained in the Arbitrator's Award that indicates that the Arbitrator would have
15 arrived at a different valuation of Goldstein's interest even had the report and testimony of
16 Parker been excluded. And, because it was allowed ample opportunity to rebut all of Parker's
17 opinions, NuVeda can show absolutely no prejudice due to the Arbitrator's decision to allow
18 Parker's testimony.
19

20 In short, NuVeda's Motion is nothing more than a desperate attempt to set aside a
21 thorough and well-reasoned arbitration award that issued after years of litigation and a
22 comprehensive three-day arbitration hearing where the Arbitrator considered all of the
23 documentary evidence and live witness testimony and arrived at a valuation that was less than
24 Goldstein was seeking. Given the extreme deference that arbitrator decisions and awards are
25 afforded under Nevada law, NuVeda's Motion should be denied.
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A. Background on NuVeda and the Underlying Dispute

In July 2014, seven individuals executed an Operating Agreement for NuVeda to engage in the “research, design, creation, management, licensing, advertising and consulting regarding the legal medical marijuana industry, as such matters shall be lawfully allowed under applicable state laws.” (Mot. to Vac. at 3; Mot. to Vac., Exhibit 1 (“Operating Agreement”); Mot. to Vac., Exhibit 20 (“Interim Award”)). The NuVeda members consisted of: (1) Pejman Bady (“Bady”); (2) Pouya Mohajer (“Mohajer”); (3) Shane Terry (“Terry”); (4) Ryan Winmill (“Winmill”); (5) Joseph Kennedy (“Kennedy”); (6) John Penders (“Penders”); and (7) Goldstein. (Mot. to Vac. at 3; Operating Agreement at 22). The members of NuVeda formed several wholly-owned subsidiary companies and, through the subsidiaries, applied for and received six (6) licenses to cultivate, process and dispense marijuana. (Mot. to Vac. at 4; Interim Award at 2).

Subsequent disputes between the NuVeda members led to the initiation of the subject arbitration and litigation in this Court. (Mot. to Vac. at 4; Interim Award at 2). During the pendency of the arbitration, on August 8, 2017, the requisite number of voting members voted to expel Goldstein from NuVeda pursuant to Section 6.2 of the Operating Agreement. (Mot. to Vac. at 6; Interim Award at 3). Pursuant to Section 6.2 of the Operating Agreement, Goldstein’s expulsion entitled her to “receive from the Company, in exchange for all of the former Member’s Ownership Interest, the fair market value of that Member’s Ownership Interest, adjusted for profits and losses to the date of expulsion...” (Interim Award at 3; Operating Agreement at Sec. 6.2). In the event that the fair market value could not be agreed upon, “the Voting Members shall hire an appraiser to determine fair market value.” (*Id.*)

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1 **B. NuVeda's Purported Valuation of the Company**

2 After Goldstein's expulsion, Michael R. Webster of the Webster Business Group was
3 retained to provide an appraisal on behalf of NuVeda. (Mot. to Vac. at 6-7; Interim Award at
4 4). The Arbitrator found that Mr. Kennedy, on behalf of NuVeda, asked Mr. Webster "to
5 establish the value of NuVeda LLC in accordance with procedure in the removal of its
6 Manager Jennifer Goldstein who's total compensation is seven percent (7%)." (Interim Award
7 at 4) (internal quotation marks omitted). The Arbitrator further found that Mr. Kennedy
8 prepared a document for Mr. Webster titled "Assets and Liabilities as of 8-8-2017" (the "Aug.
9 8 Document"), which Mr. Kennedy testified that he prepared "by looking at NuVeda's (actual)
10 balance sheets and profit & loss statements." (*Id.*)

11 Finally, the Arbitrator found:

12 Mr. Kennedy provided to Mr. Webster the Aug. 8 Document.
13 The information contained in the Aug. 8 Document was then
14 copied into a letter dated August 19, 2017, which purported to be
15 a Certified Business Appraisal of NuVeda (the "Webster
16 Appraisal"). Although Mr. Webster claims to have spent a total
17 of four (4) hours working on the Webster Appraisal, he testified
18 that he spent "[m]aybe 10 minutes" simply adding up the assets
19 Mr. Kennedy provided in the Aug. 8 Document, and subtracting
20 from the total amount of the assets the liabilities that were also
21 provided by Mr. Kennedy in the Aug. 8 Document. Mr. Webster
22 did not undertake any effort to verify any of the information
provided by Mr. Kennedy in the Aug. 8 Document. Nor did Mr.
Webster inquire about whether NuVeda was generating any
revenue. Nevertheless, after performing this elementary
calculation, Mr. Webster concluded in the Webster Appraisal
that the fair market value of NuVeda on August 8, 2017, was
\$1,695,227.00.

23 (*Id.*) (citations and footnote omitted).

24 **C. NuVeda's Motion to Strike the Parker Report**

25 During the course of arbitration, on December 14, Goldstein submitted a Supplemental
26 Valuation and Expert Report. (Mot. to Vac. at 9, Mot. to Vac., Exhibit 17 ("Parker Report").
27 On December 27, 2018, NuVeda filed a Motion to Strike the Parker Report. (Mot. to Vac.,
28

1 Exhibit 18 (“Mot. to Strike”). In its Motion to Strike, NuVeda argued that, on October 30,
2 2017, the Arbitrator issued Preliminary Hearing and Scheduling Order #2, which provided, in
3 part: “On or before December 8, 2017, the Parties shall file and serve any supplemental expert
4 witness reports. . . . There shall be no additional discovery of experts, except on good cause
5 shown to the Arbitrator or an agreement between the Parties.” (Mot. to Strike at 2). NuVeda
6 further argued that “[a]t the time that Scheduling Order #2 was issued, the parties had already
7 made various expert disclosures, and the initial expert disclosure deadline was closed. . . . [and]
8 no order was entered by the Arbitrator opening the deadline for disclosure of an initial expert
9 report.” (*Id.*) NuVeda further argued that Goldstein disclosed the Parker Report, for the first
10 time, on December 14, 2018, in violation of the arbitration scheduling orders. Thus, NuVeda
11 argued that the Parker Report “should be stricken and Mr. Parker should be prohibited from
12 testifying at the arbitration regarding his conclusions set forth therein.” (*Id.* at 4). NuVeda also
13 submitted an expert report rebutting the Parker Report that was not disclosed by the December
14 29, 2018 deadline for rebuttal expert reports, (Mot. to Vac., Exhibit 19, (“Ord. on Mot. to
15 Strike”)), and Goldstein argued that NuVeda’s untimely rebuttal report should not be
16 permitted.
17

18 On January 9, 2019, the Arbitrator distributed an email summarizing her ruling on both
19 NuVeda’s Motion to Strike and Goldstein’s argument to preclude NuVeda’s rebuttal report,
20 each of which were addressed during a telephonic hearing. (Ord. on Mot. to Strike). The
21 Arbitrator concluded that “Respondent NuVeda’s Motion to Strike Supplemental Valuation &
22 Expert Report of Donald Parker dated December 14, 2018 is **DENIED**.” Moreover, the
23 Arbitrator ruled that “the opinions offered in Respondents’ rebuttal to this report will not be
24 stricken on the basis that the report was not disclosed on or by the December 29 deadline.”
25 (*Id.*) Thus, the Arbitrator exercised her discretion to allow all of the expert reports submitted
26 by all parties and to consider all expert testimony at the arbitration hearing.
27
28

1 **D. January 2019 Arbitration Final Hearing and Award**

2 On January 10, 2019, the parties agreed to narrow the issues for the final hearing, and
3 further agreed “that the only issue that remain[ed] [was] the valuation of Ms. Goldstein’s
4 shares of August 8, 2017 and whether Ms. Goldstein [was] entitled to her attorneys’ fees
5 because she was never offered the actual fair market value of her shares of that date.” (Interim
6 Award at 5). In that regard, Goldstein argued “that the Webster Appraisal did not accurately
7 reflect the fair market value of NuVeda and inappropriately relied solely on the Aug. 8
8 Document, without verifying the accuracy of the information contained in the Aug 8
9 Document.” (*Id.*)

10
11 As explained, the Arbitrator determined, for several, independent reasons, that NuVeda
12 did not meet its express obligations under NuVeda’s Operating Agreement to have an appraiser
13 determine fair market value based on the deficiencies in the Webster Report. (Interim Award at
14 6-8). More specifically, the Arbitrator found that the Webster Report did not appraise the “fair
15 market value” of Goldstein’s interest in NuVeda, as required in Section 6.2 of the Operating
16 Agreement, because the Webster Report established only a “book value” or “liquidation
17 evaluation” of Goldstein’s interest rather than fair market value. (*Id.* at 6-7)

18 Then, turning to the actual fair market value of NuVeda, the Arbitrator adopted the
19 definition of “fair market value” provided by both Parker and NuVeda’s expert, Dr. Clauretie,
20 “as the price at which the property would change hands between a willing buyer and a willing
21 seller, neither being under any compulsion to buy or sell and both having reasonable
22 knowledge of the relevant facts.” (*Id.* at 6). She then determined that the fair market value of
23 NuVeda was \$27,243,520.00, (*Id.* at 10), and that the fair market value of Goldstein’s
24 Ownership interest in NuVeda as of August 8, 2017, was \$2,051,215.38, and that NuVeda
25 owes Goldstein that amount. (*Id.* at 11). On March 19, 2019, the Arbitrator issued the Final
26 Award, which incorporated the findings set forth in the Interim Award. (Mot. to Vac., Exhibit
27
28

21 “Final Award”). The Final Award awards Goldstein \$2,051,215.38 for her ownership
2 interest in NuVeda, plus prejudgment interest and attorneys’ fees and costs. (*Id.*)¹

3 III. DISCUSSION

4 A. Legal Standard

5 “[T]he scope of judicial review of an arbitration award is limited and is nothing like the
6 scope of an appellate court’s review of a trial court’s decision.” *Health Plan of Nevada, Inc. v.*
7 *Rainbow Med., LLC.*, 120 Nev. 689, 695, 100 P.3d 172, 176 (2004). A reviewing court does
8 not concern itself with whether the arbitrator made the “correct” ruling; rather, it will deny
9 relief from an arbitrator’s ruling unless it was “arbitrary, capricious, or unsupported by the
10 agreement” or the arbitrator “manifestly disregarded the law.” *Bohlmann v. Printz*, 120 Nev.
11 543, 546-47, 96 P.3d 1155, 1157-58 (2004) overruled on other grounds by *Bass-Davis v.*
12 *Davis*, 122 Nev. 442, 452 n.32, 134 P.3d 103, 109 n.32 (2006).

14 Reviewing whether the arbitrator’s award was arbitrary, capricious, or unsupported by
15 the agreement is to ensure only “that the arbitrator does not disregard the facts or terms of the
16 arbitration agreement”; reviewing whether the arbitrator manifestly disregarded the law is to
17 ensure only that the arbitrator recognizes the applicable law and does not simply disregard it—
18 not that the arbitrator correctly interpreted and applied the law. *Clark County Educ. Ass’n v.*
19 *Clark County School Dist.*, 122 Nev. 337, 341-42, 131 P.3d 5, 8-9 (2006) (“neither standard
20 permits a reviewing court to consider the arbitrator’s interpretation of the law” (citing
21 *Bohlmann*, 120 Nev. at 547, 96 P.3d at 1157-58)); *see also* NRS 38.218; 38.241. Finally, “[t]he
22

23 ¹ NuVeda does not challenge the Arbitrator’s calculation of Goldstein’s ownership interest in
24 NuVeda, the attorneys’ fees and costs, or the prejudgment interest that made up the total in the
25 Final Award. NuVeda merely challenges the Final Award on the basis that the Arbitrator erred
26 in even considering the Parker Report. However as explained throughout this Opposition, the
27 Arbitrator properly considered not only the Parker Report, but all expert reports from all
28 experts disclosed by both parties (including NuVeda’s untimely rebuttal to the Parker Report),
and likewise properly interpreted the Operating Agreement. Therefore, as they are not
challenged here, the Arbitrator’s calculations of Goldstein’s ownership interest based on the
actual fair market value of NuVeda are not addressed further in this Opposition.

1 party seeking to attack the validity of an arbitration award has the burden of proving, by clear
2 and convincing evidence, the statutory or common-law ground relied upon for challenging the
3 award.” *Health Plan of Nev., Inc.*, 120 Nev. at 695, 100 P.3d at 176.

4 **B. The Arbitrator did not Exceed her Powers or Manifestly Disregard the Law**

5 Although NuVeda dedicates several pages of its Motion to the various common law and
6 statutory justifications for vacating an arbitration award, NuVeda only argues that the award
7 should be vacated because (1) the Arbitrator exceeded the scope of her authority and
8 manifestly disregarded the law by relying on Parker’s expert witness testimony and the Parker
9 Report, and (2) the Arbitrator’s interpretation of the Operating Agreement was contrary to
10 Nevada law. (Mot. to Vac. at 14-21). However, neither argument provides a basis for vacating
11 the Arbitrator’s award under Nevada law.
12

13 **1. The Arbitrator Properly Considered Parker’s Expert Witness Testimony**

14 In its Motion, NuVeda argues that the arbitration award should be vacated because
15 Goldstein failed to timely disclose Parker as an expert witness and similarly failed to timely
16 submit the Parker Report regarding valuation of Goldstein’s membership interest pursuant to
17 the deadlines contained in the arbitration scheduling orders. (Mot. to Vac, at 14). NuVeda
18 further argues that the proper remedy for Goldstein’s failure to adhere to the expert disclosure
19 deadlines was preclusion of the Parker Report. However, NuVeda improperly attempts to
20 support its argument by relying exclusively on the Nevada and Federal Rules of Civil
21 Procedure rather than the AAA Commercial Arbitration Rules for Large, Complex Cases,
22 which governed the subject arbitration proceedings. (Mot. to Vac., Exhibit 9 “Preliminary
23 Hearing and Scheduling Order #2” at 1).
24
25

26 **a. NuVeda’s rule-based argument is misplaced**

1 NuVeda appears to argue that the arbitration award should be vacated based on an
2 application of the Nevada and Federal Rules of Civil Procedure.² However, this argument is
3 unavailing. First, each of the cases NuVeda cites in support of its position are inapplicable to
4 this action, as none of those cases involve arbitration proceedings, let alone a case such as this,
5 where the subject arbitration proceedings were expressly governed by AAA's Large Complex
6 procedures of its Commercial Arbitration Rules. (Mot. to Vac., Exhibit 9 "Preliminary Hearing
7 and Scheduling Order #2" at 1). Instead, all of the cases NuVeda cites interpret and apply
8 FRCP 26 expert disclosure requirements and sanctions for violations of the same pursuant to
9 FRCP 37 in the context of *formal* court proceedings.³ Indeed, not one of the cases NuVeda
10 relies upon involves a confirmation or vacatur of an arbitration award. The reason for the lack
11 of authority to support NuVeda's position is clear; the vast weight of authority directly rebuts
12 NuVeda's position.
13

14
15 ² Goldstein notes that NuVeda did not present this argument to the Arbitrator below, and thus it
16 should not be considered by this Court. *Knickmeyer v. State ex. rel. Eighth Judicial Dist.*
17 *Court*, 408 P.3d 161, 164 (Nev. App. 2017) (refusing to consider argument because appellant
18 "did not raise this argument before the arbitrator, belatedly raising it for the first time only
19 before the district court.") (citing *State Bd. of Equalization v. Barta*, 124 Nev. 612, 621, 188
P.3d 1092, 1098 (2008) ("Because judicial review is limited to the administrative record,
arguments made for the first time on judicial review are generally waived by the party raising
them.")).

20 ³ See, e.g., *Eagle Railcar Servs.-Roscoe, Inc. v. NGL Crude Logistics, LLC*, No. 1:16-CV-
21 0153-BL, 2018 WL 2317696 (N.D. Tex. May 22, 2018) (interpreting and applying expert
22 disclosure requirements and sanctions pursuant to Fed. R. Civ. P. 26 & 37 in a federal district
23 court proceeding); *Elliot v. Amadas Indus., Inc.*, 796 F. Supp. 2d 796, 803 (S.D. Miss. 2011)
24 (same); *Ishee v. Fed. Nat. Mortg. Ass'n*, No. 2:13-CV-234-KS-MTP, 2015 WL 224800 (S.D.
25 Miss. Jan. 15, 2015) (same); *Keener v. United States*, 181 F.R.D. 639, 641 (D. Mont. 1998)
26 (same); *Reinsdorf v. Skechers U.S.A.*, 922 F. Supp. 2d 866 (C.D. Cal. 2013) (same); *Plumley v.*
27 *Mockett*, 836 F. Supp. 2d 1053 (C.D. Cal. 2010) (same); *Drechsel v. Liberty Mut. Ins. Co.*, No.
28 3:14-CV-162-M-BN, 2015 WL 7067793 (N.D. Tex. Nov. 12, 2015) (same); *Lanard Toys Ltd.*
v. Novelty, Inc., 375 F. App'x 705 (9th Cir. 2010) (same); *Yeti by Molly, Ltd. v. Deckers*
Outdoor Corp., 259 F.3d 1101, 1106 (9th Cir. 2001) (same); *Sherwin-Williams Co. v. JB*
Collision Servs., Inc., No. 13-CV-1946-LAB WVG, 2015 WL 4742494, at *6 (S.D. Cal. Aug.
11, 2015) (discussing the purpose of Fed. R. Civ. P. 26 expert disclosures in a federal district
court proceeding); *FMC Corp. v. Vendo Co.*, 196 F. Supp. 2d 1023 (E.D. Cal. 2002) (same).

1 Case law recognizes that, in order to provide a relatively expeditious and inexpensive
2 dispute resolution, arbitration is not governed by the courts' strict procedural and evidentiary
3 requirements. *Mitsubishi Motors Corp. v. Soler Chrysler–Plymouth, Inc.*, 473 U.S. 614, 628,
4 105 S.Ct. 3346, 87 L.Ed.2d 444 (1985); *Kyocera Corp. v. Prudential–Bache Trade Servs., Inc.*,
5 341 F.3d 987, 998 (9th Cir. 2003) (en banc); *see also, Rosensweig v. Morgan Stanley & Co.*,
6 494 F.3d 1328, 1333 (11th Cir. 2007) (“Arbitrators enjoy wide latitude in conducting an
7 arbitration hearing, and they are not constrained by formal rules of procedure or evidence.”)
8 (citation and internal quotation marks omitted); *Oracle Corp. v. Wilson*, 276 F. Supp. 3d 22, 29
9 (S.D.N.Y. 2017) (“Arbitrators must give each of the parties to the dispute an adequate
10 opportunity to present its evidence and argument, but need not follow all the niceties observed
11 by the federal courts such as the Federal Rules of Civil Procedure or the Federal Rules of
12 Evidence, nor hear all of the evidence proffered by a party.”) (internal quotation marks
13 omitted); *Commercial Risk Reinsurance Co. v. Sec. Ins. Co. of Hartford*, 526 F. Supp. 2d 424,
14 428 (S.D.N.Y. 2007) (“Arbitrators generally are not bound by the rules of evidence, but
15 possess broad latitude to determine the procedures governing their proceedings, to hear or not
16 hear additional evidence, to decide what evidence is relevant, material or cumulative, and
17 otherwise to restrict the scope of evidentiary submissions.”).

20 In *Allied Professionals Ins. Co. v. Kong*, the Ninth Circuit Court of Appeals considered
21 an appeal from a district court order affirming an arbitration award in favor of Allied
22 Professionals Insurance Company (“Allied”) and against Joanne Kong (“Kong”). 492 App’x
23 749, 749 (9th Cir. 2012). On appeal, Kong argued that “the arbitrator demonstrated manifest
24 disregard of the law by allowing the report of Allied’s expert witness in violation of” FRCP 26.
25 *Id.* at 750. The Ninth Circuit found Kong’s argument “unavailing,” and further determined that
26 “[e]ven if such a violation occurred, it would not constitute a basis upon which to vacate the
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1 arbitration award.” *Id.* at 751 (citing *U.S. Life Ins. Co. v. Superior Nat’l Ins. Co.*, 591 F.3d
2 1167, 1173 (9th Cir.2010) (“[W]hen interpreting and applying the [Federal Arbitration Act],
3 we are mindful not to impose the federal courts’ procedural and evidentiary requirements on
4 the arbitration proceeding; rather, our responsibility is to ensure that the [Federal Arbitration
5 Act]’s due process protections were afforded.”)).

6 Here, as in *Kong*, NuVeda’s argument that the Arbitrator demonstrated manifest
7 disregard for the law based on alleged violations of procedural and evidentiary court rules is
8 unavailing. Indeed, under settled law and the AAA Rules, an arbitrator has wide latitude and
9 discretion in conducting arbitration proceedings and court procedural and evidentiary rules do
10 not form a proper basis for vacatur of the arbitration award.

12 **b. The Arbitrator’s decision to modify the scheduling order does not**
13 **provide a basis for vacatur**

14 While not explicit in its Motion, NuVeda appears to argue that the Arbitrator exceeded
15 her powers or exhibited a manifest disregard for the law because the Parker Report was
16 disclosed by Goldstein after the deadline set forth in the October 30, 2017 Scheduling Order.
17 However, NuVeda’s argument is again misplaced, as it ignores the wide discretion arbitrators
18 are afforded in conducting arbitration proceedings. And, under AAA’s Commercial Arbitration
19 Rules for Large, Complex Cases, the Arbitrator is granted broad discretion to manage the pre-
20 hearing disclosure of documents and information:

22 The arbitrator, or any single member of the arbitration tribunal, shall be
23 authorized to resolve any disputes concerning the pre-hearing exchange and
24 production of documents and information by any reasonable means within his
discretion, including, without limitation, the issuance of orders set forth in rules
R-22 and R-23 of the AAA Commercial Rules.

25 (**Exhibit 2**, at Rule L-3(e); *see also* Rule R-22(a) (“The arbitrator shall manage any necessary
26 exchange of information among the parties with a view to achieving an efficient and
27

1 economical resolution of the dispute, while at the same time promoting equality of treatment
2 and safeguarding each party's opportunity to fairly present its claims and defenses"); *see also*
3 Rule R-23 ("The arbitrator shall have the authority to issue any orders necessary to enforce the
4 provisions of rules R-21 and R-22 and to otherwise achieve a fair, efficient and economical
5 resolution of the case"). It is clear that the Arbitrator simply exercised her discretion under the
6 AAA Rules to modify her own scheduling order and allowed the parties the opportunity to full-
7 present their respective cases through both lay and expert witnesses.
8

9 While NuVeda does not offer any support for its argument that a party's failure to meet
10 a deadline in an arbitration scheduling order warrants vacatur of the arbitration award, several
11 courts have addressed the issue.

12 In *Selby Gen. Hosp. v. Kindig*, the Ohio Court of Appeals reviewed a trial court order
13 vacating an arbitration award. 2006 WL 2457436 (Ohio App. 2006). The trial court vacated the
14 arbitration award because "the arbitrators' failure to strictly enforce their deadlines resulted in
15 manifest unfairness" and appellant's "extremely untimely designation of [appellant's expert
16 witness] violated the orders established by the arbitrators and resulted in arbitration by
17 ambush." *Id.* at *3 (internal quotation marks omitted). The trial court thus "concluded that the
18 arbitrators committed misconduct by allowing [appellant's expert witness] testimony and
19 denying [a] request to postpone the hearing." *Id.*
20

21 On appeal, the court determined that, because appellant disclosed her expert witness
22 beyond the deadline set in the arbitration scheduling order, her disclosure was untimely. *Id.* at
23 *4. "However, despite this untimely disclosure, [the court was] not convinced the arbitrators
24 committed misconduct in refusing to postpone the hearing." *Id.* Indeed, the court determined
25 that, while appellant was tardy in disclosing her expert witness, appellant's "disclosure of her
26 expert occurred more than a month before the arbitration hearing. While this may have been
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1 inadequate time in the litigation context, it gave [respondent] adequate time to prepare for the
2 less formal arbitration process.” *Id.* at *5. The court thus concluded: “While we might have
3 ruled differently had we been in the arbitrators’ position, we cannot say, given the evidence,
4 that the arbitrators were guilty of misconduct in refusing to postpone the hearing. Therefore,
5 we conclude that the trial court erred in vacating the arbitration award on this basis.” *Id.* at *6.

6 Similarly, in *Roe v. Ladymon*, the Texas Court of Appeals reviewed a trial court
7 confirmation of an arbitration award against Metro LLP (“Metro”) and in favor of Kimberla
8 Roe (“Roe”). 318 S.W.3d 502 (Tex. App. 2010). On appeal, Metro argued that Roe disclosed
9 her expert witness and certain documents after the dates set in the scheduling order, and the
10 untimely disclosures prevented it from adequately preparing for the arbitration hearing. *Id.* at
11 522. Specifically, Roe filed a supplemental disclosure three days before the arbitration hearing,
12 listing a new expert witness and additional documents supporting her claims. *Id.* The arbitrator
13 denied Metro’s written objections and request for a continuance. *Id.* Metro argued that the
14 arbitrator exhibited partiality by denying the continuance and by a comment during a break that
15 Metro “needed to finish presenting its evidence and set a post-hearing briefing schedule so that
16 he could ‘finally get this lady some relief.’” *Id.*

17 The trial court concluded that, although Metro “had raised serious concerns about the
18 fairness of the arbitration proceedings, . . . parties to an arbitration agreement knowingly give
19 up the procedural protections of the court system.” *Id.* The Texas appellate court affirmed the
20 trial court’s judgment, determining that Metro “had not met its high burden to show the
21 arbitrator committed misconduct in denying the continuance or engaged in evident partiality.”
22 *Id.* (citing *Raiford v. Merrill Lynch, Pierce, Fenner & Smith*, 903 F.2d 1410, 1413 (11th Cir.
23 1990) (“When the parties agreed to submit to arbitration, they also agreed to accept whatever
24 reasonable uncertainties might arise from the process.”)).
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1 Finally, in *Controlotron Corp. v. Siemens Indus., Inc.*, the Second Circuit Court of
2 Appeals considered an appeal from a district court order denying Controlotron Corp.’s
3 (“Controlotron”) motion to vacate an arbitration award and granting a cross-motion by
4 Siemens Industry, Inc., (“Siemens”) to confirm that award. 465 F. App’x 8 (2d Cir. 2012). On
5 appeal, Controlotron argued that the arbitrator exceeded her authority by allowing Siemens to
6 add a new claim after the time to do so had expired under the arbitration scheduling order. *Id.*
7 at *9.

8
9 The Second Circuit determined that Controlotron’s argument was “without merit”
10 because “[t]he Scheduling Order at issue in th[e] case contain[ed] a provision that explicitly
11 empowered the arbitrator to modify the terms of the Order at any time.” *Id.* Specifically, the
12 scheduling order provided that the “order shall continue in effect *unless and until amended by*
13 *subsequent order of the Arbitrator.*” *Id.* (emphasis in original). Thus, the court concluded that
14 “even if the parties had agreed not to bring new claims or amend existing ones, the plain
15 language of the Scheduling Order makes clear that they also agreed that the arbitrator would
16 retain authority to grant exceptions to that general prohibition. And the arbitrator’s decision to
17 permit Siemens to add a new claim was itself an exercise of her authority to amend the
18 Scheduling Order.” *Id.* (citation omitted).

19
20 Here, as in *Kindig*, *Ladymon*, and *Controlotron*, NuVeda’s argument that the Arbitrator
21 exceeded her authority or manifestly disregarded the law by allegedly permitting Goldstein to
22 disclose Parker and the Parker Report after the time allowed under the scheduling order is a
23 non-starter. Indeed, even if Goldstein’s disclosure was tardy, the scheduling order NuVeda
24 relies upon contains the exact language the Second Circuit cited in *Controlotron*. The last line
25 of the October 30, 2017, scheduling order provides: “This Order shall continue in effect unless
26 and until amended by subsequent order of the Arbitrator.” (Mot. to Vac., Exhibit 9). Therefore,
27
28

1 as in *Controlotron*, the Arbitrator's decision to consider Parker's testimony and the Parker
2 Report "was itself an exercise of her authority to amend the Scheduling Order," and does not
3 constitute grounds for vacatur of the arbitration award. *Controlotron*, 465 F. App'x at *9.

4 c. **NuVeda was not prejudiced by the Arbitrator's decision to consider**
5 **the Parker Report and Parker's testimony**

6 A review of the Arbitrator's Award and the arbitration record shows that NuVeda was
7 not prejudiced in any way by the Arbitrator's decision to consider the Parker Report and the
8 testimony of Parker. NuVeda was permitted to rely on an expert report rebutting the Parker
9 Report, despite the fact that the rebuttal expert report was not disclosed within the deadline
10 imposed by the Arbitrator's Scheduling Order. (Ord. on Mot. to Strike). And, all of NuVeda's
11 experts testified at length and offered detailed criticism of the Parker Report. (Mot. to Vac.,
12 Exhibit 22 at 267-293 (testimony of Michael Webster), 415-476 (testimony of Dr. Terrence
13 Clauretie), and 478-519 (testimony of Joseph Leauanae). NuVeda was also afforded
14 opportunity to cross-examine Parker about all of his opinions. (**Exhibit 3** at 137-257,
15 (testimony of Donald Parker) ("Transcript of Proceedings")).

16
17 In addition, it is clear that the Arbitrator did not simply accept Parker's valuation of
18 Goldstein's interest in her Award. NuVeda itself admits that the Award only relied on portions
19 of Parker's opinions at best. (Mot. to Vac. at 11:14-16). This fact is made clear by the analysis
20 in the Award itself, which:
21

- 22 • was critical of Parker's opinions (Mot. to Vac., Exhibit 20 at 9 ("Here, there were
23 reasons to discredit certain aspects of Mr. Parker's opinions..."));
- 24 • did not adopt Parker's opinion of the fair market value of Goldstein's interest
25 (*Compare* Transcript of Proceedings at 167-68 *with* Mot. to Vac., Exhibit 20 at 11
26 (valuing Goldstein interest at \$2,051,215.38)); and
27

- instead computed the fair market value from a number of evidentiary sources, including the MIPA, the testimony of Shane Terry, and the values assigned in the PSA, after applying a discount rate derived from the testimony from all of the experts that testified at the hearing.⁴

(Interim Award at 10-11; *see also* Mot. to Vac. at 17 (“it is important to note that the Arbitrator, after eliciting testimony from Parker, based the valuation of NuVeda largely upon Brian Padgett’s testimony from the preliminary injunction hearing before this Court which was mere conjecture and unsupported by any evidence.”)). Put simply, the arbitration record shows that NuVeda was afforded a fair hearing, and that the Arbitrator considered all of the evidence and arrived at a thorough and well-reasoned Award. There is certainly nothing in the record that indicates that the result would have been different had Goldstein been precluded from offering the testimony of Parker at the hearing, and NuVeda wholly fails to articulate how it was prejudiced by the Arbitrator’s decision to consider the testimony of all experts, including Parker.

In contrast, Goldstein would be significantly prejudiced by any vacatur of the Award. Relying on the admission of her Expert’s testimony, Goldstein agreed to: (1) dismiss the individual defendants, Bady and Mohajer; and (2) waive the majority of her claims, thereby narrowing the scope of the arbitration hearing solely to the issue of valuation. (*See* Mot. to Vac., Exhibit 20 (Interim Award) at 5 (“[o]n January 10, 2019, the parties reached an agreement ‘that the only issue that remains is the valuation of Ms. Goldstein’s shares of August 8, 2017 and whether Ms. Goldstein is entitled to her attorneys’ fees because she was never offered the actual fair market value of her shares of that date.’”). Had she not been allowed to

⁴ It also appears that the Arbitrator adopted the testimony of NuVeda’s principal, Joseph Kennedy, regarding the valuation of NuVeda’s marijuana cultivation licenses at \$200,000 each. (*See* Mot. to Vac., Exhibit 20 at 10; *see also* Mot. to Vac., Exhibit 22 at 343:6-24).

1 utilize Parker's testimony at the hearing, she would have proceeded against the full slate of
2 defendants and pursuing all of her causes of action. If this Court were to determine that the
3 testimony of Parker was, in fact, wrongfully admitted, this would mandate the parties to start
4 the arbitration process anew.

5 **2. The Arbitrator's Interpretation of the Operating Agreement was correct**
6 **and does not Warrant Vacatur of the Arbitration Award**

7 **a. Standard of review**

8 At the outset, it is important to note that NuVeda misconstrues the proper standard of
9 review this Court must apply in considering the Arbitrator's interpretation of the Operating
10 Agreement. Indeed, NuVeda seems to suggest that this Court should review the Arbitrator's
11 interpretation of the Operating Agreement de novo. However, the Supreme Court of Nevada
12 has stated that judicial review of an Arbitrator's interpretation of a contract is extremely
13 limited. *Castaneda v. Palm Beach Resort Condominiums*, 127 Nev. 1124, 373 P.3d 901 (2011)
14 ("Furthermore, to the extent the Castanedas argue that the arbitrator misinterpreted the contract
15 provision on financing, this argument evades judicial review." (citing *Hill v. Norfolk and*
16 *Western Ry. Co.*, 814 F.2d 1192, 1195 (7th Cir.1987) (The question in reviewing an arbitration
17 award "is not whether the arbitrator or arbitrators erred in interpreting the contract; it is not
18 whether they clearly erred in interpreting the contract; it is not whether they grossly erred in
19 interpreting the contract; it is whether they interpreted the contract. If they did, their
20 interpretation is conclusive.")) (citations omitted))).

21 **b. The Arbitrator properly interpreted the Operating Agreement**

22 Notwithstanding the great deference that must be afforded to the Arbitrator's
23 interpretation of the Operating Agreement, NuVeda argues that the Arbitrator's interpretation
24 warrants vacatur of the arbitration award. Specifically, NuVeda asserts that, contrary to the
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1 Arbitrator's determination, it complied with the terms of the Operating Agreement and
2 properly valued Goldstein's interest in the company. However, NuVeda's argument is
3 unpersuasive.

4 Section 6.2 of the Operating Agreement provides, in part, that an expelled member
5 "shall be entitled to receive from the Company, in exchange for all the former Member's
6 Ownership Interest, the fair market value of that Member's Ownership Interest." (Mot. to Vac.,
7 Exhibit 1). Section 6.2 further provides: "In the absence of an informal agreement as to fair
8 market value, the Voting Members shall hire an appraiser to determine fair market value." (*Id.*)
9

10 The Arbitrator was tasked with (1) interpreting Section 6.2 of the Operating
11 Agreement, and (2) determining the fair market value of Goldstein's ownership interest. In
12 resolving the first issue, the Arbitrator determined that the Webster Appraisal did not comply
13 with Section 6.2 for several reasons. (Interim Award at 6.). The Arbitrator began by noting that
14 the parties agreed on the definition of "fair market value," which is defined "as the price at
15 which the property would change hands between a willing buyer and a willing seller, neither
16 being under any compulsion to buy or sell and both having reasonable knowledge of the
17 relevant facts." (*Id.*)⁵
18

19 Then, turning to whether NuVeda complied with Section 6.2, the Arbitrator determined
20 that the Webster Appraisal did not comply with the definition of "fair market value" and
21 NuVeda thus did not comply with Section 6.2 of the Operating Agreement. (*Id.*). First, the
22 Arbitrator determined that the appraisal value contained in the Webster Appraisal was
23

24
25 ⁵ The definition of "fair market value" used by the Arbitrator is supported by Nevada law. *See*
26 *Gohar v. State*, No. 73872, 2018 WL 3351984, at *4 (Nev. App. June 22, 2018) ("Fair market
27 value' is defined as '[t]he price that a seller is willing to accept and a buyer is willing to pay on
the open market and in an arm's-length transaction; the point at which supply and demand
intersect.'" (citing *Value*, Black's Law Dictionary (10th ed. 2014)).
28

1 premised on NuVeda's "book value" rather than "fair market value." (*Id.* at 7). The Arbitrator
2 concluded that the Webster Appraisal's use of book value was contrary to the terms of the
3 Operating Agreement. Specifically, the Arbitrator cited to Section 6.1 of the Operating
4 Agreement, which "provides that when a Member voluntarily resigns his membership, the
5 Member 'shall be entitled to receive from the Company *only the book value of his Ownership*
6 *Interest*, adjusted for profits and losses to the date of resignation....'" (*Id.* citing Operating
7 Agreement at Section 6.1) (emphasis in original). Thus, the Arbitrator concluded that, because
8 Section 6.2 calls for "fair market value" rather than "book value", the parties did not intend for
9 a determination of fair market value pursuant to Section 6.2 to be based upon the book value of
10 an expelled Member's ownership interest. (*Id.*)⁶ This conclusion is wholly consistent with the
11 fundamental tenet of contract interpretation under Nevada law that contracts are to be read and
12 interpreted as a whole. *See Eversole v. Sunrise Villas VIII Homeowners Ass'n*, 112 Nev. 1255,
13 1260, 925 P.2d 505, 509 (1996) (noting that "contractual provisions should be harmonized
14 whenever possible, and construed to reach a reasonable solution."); *Quirrion v. Sherman*, 109
15 Nev. 62, 65, 846 P.2d 1051, 1053 (1993) ("It is a well established principle of contract
16 law...that where two interpretations of a contract provision are possible, a court will prefer the
17 interpretation which gives meaning to both provisions rather than an interpretation which
18 renders one of the provisions meaningless.").

21 Second, the Arbitrator determined that Mr. Webster did not "meaningfully appraise
22 anything" because the Webster Appraisal was based on values Mr. Webster was given "by Mr.
23 Kennedy, who, in turn, received information concerning NuVeda's assets from Dr. Brady
24

25 ⁶ The Arbitrator's decision regarding the use of book value as an inappropriate valuation tool
26 has support in Nevada law. In *American Ethanol, Inc. v. Cordillera Fund, L.P.* the Nevada
27 Supreme Court noted that, in determining the value of corporate stock, "[b]ook value is entitled
28 to little, if any, weight in determining the value of corporate stock, and many other factors must
be taken into consideration." 127 Nev.147, 155, n. 7, 252 P.3d 663, 668, n. 7 (2011).

1 and/or came up with these numbers based on what he had ‘heard’ licenses were ‘going for.’”
2 (Interim Award at 7). The Arbitrator thus determined that “the appraising was actually
3 performed by Mr. Kennedy or Dr. Brady” rather than an independent appraiser in violation of
4 Section 6.2 of the Operating Agreement. (*Id.*)

5 Third, the Arbitrator found that the assets and liabilities set forth in the balance sheets
6 Mr. Webster used in his appraisal were inaccurate and unreliable. (*Id.*) The Arbitrator also
7 determined that NuVeda’s purported valuation was contrary to the evidence in the record. (*Id.*)
8 Thus, based on the inaccuracy and unreliability of the Webster Appraisal, the Arbitrator
9 determined that the Webster Appraisal did “not reflect the fair market value of NuVeda.” (*Id.*)
10 Finally, the Arbitrator determined that, while a willing buyer might have purchased NuVeda
11 for the valuation amount in the Webster Appraisal, “no willing seller, much less NuVeda,
12 would have sold NuVeda for that amount.” (*Id.* at 8).

13
14 Based on the calculated, well-reasoned, and thorough analysis expressed in the Interim
15 Award, the Arbitrator determined that NuVeda failed to “hire an appraiser to determine fair
16 market value of Ms. Goldstein’s Ownership Interest” and had thus not complied with Section
17 6.2 of the Operating Agreement. (*Id.*)

18
19 Notwithstanding the Arbitrator’s interpretation of Section 6.2 of the Operating
20 Agreement, and NuVeda’s failure to comply therewith, NuVeda argues that the Arbitrator
21 erred in her decision. (Mot. to Vac. at 20). Moreover, although the Arbitrator gave several,
22 alternative bases for her decision, NuVeda only argues that:

23
24 In the Interim Award, the Arbitrator concluded that NuVeda
25 failed to hire an appraiser to determine the fair market value of
26 Goldstein’s interest in NuVeda. In doing so, the Arbitrator
27 determined that because the expulsion provision of the Operating
28 Agreement (Section 6.2) did not specify the use of book value in
determining the value of an interest, while the resignation
provision of the Operating Agreement (Section 6.1) did expressly

1 state the resigning member is only entitled to the book value of
2 his/her membership interest, that the use of book value to
3 determine Goldstein's interest was improper. This amounts to
4 error.

5 (*Id.* at 21).

6 Despite the several, alternative bases upon which the Arbitrator concluded that NuVeda
7 did not comply with Section 6.2 of the Operating Agreement, NuVeda's only assignment of
8 error is the Arbitrator's conclusion that the use of book value, rather than fair market value, to
9 value Goldstein's ownership interest was contrary to the terms of the Operating Agreement.
10 NuVeda completely ignores the other bases upon which the Arbitrator determined that NuVeda
11 had failed to comply with Section 6.2 of the Operating Agreement.

12 NuVeda's position that the Arbitration Award should be vacated based upon the
13 Arbitrator's interpretation of the Operating Agreement is misplaced. Indeed, "allegations that
14 an arbitrator misinterpreted the agreement or made factual or legal errors do not support
15 vacating an award as being in excess of the arbitrator's powers. Moreover, [a]rbitrators do not
16 exceed their powers if their interpretation of an agreement, even if erroneous, is rationally
17 grounded in the agreement." *Washoe Cty. Sch. Dist. v. White*, 396 P.3d 834, 838 (Nev. 2017)
18 (internal quotation marks and citations omitted) (alteration in original). Here, the Arbitrator's
19 interpretation of the Operating Agreement was clearly grounded in the Operating Agreement's
20 terms. And, because NuVeda has not even addressed the several, alternative bases upon which
21 the Arbitrator made her decision, NuVeda's Motion should be denied.

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IV. CONCLUSION

Based on the foregoing, NuVeda's Motion to Vacate the Arbitration Award should be denied.

DATED this 25th day of July, 2019.

DICKINSON WRIGHT PLLC

/s/ Brian R. Irvine

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Attorneys for Plaintiff Jennifer M. Goldstein

1 **CERTIFICATE OF SERVICE**

2 I certify that I am an employee of DICKINSON WRIGHT PLLC, and that on this date,
3 pursuant to NRCP 5(b), I am serving a true and correct copy of the **PLAINTIFF JENNIFER**
4 **M. GOLDSTEIN'S OPPOSITION TO NUVEDA, LLC's MOTION TO VACATE**
5 **ARBITRATION AWARD** on the parties as set forth below via the Court's Electronic service
6 system to the following counsel of record:

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19
20 DATED this 25th day of July, 2019.

21 /s/ Mina Reel
22 An Employee of DICKINSON WRIGHT PLLC
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EXHIBIT TABLE

Exhibit	Description	Pages⁷
1	Declaration of Brian R. Irvine	2
2	AAA Commercial Rules, 2018	46
3	Arbitration Transcript of Proceedings, June 15-17, 2019	716

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⁷ Exhibit Page counts are exclusive of exhibit slip sheets.

EXHIBIT 1

EXHIBIT 1

DECL

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DISTRICT COURT

CLARK COUNTY, NEVADA

NUVEDA, LLC, a Nevada limited liability company, SHANE M. TERRY, a Nevada resident; and JENNIFER M. GOLDSTEIN, a Nevada resident,

Plaintiffs,

vs.

PEJMAN BADY; POUYA MOHAJER; DOE Individuals I-X and ROE Entities I-X, inclusive,

Defendants.

Case No.: A-15-728510-B

Dept. No.: 11

**DECLARATION OF BRIAN R. IRVINE IN SUPPORT OF
PLAINTIFF JENNIFER M. GOLDSTEIN'S OPPOSITION TO NUVEDA, LLC's
MOTION TO VACATE ARBITRATION AWARD**

I, BRIAN R. IRVINE, do hereby declare as follows:

1. I am an attorney with the law firm of DICKINSON WRIGHT, PLLC, attorneys for Plaintiff, JENNIFER M. GOLDSTEIN, ("Plaintiff"), in the above captioned action. I submit this Declaration in support of Plaintiff Jennifer M. Goldstein's Opposition to Nuveda, LLC's Motion to Vacate Arbitration Award ("Opposition"). I have personal knowledge of the

1 matters set forth in this Declaration and, if called as a witness could and would competently
2 testify thereto.

3 2. Attached to the Opposition as **Exhibit 2** is a true and correct copy of the
4 AAA Commercial Rules, 2018.

5 3. Attached to the Opposition as **Exhibit 3** is a true and correct copy of the
6 Arbitration Transcript of Proceedings, June 15-17, 2019.
7

8 I declare under penalty of perjury under the law of the State of Nevada that the
9 foregoing is true and correct.

10 DATED this 25th day of July, 2019.

11
12
13 /s/ Brian R. Irvine
14 BRIAN R. IRVINE

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EXHIBIT 2

EXHIBIT 2

Commercial

Arbitration Rules and Mediation Procedures

Including Procedures for Large, Complex Commercial Disputes



AMERICAN ARBITRATION ASSOCIATION®

Available online at adr.org/commercial

Rules Amended and Effective October 1, 2013

Fee Schedule Amended and Effective May 1, 2018

JA01568

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Table of Contents

Important Notice7

Introduction7

Standard Arbitration Clause8

Administrative Fees8

Mediation8

Large, Complex Cases9

Commercial Arbitration Rules10

 R-1. Agreement of Parties.10

 R-2. AAA and Delegation of Duties.11

 R-3. National Roster of Arbitrators.11

 R-4. Filing Requirements.11

 R-5. Answers and Counterclaims12

 R-6. Changes of Claim13

 R-7. Jurisdiction13

 R-8. Interpretation and Application of Rules.14

 R-9. Mediation14

 R-10. Administrative Conference14

 R-11. Fixing of Locale14

 R-12. Appointment from National Roster15

 R-13. Direct Appointment by a Party16

 R-14. Appointment of Chairperson by Party-Appointed Arbitrators or Parties.16

 R-15. Nationality of Arbitrator17

 R-16. Number of Arbitrators.17

 R-17. Disclosure17

 R-18. Disqualification of Arbitrator18

 R-19. Communication with Arbitrator18

 R-20. Vacancies19

 R-21. Preliminary Hearing19

 R-22. Pre-Hearing Exchange and Production of Information19

 R-23. Enforcement Powers of the Arbitrator.20

 R-24. Date, Time, and Place of Hearing20

 R-25. Attendance at Hearings21

 R-26. Representation.21

 R-27. Oaths21

R-28. Stenographic Record	21
R-29. Interpreters	22
R-30. Postponements	22
R-31. Arbitration in the Absence of a Party or Representative	22
R-32. Conduct of Proceedings	22
R-33. Dispositive Motions	23
R-34. Evidence	23
R-35. Evidence by Written Statements and Post-Hearing Filing of Documents or Other Evidence	23
R-36. Inspection or Investigation	24
R-37. Interim Measures	24
R-38. Emergency Measures of Protection	24
R-39. Closing of Hearing	25
R-40. Reopening of Hearing	26
R-41. Waiver of Rules	26
R-42. Extensions of Time	26
R-43. Serving of Notice and Communications	26
R-44. Majority Decision	27
R-45. Time of Award	27
R-46. Form of Award	27
R-47. Scope of Award	28
R-48. Award Upon Settlement—Consent Award	28
R-49. Delivery of Award to Parties	28
R-50. Modification of Award	28
R-51. Release of Documents for Judicial Proceedings	29
R-52. Applications to Court and Exclusion of Liability	29
R-53. Administrative Fees	29
R-54. Expenses	29
R-55. Neutral Arbitrator’s Compensation	30
R-56. Deposits	30
R-57. Remedies for Nonpayment	30
R-58. Sanctions	31

Preliminary Hearing Procedures	32
P-1. General	32
P-2. Checklist	32
Expedited Procedures	34
E-1. Limitation on Extensions	34
E-2. Changes of Claim or Counterclaim	34
E-3. Serving of Notices	34
E-4. Appointment and Qualifications of Arbitrator	34
E-5. Exchange of Exhibits	35
E-6. Proceedings on Documents and Procedures for the Resolution of Disputes Through Document Submission	35
E-7. Date, Time, and Place of Hearing	36
E-8. The Hearing	36
E-9. Time of Award	36
E-10. Arbitrator's Compensation	36
Procedures for Large, Complex Commercial Disputes	37
L-1. Administrative Conference	37
L-2. Arbitrators	37
L-3. Management of Proceedings	38
Administrative Fee Schedules (Standard and Flexible Fees)	38
Commercial Mediation Procedures	39
M-1. Agreement of Parties	39
M-2. Initiation of Mediation	39
M-3. Representation	39
M-4. Appointment of the Mediator	40
M-5. Mediator's Impartiality and Duty to Disclose	40
M-6. Vacancies	41
M-7. Duties and Responsibilities of the Mediator	41
M-8. Responsibilities of the Parties	42
M-9. Privacy	42
M-10. Confidentiality	42
M-11. No Stenographic Record	43

M-12. Termination of Mediation.....43

M-13. Exclusion of Liability.....43

M-14. Interpretation and Application of Procedures.....43

M-15. Deposits.....43

M-16. Expenses.....44

M-17. Cost of the Mediation.....44

Commercial Arbitration Rules and Mediation Procedures

(Including Procedures for Large, Complex Commercial Disputes)



Important Notice

These rules and any amendment of them shall apply in the form in effect at the time the administrative filing requirements are met for a demand for arbitration or submission agreement received by the AAA®. To ensure that you have the most current information, see our web site at **www.adr.org**.

Introduction

Each year, many millions of business transactions take place. Occasionally, disagreements develop over these business transactions. Many of these disputes are resolved by arbitration, the voluntary submission of a dispute to an impartial person or persons for final and binding determination. Arbitration has proven to be an effective way to resolve these disputes privately, promptly, and economically.

The American Arbitration Association® (AAA), a not-for-profit, public service organization, offers a broad range of dispute resolution services to business executives, attorneys, individuals, trade associations, unions, management, consumers, families, communities, and all levels of government. Services are available through AAA headquarters in New York and through offices located in major cities throughout the United States. Hearings may be held at locations convenient for the parties and are not limited to cities with AAA offices. In addition, the AAA serves as a center for education and training, issues specialized publications, and conducts research on various forms of alternative dispute resolution.

Standard Arbitration Clause

The parties can provide for arbitration of future disputes by inserting the following clause into their contracts:

Any controversy or claim arising out of or relating to this contract, or the breach thereof, shall be settled by arbitration administered by the American Arbitration Association under its Commercial Arbitration Rules, and judgment on the award rendered by the arbitrator(s) may be entered in any court having jurisdiction thereof.

Arbitration of existing disputes may be accomplished by use of the following:

We, the undersigned parties, hereby agree to submit to arbitration administered by the American Arbitration Association under its Commercial Arbitration Rules the following Controversy: (describe briefly). We further agree that the above controversy be submitted to (one) (three) arbitrator(s). We further agree that we will faithfully observe this agreement and the rules, that we will abide by and perform any award rendered by the arbitrator(s), and that a judgment of any court having jurisdiction may be entered on the award.

The services of the AAA are generally concluded with the transmittal of the award. Although there is voluntary compliance with the majority of awards, judgment on the award can be entered in a court having appropriate jurisdiction if necessary.

Administrative Fees

The AAA charges a filing fee based on the amount of the claim or counterclaim. This fee information, which is included with these rules, allows the parties to exercise control over their administrative fees. The fees cover AAA administrative services; they do not cover arbitrator compensation or expenses, if any, reporting services, or any post-award charges incurred by the parties in enforcing the award.

Mediation

Subject to the right of any party to opt out, in cases where a claim or counterclaim exceeds \$75,000, the rules provide that the parties shall mediate their dispute upon the administration of the arbitration or at any time when the arbitration is pending. In mediation, the neutral mediator assists the parties in

reaching a settlement but does not have the authority to make a binding decision or award. Mediation is administered by the AAA in accordance with its Commercial Mediation Procedures. There is no additional filing fee where parties to a pending arbitration attempt to mediate their dispute under the AAA's auspices.

Although these rules include a mediation procedure that will apply to many cases, parties may still want to incorporate mediation into their contractual dispute settlement process. Parties can do so by inserting the following mediation clause into their contract in conjunction with a standard arbitration provision:

If a dispute arises out of or relates to this contract, or the breach thereof, and if the dispute cannot be settled through negotiation, the parties agree first to try in good faith to settle the dispute by mediation administered by the American Arbitration Association under its Commercial Mediation Procedures before resorting to arbitration, litigation, or some other dispute resolution procedure.

If the parties want to use a mediator to resolve an existing dispute, they can enter into the following submission agreement:

The parties hereby submit the following dispute to mediation administered by the American Arbitration Association under its Commercial Mediation Procedures. (The clause may also provide for the qualifications of the mediator(s), method of payment, locale of meetings, and any other item of concern to the parties.)

Large, Complex Cases

Unless the parties agree otherwise, the procedures for Large, Complex Commercial Disputes, which appear in this pamphlet, will be applied to all cases administered by the AAA under the Commercial Arbitration Rules in which the disclosed claim or counterclaim of any party is at least \$500,000 exclusive of claimed interest, arbitration fees and costs. The key features of these procedures include:

- > A highly qualified, trained Roster of Neutrals;
- > A mandatory preliminary hearing with the arbitrators, which may be conducted by teleconference;
- > Broad arbitrator authority to order and control the exchange of information, including depositions;
- > A presumption that hearings will proceed on a consecutive or block basis.

Commercial Arbitration Rules

R-1. Agreement of Parties*

(a) The parties shall be deemed to have made these rules a part of their arbitration agreement whenever they have provided for arbitration by the American Arbitration Association (hereinafter AAA) under its Commercial Arbitration Rules or for arbitration by the AAA of a domestic commercial dispute without specifying particular rules. These rules and any amendment of them shall apply in the form in effect at the time the administrative requirements are met for a Demand for Arbitration or Submission Agreement received by the AAA. Any disputes regarding which AAA rules shall apply shall be decided by the AAA. The parties, by written agreement, may vary the procedures set forth in these rules. After appointment of the arbitrator, such modifications may be made only with the consent of the arbitrator.

(b) Unless the parties or the AAA determines otherwise, the Expedited Procedures shall apply in any case in which no disclosed claim or counterclaim exceeds \$75,000, exclusive of interest, attorneys' fees, and arbitration fees and costs.

Parties may also agree to use these procedures in larger cases. Unless the parties agree otherwise, these procedures will not apply in cases involving more than two parties. The Expedited Procedures shall be applied as described in Sections E-1 through E-10 of these rules, in addition to any other portion of these rules that is not in conflict with the Expedited Procedures.

(c) Unless the parties agree otherwise, the Procedures for Large, Complex Commercial Disputes shall apply to all cases in which the disclosed claim or counterclaim of any party is at least \$500,000 or more, exclusive of claimed interest, attorneys' fees, arbitration fees and costs. Parties may also agree to use the procedures in cases involving claims or counterclaims under \$500,000, or in nonmonetary cases. The Procedures for Large, Complex Commercial Disputes shall be applied as described in Sections L-1 through L-3 of these rules, in addition to any other portion of these rules that is not in conflict with the Procedures for Large, Complex Commercial Disputes.

(d) Parties may, by agreement, apply the Expedited Procedures, the Procedures for Large, Complex Commercial Disputes, or the Procedures for the Resolution of Disputes through Document Submission (Rule E-6) to any dispute.

(e) All other cases shall be administered in accordance with Sections R-1 through R-58 of these rules.

* Beginning October 1, 2017, AAA will apply the Employment Fee Schedule to any dispute between an individual employee or an independent contractor (working or performing as an individual and not incorporated) and a business or organization and the dispute involves work or work-related claims, including any statutory claims and including work-related claims under independent contractor agreements. A dispute arising out of an employment plan will be administered under the AAA's Employment Arbitration Rules and Mediation Procedures. A dispute arising out of a consumer arbitration agreement will be administered under the AAA's Consumer Arbitration Rules.

R-2. AAA and Delegation of Duties

When parties agree to arbitrate under these rules, or when they provide for arbitration by the AAA and an arbitration is initiated under these rules, they thereby authorize the AAA to administer the arbitration. The authority and duties of the AAA are prescribed in the agreement of the parties and in these rules, and may be carried out through such of the AAA's representatives as it may direct. The AAA may, in its discretion, assign the administration of an arbitration to any of its offices. Arbitrations administered under these rules shall only be administered by the AAA or by an individual or organization authorized by the AAA to do so.

R-3. National Roster of Arbitrators

The AAA shall establish and maintain a National Roster of Arbitrators ("National Roster") and shall appoint arbitrators as provided in these rules. The term "arbitrator" in these rules refers to the arbitration panel, constituted for a particular case, whether composed of one or more arbitrators, or to an individual arbitrator, as the context requires.

R-4. Filing Requirements

- (a) Arbitration under an arbitration provision in a contract shall be initiated by the initiating party ("claimant") filing with the AAA a Demand for Arbitration, the administrative filing fee, and a copy of the applicable arbitration agreement from the parties' contract which provides for arbitration.
- (b) Arbitration pursuant to a court order shall be initiated by the initiating party filing with the AAA a Demand for Arbitration, the administrative filing fee, and a copy of any applicable arbitration agreement from the parties' contract which provides for arbitration.
 - i. The filing party shall include a copy of the court order.
 - ii. The filing fee must be paid before a matter is considered properly filed. If the court order directs that a specific party is responsible for the filing fee, it is the responsibility of the filing party to either make such payment to the AAA and seek reimbursement as directed in the court order or to make other such arrangements so that the filing fee is submitted to the AAA with the Demand.
 - iii. The party filing the Demand with the AAA is the claimant and the opposing party is the respondent regardless of which party initiated the court action. Parties may request that the arbitrator alter the order of proceedings if necessary pursuant to R-32.
- (c) It is the responsibility of the filing party to ensure that any conditions precedent to the filing of a case are met prior to filing for an arbitration, as well as any time requirements associated with the filing. Any dispute regarding whether a condition precedent has been met may be raised to the arbitrator for determination.

- (d) Parties to any existing dispute who have not previously agreed to use these rules may commence an arbitration under these rules by filing a written submission agreement and the administrative filing fee. To the extent that the parties' submission agreement contains any variances from these rules, such variances should be clearly stated in the Submission Agreement.
- (e) Information to be included with any arbitration filing includes:
- i. the name of each party;
 - ii. the address for each party, including telephone and fax numbers and e-mail addresses;
 - iii. if applicable, the names, addresses, telephone and fax numbers, and e-mail addresses of any known representative for each party;
 - iv. a statement setting forth the nature of the claim including the relief sought and the amount involved; and
 - v. the locale requested if the arbitration agreement does not specify one.
- (f) The initiating party may file or submit a dispute to the AAA in the following manner:
- i. through AAA WebFile, located at **www.adr.org**; or
 - ii. by filing the complete Demand or Submission with any AAA office, regardless of the intended locale of hearing.
- (g) The filing party shall simultaneously provide a copy of the Demand and any supporting documents to the opposing party.
- (h) The AAA shall provide notice to the parties (or their representatives if so named) of the receipt of a Demand or Submission when the administrative filing requirements have been satisfied. The date on which the filing requirements are satisfied shall establish the date of filing the dispute for administration. However, all disputes in connection with the AAA's determination of the date of filing may be decided by the arbitrator.
- (i) If the filing does not satisfy the filing requirements set forth above, the AAA shall acknowledge to all named parties receipt of the incomplete filing and inform the parties of the filing deficiencies. If the deficiencies are not cured by the date specified by the AAA, the filing may be returned to the initiating party.

R-5. Answers and Counterclaims

- (a) A respondent may file an answering statement with the AAA within 14 calendar days after notice of the filing of the Demand is sent by the AAA. The respondent shall, at the time of any such filing, send a copy of any answering statement to the claimant and to all other parties to the arbitration. If no answering statement is filed within the stated time, the respondent will be deemed to deny the claim. Failure to file an answering statement shall not operate to delay the arbitration.

- (b)** A respondent may file a counterclaim at any time after notice of the filing of the Demand is sent by the AAA, subject to the limitations set forth in Rule R-6. The respondent shall send a copy of the counterclaim to the claimant and all other parties to the arbitration. If a counterclaim is asserted, it shall include a statement setting forth the nature of the counterclaim including the relief sought and the amount involved. The filing fee as specified in the applicable AAA Fee Schedule must be paid at the time of the filing of any counterclaim.
- (c)** If the respondent alleges that a different arbitration provision is controlling, the matter will be administered in accordance with the arbitration provision submitted by the initiating party subject to a final determination by the arbitrator.
- (d)** If the counterclaim does not meet the requirements for filing a claim and the deficiency is not cured by the date specified by the AAA, it may be returned to the filing party.

R-6. Changes of Claim

- (a)** A party may at any time prior to the close of the hearing or by the date established by the arbitrator increase or decrease the amount of its claim or counterclaim. Written notice of the change of claim amount must be provided to the AAA and all parties. If the change of claim amount results in an increase in administrative fee, the balance of the fee is due before the change of claim amount may be accepted by the arbitrator.
- (b)** Any new or different claim or counterclaim, as opposed to an increase or decrease in the amount of a pending claim or counterclaim, shall be made in writing and filed with the AAA, and a copy shall be provided to the other party, who shall have a period of 14 calendar days from the date of such transmittal within which to file an answer to the proposed change of claim or counterclaim with the AAA. After the arbitrator is appointed, however, no new or different claim may be submitted except with the arbitrator's consent.

R-7. Jurisdiction

- (a)** The arbitrator shall have the power to rule on his or her own jurisdiction, including any objections with respect to the existence, scope, or validity of the arbitration agreement or to the arbitrability of any claim or counterclaim.
- (b)** The arbitrator shall have the power to determine the existence or validity of a contract of which an arbitration clause forms a part. Such an arbitration clause shall be treated as an agreement independent of the other terms of the contract. A decision by the arbitrator that the contract is null and void shall not for that reason alone render invalid the arbitration clause.
- (c)** A party must object to the jurisdiction of the arbitrator or to the arbitrability of a claim or counterclaim no later than the filing of the answering statement to the claim or counterclaim that gives rise to the objection. The arbitrator may rule on such objections as a preliminary matter or as part of the final award.

R-8. Interpretation and Application of Rules

The arbitrator shall interpret and apply these rules insofar as they relate to the arbitrator's powers and duties. When there is more than one arbitrator and a difference arises among them concerning the meaning or application of these rules, it shall be decided by a majority vote. If that is not possible, either an arbitrator or a party may refer the question to the AAA for final decision. All other rules shall be interpreted and applied by the AAA.

R-9. Mediation

In all cases where a claim or counterclaim exceeds \$75,000, upon the AAA's administration of the arbitration or at any time while the arbitration is pending, the parties shall mediate their dispute pursuant to the applicable provisions of the AAA's Commercial Mediation Procedures, or as otherwise agreed by the parties. Absent an agreement of the parties to the contrary, the mediation shall take place concurrently with the arbitration and shall not serve to delay the arbitration proceedings. However, any party to an arbitration may unilaterally opt out of this rule upon notification to the AAA and the other parties to the arbitration. The parties shall confirm the completion of any mediation or any decision to opt out of this rule to the AAA. Unless agreed to by all parties and the mediator, the mediator shall not be appointed as an arbitrator to the case.

R-10. Administrative Conference

At the request of any party or upon the AAA's own initiative, the AAA may conduct an administrative conference, in person or by telephone, with the parties and/or their representatives. The conference may address such issues as arbitrator selection, mediation of the dispute, potential exchange of information, a timetable for hearings, and any other administrative matters.

R-11. Fixing of Locale

The parties may mutually agree on the locale where the arbitration is to be held. Any disputes regarding the locale that are to be decided by the AAA must be submitted to the AAA and all other parties within 14 calendar days from the date of the AAA's initiation of the case or the date established by the AAA. Disputes regarding locale shall be determined in the following manner:

- (a) When the parties' arbitration agreement is silent with respect to locale, and if the parties disagree as to the locale, the AAA may initially determine the place of

arbitration, subject to the power of the arbitrator after appointment, to make a final determination on the locale.

- (b)** When the parties' arbitration agreement requires a specific locale, absent the parties' agreement to change it, or a determination by the arbitrator upon appointment that applicable law requires a different locale, the locale shall be that specified in the arbitration agreement.
- (c)** If the reference to a locale in the arbitration agreement is ambiguous, and the parties are unable to agree to a specific locale, the AAA shall determine the locale, subject to the power of the arbitrator to finally determine the locale.

The arbitrator, at the arbitrator's sole discretion, shall have the authority to conduct special hearings for document production purposes or otherwise at other locations if reasonably necessary and beneficial to the process.

R-12. Appointment from National Roster

If the parties have not appointed an arbitrator and have not provided any other method of appointment, the arbitrator shall be appointed in the following manner:

- (a)** The AAA shall send simultaneously to each party to the dispute an identical list of 10 (unless the AAA decides that a different number is appropriate) names of persons chosen from the National Roster. The parties are encouraged to agree to an arbitrator from the submitted list and to advise the AAA of their agreement.
- (b)** If the parties are unable to agree upon an arbitrator, each party to the dispute shall have 14 calendar days from the transmittal date in which to strike names objected to, number the remaining names in order of preference, and return the list to the AAA. The parties are not required to exchange selection lists. If a party does not return the list within the time specified, all persons named therein shall be deemed acceptable to that party. From among the persons who have been approved on both lists, and in accordance with the designated order of mutual preference, the AAA shall invite the acceptance of an arbitrator to serve. If the parties fail to agree on any of the persons named, or if acceptable arbitrators are unable to act, or if for any other reason the appointment cannot be made from the submitted lists, the AAA shall have the power to make the appointment from among other members of the National Roster without the submission of additional lists.
- (c)** Unless the parties agree otherwise, when there are two or more claimants or two or more respondents, the AAA may appoint all the arbitrators.

R-13. Direct Appointment by a Party

- (a) If the agreement of the parties names an arbitrator or specifies a method of appointing an arbitrator, that designation or method shall be followed. The notice of appointment, with the name and address of the arbitrator, shall be filed with the AAA by the appointing party. Upon the request of any appointing party, the AAA shall submit a list of members of the National Roster from which the party may, if it so desires, make the appointment.
- (b) Where the parties have agreed that each party is to name one arbitrator, the arbitrators so named must meet the standards of Section R-18 with respect to impartiality and independence unless the parties have specifically agreed pursuant to Section R-18(b) that the party-appointed arbitrators are to be non-neutral and need not meet those standards.
- (c) If the agreement specifies a period of time within which an arbitrator shall be appointed and any party fails to make the appointment within that period, the AAA shall make the appointment.
- (d) If no period of time is specified in the agreement, the AAA shall notify the party to make the appointment. If within 14 calendar days after such notice has been sent, an arbitrator has not been appointed by a party, the AAA shall make the appointment.

R-14. Appointment of Chairperson by Party-Appointed Arbitrators or Parties

- (a) If, pursuant to Section R-13, either the parties have directly appointed arbitrators, or the arbitrators have been appointed by the AAA, and the parties have authorized them to appoint a chairperson within a specified time and no appointment is made within that time or any agreed extension, the AAA may appoint the chairperson.
- (b) If no period of time is specified for appointment of the chairperson, and the party-appointed arbitrators or the parties do not make the appointment within 14 calendar days from the date of the appointment of the last party-appointed arbitrator, the AAA may appoint the chairperson.
- (c) If the parties have agreed that their party-appointed arbitrators shall appoint the chairperson from the National Roster, the AAA shall furnish to the party-appointed arbitrators, in the manner provided in Section R-12, a list selected from the National Roster, and the appointment of the chairperson shall be made as provided in that Section.

R-15. Nationality of Arbitrator

Where the parties are nationals of different countries, the AAA, at the request of any party or on its own initiative, may appoint as arbitrator a national of a country other than that of any of the parties. The request must be made before the time set for the appointment of the arbitrator as agreed by the parties or set by these rules.

R-16. Number of Arbitrators

- (a) If the arbitration agreement does not specify the number of arbitrators, the dispute shall be heard and determined by one arbitrator, unless the AAA, in its discretion, directs that three arbitrators be appointed. A party may request three arbitrators in the Demand or Answer, which request the AAA will consider in exercising its discretion regarding the number of arbitrators appointed to the dispute.
- (b) Any request for a change in the number of arbitrators as a result of an increase or decrease in the amount of a claim or a new or different claim must be made to the AAA and other parties to the arbitration no later than seven calendar days after receipt of the R-6 required notice of change of claim amount. If the parties are unable to agree with respect to the request for a change in the number of arbitrators, the AAA shall make that determination.

R-17. Disclosure

- (a) Any person appointed or to be appointed as an arbitrator, as well as the parties and their representatives, shall disclose to the AAA any circumstance likely to give rise to justifiable doubt as to the arbitrator's impartiality or independence, including any bias or any financial or personal interest in the result of the arbitration or any past or present relationship with the parties or their representatives. Such obligation shall remain in effect throughout the arbitration. Failure on the part of a party or a representative to comply with the requirements of this rule may result in the waiver of the right to object to an arbitrator in accordance with Rule R-41.
- (b) Upon receipt of such information from the arbitrator or another source, the AAA shall communicate the information to the parties and, if it deems it appropriate to do so, to the arbitrator and others.
- (c) Disclosure of information pursuant to this Section R-17 is not an indication that the arbitrator considers that the disclosed circumstance is likely to affect impartiality or independence.

R-18. Disqualification of Arbitrator

- (a) Any arbitrator shall be impartial and independent and shall perform his or her duties with diligence and in good faith, and shall be subject to disqualification for:
 - i. partiality or lack of independence,
 - ii. inability or refusal to perform his or her duties with diligence and in good faith, and
 - iii. any grounds for disqualification provided by applicable law.
- (b) The parties may agree in writing, however, that arbitrators directly appointed by a party pursuant to Section R-13 shall be non-neutral, in which case such arbitrators need not be impartial or independent and shall not be subject to disqualification for partiality or lack of independence.
- (c) Upon objection of a party to the continued service of an arbitrator, or on its own initiative, the AAA shall determine whether the arbitrator should be disqualified under the grounds set out above, and shall inform the parties of its decision, which decision shall be conclusive.

R-19. Communication with Arbitrator

- (a) No party and no one acting on behalf of any party shall communicate *ex parte* with an arbitrator or a candidate for arbitrator concerning the arbitration, except that a party, or someone acting on behalf of a party, may communicate *ex parte* with a candidate for direct appointment pursuant to R-13 in order to advise the candidate of the general nature of the controversy and of the anticipated proceedings and to discuss the candidate's qualifications, availability, or independence in relation to the parties or to discuss the suitability of candidates for selection as a third arbitrator where the parties or party-designated arbitrators are to participate in that selection.
- (b) Section R-19(a) does not apply to arbitrators directly appointed by the parties who, pursuant to Section R-18(b), the parties have agreed in writing are non-neutral. Where the parties have so agreed under Section R-18(b), the AAA shall as an administrative practice suggest to the parties that they agree further that Section R-19(a) should nonetheless apply prospectively.
- (c) In the course of administering an arbitration, the AAA may initiate communications with each party or anyone acting on behalf of the parties either jointly or individually.
- (d) As set forth in R-43, unless otherwise instructed by the AAA or by the arbitrator, any documents submitted by any party or to the arbitrator shall simultaneously be provided to the other party or parties to the arbitration.

R-20. Vacancies

- (a) If for any reason an arbitrator is unable or unwilling to perform the duties of the office, the AAA may, on proof satisfactory to it, declare the office vacant. Vacancies shall be filled in accordance with the applicable provisions of these rules.
- (b) In the event of a vacancy in a panel of neutral arbitrators after the hearings have commenced, the remaining arbitrator or arbitrators may continue with the hearing and determination of the controversy, unless the parties agree otherwise.
- (c) In the event of the appointment of a substitute arbitrator, the panel of arbitrators shall determine in its sole discretion whether it is necessary to repeat all or part of any prior hearings.

R-21. Preliminary Hearing

- (a) At the discretion of the arbitrator, and depending on the size and complexity of the arbitration, a preliminary hearing should be scheduled as soon as practicable after the arbitrator has been appointed. The parties should be invited to attend the preliminary hearing along with their representatives. The preliminary hearing may be conducted in person or by telephone.
- (b) At the preliminary hearing, the parties and the arbitrator should be prepared to discuss and establish a procedure for the conduct of the arbitration that is appropriate to achieve a fair, efficient, and economical resolution of the dispute. Sections P-1 and P-2 of these rules address the issues to be considered at the preliminary hearing.

R-22. Pre-Hearing Exchange and Production of Information

- (a) *Authority of arbitrator.* The arbitrator shall manage any necessary exchange of information among the parties with a view to achieving an efficient and economical resolution of the dispute, while at the same time promoting equality of treatment and safeguarding each party's opportunity to fairly present its claims and defenses.
- (b) *Documents.* The arbitrator may, on application of a party or on the arbitrator's own initiative:
 - i. require the parties to exchange documents in their possession or custody on which they intend to rely;
 - ii. require the parties to update their exchanges of the documents on which they intend to rely as such documents become known to them;
 - iii. require the parties, in response to reasonable document requests, to make available to the other party documents, in the responding party's possession or custody, not otherwise readily available to the party seeking the documents, reasonably believed by the party seeking the documents to exist and to be relevant and material to the outcome of disputed issues; and

- iv. require the parties, when documents to be exchanged or produced are maintained in electronic form, to make such documents available in the form most convenient and economical for the party in possession of such documents, unless the arbitrator determines that there is good cause for requiring the documents to be produced in a different form. The parties should attempt to agree in advance upon, and the arbitrator may determine, reasonable search parameters to balance the need for production of electronically stored documents relevant and material to the outcome of disputed issues against the cost of locating and producing them.

R-23. Enforcement Powers of the Arbitrator

The arbitrator shall have the authority to issue any orders necessary to enforce the provisions of rules R-21 and R-22 and to otherwise achieve a fair, efficient and economical resolution of the case, including, without limitation:

- (a) conditioning any exchange or production of confidential documents and information, and the admission of confidential evidence at the hearing, on appropriate orders to preserve such confidentiality;
- (b) imposing reasonable search parameters for electronic and other documents if the parties are unable to agree;
- (c) allocating costs of producing documentation, including electronically stored documentation;
- (d) in the case of willful non-compliance with any order issued by the arbitrator, drawing adverse inferences, excluding evidence and other submissions, and/or making special allocations of costs or an interim award of costs arising from such non-compliance; and
- (e) issuing any other enforcement orders which the arbitrator is empowered to issue under applicable law.

R-24. Date, Time, and Place of Hearing

The arbitrator shall set the date, time, and place for each hearing. The parties shall respond to requests for hearing dates in a timely manner, be cooperative in scheduling the earliest practicable date, and adhere to the established hearing schedule. The AAA shall send a notice of hearing to the parties at least 10 calendar days in advance of the hearing date, unless otherwise agreed by the parties.

R-25. Attendance at Hearings

The arbitrator and the AAA shall maintain the privacy of the hearings unless the law provides to the contrary. Any person having a direct interest in the arbitration is entitled to attend hearings. The arbitrator shall otherwise have the power to require the exclusion of any witness, other than a party or other essential person, during the testimony of any other witness. It shall be discretionary with the arbitrator to determine the propriety of the attendance of any other person.

R-26. Representation

Any party may participate without representation (*pro se*), or by counsel or any other representative of the party's choosing, unless such choice is prohibited by applicable law. A party intending to be so represented shall notify the other party and the AAA of the name, telephone number and address, and email address if available, of the representative at least seven calendar days prior to the date set for the hearing at which that person is first to appear. When such a representative initiates an arbitration or responds for a party, notice is deemed to have been given.

R-27. Oaths

Before proceeding with the first hearing, each arbitrator may take an oath of office and, if required by law, shall do so. The arbitrator may require witnesses to testify under oath administered by any duly qualified person and, if it is required by law or requested by any party, shall do so.

R-28. Stenographic Record

- (a) Any party desiring a stenographic record shall make arrangements directly with a stenographer and shall notify the other parties of these arrangements at least three calendar days in advance of the hearing. The requesting party or parties shall pay the cost of the record.
- (b) No other means of recording the proceedings will be permitted absent the agreement of the parties or per the direction of the arbitrator.
- (c) If the transcript or any other recording is agreed by the parties or determined by the arbitrator to be the official record of the proceeding, it must be provided to the arbitrator and made available to the other parties for inspection, at a date, time, and place determined by the arbitrator.
- (d) The arbitrator may resolve any disputes with regard to apportionment of the costs of the stenographic record or other recording.

R-29. Interpreters

Any party wishing an interpreter shall make all arrangements directly with the interpreter and shall assume the costs of the service.

R-30. Postponements

The arbitrator may postpone any hearing upon agreement of the parties, upon request of a party for good cause shown, or upon the arbitrator's own initiative.

R-31. Arbitration in the Absence of a Party or Representative

Unless the law provides to the contrary, the arbitration may proceed in the absence of any party or representative who, after due notice, fails to be present or fails to obtain a postponement. An award shall not be made solely on the default of a party. The arbitrator shall require the party who is present to submit such evidence as the arbitrator may require for the making of an award.

R-32. Conduct of Proceedings

- (a) The claimant shall present evidence to support its claim. The respondent shall then present evidence to support its defense. Witnesses for each party shall also submit to questions from the arbitrator and the adverse party. The arbitrator has the discretion to vary this procedure, provided that the parties are treated with equality and that each party has the right to be heard and is given a fair opportunity to present its case.
- (b) The arbitrator, exercising his or her discretion, shall conduct the proceedings with a view to expediting the resolution of the dispute and may direct the order of proof, bifurcate proceedings and direct the parties to focus their presentations on issues the decision of which could dispose of all or part of the case.
- (c) When deemed appropriate, the arbitrator may also allow for the presentation of evidence by alternative means including video conferencing, internet communication, telephonic conferences and means other than an in-person presentation. Such alternative means must afford a full opportunity for all parties to present any evidence that the arbitrator deems material and relevant to the resolution of the dispute and, when involving witnesses, provide an opportunity for cross-examination.
- (d) The parties may agree to waive oral hearings in any case and may also agree to utilize the Procedures for Resolution of Disputes Through Document Submission, found in Rule E-6.

R-33. Dispositive Motions

The arbitrator may allow the filing of and make rulings upon a dispositive motion only if the arbitrator determines that the moving party has shown that the motion is likely to succeed and dispose of or narrow the issues in the case.

R-34. Evidence

- (a) The parties may offer such evidence as is relevant and material to the dispute and shall produce such evidence as the arbitrator may deem necessary to an understanding and determination of the dispute. Conformity to legal rules of evidence shall not be necessary. All evidence shall be taken in the presence of all of the arbitrators and all of the parties, except where any of the parties is absent, in default, or has waived the right to be present.
- (b) The arbitrator shall determine the admissibility, relevance, and materiality of the evidence offered and may exclude evidence deemed by the arbitrator to be cumulative or irrelevant.
- (c) The arbitrator shall take into account applicable principles of legal privilege, such as those involving the confidentiality of communications between a lawyer and client.
- (d) An arbitrator or other person authorized by law to subpoena witnesses or documents may do so upon the request of any party or independently.

R-35. Evidence by Written Statements and Post-Hearing Filing of Documents or Other Evidence

- (a) At a date agreed upon by the parties or ordered by the arbitrator, the parties shall give written notice for any witness or expert witness who has provided a written witness statement to appear in person at the arbitration hearing for examination. If such notice is given, and the witness fails to appear, the arbitrator may disregard the written witness statement and/or expert report of the witness or make such other order as the arbitrator may consider to be just and reasonable.
- (b) If a witness whose testimony is represented by a party to be essential is unable or unwilling to testify at the hearing, either in person or through electronic or other means, either party may request that the arbitrator order the witness to appear in person for examination before the arbitrator at a time and location where the witness is willing and able to appear voluntarily or can legally be compelled to do so. Any such order may be conditioned upon payment by the requesting party of all reasonable costs associated with such examination.
- (c) If the parties agree or the arbitrator directs that documents or other evidence be submitted to the arbitrator after the hearing, the documents or other evidence shall be filed with the AAA for transmission to the arbitrator. All parties shall be afforded an opportunity to examine and respond to such documents or other evidence.

R-36. Inspection or Investigation

An arbitrator finding it necessary to make an inspection or investigation in connection with the arbitration shall direct the AAA to so advise the parties. The arbitrator shall set the date and time and the AAA shall notify the parties. Any party who so desires may be present at such an inspection or investigation. In the event that one or all parties are not present at the inspection or investigation, the arbitrator shall make an oral or written report to the parties and afford them an opportunity to comment.

R-37. Interim Measures

- (a) The arbitrator may take whatever interim measures he or she deems necessary, including injunctive relief and measures for the protection or conservation of property and disposition of perishable goods.
- (b) Such interim measures may take the form of an interim award, and the arbitrator may require security for the costs of such measures.
- (c) A request for interim measures addressed by a party to a judicial authority shall not be deemed incompatible with the agreement to arbitrate or a waiver of the right to arbitrate.

R-38. Emergency Measures of Protection

- (a) Unless the parties agree otherwise, the provisions of this rule shall apply to arbitrations conducted under arbitration clauses or agreements entered on or after October 1, 2013.
- (b) A party in need of emergency relief prior to the constitution of the panel shall notify the AAA and all other parties in writing of the nature of the relief sought and the reasons why such relief is required on an emergency basis. The application shall also set forth the reasons why the party is entitled to such relief. Such notice may be given by facsimile or e-mail or other reliable means, but must include a statement certifying that all other parties have been notified or an explanation of the steps taken in good faith to notify other parties.
- (c) Within one business day of receipt of notice as provided in section (b), the AAA shall appoint a single emergency arbitrator designated to rule on emergency applications. The emergency arbitrator shall immediately disclose any circumstance likely, on the basis of the facts disclosed on the application, to affect such arbitrator's impartiality or independence. Any challenge to the appointment of the emergency arbitrator must be made within one business day of the communication by the AAA to the parties of the appointment of the emergency arbitrator and the circumstances disclosed.

- (d) The emergency arbitrator shall as soon as possible, but in any event within two business days of appointment, establish a schedule for consideration of the application for emergency relief. Such a schedule shall provide a reasonable opportunity to all parties to be heard, but may provide for proceeding by telephone or video conference or on written submissions as alternatives to a formal hearing. The emergency arbitrator shall have the authority vested in the tribunal under Rule 7, including the authority to rule on her/his own jurisdiction, and shall resolve any disputes over the applicability of this Rule 38.
- (e) If after consideration the emergency arbitrator is satisfied that the party seeking the emergency relief has shown that immediate and irreparable loss or damage shall result in the absence of emergency relief, and that such party is entitled to such relief, the emergency arbitrator may enter an interim order or award granting the relief and stating the reason therefore.
- (f) Any application to modify an interim award of emergency relief must be based on changed circumstances and may be made to the emergency arbitrator until the panel is constituted; thereafter such a request shall be addressed to the panel. The emergency arbitrator shall have no further power to act after the panel is constituted unless the parties agree that the emergency arbitrator is named as a member of the panel.
- (g) Any interim award of emergency relief may be conditioned on provision by the party seeking such relief for appropriate security.
- (h) A request for interim measures addressed by a party to a judicial authority shall not be deemed incompatible with this rule, the agreement to arbitrate or a waiver of the right to arbitrate. If the AAA is directed by a judicial authority to nominate a special master to consider and report on an application for emergency relief, the AAA shall proceed as provided in this rule and the references to the emergency arbitrator shall be read to mean the special master, except that the special master shall issue a report rather than an interim award.
- (i) The costs associated with applications for emergency relief shall initially be apportioned by the emergency arbitrator or special master, subject to the power of the tribunal to determine finally the apportionment of such costs.

R-39. Closing of Hearing

- (a) The arbitrator shall specifically inquire of all parties whether they have any further proofs to offer or witnesses to be heard. Upon receiving negative replies or if satisfied that the record is complete, the arbitrator shall declare the hearing closed.
- (b) If documents or responses are to be filed as provided in Rule R-35, or if briefs are to be filed, the hearing shall be declared closed as of the final date set by the arbitrator for the receipt of briefs. If no documents, responses, or briefs are to be filed, the arbitrator shall declare the hearings closed as of the date of the last hearing (including telephonic hearings). If the case was heard without any oral hearings, the arbitrator shall close the hearings upon the due date established for receipt of the final submission.

- (c) The time limit within which the arbitrator is required to make the award shall commence, in the absence of other agreements by the parties, upon the closing of the hearing. The AAA may extend the time limit for rendering of the award only in unusual and extreme circumstances.

R-40. Reopening of Hearing

The hearing may be reopened on the arbitrator's initiative, or by the direction of the arbitrator upon application of a party, at any time before the award is made. If reopening the hearing would prevent the making of the award within the specific time agreed to by the parties in the arbitration agreement, the matter may not be reopened unless the parties agree to an extension of time. When no specific date is fixed by agreement of the parties, the arbitrator shall have 30 calendar days from the closing of the reopened hearing within which to make an award (14 calendar days if the case is governed by the Expedited Procedures).

R-41. Waiver of Rules

Any party who proceeds with the arbitration after knowledge that any provision or requirement of these rules has not been complied with and who fails to state an objection in writing shall be deemed to have waived the right to object.

R-42. Extensions of Time

The parties may modify any period of time by mutual agreement. The AAA or the arbitrator may for good cause extend any period of time established by these rules, except the time for making the award. The AAA shall notify the parties of any extension.

R-43. Serving of Notice and Communications

- (a) Any papers, notices, or process necessary or proper for the initiation or continuation of an arbitration under these rules, for any court action in connection therewith, or for the entry of judgment on any award made under these rules may be served on a party by mail addressed to the party or its representative at the last known address or by personal service, in or outside the state where the arbitration is to be held, provided that reasonable opportunity to be heard with regard to the dispute is or has been granted to the party.
- (b) The AAA, the arbitrator and the parties may also use overnight delivery or electronic facsimile transmission (fax), or electronic (e-mail) to give the notices required by these rules. Where all parties and the arbitrator agree, notices may be transmitted by e-mail or other methods of communication.

- (c) Unless otherwise instructed by the AAA or by the arbitrator, any documents submitted by any party to the AAA or to the arbitrator shall simultaneously be provided to the other party or parties to the arbitration.
- (d) Unless otherwise instructed by the AAA or by the arbitrator, all written communications made by any party to the AAA or to the arbitrator shall simultaneously be provided to the other party or parties to the arbitration.
- (e) Failure to provide the other party with copies of communications made to the AAA or to the arbitrator may prevent the AAA or the arbitrator from acting on any requests or objections contained therein.
- (f) The AAA may direct that any oral or written communications that are sent by a party or their representative shall be sent in a particular manner. The failure of a party or their representative to do so may result in the AAA's refusal to consider the issue raised in the communication.

R-44. Majority Decision

- (a) When the panel consists of more than one arbitrator, unless required by law or by the arbitration agreement or section (b) of this rule, a majority of the arbitrators must make all decisions.
- (b) Where there is a panel of three arbitrators, absent an objection of a party or another member of the panel, the chairperson of the panel is authorized to resolve any disputes related to the exchange of information or procedural matters without the need to consult the full panel.

R-45. Time of Award

The award shall be made promptly by the arbitrator and, unless otherwise agreed by the parties or specified by law, no later than 30 calendar days from the date of closing the hearing, or, if oral hearings have been waived, from the due date set for receipt of the parties' final statements and proofs.

R-46. Form of Award

- (a) Any award shall be in writing and signed by a majority of the arbitrators. It shall be executed in the form and manner required by law.
- (b) The arbitrator need not render a reasoned award unless the parties request such an award in writing prior to appointment of the arbitrator or unless the arbitrator determines that a reasoned award is appropriate.

R-47. Scope of Award

- (a) The arbitrator may grant any remedy or relief that the arbitrator deems just and equitable and within the scope of the agreement of the parties, including, but not limited to, specific performance of a contract.
- (b) In addition to a final award, the arbitrator may make other decisions, including interim, interlocutory, or partial rulings, orders, and awards. In any interim, interlocutory, or partial award, the arbitrator may assess and apportion the fees, expenses, and compensation related to such award as the arbitrator determines is appropriate.
- (c) In the final award, the arbitrator shall assess the fees, expenses, and compensation provided in Sections R-53, R-54, and R-55. The arbitrator may apportion such fees, expenses, and compensation among the parties in such amounts as the arbitrator determines is appropriate.
- (d) The award of the arbitrator(s) may include:
 - i. interest at such rate and from such date as the arbitrator(s) may deem appropriate; and
 - ii. an award of attorneys' fees if all parties have requested such an award or it is authorized by law or their arbitration agreement.

R-48. Award Upon Settlement—Consent Award

- (a) If the parties settle their dispute during the course of the arbitration and if the parties so request, the arbitrator may set forth the terms of the settlement in a "consent award." A consent award must include an allocation of arbitration costs, including administrative fees and expenses as well as arbitrator fees and expenses.
- (b) The consent award shall not be released to the parties until all administrative fees and all arbitrator compensation have been paid in full.

R-49. Delivery of Award to Parties

Parties shall accept as notice and delivery of the award the placing of the award or a true copy thereof in the mail addressed to the parties or their representatives at their last known addresses, personal or electronic service of the award, or the filing of the award in any other manner that is permitted by law.

R-50. Modification of Award

Within 20 calendar days after the transmittal of an award, any party, upon notice to the other parties, may request the arbitrator, through the AAA, to correct any clerical, typographical, or computational errors in the award. The arbitrator is not empowered to redetermine the merits of any claim already decided. The other

parties shall be given 10 calendar days to respond to the request. The arbitrator shall dispose of the request within 20 calendar days after transmittal by the AAA to the arbitrator of the request and any response thereto.

R-51. Release of Documents for Judicial Proceedings

The AAA shall, upon the written request of a party to the arbitration, furnish to the party, at its expense, copies or certified copies of any papers in the AAA's possession that are not determined by the AAA to be privileged or confidential.

R-52. Applications to Court and Exclusion of Liability

- (a) No judicial proceeding by a party relating to the subject matter of the arbitration shall be deemed a waiver of the party's right to arbitrate.
- (b) Neither the AAA nor any arbitrator in a proceeding under these rules is a necessary or proper party in judicial proceedings relating to the arbitration.
- (c) Parties to an arbitration under these rules shall be deemed to have consented that judgment upon the arbitration award may be entered in any federal or state court having jurisdiction thereof.
- (d) Parties to an arbitration under these rules shall be deemed to have consented that neither the AAA nor any arbitrator shall be liable to any party in any action for damages or injunctive relief for any act or omission in connection with any arbitration under these rules.
- (e) Parties to an arbitration under these rules may not call the arbitrator, the AAA, or AAA employees as a witness in litigation or any other proceeding relating to the arbitration. The arbitrator, the AAA and AAA employees are not competent to testify as witnesses in any such proceeding.

R-53. Administrative Fees

As a not-for-profit organization, the AAA shall prescribe administrative fees to compensate it for the cost of providing administrative services. The fees in effect when the fee or charge is incurred shall be applicable. The filing fee shall be advanced by the party or parties making a claim or counterclaim, subject to final apportionment by the arbitrator in the award. The AAA may, in the event of extreme hardship on the part of any party, defer or reduce the administrative fees.

R-54. Expenses

The expenses of witnesses for either side shall be paid by the party producing such witnesses. All other expenses of the arbitration, including required travel and other expenses of the arbitrator, AAA representatives, and any witness and

the cost of any proof produced at the direct request of the arbitrator, shall be borne equally by the parties, unless they agree otherwise or unless the arbitrator in the award assesses such expenses or any part thereof against any specified party or parties.

R-55. Neutral Arbitrator's Compensation

- (a) Arbitrators shall be compensated at a rate consistent with the arbitrator's stated rate of compensation.
- (b) If there is disagreement concerning the terms of compensation, an appropriate rate shall be established with the arbitrator by the AAA and confirmed to the parties.
- (c) Any arrangement for the compensation of a neutral arbitrator shall be made through the AAA and not directly between the parties and the arbitrator.

R-56. Deposits

- (a) The AAA may require the parties to deposit in advance of any hearings such sums of money as it deems necessary to cover the expense of the arbitration, including the arbitrator's fee, if any, and shall render an accounting to the parties and return any unexpended balance at the conclusion of the case.
- (b) Other than in cases where the arbitrator serves for a flat fee, deposit amounts requested will be based on estimates provided by the arbitrator. The arbitrator will determine the estimated amount of deposits using the information provided by the parties with respect to the complexity of each case.
- (c) Upon the request of any party, the AAA shall request from the arbitrator an itemization or explanation for the arbitrator's request for deposits.

R-57. Remedies for Nonpayment

If arbitrator compensation or administrative charges have not been paid in full, the AAA may so inform the parties in order that one of them may advance the required payment.

- (a) Upon receipt of information from the AAA that payment for administrative charges or deposits for arbitrator compensation have not been paid in full, to the extent the law allows, a party may request that the arbitrator take specific measures relating to a party's non-payment.
- (b) Such measures may include, but are not limited to, limiting a party's ability to assert or pursue their claim. In no event, however, shall a party be precluded from defending a claim or counterclaim.

- (c) The arbitrator must provide the party opposing a request for such measures with the opportunity to respond prior to making any ruling regarding the same.
- (d) In the event that the arbitrator grants any request for relief which limits any party's participation in the arbitration, the arbitrator shall require the party who is making a claim and who has made appropriate payments to submit such evidence as the arbitrator may require for the making of an award.
- (e) Upon receipt of information from the AAA that full payments have not been received, the arbitrator, on the arbitrator's own initiative or at the request of the AAA or a party, may order the suspension of the arbitration. If no arbitrator has yet been appointed, the AAA may suspend the proceedings.
- (f) If the arbitration has been suspended by either the AAA or the arbitrator and the parties have failed to make the full deposits requested within the time provided after the suspension, the arbitrator, or the AAA if an arbitrator has not been appointed, may terminate the proceedings.

R-58. Sanctions

- (a) The arbitrator may, upon a party's request, order appropriate sanctions where a party fails to comply with its obligations under these rules or with an order of the arbitrator. In the event that the arbitrator enters a sanction that limits any party's participation in the arbitration or results in an adverse determination of an issue or issues, the arbitrator shall explain that order in writing and shall require the submission of evidence and legal argument prior to making of an award. The arbitrator may not enter a default award as a sanction.
- (b) The arbitrator must provide a party that is subject to a sanction request with the opportunity to respond prior to making any determination regarding the sanctions application.

Preliminary Hearing Procedures

P-1. General

- (a)** In all but the simplest cases, holding a preliminary hearing as early in the process as possible will help the parties and the arbitrator organize the proceeding in a manner that will maximize efficiency and economy, and will provide each party a fair opportunity to present its case.
- (b)** Care must be taken to avoid importing procedures from court systems, as such procedures may not be appropriate to the conduct of arbitrations as an alternative form of dispute resolution that is designed to be simpler, less expensive and more expeditious.

P-2. Checklist

- (a)** The following checklist suggests subjects that the parties and the arbitrator should address at the preliminary hearing, in addition to any others that the parties or the arbitrator believe to be appropriate to the particular case. The items to be addressed in a particular case will depend on the size, subject matter, and complexity of the dispute, and are subject to the discretion of the arbitrator:
 - (i)** the possibility of other non-adjudicative methods of dispute resolution, including mediation pursuant to R-9;
 - (ii)** whether all necessary or appropriate parties are included in the arbitration;
 - (iii)** whether a party will seek a more detailed statement of claims, counterclaims or defenses;
 - (iv)** whether there are any anticipated amendments to the parties' claims, counterclaims, or defenses;
 - (v)** which
 - (a)** arbitration rules;
 - (b)** procedural law; and
 - (c)** substantive law govern the arbitration;
 - (vi)** whether there are any threshold or dispositive issues that can efficiently be decided without considering the entire case, including without limitation,
 - (a)** any preconditions that must be satisfied before proceeding with the arbitration;
 - (b)** whether any claim or counterclaim falls outside the arbitrator's jurisdiction or is otherwise not arbitrable;
 - (c)** consolidation of the claims or counterclaims with another arbitration; or
 - (d)** bifurcation of the proceeding.

- (vii) whether the parties will exchange documents, including electronically stored documents, on which they intend to rely in the arbitration, and/or make written requests for production of documents within defined parameters;
 - (viii) whether to establish any additional procedures to obtain information that is relevant and material to the outcome of disputed issues;
 - (ix) how costs of any searches for requested information or documents that would result in substantial costs should be borne;
 - (x) whether any measures are required to protect confidential information;
 - (xi) whether the parties intend to present evidence from expert witnesses, and if so, whether to establish a schedule for the parties to identify their experts and exchange expert reports;
 - (xii) whether, according to a schedule set by the arbitrator, the parties will
 - (a) identify all witnesses, the subject matter of their anticipated testimonies, exchange written witness statements, and determine whether written witness statements will replace direct testimony at the hearing;
 - (b) exchange and pre-mark documents that each party intends to submit; and
 - (c) exchange pre-hearing submissions, including exhibits;
 - (xiii) the date, time and place of the arbitration hearing;
 - (xiv) whether, at the arbitration hearing,
 - (a) testimony may be presented in person, in writing, by videoconference, via the internet, telephonically, or by other reasonable means;
 - (b) there will be a stenographic transcript or other record of the proceeding and, if so, who will make arrangements to provide it;
 - (xv) whether any procedure needs to be established for the issuance of subpoenas;
 - (xvi) the identification of any ongoing, related litigation or arbitration;
 - (xvii) whether post-hearing submissions will be filed;
 - (xviii) the form of the arbitration award; and
 - (xix) any other matter the arbitrator considers appropriate or a party wishes to raise.
- (b) The arbitrator shall issue a written order memorializing decisions made and agreements reached during or following the preliminary hearing.

Expedited Procedures

E-1. Limitation on Extensions

Except in extraordinary circumstances, the AAA or the arbitrator may grant a party no more than one seven-day extension of time to respond to the Demand for Arbitration or counterclaim as provided in Section R-5.

E-2. Changes of Claim or Counterclaim

A claim or counterclaim may be increased in amount, or a new or different claim or counterclaim added, upon the agreement of the other party, or the consent of the arbitrator. After the arbitrator is appointed, however, no new or different claim or counterclaim may be submitted except with the arbitrator's consent. If an increased claim or counterclaim exceeds \$75,000, the case will be administered under the regular procedures unless all parties and the arbitrator agree that the case may continue to be processed under the Expedited Procedures.

E-3. Serving of Notices

In addition to notice provided by Section R-43, the parties shall also accept notice by telephone. Telephonic notices by the AAA shall subsequently be confirmed in writing to the parties. Should there be a failure to confirm in writing any such oral notice, the proceeding shall nevertheless be valid if notice has, in fact, been given by telephone.

E-4. Appointment and Qualifications of Arbitrator

- (a) The AAA shall simultaneously submit to each party an identical list of five proposed arbitrators drawn from its National Roster from which one arbitrator shall be appointed.
- (b) The parties are encouraged to agree to an arbitrator from this list and to advise the AAA of their agreement. If the parties are unable to agree upon an arbitrator, each party may strike two names from the list and return it to the AAA within seven days from the date of the AAA's mailing to the parties. If for any reason the appointment of an arbitrator cannot be made from the list, the AAA may make the appointment from other members of the panel without the submission of additional lists.
- (c) The parties will be given notice by the AAA of the appointment of the arbitrator, who shall be subject to disqualification for the reasons specified in Section R-18. The parties shall notify the AAA within seven calendar days of any objection to the arbitrator appointed. Any such objection shall be for cause and shall be confirmed in writing to the AAA with a copy to the other party or parties.

E-5. Exchange of Exhibits

At least two business days prior to the hearing, the parties shall exchange copies of all exhibits they intend to submit at the hearing. The arbitrator shall resolve disputes concerning the exchange of exhibits.

E-6. Proceedings on Documents and Procedures for the Resolution of Disputes Through Document Submission

Where no party's claim exceeds \$25,000, exclusive of interest, attorneys' fees and arbitration costs, and other cases in which the parties agree, the dispute shall be resolved by submission of documents, unless any party requests an oral hearing, or the arbitrator determines that an oral hearing is necessary. Where cases are resolved by submission of documents, the following procedures may be utilized at the agreement of the parties or the discretion of the arbitrator:

- (a) Within 14 calendar days of confirmation of the arbitrator's appointment, the arbitrator may convene a preliminary management hearing, via conference call, video conference, or internet, to establish a fair and equitable procedure for the submission of documents, and, if the arbitrator deems appropriate, a schedule for one or more telephonic or electronic conferences.
- (b) The arbitrator has the discretion to remove the case from the documents-only process if the arbitrator determines that an in-person hearing is necessary.
- (c) If the parties agree to in-person hearings after a previous agreement to proceed under this rule, the arbitrator shall conduct such hearings. If a party seeks to have in-person hearings after agreeing to this rule, but there is not agreement among the parties to proceed with in-person hearings, the arbitrator shall resolve the issue after the parties have been given the opportunity to provide their respective positions on the issue.
- (d) The arbitrator shall establish the date for either written submissions or a final telephonic or electronic conference. Such date shall operate to close the hearing and the time for the rendering of the award shall commence.
- (e) Unless the parties have agreed to a form of award other than that set forth in rule R-46, when the parties have agreed to resolve their dispute by this rule, the arbitrator shall render the award within 14 calendar days from the date the hearing is closed.
- (f) If the parties agree to a form of award other than that described in rule R-46, the arbitrator shall have 30 calendar days from the date the hearing is declared closed in which to render the award.
- (g) The award is subject to all other provisions of the Regular Track of these rules which pertain to awards.

E-7. Date, Time, and Place of Hearing

In cases in which a hearing is to be held, the arbitrator shall set the date, time, and place of the hearing, to be scheduled to take place within 30 calendar days of confirmation of the arbitrator's appointment. The AAA will notify the parties in advance of the hearing date.

E-8. The Hearing

- (a) Generally, the hearing shall not exceed one day. Each party shall have equal opportunity to submit its proofs and complete its case. The arbitrator shall determine the order of the hearing, and may require further submission of documents within two business days after the hearing. For good cause shown, the arbitrator may schedule additional hearings within seven business days after the initial day of hearings.
- (b) Generally, there will be no stenographic record. Any party desiring a stenographic record may arrange for one pursuant to the provisions of Section R-28.

E-9. Time of Award

Unless otherwise agreed by the parties, the award shall be rendered not later than 14 calendar days from the date of the closing of the hearing or, if oral hearings have been waived, from the due date established for the receipt of the parties' final statements and proofs.

E-10. Arbitrator's Compensation

Arbitrators will receive compensation at a rate to be suggested by the AAA regional office.

Procedures for Large, Complex Commercial Disputes

L-1. Administrative Conference

Prior to the dissemination of a list of potential arbitrators, the AAA shall, unless the parties agree otherwise, conduct an administrative conference with the parties and/or their attorneys or other representatives by conference call. The conference will take place within 14 calendar days after the commencement of the arbitration. In the event the parties are unable to agree on a mutually acceptable time for the conference, the AAA may contact the parties individually to discuss the issues contemplated herein. Such administrative conference shall be conducted for the following purposes and for such additional purposes as the parties or the AAA may deem appropriate:

- (a) to obtain additional information about the nature and magnitude of the dispute and the anticipated length of hearing and scheduling;
- (b) to discuss the views of the parties about the technical and other qualifications of the arbitrators;
- (c) to obtain conflicts statements from the parties; and
- (d) to consider, with the parties, whether mediation or other non-adjudicative methods of dispute resolution might be appropriate.

L-2. Arbitrators

- (a) Large, complex commercial cases shall be heard and determined by either one or three arbitrators, as may be agreed upon by the parties. With the exception in paragraph (b) below, if the parties are unable to agree upon the number of arbitrators and a claim or counterclaim involves at least \$1,000,000, then three arbitrator(s) shall hear and determine the case. If the parties are unable to agree on the number of arbitrators and each claim and counterclaim is less than \$1,000,000, then one arbitrator shall hear and determine the case.
- (b) In cases involving the financial hardship of a party or other circumstance, the AAA at its discretion may require that only one arbitrator hear and determine the case, irrespective of the size of the claim involved in the dispute.
- (c) The AAA shall appoint arbitrator(s) as agreed by the parties. If they are unable to agree on a method of appointment, the AAA shall appoint arbitrators from the Large, Complex Commercial Case Panel, in the manner provided in the regular Commercial Arbitration Rules. Absent agreement of the parties, the arbitrator(s) shall not have served as the mediator in the mediation phase of the instant proceeding.

L-3. Management of Proceedings

- (a) The arbitrator shall take such steps as deemed necessary or desirable to avoid delay and to achieve a fair, speedy and cost-effective resolution of a Large, Complex Commercial Dispute.
- (b) As promptly as practicable after the selection of the arbitrator(s), a preliminary hearing shall be scheduled in accordance with sections P-1 and P-2 of these rules.
- (c) The parties shall exchange copies of all exhibits they intend to submit at the hearing at least 10 calendar days prior to the hearing unless the arbitrator(s) determines otherwise.
- (d) The parties and the arbitrator(s) shall address issues pertaining to the pre-hearing exchange and production of information in accordance with rule R-22 of the AAA Commercial Rules, and the arbitrator's determinations on such issues shall be included within the Scheduling and Procedure Order.
- (e) The arbitrator, or any single member of the arbitration tribunal, shall be authorized to resolve any disputes concerning the pre-hearing exchange and production of documents and information by any reasonable means within his discretion, including, without limitation, the issuance of orders set forth in rules R-22 and R-23 of the AAA Commercial Rules.
- (f) In exceptional cases, at the discretion of the arbitrator, upon good cause shown and consistent with the expedited nature of arbitration, the arbitrator may order depositions to obtain the testimony of a person who may possess information determined by the arbitrator to be relevant and material to the outcome of the case. The arbitrator may allocate the cost of taking such a deposition.
- (g) Generally, hearings will be scheduled on consecutive days or in blocks of consecutive days in order to maximize efficiency and minimize costs.

Administrative Fee Schedules (Standard and Flexible Fees)

FOR THE CURRENT ADMINISTRATIVE FEE SCHEDULE, PLEASE VISIT
www.adr.org/feeschedule.

Commercial Mediation Procedures

M-1. Agreement of Parties

Whenever, by stipulation or in their contract, the parties have provided for mediation or conciliation of existing or future disputes under the auspices of the American Arbitration Association or under these procedures, the parties and their representatives, unless agreed otherwise in writing, shall be deemed to have made these procedural guidelines, as amended and in effect as of the date of filing of a request for mediation, a part of their agreement and designate the AAA as the administrator of their mediation.

The parties by mutual agreement may vary any part of these procedures including, but not limited to, agreeing to conduct the mediation via telephone or other electronic or technical means.

M-2. Initiation of Mediation

Any party or parties to a dispute may initiate mediation under the AAA's auspices by making a request for mediation to any of the AAA's regional offices or case management centers via telephone, email, regular mail or fax. Requests for mediation may also be filed online via WebFile at **www.adr.org**.

The party initiating the mediation shall simultaneously notify the other party or parties of the request. The initiating party shall provide the following information to the AAA and the other party or parties as applicable:

- (i) A copy of the mediation provision of the parties' contract or the parties' stipulation to mediate.
- (ii) The names, regular mail addresses, email addresses, and telephone numbers of all parties to the dispute and representatives, if any, in the mediation.
- (iii) A brief statement of the nature of the dispute and the relief requested.
- (iv) Any specific qualifications the mediator should possess.

M-3. Representation

Subject to any applicable law, any party may be represented by persons of the party's choice. The names and addresses of such persons shall be communicated in writing to all parties and to the AAA.

M-4. Appointment of the Mediator

If the parties have not agreed to the appointment of a mediator and have not provided any other method of appointment, the mediator shall be appointed in the following manner:

- (i) Upon receipt of a request for mediation, the AAA will send to each party a list of mediators from the AAA's Panel of Mediators. The parties are encouraged to agree to a mediator from the submitted list and to advise the AAA of their agreement.
- (ii) If the parties are unable to agree upon a mediator, each party shall strike unacceptable names from the list, number the remaining names in order of preference, and return the list to the AAA. If a party does not return the list within the time specified, all mediators on the list shall be deemed acceptable. From among the mediators who have been mutually approved by the parties, and in accordance with the designated order of mutual preference, the AAA shall invite a mediator to serve.
- (iii) If the parties fail to agree on any of the mediators listed, or if acceptable mediators are unable to serve, or if for any other reason the appointment cannot be made from the submitted list, the AAA shall have the authority to make the appointment from among other members of the Panel of Mediators without the submission of additional lists.

M-5. Mediator's Impartiality and Duty to Disclose

AAA mediators are required to abide by the *Model Standards of Conduct for Mediators* in effect at the time a mediator is appointed to a case. Where there is a conflict between the *Model Standards* and any provision of these Mediation Procedures, these Mediation Procedures shall govern. The Standards require mediators to (i) decline a mediation if the mediator cannot conduct it in an impartial manner, and (ii) disclose, as soon as practicable, all actual and potential conflicts of interest that are reasonably known to the mediator and could reasonably be seen as raising a question about the mediator's impartiality.

Prior to accepting an appointment, AAA mediators are required to make a reasonable inquiry to determine whether there are any facts that a reasonable individual would consider likely to create a potential or actual conflict of interest for the mediator. AAA mediators are required to disclose any circumstance likely to create a presumption of bias or prevent a resolution of the parties' dispute within the time-frame desired by the parties. Upon receipt of such disclosures, the AAA shall immediately communicate the disclosures to the parties for their comments.

The parties may, upon receiving disclosure of actual or potential conflicts of interest of the mediator, waive such conflicts and proceed with the mediation. In the event that a party disagrees as to whether the mediator shall serve, or in the event that the mediator's conflict of interest might reasonably be viewed as undermining the integrity of the mediation, the mediator shall be replaced.

M-6. Vacancies

If any mediator shall become unwilling or unable to serve, the AAA will appoint another mediator, unless the parties agree otherwise, in accordance with section M-4.

M-7. Duties and Responsibilities of the Mediator

- (i) The mediator shall conduct the mediation based on the principle of party self-determination. Self-determination is the act of coming to a voluntary, uncoerced decision in which each party makes free and informed choices as to process and outcome.
- (ii) The mediator is authorized to conduct separate or *ex parte* meetings and other communications with the parties and/or their representatives, before, during, and after any scheduled mediation conference. Such communications may be conducted via telephone, in writing, via email, online, in person or otherwise.
- (iii) The parties are encouraged to exchange all documents pertinent to the relief requested. The mediator may request the exchange of memoranda on issues, including the underlying interests and the history of the parties' negotiations. Information that a party wishes to keep confidential may be sent to the mediator, as necessary, in a separate communication with the mediator.
- (iv) The mediator does not have the authority to impose a settlement on the parties but will attempt to help them reach a satisfactory resolution of their dispute. Subject to the discretion of the mediator, the mediator may make oral or written recommendations for settlement to a party privately or, if the parties agree, to all parties jointly.
- (v) In the event a complete settlement of all or some issues in dispute is not achieved within the scheduled mediation session(s), the mediator may continue to communicate with the parties, for a period of time, in an ongoing effort to facilitate a complete settlement.
- (vi) The mediator is not a legal representative of any party and has no fiduciary duty to any party.

M-8. Responsibilities of the Parties

The parties shall ensure that appropriate representatives of each party, having authority to consummate a settlement, attend the mediation conference.

Prior to and during the scheduled mediation conference session(s) the parties and their representatives shall, as appropriate to each party's circumstances, exercise their best efforts to prepare for and engage in a meaningful and productive mediation.

M-9. Privacy

Mediation sessions and related mediation communications are private proceedings. The parties and their representatives may attend mediation sessions. Other persons may attend only with the permission of the parties and with the consent of the mediator.

M-10. Confidentiality

Subject to applicable law or the parties' agreement, confidential information disclosed to a mediator by the parties or by other participants (witnesses) in the course of the mediation shall not be divulged by the mediator. The mediator shall maintain the confidentiality of all information obtained in the mediation, and all records, reports, or other documents received by a mediator while serving in that capacity shall be confidential.

The mediator shall not be compelled to divulge such records or to testify in regard to the mediation in any adversary proceeding or judicial forum.

The parties shall maintain the confidentiality of the mediation and shall not rely on, or introduce as evidence in any arbitral, judicial, or other proceeding the following, unless agreed to by the parties or required by applicable law:

- (i) Views expressed or suggestions made by a party or other participant with respect to a possible settlement of the dispute;
- (ii) Admissions made by a party or other participant in the course of the mediation proceedings;
- (iii) Proposals made or views expressed by the mediator; or
- (iv) The fact that a party had or had not indicated willingness to accept a proposal for settlement made by the mediator.

M-11. No Stenographic Record

There shall be no stenographic record of the mediation process.

M-12. Termination of Mediation

The mediation shall be terminated:

- (i) By the execution of a settlement agreement by the parties; or
- (ii) By a written or verbal declaration of the mediator to the effect that further efforts at mediation would not contribute to a resolution of the parties' dispute; or
- (iii) By a written or verbal declaration of all parties to the effect that the mediation proceedings are terminated; or
- (iv) When there has been no communication between the mediator and any party or party's representative for 21 days following the conclusion of the mediation conference.

M-13. Exclusion of Liability

Neither the AAA nor any mediator is a necessary party in judicial proceedings relating to the mediation. Neither the AAA nor any mediator shall be liable to any party for any error, act or omission in connection with any mediation conducted under these procedures.

M-14. Interpretation and Application of Procedures

The mediator shall interpret and apply these procedures insofar as they relate to the mediator's duties and responsibilities. All other procedures shall be interpreted and applied by the AAA.

M-15. Deposits

Unless otherwise directed by the mediator, the AAA will require the parties to deposit in advance of the mediation conference such sums of money as it, in consultation with the mediator, deems necessary to cover the costs and expenses of the mediation and shall render an accounting to the parties and return any unexpended balance at the conclusion of the mediation.

M-16. Expenses

All expenses of the mediation, including required traveling and other expenses or charges of the mediator, shall be borne equally by the parties unless they agree otherwise. The expenses of participants for either side shall be paid by the party requesting the attendance of such participants.

M-17. Cost of the Mediation

*FOR THE CURRENT ADMINISTRATIVE FEE SCHEDULE, PLEASE VISIT
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EXHIBIT 3

EXHIBIT 3

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AMERICAN ARBITRATION ASSOCIATION

BCP Holdings 7, LLC,)
JENNIFER GOLDSTEIN,)
)
Plaintiffs,)
)
vs.) Case No.
) 01-15-005-8574
)
NUVEDA, LLC, a Nevada limited)
liability compay; et al.,)
)
Defendants.)
-----)

REPORTER'S TRANSCRIPT OF PROCEEDINGS
BEFORE ARBITRATOR NIKKI BAKER
TUESDAY, JANUARY 15, 2019
LAS VEGAS, NEVADA
VOLUME 1

REPORTED BY:
KENDALL D. HEATH
NEV. CCR NO. 475
CALIF. CSR NO. 11861
JOB NO.: 3194923
PAGES 1 - 258

1
2
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AMERICAN ARBITRATION ASSOCIATION

BCP Holdings 7, LLC,)
JENNIFER GOLDSTEIN,)
)
Plaintiffs,)
)
vs.) Case No.
) 01-15-005-8574
)
NUVEDA, LLC, a Nevada limited)
liability company; et al.,)
)
Defendants.)
-----)

ARBITRATION PROCEEDINGS - VOLUME 1,
held Tuesday, January 15, 2019, commencing at
9:55 a.m. at the offices of Kolesar &
Leatham, 400 South Rampart, Suite 400, Las
Vegas, Nevada, taken before Kendall D. Heath,
Certified Court Reporter, Certificate No.
475, in and for the State of Nevada.

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ARBITRATOR
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20 ALSO PRESENT:

21 Jennifer Goldstein

22 Pejman Bady

23 Pouya Mohajer

24 Joe Kennedy

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21
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23
24
25

INDEX

EXAMINATION

Page

CLAIMANT'S CASE IN CHIEF 34

WITNESS

SHANE TERRY

Direct By Mr. Feuerstein 34
Cross By Mr. Wiley 53
Cross By Mr. Dushoff 60
Redirect By Mr. Feuerstein 73

JENNIFER M. GOLDSTEIN

Direct By Mr. Feuerstein 80
Cross By Mr. Wiley 90
Cross By Mr. Dushoff 118
Redirect By Mr. Feuerstein 124
Cross By Arbitrator Baker 134

DAVID PARKER

Direct By Mr. Feuerstein 137
Cross By Mr. Dushoff 174
Redirect By Mr. Feuerstein 248

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
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23
24
25

JOINT EXHIBITS
ADMITTED INTO EVIDENCE

Exhibit	Description	Page
Exhibit 257	Terra Tech document	73

JOINT EXHIBITS

MARKED FOR IDENTIFICATION

Exhibit 258	E-mail from Mr. Butell including Webster appraisal	105
Exhibit 259	Document re Land/Ops, RESP 4429 through RESP 4432	131
Exhibit 260	Terra Tech Form 10-Q	239

1 Las Vegas, Nevada

2 Tuesday, January 15, 2019

3 -oOo-

4 ARBITRATOR BAKER: This is the time set for
5 the final arbitration hearing in the matter titled
6 Jennifer Goldstein versus NuVeda, LLC. The case
7 number, 01-15-005-8574.

8 Let's start over here, and please state your
9 appearances for the record.

10 MR. FEUERSTEIN: Good morning. I'm David
11 Feuerstein, with Feuerstein & Kulick, on behalf of the
12 claimant.

13 MS. BAYNARD: Nancy Baynard, Feuerstein &
14 Kulick, on behalf of the claimant.

15 MS. GOLDSTEIN: Jennifer Goldstein, claimant.

16 DR. BADY: Pej Bady, NuVeda.

17 DR. MOHAJER: Pouya Mohajer.

18 MR. KENNEDY: Joe Kennedy, NuVeda.

19 MR. DUSHOFF: And Matthew Dushoff, Kolesar &
20 Leatham. I have been retained as co-counsel now for
21 NuVeda since my clients have been dismissed from the
22 case.

23 MR. WILEY: Jason Wiley, of the law firm
24 Wiley Petersen, on behalf of NuVeda, LLC.

25 ARBITRATOR BAKER: And Mr. Dushoff alluded to

Page 7

1 the dismissal of the individual respondents. I'd
2 like -- I have your e-mail, again, thank you,
3 Mr. Feuerstein, but I'd like the parties to state on
4 the record, so it's clear, exactly what claims
5 Ms. Goldstein has dismissed and what claims she's
6 going forward on.

7 MR. FEUERSTEIN: Ms. Goldstein has dismissed
8 the claims against the individual respondents in the
9 context of her being readmitted to the partnership
10 with damages that would have resulted in the valuation
11 of her percentage ownership of NuVeda once being
12 admitted.

13 She's maintaining her claim that the
14 expulsion of her in August of 2017 was improper, that
15 the valuation that was offered was not appropriate or
16 good in faith, and that her legal fees -- because of
17 that gross conduct, that her legal fees should be
18 paid. And we've left open the question of whether the
19 legal fees ought to be paid by NuVeda or by the
20 individual respondents who voted her out.

21 ARBITRATOR BAKER: Real quick, before you
22 respond, just so I'm clear, is she contesting that she
23 was expelled?

24 MR. FEUERSTEIN: She has assumed for purposes
25 of the arbitration that the -- that she was expelled

1 from the company, as a part of the vote by the
2 disinterested members.

3 ARBITRATOR BAKER: Okay.

4 MR. FEUERSTEIN: The expulsion, I think, as a
5 whole, requires in part the buyout of her interest at
6 the fair market value --

7 ARBITRATOR BAKER: Okay.

8 MR. FEUERSTEIN: -- and you can't -- I don't
9 think you can divorce the two. And so if you don't
10 offer a fair market value, I would argue that the
11 expulsion was improper; but we're assuming that the
12 vote happened and we're just talking about what the
13 appropriate valuation should be.

14 ARBITRATOR BAKER: So, for example -- again,
15 I just want to make sure we're on the same page -- if
16 I find that the number that was calculated by
17 Mr. Webster, and NuVeda says, That's the fair market
18 value of the company and your percentage is
19 seven percent and there's your number -- if I find
20 that that was improper and that she was entitled to
21 more money, Ms. Goldstein is not asking to be
22 reinstated or to say that the expulsion was null and
23 void; rather, she's saying, It was improper amount,
24 here's what I'm owed, and I get attorneys' fees and
25 costs. Is that accurate?

1 MR. FEUERSTEIN: Not only, Here's what I'm
2 owed, but here's what I should be paid.

3 ARBITRATOR BAKER: Right, right. Okay.

4 MR. FEUERSTEIN: Yeah, yeah.

5 ARBITRATOR BAKER: Yes. Fair enough. Fair
6 enough. Okay. I just wanted to make sure.

7 MR. FEUERSTEIN: Yes.

8 ARBITRATOR BAKER: And so I have in the
9 briefs there was a mention of two claims: Breach of
10 contract concerning the operating agreement; and
11 breach of covenant, good faith, and fair dealing,
12 concerning the operating agreement.

13 And the damages are -- as I understand it, is
14 the value of interest as against NuVeda; and then
15 she's reserving the right to seek attorneys' fees and
16 costs from the individual respondents as well as
17 NuVeda?

18 MR. FEUERSTEIN: Correct.

19 ARBITRATOR BAKER: Okay. Counsel?

20 MR. DUSHOFF: That was not even close to my
21 understanding.

22 ARBITRATOR BAKER: Okay.

23 MR. DUSHOFF: My understanding, and I think
24 you've got it through the e-mails, is that she's
25 agreeing that she was expelled from there; and that

1 that all we're talking about today is the value.
2 Period.

3 Because my clients have -- they're gone.
4 They have no liability for attorneys' fees or anything
5 in this matter. And you made it clear that only if
6 it's an improper expulsion is there an opportunity --
7 is there a chance for my clients potentially to get
8 damages and have to pay attorneys' fees.

9 But that went by the wayside when -- then
10 when we made the agreement that this is just a value
11 case, that she was expelled and so forth; so now I
12 prepared the value case based upon what we all agreed
13 to.

14 And now, all the sudden, now I got to change
15 gears as we're sitting here right now and defend my
16 clients?

17 And where my clients are gone, there's no
18 cause of action against them that survives. And you
19 made that clear, unless she was able to testify that
20 it was worthless against them. Any attorneys' fees
21 claim in this case would be against NuVeda, definitely
22 not against Pej and Pouya.

23 So when I said I'm now being retained as
24 counsel for them, well, I can't be counsel for them
25 and for them as well, because my understanding is they

1 were done. I'm literally blown away right now to say
2 that all the sudden my clients are back in this thing,
3 because they are -- they are gone and this was the
4 agreement. You saw it. This was a value case. You
5 know, she was expelled. She agrees that she was
6 expelled. And this is the value of her case.

7 And not challenging whether it was -- that it
8 was a good or bad expulsion. It was that, yes, she
9 was expelled and here's the value of that. Because
10 now I'm sitting here, and now I've got to defend my
11 clients again?

12 That was definitely not the agreement that I
13 understood here, that all attorneys' fees in this case
14 would have been from NuVeda; and that basically, Hey,
15 this is a value case. She was expelled. Agreed she
16 was expelled, you know. And that, Okay, I'm not
17 coming back in. What's the value of my share? It was
18 a -- it's a simple matter. Now, that just complicates
19 everything.

20 MR. FEUERSTEIN: Can I respond?

21 ARBITRATOR BAKER: Yes, go ahead.

22 MR. FEUERSTEIN: So the -- this stems -- this
23 agreement stems from the ruling that was on the
24 motions in limine made by the respondents. And what
25 your order wrote with respect to the damages that

1 Ms. Goldstein would seek in the event that your
2 determination that there was a proper expulsion was
3 that -- and you said, and I'm quoting, "Nothing about
4 this ruling precludes Claimant Goldstein from arguing
5 that she's entitled to recover any award of attorneys'
6 fees and costs against Respondent NuVeda and/or
7 Respondents Bady and Mohajer."

8 Now, when we made the agreement to sort of
9 peel away from that, that's what we were keeping in.

10 Moreover, the question of whether -- of
11 whether the expulsion was proper, we're not asking --
12 we're not going back to the issue of did you have good
13 cause? That's not our question.

14 Our point is simply the fact of you had a --
15 Section 6.2 has a provision that requires you to do
16 all these steps and ultimately pay the fair market
17 value. And, ultimately, if you didn't pay the fair
18 market value and we had to bring a case, section I
19 think 12.10, says we're entitled to our attorneys'
20 fees.

21 And we left open the question -- I think it's
22 only a question of law, not a question of facts, as to
23 whether the respondents would be liable for those
24 fees. We're not -- we're not suggesting that we're
25 taking testimony or putting in facts in evidence that

1 are going to bear on whether, you know, there was good
2 cause for Ms. Goldstein to be expelled.

3 All we're suggesting is, I think it's
4 ambiguous, at a minimum, as to who is responsible for
5 the legal fees as a result of the action that took
6 place.

7 ARBITRATOR BAKER: And I believe when we had
8 the telephonic hearing, I said, you know, my initial
9 impression is that if your claim is against NuVeda,
10 right, you say you weren't paid the value, then the
11 attorneys' fees would be against NuVeda. I think I
12 left open the issue, because the way I see this case
13 is here's the claims, because you're not seeking
14 attorneys' fees as special damages; right?

15 MR. FEUERSTEIN: That's right, as special
16 damages.

17 ARBITRATOR BAKER: As special damages.

18 So as I saw it, you know, if it were just
19 stealing the valuation, the claims are against NuVeda;
20 but I didn't foreclose an argument when we addressed
21 the attorneys' fees and costs. When I say, you know,
22 what the decision is and then I'm going to give the
23 parties an opportunity to address it, that was what I
24 left open was the attorneys' fees and costs.

25 And, again, my initial thought was, as I

1 said, it seems to be a NuVeda issue. But I didn't
2 think the parties had fully explored the issue, and I
3 think that attorneys' fees come at the end of case,
4 was my ...

5 MR. WILEY: No, I agree with that assessment;
6 and I think that's exactly what was addressed and as
7 we left it once our conference was ended.

8 Subsequent to that, I'm of the same opinion
9 of Mr. Dushoff. We had discussions where this was
10 going to go forward with respect to NuVeda and NuVeda
11 only. And any claim for attorneys' fees would be, I
12 guess, submitted for review with respect to NuVeda.
13 And that's why Mr. Dushoff has come in as
14 co-counsel.

15 MR. DUSHOFF: We even bargained, we gave
16 up -- Pej and Pouya -- Dr. Bady and Dr. Mohajer gave
17 up their right to seek attorneys' fees, and so did
18 NuVeda, in order to make this deal.

19 So we -- my clients gave up their right to
20 seek attorneys' fees. The only way you were going to
21 grant attorneys' fees or anything against my clients
22 is if there was an improper -- two-fold: If they were
23 improperly expelled; right, if it was an improper
24 expulsion.

25 ARBITRATOR BAKER: Right.

1 MR. DUSHOFF: And Ms. Goldstein could somehow
2 say that the values were worthless; otherwise -- and
3 whether she could even testify, which I have a whole
4 set of rules, but that's -- that's gone by the
5 wayside. They gave up their rights, and we have the
6 correspondence. I know Dave will back me up on
7 that -- is that they gave up their rights to
8 attorneys' fees in order to make this bargain.

9 This case is against NuVeda, it's a value;
10 it's our experts versus their experts, and that's it.

11 Anything beyond that, whether it -- the truth
12 is, my clients gave up their rights for that specific
13 purpose. They asked, and we had to -- I had to really
14 convince my clients to say, Listen, we'll give up our
15 right in order to make this specifically a value case,
16 not whether they have attorneys' fees against them.
17 Because now, all of a sudden, my client -- I get the
18 attorneys' fees against NuVeda, but my clients are
19 potentially liable for it?

20 That was never in the discussions. That was
21 never in agreement. And I piggyback on Mr. Wiley
22 saying, Yes, I agree after yours that's what it was,
23 but then we had that subsequent agreement, and they
24 gave up their rights. And now I'm sitting here going,
25 Sorry, guys. I know we bargained for this, but now,

1 as I'm sitting here, now you're still subject to it?
2 That -- that was not -- they're not getting the
3 benefit of the bargain on that. That's what we agreed
4 to.

5 MR. FEUERSTEIN: Well, the benefit of the
6 bargain is that we dropped the personal -- all the
7 personal claims against their client. So to suggest
8 that there's no benefit of the bargain I think is a
9 little bit overstated.

10 We obviously took away their personal
11 liability with respect to everything else. I don't --
12 I -- frankly, guys, I don't recall ever saying that
13 what we're -- we're taking and waiving our legal-fee
14 claim against the individuals. I don't.

15 And if that was the impress- -- I mean, I
16 thought we were all talking about item B in the
17 Arbitrator's sort of ruling dated January 9, 2019.

18 So, you know, I thought, and I distinctly
19 remember this part, Mr. Dushoff, which was the quid
20 pro quo of our agreement, was I was going to -- or Ms.
21 Goldstein was going to give up her claims as against
22 the individuals and ask them to be reinstated and the
23 diminution in value of her -- of her percentage, but
24 that the rest of the case, which was really just item
25 B, goes on.

1 And, by the way, it sounds to me -- not that
2 I want to suggest that Arbitrator Baker has already
3 made up her mind with respect to something, but it
4 sounds to me like I have a pretty long night ahead of
5 me to try to persuade her that the contract and titles
6 need to get damages against the individuals anyway.

7 And, as I said, it's a legal argument; it has
8 nothing to do with the facts that's going to take
9 place in this hearing.

10 ARBITRATOR BAKER: Right. And again, what I
11 was anticipating when I -- when we had the hearing and
12 when I issued the order was, again, it was going to be
13 attorneys' fees argument, you know, the contract
14 provision, here's what it says, at the end of the
15 case. Or actually after the case is over, likely,
16 because I will say, Here's my initial ruling, sort of
17 a preliminary, submit attorneys' fees and costs.

18 And at the time it was -- it was anticipating
19 if NuVeda or the other individual respondents
20 succeeded, I didn't want both parties spending time
21 and money putting invoices together and preparing
22 motion for summary judgment -- or a motion for
23 attorneys' fees, only for me to say, Well, you know,
24 You win, or You win, and then it was a waste of time.

25 So I was anticipating issuing my initial

1 decision, Here's how I find, and then allowing the
2 prevailing party.

3 Now it sounds like it'll just be the claimant
4 that would be able to recover attorneys' fees, not
5 respondents, if that was the arrangement.

6 MR. DUSHOFF: Right, but if I'm making -- if
7 I'm making the deal, say, okay, and they're saying,
8 listen, we're dismissing all causes of action against
9 the individual capacity, which Mr. Feuerstein said,
10 then how on earth in a case like that are my clients
11 individually liable for attorneys' fees if all the
12 causes of action against them in their individual
13 capacity have been de- -- I've never seen that before.

14 I mean, NuVeda, I agree; but subsequent to
15 your ruling, we agreed, okay -- and you just stated --
16 they're all gone against my clients, all right,
17 they -- there's no issues of whether they properly
18 expelled, it's good faith or that, so that's done and
19 they're out.

20 So how would they be individually liable in
21 an attorneys' fees when they have no causes of action
22 against them? And I apologize if it -- if it -- if
23 it's me, but I really don't understand that.

24 ARBITRATOR BAKER: Yeah. Well, again, I have
25 not fully explored, you know, and really delved into

1 the attorneys' fees provision. I have not made -- I
2 mean, I couldn't sit here and tell you. I'm just --
3 as I said in the call, I don't know how that would
4 work, but I had not explored the issue.

5 So it's -- how do you guys want to handle
6 this? Because I understand your point of view,
7 because it would have -- it may effect how you defend
8 this case if the individuals might potentially be
9 liable for attorneys' fees. Do you guys want to take
10 a minute and talk about it without me, and I can go
11 out there, to try to get a resolution?

12 Unless you want me to spend a few minutes
13 looking at the attorneys' fees provision, you want to
14 make a couple of arguments, and I'll make a decision
15 right now on whether -- if she's successful against
16 NuVeda, whether she would possibly be able to get
17 attorneys' fees and costs against the individuals. If
18 you guys want to make that argument, I mean, I can
19 certainly look at that. I just have not delved into
20 that.

21 So how do you want to handle it?

22 MR. FEUERSTEIN: Why don't we step out for a
23 moment.

24 ARBITRATOR BAKER: Yeah, I can step out.

25 MR. FEUERSTEIN: Well, I think -- I'd like to

1 speak to my client first --

2 MR. DUSHOFF: Oh, okay.

3 MR. FEUERSTEIN: -- and then I can speak to
4 you guys.

5 MR. DUSHOFF: Okay.

6 MR. FEUERSTEIN: So if we could take a couple
7 minutes.

8 ARBITRATOR BAKER: Yeah. Let's take a little
9 break.

10 MR. DUSHOFF: Okay.

11 (Break taken.)

12 ARBITRATOR BAKER: Back on the record.

13 MR. FEUERSTEIN: So I think there is truly a
14 disconnect between what the parties agreed to and what
15 was discussed amongst ourselves, by virtue of our
16 decision to whittle down the case.

17 It was our understanding and our operation,
18 in fact I remember when we edited the sort of e-mail
19 to you, Arbitrator Baker, was that we were absolutely
20 reserving the right to seek damages as against Pej
21 and -- well, Dr. Bady and Dr. Mohajer, the individual
22 respondents. It's why --

23 ARBITRATOR BAKER: Can I --

24 MR. FEUERSTEIN: Yeah.

25 ARBITRATOR BAKER: -- just pause. When you

1 say "seek damages," you don't mean actual compensatory
2 damages; you mean attorneys' fees --

3 MR. FEUERSTEIN: Attorneys' fees --

4 ARBITRATOR BAKER: -- and cost -- okay.

5 MR. FEUERSTEIN: Attorneys' fees as a product
6 of the contract.

7 ARBITRATOR BAKER: Okay.

8 MR. FEUERSTEIN: We believe that -- as we set
9 forth in our prearbitration brief, that there are two
10 steps in section 6.2. One is the payment of money,
11 which is clearly an issue of NuVeda. But the question
12 of whether the appraisal, which they now claim they
13 completed, whether that was done properly pursuant to
14 the terms of the agreement or within good faith and
15 fair dealing, could arguably be caused by the
16 voting -- quote/unquote, "voting members" is what the
17 agreement says.

18 And if it's determined by you that the
19 Webster Report, which is their, quote/unquote, "fair
20 market appraisal," wasn't done in good faith and fair
21 dealing because it was significantly too low, then I
22 think there is an argument to say that the legal fees
23 incurred were a product of that appraisal; and that,
24 therefore, Ms. Goldstein should be able to seek those
25 legal fees and costs against the individual

1 respondents.

2 ARBITRATOR BAKER: Okay. Before I get to
3 respondents, what are you proposing as far as, are
4 we -- do you want me to decide the issue? I mean, I
5 was looking at the attorneys' fees provision when we
6 were out during the break.

7 Is this something you want me to decide now,
8 or you guys want to make arguments on it? Do you have
9 a preference, and then I'll ask the respondents.

10 MR. FEUERSTEIN: Yeah. No, I -- from our
11 perspective, whether -- you know, whether -- whether
12 the individual respondents are potentially liable for
13 the legal fees and costs of the claimant is something
14 that's a matter of law to be decided at the end.

15 Our preference would be to simply get to the
16 merits. Let's get the witnesses on the stand. Let's
17 get the facts into the record. And let's make our
18 arguments at the end as to whether we're entitled to
19 seek our legal fees and costs from the individuals.

20 If it's determined at that point, when we do
21 it on the papers and we have all the law in front of
22 us, that you agree with us, then you can make that
23 decision.

24 Nothing, though, should be changed in terms
25 of trial strategy; right? We're either -- we going to

1 make the same arguments. I've already opened my
2 kimono to tell them what we're arguing, so I don't
3 think there's any need to sort of upset the apple cart
4 and have that argument up front.

5 ARBITRATOR BAKER: Okay.

6 MR. DUSHOFF: I absolutely believe that you
7 need to make a ruling right now and here's why.

8 They agree that all causes of action against
9 my clients, Dr. Bady and Dr. Mohajer, have been
10 dismissed, all of them. Okay. When we made that
11 agreement to dismiss all of them, we're going to give
12 up our rights to attorneys' fees. Okay. There's no
13 dispute about that. Okay.

14 If all of them are dismissed against my
15 clients in their individual capacities, there's no way
16 that they can get the attorneys' fees from my clients.

17 I understand the NuVeda argument. Now, for
18 the first time in this entire case -- and you read the
19 second amended complaint and been in this case
20 forever -- the first time you've ever seen the
21 argument that there's a breach of good faith and fair
22 dealing regarding the fair market value, that she was
23 improperly expelled.

24 The improper expulsion issue was you didn't
25 do it in good faith, you didn't have reasons to do it;

1 right? You didn't have reasons to do it.

2 Well, they, for -- that is gone. And that's
3 what you had -- that was the argument before you when
4 you made your motion. When you made your ruling and
5 we made the motion, that was the argument that was
6 made.

7 And if you said that there was an improper
8 expulsion because of -- you didn't have good faith
9 then, then, Ms. Goldstein, you can come in here and
10 testify whether you have damages or not -- if you can,
11 and you say it's worthless.

12 But my clients bargained to be out of this
13 case. I told them, You guys are out. We did it. You
14 guys are out of this case. You're not responsible for
15 anything.

16 Now, all of the sudden, we're sitting here
17 right now and saying, Well, yes, we dismissed all the
18 causes of action against them; but, however, there's
19 still a chance that they can be held for attorneys'
20 fees. Which makes it difficult for me, because I
21 already associated with NuVeda and they're done. For
22 all intent and purposes, they're done. They're out of
23 this case. And this case was a value case, period.
24 There's no cause of action against them at all.

25 You want to get attorneys' fees from NuVeda?

1 Okay. If you decide that the -- you know what? It
2 wasn't -- you know, that wasn't proper and fair market
3 value, it wasn't --

4 ARBITRATOR BAKER: Right.

5 MR. DUSHOFF: -- it shouldn't have been
6 116,000; it should have been 1.2 million, 10 million,
7 whatever your decision is.

8 But that would be against NuVeda, and NuVeda
9 gave up their rights for attorneys' fees as well.

10 But my clients made a bargain here, they made
11 a deal after your ruling; and they dismissed all the
12 causes of action. And Mr. Feuerstein will agree to
13 that, that they dismissed all the causes of action
14 against my clients in their individual capacity.

15 And for the first time in my career I'm
16 sitting here trying to defend clients who have no
17 causes of action against them, yet could still be
18 liable for attorneys' fees, which is -- which is
19 dumbfounding to me. I truly don't understand that.

20 And I have to know now if I have to sit here
21 and defend my clients. Because after your ruling, we
22 made a bargain and we made a deal and my clients gave
23 up their right to attorneys' fees in this case in
24 order to have all the causes of action against them
25 dismissed. They were dismissed against my clients in

1 their individual capacity.

2 They can't now sit here and still potentially
3 be held liable for attorneys' fees when there are no
4 causes of action in their individual capacities.

5 MR. FEUERSTEIN: I have stuff to say. I
6 mean, you know, I already explained what the e-mail
7 and the judgment was from January 10th and what it
8 said. And it opened -- left open a door that we could
9 seek it.

10 We then had a -- we then negotiated this deal
11 between the parties. And Mr. Dushoff sent to me an
12 e-mail and asked me whether I approved of the e-mail.
13 And I -- if you -- I don't know if you have the e-mail
14 from Mr. Dushoff. It's on my computer. It's dated
15 January 10th at 4 p.m., but that may -- the time
16 change may have it wrong for -- or different for you.

17 But if you read the agreement, what it says
18 is whether Ms. Goldstein is entitled to her attorneys'
19 fees because she was never offered the actual fair
20 market value of her shares as of that date. That was
21 the deal. That was language that I insisted on
22 including in there, in particular because the issue
23 was still remaining open as of the July 9th --
24 January 19th rule.

25 So, you know, I appreciate Mr. Dushoff's

1 advocacy here, but my understanding of the deal that
2 we struck is the deal that was -- we were keeping that
3 paragraph in. We were arguing the point to this
4 within the deal.

5 To me, everything else is irrelevant. The
6 deal is set forth in that agreement. We were leaving
7 in the idea of whether she was -- could seek her
8 attorneys' fees against the individual respondents
9 from our understanding of your ruling. So that was
10 what my understanding was.

11 MR. DUSHOFF: And if I may just comment?

12 MR. WILEY: Let me comment on that first,
13 because I've got it pulled up here. It states that,
14 in that e-mail, the included language, as of --
15 Ms. Goldstein's shares as of August 8, 2017, and
16 whether Ms. Goldstein is entitled to her attorneys'
17 fees because she was never offered the actual fair
18 market value of her shares as of that date. That is
19 a -- an action that would be against NuVeda, the
20 offering of her fair market value for her shares of --
21 as of that date. That's simply -- and you would agree
22 with me, Dave -- that has -- that only has to do with
23 NuVeda.

24 MR. FEUERSTEIN: The payment -- I said, the
25 payment of -- the payment of money from NuVeda to

1 Ms. Goldstein is a NuVeda action; right? That was a
2 NuVeda obligation of the agreement.

3 MR. WILEY: And that was the included
4 language --

5 MR. FEUERSTEIN: But the step before that --

6 MR. WILEY: Well, it doesn't say that. I
7 mean, that's -- and that's what's problematic about
8 this whole thing, because obviously Matt and I are on
9 the same page.

10 MR. FEUERSTEIN: Shocking.

11 (Cross-talking.)

12 ARBITRATOR BAKER: Hold on. Hold on.

13 MR. WILEY: -- as evidenced by the fact
14 that -- you know, as evidenced by the fact that he
15 associated in as co-counsel because we thought we were
16 totally done with it as far as Pej and Pouya in their
17 individual capacity. And if you want to rely upon
18 that language, I mean, it talks about the --

19 MR. DUSHOFF: If I may. Why would I even
20 assume that there'd be attorneys' fees against my
21 client when they have been dismissed from this cause
22 of action? When he says attorneys' fees, why would he
23 even assume that my clients would be responsible for
24 any attorneys' fees when they've already -- we agreed
25 that they're dismissed?

1 You've done this for a long time, too.
2 There's never a case where clients are dismissed from
3 the case, but you're still liable for attorneys' fees.

4 What? More likely than not, my clients are
5 entitled to attorneys' fees because they've been
6 totally dismissed from the case that they've been
7 litigating for three years. But they gave up that
8 right, so they should not be sitting here having their
9 necks out on the line for this. Sigh.

10 ARBITRATOR BAKER: Good. Okay. Well, again,
11 I understand, I think where the confusion came in my
12 ruling was, I'm not making a decision on the
13 attorneys' fees issue at that point. It had not -- it
14 had not been fully laid out, because it wasn't special
15 damages. And that's why I asked that question --

16 MR. WILEY: Right.

17 ARBITRATOR BAKER: -- as far as what the
18 damages were going to be and what evidence you were
19 going to be able to admit at the hearing.

20 So, I guess -- I mean, I can read the
21 attorneys' fees provision. But I'm hesitant not to at
22 least give you a chance to give me a case or two.

23 Mr. Dushoff, can you get through today and we
24 can address the issue first thing in the morning?

25 I mean, my initial looking at this, I don't

1 see any claim for attorneys' fees against individuals.
2 You know, even looking at the last sentence of the
3 paragraph says, "The prevailing party shall mean the
4 party that is determined in the arbitration, action,
5 or proceeding, to have prevailed or who prevails by
6 dismissal, default, or otherwise."

7 I think that goes into Mr. Dushoff's
8 argument, they would be the party, arguably. And I
9 know there's case law about voluntary dismissal of
10 claims; but they would arguably be the party that
11 would be entitled to attorneys' fees and costs because
12 the claims against them have been dismissed.

13 MR. FEUERSTEIN: Yeah, but they waived --
14 that, there's no dispute, they waived.

15 ARBITRATOR BAKER: But they waived it. But
16 that's why I'm saying that I don't know how you then
17 turn it around -- claimant can turn that around and
18 say somehow they would be the prevailing party against
19 the individual respondents, even if it is found that
20 the fair market value that was determined by Webster
21 was not accurate and fair.

22 So, look, I -- you know, I don't -- because I
23 just feel like that it hasn't been briefed, but just a
24 plain reading of this, I don't see it.

25 I understand Mr. Dushoff's position, you

1 know. My preference would be, let's get through
2 today. I would give both parties the opportunity to
3 give -- if you can give me a case or something that
4 shows otherwise, I will certainly look at it. And we
5 can address it first thing in the morning.

6 Mr. Dushoff, can you -- can we just move
7 forward --

8 MR. DUSHOFF: Yeah.

9 ARBITRATOR BAKER: -- today?

10 MR. DUSHOFF: Yeah. I understand your
11 position. We can move forward on that. You've
12 understood -- you understood my position?

13 ARBITRATOR BAKER: I do. I understand both
14 sides. And again, I'm just looking at the provision
15 itself. But I don't have -- neither side has given me
16 any sort of case law.

17 So if you want, by tomorrow morning, to give
18 me -- if you have a case or two, I'll entertain just
19 super-short arguments. You don't even have to put
20 something together in writing, though you certainly
21 can. Send it to me tonight or first thing in the
22 morning, I'm an early riser, unfortunately.

23 But those are my initial thoughts, just
24 looking at the black letter for the contract; but I'm
25 not going to foreclose you the opportunity to provide

1 me something, and same for respondents, that applies
2 to this attorneys' fees provision.

3 But for now, let's move forward. And I
4 appreciate you letting us do that.

5 So with that said, given that both sides
6 submitted prehearing briefs, do the both sides just
7 want to proceed with testimony; or would you like to
8 make a short opening? I've read both briefs. I
9 understand what the arguments are, but I'm not going
10 to foreclose a very brief opening.

11 MR. FEUERSTEIN: I don't think -- I think we
12 can get started --

13 ARBITRATOR BAKER: Okay.

14 MR. FEUERSTEIN: -- and move ahead.

15 MR. DUSHOFF: Agreed.

16 MR. WILEY: Agreed.

17 MR. FEUERSTEIN: I would like just to peek
18 outside, because we had originally told Mr. Terry to
19 come at 11 o'clock. And I think if he's here, I would
20 not -- I'd ask that we take him out of order for a
21 moment, just so that we don't -- not make him wait
22 until we -- until we, you know, get through
23 Ms. Goldstein's testimony.

24 ARBITRATOR BAKER: That's fine with me.

25 (Break taken.)

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CLAIMANT'S CASE IN CHIEF

ARBITRATOR BAKER: We're back on the record.
We'll note that Mr. Terry has joined us. If you could
please swear in the witness.
Thereupon,

SHANE TERRY,
called as a witness by the Claimant having
been duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. FEUERSTEIN:

Q Good morning, Mr. Terry.

A Good morning.

Q I realize that this case has been narrowed,
but I think it will help for additional testimony to
give a little bit of a background, if you will.

Can you start with all your education after
high school?

A Sure. I went to the Military Prep College in
New Mexico. After that, I went to the United States
Air Force Academy where I graduated. And then have
taken a couple of professional military courses since
then. And I've got a few certificates from University
of Pennsylvania at Wharton and MIT.

Q What were your certificates from Wharton and
MIT in?

1 A The Wharton ones were in marketing strategy,
2 finance, corporate finance, and strategy. And MIT was
3 in product development and operations management.

4 Q What did you do after graduation from the Air
5 Force?

6 A Flew F-16s for 14 years in the military; and
7 that led me all the way to 2014, where I separated on
8 my terms, honorably.

9 Q And what did you do in 2014?

10 A Transitioned out of the Air Force to start
11 what eventually became NuVeda.

12 Q How did you get introduced to NuVeda?

13 A I would say relatively long-time friends with
14 Pej, and through that friendship, I met Pouya.

15 And when they were looking at the industry
16 they had already made a little bit of a head start
17 with some other companies prior to joining -- or prior
18 to me joining, and then they asked me to join the team
19 in 2014, and that was the trigger that made me decide
20 to leave the military.

21 Q And what was your understanding of the
22 arrangement when you were going to join the team at
23 NuVeda?

24 A At that point they had retained some
25 consultants. They had already done some work on

1 trying to, you know, figure out what sort of business
2 model they wanted to create, where they wanted to go.
3 It was very early stage, prelicensing; so I want to
4 say this was maybe six months before we had to submit
5 an application to the local jurisdictions in the state
6 to apply for the first licenses.

7 Q What was your role at NuVeda during those six
8 months?

9 A I was initially brought on, I guess, maybe
10 more of a flex roll or operations help. There was
11 another team member at that point that didn't end up
12 working out; and when he departed, I eventually became
13 COO.

14 Q Do you have a recollection as to time frame
15 as to when you became the COO?

16 A I would say probably closer to June of -- May
17 or June of 2014.

18 Q Okay. Prior to getting involved in NuVeda,
19 did you know the claimant, Ms. Goldstein?

20 A We have met locally. I didn't know her all
21 that well, but we were just starting a friendship.

22 Q Did there come a time when you introduced
23 Ms. Goldstein to the other members of NuVeda?

24 A Yes, I do.

25 Q And can you describe sort of the

1 circumstances about how that came about?

2 A Sure. I think the friendship with
3 Ms. Goldstein and myself started maybe six months
4 prior to that introduction. And we were catching up,
5 just socially, and she mentioned that she was going
6 after dispensary licenses, you know, had an investment
7 that -- that she was going to use to start her own
8 company and go after some of the new licenses.

9 And I think that's where we first started
10 making the connections that I was with a group that
11 was also going after dispensaries. She had an
12 interest. She had capital that she wanted to put in.
13 So I thought it kind of made sense to combine the
14 efforts. And, you know, I respected her as an
15 attorney and as a friend and thought it would be a
16 good fit.

17 Q Do you recall approximately when in time you
18 introduced Ms. Goldstein to the other members of
19 NuVeda?

20 A I'd say plus or minus a few months, but April
21 of 2014.

22 Q And was it that first meeting that there was
23 an agreement among the existing members of NuVeda and
24 Ms. Goldstein whereby Ms. Goldstein would become a
25 member of NuVeda?

1 A No. Initially, it was exploratory. So both
2 sides were, yeah, trying to warm up to each other,
3 figure out who could contribute what, what roles
4 needed to be filled on the team. So, of course, there
5 was some warming-up meetings prior to anything really
6 becoming formalized.

7 Q At what point do you recall, if ever, that
8 Ms. Goldstein's role with NuVeda became formalized?

9 A I know she started -- I specifically remember
10 one meeting where her and Pej met at a Starbucks; and
11 I think that's where they started the discussions,
12 there.

13 And then eventually there was a pressure for
14 us to submit an application, that had a deadline, to
15 Clark County. And as the relationships are
16 progressing, as part of that application we had to
17 submit who the team was, what the exact percentages,
18 ownership structure was; and obviously, that's what
19 the local jurisdiction or unincorporated Clark County
20 would be looking at to determine our corporate
21 structure for the application.

22 Q During that time period, did the members of
23 NuVeda enter into an operating agreement?

24 A I do not believe there was an operating
25 agreement required for that specific submission --

1 Q Okay.

2 A -- but I can't recall.

3 Q Was there -- did the members of NuVeda come
4 to an agreement whether, you know -- formal agreement
5 or not, as to the ownership interest in NuVeda?

6 A Yes, that had to be declared to -- you know,
7 with the application. I remember I was writing the
8 application and hers was kind of the blank spot that
9 we needed to fill and solidify so we could submit.

10 Q Do you recall, Mr. Terry, how Ms. Goldstein's
11 percent interest -- well, let me take a step back.

12 Do you recall, sitting here today, what
13 Ms. Goldstein's percent interest in NuVeda is?

14 A Seven percent.

15 Q Okay.

16 A At least at the last time I had anything to
17 do with the company.

18 Q Do you recall whether that seven percent --
19 was there anything special attached to that seven
20 percent?

21 A Nondilutable.

22 Q Okay. Do you recall how Ms. Goldstein's
23 nondilutable seven percent came about?

24 A We -- internally, I think Pej was primarily
25 working with her to figure out what the right interest

1 was for her, what she was going to contribute. And
2 internally, without her around, we discussed potential
3 roles and where we would want to take it.

4 And then eventually, if I recall, Pej gave
5 her three options for her to choose from; and
6 basically she chose one of those options.

7 Q Is it your recollection that Ms. Goldstein
8 demanded to have seven percent nondilutable
9 interest?

10 A No. It was my recollection that it was
11 tiered where at the --

12 MR. DUSHOFF: Objection as to relevance. We
13 all stipulated she has seven percent nondilutable
14 interest. I think we're wasting time going down this
15 down this road.

16 MR. FEUERSTEIN: I'm about to move on, but --

17 ARBITRATOR BAKER: Overruled. Just keep
18 going.

19 BY MR. FEUERSTEIN:

20 Q You want to just -- do you recall where you
21 were in your answer?

22 A Sure. So there were three different tiers,
23 and one of them was seven percent, nondilutable,
24 without any requirement for capital contributions.

25 And then it went up from there, where she

1 could earn more membership interest with certain
2 capital contributions.

3 I think there was two more that -- other two
4 tiers I believe were dilutable, and both of them I
5 believe required some amount of capital contributions.

6 Q Okay. I'm going to fast-forward in time to
7 December of 2015. Do you recall, Mr. Terry, that
8 there was an agreement that the majority members had
9 entered into with a company called CW?

10 A I do.

11 Q Okay.

12 MR. WILEY: Objection. Just for
13 clarification, entered into with which entity?

14 MR. FEUERSTEIN: CW. CWNevada, LLC.

15 MR. WILEY: As opposed to the other CW
16 entity?

17 MR. FEUERSTEIN: Yes.

18 MR. WILEY: Just so we're clear.

19 MR. FEUERSTEIN: Yes.

20 And just so the record is clear for the
21 remainder of today, when I use the term CW, I'll be
22 referring to CWNevada, LLC. If I intend to mean CWNV,
23 I will say CWNV.

24 Q Is that okay with you, Mr. Terry?

25 A That works for me.

1 Q Okay. So you recall that there was an
2 agreement entered into with CW?

3 A Yes, I do.

4 Q Do you recall the name of that agreement?

5 A I believe it was a membership interest
6 purchase agreement.

7 Q And I'd ask you, Mr. Terry, to pull up in
8 front of -- the computer in front of you what's been
9 marked as Joint Exhibit 149.

10 Are you able to see that there?

11 A On the exhibits. And it looks like this is
12 the MIPA, December 6, 2015.

13 Q And in your own words, Mr. Terry, can you
14 describe what the consideration was exchanged between
15 the parties to the MIPA?

16 A I'd have to go down into the details, but I
17 generally remember -- and I think this actually might
18 have been more disclosed in due diligence. It was
19 something around 22 and a half million dollars for a
20 65 percent ownership interest, which I believe was in
21 a new co that they were going to form.

22 Q And that new co was going to be --
23 ultimately, it was CWNV; correct?

24 A That is correct.

25 Q Mr. Terry, do you have a view -- well, if

1 65 percent was being acquired by CW in the new co, who
2 held the other 35 percent?

3 A That would be NuVeda.

4 Q And based on the price that -- or the
5 consideration being provided by CW pursuant to the
6 MIPA, what was your view of the value that NuVeda was
7 retaining?

8 A I thought that -- personally, I thought that
9 it was less value than they should have gotten from
10 it. And I think I had some concerns about CW's
11 ability to follow through on the MIPA and come through
12 with their funding obligations.

13 Q Was there ever a conversation between you and
14 the members of NuVeda as to what the actual value to
15 assign to the 35 percent interest was at that time?

16 A Yes, there was conversations about it.

17 Q Were there conversations with Joe Kennedy
18 about it?

19 A I'm sure he was part of it.

20 Q Okay.

21 A A lot of this happened kind of out of
22 surprise to me, prior -- I don't think we found out
23 about this until court, that it had been executed.

24 Q Do you recall anybody from CW making
25 statements about what the value or the consideration

1 was under the MIPA?

2 A Not until we got to an injunction hearing.

3 Q And that injunction hearing was the
4 injunction hearing before Judge Gonzalez; correct?

5 A Correct.

6 Q And what did you -- what do you recall
7 hearing?

8 A During the injunction hearing, that was the
9 first time that this was produced in evidence, or
10 certainly the first time that I had seen it, so I was
11 not part of any of the discussions with -- between CW
12 and NuVeda leading up to the execution of the MIPA.

13 And during the injection hearing, I know
14 Brian Padgett, who was the, I believe, president/COO
15 of CWNevada, testified onto the value that they would
16 be bringing.

17 Q If you would, Mr. Terry, take a look at
18 exhibit 1 -- Joint Exhibit 164.

19 A Looks like transcripts of, I'm assuming, is
20 that a hearing?

21 Q And I'd ask you, Mr. Terry, to go down to
22 page 89 of that transcript, which is Bates
23 Terry 000865.

24 A Is that the digital 89, or is it printed
25 separate on that page?

1 Q It's the digital 89 and also page 89.
2 A Sorry, could you say the Bates number again.
3 Q Yeah, 865.
4 A 865. Thank you. Okay, I'm there.
5 Q And you see towards the -- on line 818,
6 there's the number approximately \$22 million. Do you
7 see that?
8 A Yes, I do.
9 Q By the way, if you just scrolled up to the
10 beginning, can you state on the record who was
11 actually testifying at this point?
12 A Is that on --
13 Q It's --
14 A Yeah, I recall that says Brian Padgett's
15 testimony; but if you can point me to the page that --
16 Q Yeah, page --
17 A Is it on the very top?
18 Q Page 2.
19 A Okay. Yep, looks like Brian Padgett.
20 Q Brian -- Mr. Padgett is a lawyer; correct?
21 A Correct.
22 Q At the time that the MIPA was entered into,
23 had the State of Nevada promulgated regulations with
24 respect to recreational marijuana?
25 A They had not.

1 Q As somebody who has been in the business of
2 cannabis since 2014, do you have a view -- a
3 layperson's view -- as to whether the promulgation of
4 recreational marijuana increases or decreases or does
5 nothing to the value of a license?

6 A Certainly this was on the tail of the big
7 boom in Colorado, followed shortly by Washington; so I
8 think it was pretty apparent to the industry that
9 recreational market was going to increase the value of
10 licenses.

11 Q And as you sit here today, do you have a
12 layperson's view as to if there's any multiple as to
13 what, or percentage as to what the promulgation of
14 recreation would do to the value of a license?

15 MR. WILEY: Objection, calls for expert
16 testimony.

17 ARBITRATOR BAKER: Overruled.

18 THE WITNESS: I would say some of the
19 statistics that we used internally for our -- our
20 projections -- and this was -- I remember sourcing it
21 from market data -- we were finding that in the
22 medical market two percent of the population were
23 customers; and that ranged anywhere from about 1.5 to
24 2.2 percent.

25 And in a recreational market, we were seeing

1 anywhere from about 11 and a half to 12.8 percent of
2 the population were users. So I guess, therefore, you
3 know, conservatively, it's five times the value of a
4 medical market, just based on number of users.

5 BY MR. FEUERSTEIN:

6 Q Now, Mr. Terry, in connection with the MIPA,
7 did you ever sign any document agreeing to transfer
8 your membership interest over to CWNV?

9 A Not to CWNV, no.

10 Q In connection with -- well, let me take a
11 step back.

12 Prior to this hearing, do you have any
13 firsthand knowledge as to whether the licenses held by
14 the parties to the MIPA have been transferred to CWNV?

15 A I inquired into Department of Taxation last
16 week when I got suspicion that I might actually still
17 be on the license.

18 And I was told that nothing had been
19 transferred to CWNV, that it was still under NuVeda;
20 and I was still listed as an owner with a zero percent
21 interest on the license.

22 Q Was there -- I'm assuming by your answer that
23 nobody -- nobody from CWNV was listed -- well, let me
24 withdraw the question.

25 I'm assuming from your answer that nobody

1 from CW was listed on the license; is that fair to
2 say?

3 A I was -- I was told that it was the original
4 ownership structure, so myself, Jennifer, Joe Kennedy,
5 Pej, Pouya. NuVeda was still the parent company that
6 owned it.

7 I was told that I had zero percent interest
8 and they were not willing to disclose what the other
9 ownership interest were or the other members.

10 Q You ought to have in front of you, Mr. Terry,
11 a white binder that has on the cover, says "Expert
12 Reports." Do you have that?

13 A I do.

14 Q I'd like you, if you would, Mr. Terry, to
15 turn to tab 7. It should say on the cover, "Report on
16 the fair market value of NuVeda, LLC." Underneath it,
17 it says, "As of August 8, 2017, and retrospective
18 comment on report of November 28, 2016." Do you see
19 that?

20 A Yes, sir. Yes, I do; and yes, it does.

21 Q I'd like you to turn to page 5 of that
22 report.

23 And on page 5, if you read the -- I think
24 it's the second paragraph -- unfortunately, it's not
25 indented, but it begins "Table 1 shows the transaction

1 values of the three types of licenses. The average
2 values of the licenses are (rounded) \$200,000 for
3 cultivation and production, (rounded) 3 and a half
4 million dollars for dispensary." Do you see that?

5 A Yes, I do.

6 Q And then you see there's a number of
7 transactions that have nothing more than just the
8 license type and date. Do you see that?

9 A Yes, I do.

10 Q Based on the information that's provided in
11 table 1, do any of those transactions look familiar to
12 you?

13 A I couldn't specifically call out one that I
14 would be able to say, Yes, I know what that
15 transaction is about.

16 Q If I -- looking up from July '17 back in
17 time, do those prices reflect what you understood to
18 be the market price in Las Vegas for those types of
19 licenses?

20 MR. WILEY: Objection, lacks foundation.

21 ARBITRATOR BAKER: Sustained.

22 BY MR. FEUERSTEIN:

23 Q Mr. Terry, in -- between 2014 and two
24 thousand -- and the present, you've been involved in
25 the cannabis market; correct?

1 A Yes.

2 Q You work in particular or majority of your
3 time in Nevada; is that correct?

4 A Yes.

5 Q Has there been a focus in region within the
6 state of Nevada that you've worked?

7 A Southern Nevada.

8 Q Have you been familiar and kept abreast of
9 transactions in the marketplace either between
10 exchange of licenses or companies?

11 A Yes.

12 Q Would you believe that that's part of your
13 daily or routine business operation, that you follow
14 the market?

15 A I sit on the board of GB Sciences, which is a
16 publicly traded cannabis company. We have made
17 acquisitions and attempts at acquisitions ourselves.
18 I have personally purchased licenses. Since then, I
19 have consulted for other companies that have bought
20 and sold licenses, so yes.

21 Q With that, I'll restate my question.

22 Mr. Terry, do any of the transactions from
23 July '17 back in time, so February '16 to July '17,
24 appear to be transactions that occurred in the City of
25 Las Vegas?

1 MR. DUSHOFF: Objection, lacks foundation.
2 Whether he's now with a company that purchased or has
3 purchased, it doesn't say he did it back in '17 or
4 '16. You know, he may have done it in '18. They're
5 asking specific -- we need to know the specific time
6 when he's either done purchase or sales in order to
7 lay any proper foundation regarding something to this
8 effect.

9 ARBITRATOR BAKER: Overruled.

10 MR. FEUERSTEIN: Can you read the next
11 question, please. Can you read my question again,
12 please.

13 (Record read as follows:

14 "QUESTION: Mr. Terry, do any of the
15 transactions from July '17 back in time, so
16 February '16 to July '17, appear to be
17 transactions that occurred in the City of
18 Las Vegas?")

19 THE WITNESS: No, they -- no, I would -- my
20 opinion would be no.

21 BY MR. FEUERSTEIN:

22 Q And why is that?

23 A They seem -- \$50,000 for a license seems
24 extremely low, as does \$500,000 for a dispensary.
25 That was -- that was during the time frame that I was

1 actively searching for my license, and I believe I
2 purchased it in July of '16, my licenses, so I was
3 pretty familiar with it --

4 Q All right.

5 A -- at that time.

6 Q Do you have a view, Mr. Terry, whether prices
7 reflected -- well, you know, I'll take a step back.

8 Mr. Terry, you're familiar with the phrase or
9 the term "vertically integrated"?

10 A Yes.

11 Q What does that -- what does that mean to you
12 in the term -- in the context of cannabis
13 businesses?

14 A In this market it would be a company that
15 owns a dispensary, a cultivation, and a production
16 license.

17 Q And you have a view, Mr. Terry, of whether
18 selling a vertically integrated business has any
19 effect on the price versus, you know, selling
20 individual licenses or businesses?

21 A There should be -- there should be more value
22 attributed to a vertically integrated operation than
23 individual entities.

24 Q And during the course of your time -- well,
25 Mr. Terry, for the entirety of your career at NuVeda,

1 were you always the COO?

2 A No, I eventually became CEO.

3 Q In the course of your roles at NuVeda, were
4 you ever involved in the attempts or actual raising of
5 money?

6 A Yes.

7 Q Do you have a recollection, sitting here
8 today, of the valuations at which you were raising
9 money for NuVeda in or around, let's say, September of
10 2015 to ultimately your termination?

11 A We had -- we were looking at raising, on an
12 average, anywhere from 35- to 50 million.

13 MR. FEUERSTEIN: I have no further questions.

14 CROSS-EXAMINATION

15 BY MR. WILEY:

16 Q My name is Jason Wiley. Just to remind you
17 that I represent NuVeda, LLC, in this litigation. I
18 do have a couple of questions related to your
19 testimony that you've been providing. Let's start
20 with that first question, last.

21 When you were raising capital or attempting
22 to raise capital at a valuation of 35- to \$50 million,
23 were you ever successful at that value rate?

24 A We were not.

25 Q And you previously testified, and I think

1 this was your testimony, that you had not seen the
2 membership interest purchase agreement until a hearing
3 in the District Court?

4 A It was either in the disclosures or the
5 hearing itself, but I was not part of the -- I did not
6 know that there was anything formalized until that
7 hearing; correct.

8 Q Do you recall sending an e-mail to Jin Ho in
9 December of 2015, requesting that he pick this thing
10 apart with respect to the MIPA?

11 A I don't know if it was in respect to the
12 actual MIPA or terms that were being floated, I don't
13 remember -- I'd certainly remember having
14 conversations with Jin, yes.

15 Q At this point you were adverse to Dr. Bady
16 and Dr. Mohajer?

17 A We did not agree on the direction that we
18 were going with the company; correct.

19 Q In fact, you wished that the company would go
20 a different way with -- would enter into an agreement
21 for financing with Forefront?

22 A I had looked at the -- between those two
23 deals, yes, and I thought the Forefront was where I
24 was trying to push the company to go.

25 Q And that Forefront deal was contingent upon

1 Dr. Bady and Dr. Mohajer being removed from the
2 company; right?

3 MR. FEUERSTEIN: Objection, relevance.

4 ARBITRATOR BAKER: Overruled.

5 THE WITNESS: No, it wasn't.

6 BY MR. WILEY:

7 Q Were there ever discussions of -- about the
8 removal of Dr. Bady and Dr. Mohajer from the company
9 with any individuals from Forefront?

10 A To the extent that we were concerned that if
11 things were uncovered that were bad acts, that that
12 would jeopardize the license. So the -- the
13 conversations were around, you know, is the -- is the
14 license going to be jeopardized; and if so, will we
15 have to remove people.

16 But I think what you're referencing
17 specifically, the e-mail between Jin and I, where he
18 responded, does not specifically name Dr. Bady or
19 Dr. Mohajer as being the ones to be removed.

20 Q And these purported bad acts, is there -- did
21 you ever identify any bad acts on behalf of Mr. Bady
22 or Dr. Mohajer in that December 2015 time frame?

23 A Identify, as in like have concerns of or
24 start investigating?

25 Q Or petition the court for relief, based upon

1 these purported bad acts?

2 A Sure. Yes.

3 Q And was there ever a determination as to
4 whether or not Dr. Bady and Dr. Mohajer did, in fact,
5 undertake any bad acts that required any remedies?

6 A It was my understanding that this is still
7 what the arbitration is about, so I'm not sure that
8 that was taken to final conclusion yet.

9 Q Do you recall Judge Gonzalez's determination
10 as to whether or not Dr. Bady and Dr. Mohajer should
11 be expelled from the company in January of 2016?

12 A From my recollection, she said to maintain
13 the status quo.

14 Q Let's go back to that expert report that you
15 have in front of you.

16 MR. DUSHOFF: Arbitrator --

17 ARBITRATOR BAKER: Yes?

18 MR. DUSHOFF: -- if I may, since Dr. Bady and
19 Dr. Mohajer are a little bit still in the case before
20 waiting till tomorrow, would I also have an
21 opportunity to cross-examine, since -- I know I code
22 in there, but if they're still hanging out, would I
23 still have an opportunity to do as such?

24 ARBITRATOR BAKER: Do you have any
25 objections?

1 MR. FEUERSTEIN: I think you have -- I think
2 that's -- that's -- I mean, your analysis is
3 consistent with what I think is the right thing. I
4 mean, as long as we're not rehashing old ground.

5 MR. DUSHOFF: No, no, I won't rehash old
6 ground.

7 ARBITRATOR BAKER: Then, yes.

8 MR. DUSHOFF: Okay. Thank you.

9 BY MR. WILEY:

10 Q Mr. Terry, do you recognize any of these
11 transactions that are set forth in table 1 on page 5
12 of the expert report?

13 A I would not be able to say that this specific
14 transaction was related to a specific company, so
15 there's no other information other than the type of
16 license and amount, but there's no identifying
17 information.

18 Q So it's potentially possible that some of
19 these transactions occurred in Clark County?

20 MR. FEUERSTEIN: Objection. Anything is
21 possible.

22 ARBITRATOR BAKER: Overruled.

23 THE WITNESS: Anything is possible.

24 BY MR. WILEY:

25 Q Are you familiar with a company called Terra

1 Tech?

2 A Yes, I am.

3 Q Are you familiar with any sales in the last
4 six months that Terra Tech has entered into?

5 A Vaguely. Other than what I've seen in the
6 news.

7 Q Do you have any information as to the value
8 of the potential sale that occurred with Terra Tech?

9 A I would need a refresher on it.

10 ARBITRATOR BAKER: Is this marked as an
11 exhibit?

12 MR. WILEY: It's just to refresh his
13 recollection. Mr. Terry requested it.

14 THE WITNESS: Do you mind if I read through
15 it?

16 BY MR. WILEY:

17 Q Yeah, sure. Take your time to look that
18 over.

19 (Witness reviewing document.)

20 A I think I get the gist of it. And I am
21 familiar with that dispensary specifically.

22 Q This document purports that a Terra Tech
23 completed a sale of a -- one of their dispensaries;
24 correct?

25 A Correct.

1 Q And what is the value of the dispensary?

2 A It looks like 6.25 million. Doesn't say if
3 it was cash, but total consideration.

4 Q And also sets forth in that first paragraph
5 there that the sale completed and it involved
6 100 percent of the assets of the cannabis dispensary
7 located on Western Avenue?

8 A Correct.

9 Q And that's in Clark County; correct?

10 A I do not recall if that's technically
11 unincorporated Clark County or City of Las Vegas, but
12 it is within Clark County.

13 MR. FEUERSTEIN: Mr. Wiley, you'll have to
14 give me a geography lesson afterwards.

15 MR. WILEY: I'm not sure if I can give you a
16 geography lesson --

17 ARBITRATOR BAKER: Me, either.

18 MR. WILEY: -- if it entails the City and the
19 County or unincorporated.

20 THE WITNESS: Different jurisdictions have
21 different license allocations, tax structures,
22 whatnot.

23 BY MR. WILEY:

24 Q And the consideration paid, 6.25 million,
25 that's customary and an amount that is deemed to be

1 customary here in Clark County for an acquisition?

2 A As in an average price?

3 Q Correct.

4 A I would say no.

5 Q Why is that?

6 A Specifically, I'm familiar with this
7 dispensary. It must have been one of the worst
8 performing ones, just based on location. There's a
9 lot of competition on that specific road. And I know
10 that they weren't getting a lot of business. And
11 overall, even that being said, you know, 6.25 seems
12 lower than what I have historically seen them being
13 sold for.

14 Q But 6.25 was the price, nonetheless?

15 A For this one, yes, for a distressed asset.

16 MR. WILEY: I have no further questions.

17 ARBITRATOR BAKER: Mr. Dushoff.

18 MR. DUSHOFF: Thank you.

19 CROSS-EXAMINATION

20 BY MR. DUSHOFF:

21 Q I'm going to go back on the -- your last --
22 what you just talked about, Mr. Terry. You said this
23 was a distressed property; correct?

24 MR. FEUERSTEIN: Objection.

25 ///

1 BY MR. DUSHOFF:

2 Q You said the Western -- you said the
3 Western --

4 MR. FEUERSTEIN: Distressed asset.

5 BY MR. DUSHOFF:

6 Q Distressed asset, okay, is that Western
7 Avenue property; correct?

8 A Correct.

9 Q All right. So were you privy to the
10 financials of Terra Tech at that location?

11 A They're publicly reported, so, I mean,
12 technically, yes. But did I look at it?

13 Q Yeah.

14 A No.

15 Q So you have no familiarity, as you sit here
16 right now, as to what the financial condition, what
17 the financials were when this was sold to Exhale, in,
18 what was it, October of 2018; correct?

19 A No, that's not correct.

20 Q You just testified that you did not have the
21 financial; is that correct?

22 A Correct. That is correct.

23 Q Now, I want to talk to you about -- I want
24 you -- do you still have this page open -- you still
25 do -- on the exhibit?

1 A Page 5.

2 Q I think it's tab -- yeah, tab 7, page 5?

3 A Yes, sir.

4 Q All right. Now, you stated -- and
5 Mr. Feuerstein directed you -- that these numbers seem
6 low for cultivation for production dispensary;
7 correct?

8 A Correct.

9 Q Now, isn't it fair to say that purchase or a
10 license -- or cultivation license, production license,
11 depends on many variables; correct?

12 A Yes.

13 Q On the price?

14 Jurisdiction; correct?

15 A Yes.

16 Q All right. So something in the city of
17 Las Vegas will cost a lot more than something in
18 Elko?

19 A That's arguable. Theoretically, yes; but I
20 guess Elko, being one of two licenses, I think --

21 Q Right.

22 A -- in the entire county might generate more
23 foot traffic than competing for market share in the
24 city of Las Vegas.

25 Q And, you know, that's a fair argument. But,

Page 62

1 okay, how about Nye County?

2 A In what sense? Compared to --

3 Q Compared to --

4 A -- Las Vegas?

5 Q Yeah, compared to Las Vegas?

6 A For a dispensary license?

7 Q Yes.

8 A I'd have to do a market-share analysis, but I
9 would say in general I would assume that the city of
10 Las Vegas license would be more valuable than a Nye
11 County dispensary license, yes.

12 Q So instead of for me going specifics, you
13 would agree with me that the fluctuation in price and
14 value would depend on jurisdiction?

15 A I would agree with that for the most part.

16 Q And also you would agree with me on the size
17 of the dispensary or the cultivation, the size of the
18 dispensary would also determine -- be a determination
19 in value; correct?

20 A For a cultivation, I would absolutely agree.
21 For a dispensary, not necessarily.

22 Q Okay. Why not necessarily?

23 A Well, there are some dispensaries that are
24 extremely large. And I think a good dispensary metric
25 would be revenue per square foot, not just the simple

1 size. Where, conversely, with a cultivation, the
2 larger facility, the more you can produce out of it,
3 so the more revenue should be generated.

4 Q So for cultivation, size comes into play in
5 the value that you would pay for something?

6 A That's correct.

7 Q So, also -- and we talked about jurisdiction.
8 We're also talking about lo- -- I want to talk about
9 location. You talked a little bit about that.

10 Location on the Strip would be much more
11 valuable than a location somewhere else, potentially?

12 A Assuming you weren't losing market share --

13 Q Right.

14 A -- to any of your competitors, yes.

15 Q Okay. So location counts in value of shares,
16 in value of the license; correct?

17 A For dispensaries, yes.

18 Q All right. So when you look at dispensaries
19 in here on page 5, there's no showing what the
20 location was or jurisdiction that these are in;
21 correct?

22 A Correct.

23 Q Also -- and, also, again, location or
24 jurisdiction; correct?

25 A Correct.

1 Q Also, it doesn't talk about -- let's talk
2 about another thing: Operational. So it's also
3 important as an aspect of value is whether the -- it's
4 an ongoing concern; correct? If the company is
5 just -- if there's nothing there, it's worth less than
6 if there's already an ongoing concern and a business
7 is already going. Is that accurate, although it was
8 poorly phrased.

9 MR. FEUERSTEIN: I'm sorry. Can you restate
10 the question?

11 MR. DUSHOFF: Sure.

12 Q Isn't it a factor, also, whether the company
13 that gets the value is -- whether it's operational?

14 A And I want to be particular about this one.
15 So there's two type of licenses: One is provisional;
16 and one is, let's call it, perfected or operational.

17 Q Sure.

18 A So for a provisional license, you're --
19 technically, all those licenses needed to be up and
20 running 18 months after they were issued; so anything
21 after that, there's an associated risk.

22 Any operational license, once it's achieved
23 its final certification, obviously there's no risk of
24 revocation by the State.

25 I think at our stage of the industry, most

1 licenses are valued on future potential and not the
2 current operating status, simply because we're in a
3 growth stage. That's what I --

4 Q Right. But whether -- okay. So whether
5 these -- but if these were in provisional stage, as
6 you talked about, they would be worth less than, of
7 course -- because there's a greater risk -- than it
8 would be if they were already licensed with the State
9 and they perfected the license; correct?

10 A There is a time period where that was a
11 concern, until the State released a statement saying
12 as long as significant progress was being made. And
13 then that ended up being a gray area that I think
14 people --

15 Q And when was that?

16 A The significant progress, I want to say that
17 would have been probably about 15 or 16 months after
18 licenses were issued on De- -- either November or
19 December of 2014.

20 Q And when you talk about significant progress,
21 what are you talking about?

22 A Good question. And when the State released
23 that, I think that's the question that everybody in
24 the industry had.

25 Because it was loosely defined, people, I

1 think, in large part, determined that because it was
2 not specific, the State actually didn't have any
3 grounds to take action on it.

4 Q So you're saying whether a company is
5 actually operational has really no effect on the value
6 of the license?

7 A So certainly an operational company has made
8 more progress than others. And if I was looking at
9 the value of that license, of one that I was trying to
10 acquire, I would take a look at previous history,
11 past -- you know, past performance. And I think I
12 would place most of the value on -- with the right
13 management team, with the right operation -- what is
14 the potential of that license.

15 Q So if a company is making a lot of money and
16 they're doing very well at a certain spot and they
17 want to sell it, that has -- that, in and of itself,
18 has value; correct --

19 MR. FEUERSTEIN: Objection.

20 MR. DUSHOFF: -- operational, doing well at
21 that spot?

22 ARBITRATOR BAKER: Overruled.

23 THE WITNESS: I think that's evident from
24 previous sale -- or past sales.

25 ///

1 BY MR. DUSHOFF:

2 Q Right. And if it's not doing so well, of
3 course the value would go down and the price you would
4 pay would be determinative of how well that business
5 is doing; correct?

6 A In an apples-to-apples comparison, yes.

7 Q You talked about that you did not agree with
8 CW, with the MIPA; is that correct?

9 A I did not agree with it in comparison to
10 other potential deals that were on the table;
11 correct.

12 Q And you were aware that Judge Gonzalez, after
13 her -- after the preliminary injunction ruling,
14 okayed, allowed the CW, the MIPA, to continue?

15 A Correct.

16 Q You also testified that there was five
17 times -- that you believed there were five times --
18 you know, from medical to rec, that it increased
19 five-fold, the interest multiplier?

20 A I would say if you were to use the number of
21 2.2 percent medical and 10.5 percent or 11 percent in
22 rec, then -- or whatever -- 11 -- so four or five
23 times.

24 Q Where did you get that information from?

25 A Historical data that was released from

1 Colorado and Washington.

2 Q What's the specific historical data? When?
3 Where? What? Why?

4 A Specifically, both Washington and Colorado
5 Department of Taxations; in Washington, the liquor
6 board reports sales; and then their analyst reports.
7 Specifically, in Washington, there's a company called
8 Rand, which did a BOTEK analysis; and they brought in
9 an analyst firm to take a look at all the different
10 market conditions and where that was going.

11 Q You didn't produce any of that here today,
12 did you?

13 A Did I?

14 Q Yes.

15 A No.

16 Q So all that we know from you is that you read
17 something you believed in, from your determination of
18 this, that rec is five times what medical is; correct?

19 A From those numbers; correct.

20 And, again, do the math on it, but four to
21 five times.

22 Q But that's not based on any documents that we
23 have before us; this is just based on what you're
24 telling us?

25 A No, there's a lot of documents on the

1 computer. So I'm not sure if it is in there. It's --
2 we did use those numbers in our projections, pitch
3 decks, references, and past financials pro formas that
4 we created as a company, so I would imagine that
5 they're in here somewhere.

6 Q If they're -- okay. I'm going to put it to
7 you that if they're not in here, then really all we're
8 doing is relying on what you're telling us?

9 A You can go on their State website.

10 Q I didn't ask you about me going on the State
11 website. I asked you in front of us right now, really
12 we're just relying on what you're telling us the data
13 shows?

14 A Sure, of course.

15 Q And you talked about raising 35 million to
16 50 million, what you were hoping to raise for
17 NuVeda?

18 A That's correct.

19 MR. FEUERSTEIN: Objection. No, it misstates
20 the testimony.

21 ARBITRATOR BAKER: Overruled.

22 THE WITNESS: No, it's not.

23 BY MR. DUSHOFF:

24 Q What did you -- what do you testify to on
25 that?

1 A Those were the valuat- -- those average
2 valuations that we were raising on, not necessarily
3 the amount we were trying to raise.

4 Q Let me ask you, how much did you raise,
5 personally?

6 A Personally, as in me myself as an
7 individual or --

8 Q As getting an investor to come into NuVeda.
9 Isn't it true you didn't raise one dime from an
10 investor into NuVeda?

11 A No, I think we -- I'd have to total it up,
12 but it was over a million dollars.

13 Q From whom?

14 A Dr. Daniel Mosenbarre.

15 Q Mosenbarre never had a percent in NuVeda;
16 correct?

17 A Disclosed or undisclosed?

18 Q I didn't ask you that. I just asked, did he
19 ever have an -- did he ever have an interest in
20 NuVeda, according to the State, according to anybody
21 in there -- depicted in any documents?

22 A According to anybody?

23 Q No --

24 A I think according to him.

25 Q -- according to -- according to the State,

1 was he ever listed --

2 A No, he was not.

3 Q -- as an owner?

4 A No, he was not.

5 Q And it's also true, you -- who's Dan
6 Caravette, C-a-r-a-v-e-t-t-e?

7 A He was an associate -- I wouldn't say an
8 associate -- a contact brought to the table by a
9 friend of a previous independent contractor named
10 Wells Littlefield.

11 Q And did you buy licenses from Dan Caravette,
12 or an organization you were working with buy licenses
13 from Dan Caravette?

14 A Yes, I did.

15 Q Was it you or a company you're with?

16 A It was a company that I was a 100 percent
17 owner of.

18 Q And what is that company?

19 A At the time the company that bought those
20 licenses was TapRoot Holdings NV, LLC.

21 Q When were those bought?

22 A I believe that would have been around June of
23 2016 -- June, July.

24 Q What type of licenses?

25 A A cultivation and a production, both

1 provisional at the time.

2 Q And isn't it true you spent -- you paid
3 \$200,000 for hose licenses?

4 A Each.

5 Q Each.

6 A And there was other considerations involved
7 in the deal for value.

8 MR. DUSHOFF: I have nothing further.

9 MR. WILEY: Hang on. Before we pass the
10 witness, I just -- can we move to admit the Terra
11 Tech, since he did --

12 MR. FEUERSTEIN: No objection.

13 MR. WILEY: -- utilize it?

14 ARBITRATOR BAKER: Okay.

15 (Joint Exhibit 257 was entered into
16 evidence.)

17 MR. FEUERSTEIN: Okay. I have some -- a
18 little bit of rebuttal.

19 ARBITRATOR BAKER: Go ahead.

20 REDIRECT EXAMINATION

21 BY MR. FEUERSTEIN:

22 Q Let's pick up on the last point with this
23 guy, Dan Caravette. Can you describe the
24 circumstances around the acquisition of those
25 licenses?

1 A I kept in touch with Dan Caravette since we
2 met him through NuVeda. He -- I was actively looking
3 for licenses. He represented to me that he owned
4 licenses, and so I negotiated a deal with him where
5 I'd pay \$200,000 cash, per license. There was an
6 ongoing supply agreement, a contract manufacturing
7 agreement, that I utilized to be able to get that
8 value down from the licenses that he wanted.

9 As that progressed into further due
10 diligence, I realized he actually didn't own the
11 licenses, but he had rights to sell the licenses on
12 behalf of the owner.

13 And eventually we found out that -- from what
14 I have been told that he misrepresented the actual
15 purchase price to the ownership group and pocketed a
16 lot of money on -- from me; but I got the licenses, so
17 I guess I didn't care.

18 Q At some point I'm -- TapRoot's an existing
19 business today?

20 A It is.

21 Q At some point TapRoot had to be capitalized,
22 I assume?

23 A Correct.

24 Q How soon after you acquired these provisional
25 licenses did you capitalize the company?

1 MR. WILEY: Objection, this is outside the
2 scope of cross.

3 MR. FEUERSTEIN: I think it was opened by
4 Mr. Dushoff.

5 ARBITRATOR BAKER: I'm going to allow it.
6 Overruled.

7 THE WITNESS: Within the due-diligence
8 period, that I had to close on the licenses.

9 BY MR. FEUERSTEIN:

10 Q And how long was that?

11 A Thirty days.

12 Q And at what valuation did you raise in that
13 initial raise?

14 A It was 1.5 million premoney valuation, so
15 3 million post.

16 Q And that was out of pro- -- those are still
17 provisional by the time you closed?

18 A Correct.

19 Q And by the time the investors put their money
20 in?

21 A Correct.

22 Q I want to go back to a question raised by
23 Mr. Dushoff, which -- around -- is it Mr. or
24 Dr. Bahri, B-a-h-r-i?

25 A Doctor.

1 Q And there was a question about whether
2 Dr. Bahri had an interest in NuVeda or whether he
3 didn't.

4 Do you recall that Dr. Bahri once claimed
5 that he had an interest?

6 A I do.

7 Q Do you recall whether there was any
8 discussion as to -- well, let me withdraw the
9 question.

10 Did anybody from NuVeda, to your knowledge,
11 offer Dr. Bahri an interest in NuVeda?

12 A Dr. Bady did.

13 Q Do you recall what the valuation Dr. Bady
14 placed on NuVeda at around the time that he made that
15 offer to Dr. Bahri, to your understanding?

16 A I don't recall exactly. I believe, from what
17 I do remember -- and I don't remember exactly at what
18 stage -- but it was something along the lines of a
19 one percent -- one percent membership interest for
20 either 500- or a million dollars. And, again, kind
21 of -- I don't recall exactly at what stage that was.
22 It might have fluctuated a little bit.

23 Q Okay.

24 A I'm sorry, to be clear, that was 500,000 or a
25 million dollars.

1 (Court reporter requests clarification.)

2 THE WITNESS: 500,000 or a million dollars,
3 in case I might have said 500 million.

4 BY MR. FEUERSTEIN:

5 Q Okay. Mr. Wiley introduced to you a
6 document.

7 I'm sorry, did we put a number on this or we
8 just ...

9 MR. WILEY: Oh, I believe the last number we
10 had was 256, so why don't we call the Terra Tech
11 document Joint 257.

12 MR. FEUERSTEIN: Good by me.

13 MR. WILEY: Okay.

14 BY MR. FEUERSTEIN:

15 Q So Mr. Wiley presented you with what's been
16 marked as Joint 257, which is the Terra Tech article,
17 which talks about a sale in October of -- in or around
18 October of 2018 --

19 A Uh-huh.

20 Q -- fair to say?

21 Any other transactions you're aware of,
22 Mr. Terry, in or around this time, 60 days plus or
23 minus from the Terra Tech transaction?

24 A Sounds about the same time where one of my
25 companies put an LOI in for an acquisition of a

1 vertical integrated company.

2 Q OKay. Are you familiar with a company called
3 Essence?

4 A I am. Okay. So, sorry. I'm get- -- I'm
5 about one year off, so, yes.

6 Q You're familiar with a company called
7 Essence.

8 Do you recall whether in or around the same
9 time that Terra Tech sold this dispensary, did Essence
10 enter into a transaction?

11 A They did. It was pretty close to this
12 time.

13 Q And do you recall what Essence was -- for
14 instance, was Essence buying or selling an asset?

15 A Essence combined with Cannabiotix and that
16 was -- Essence was selling interest in three -- or the
17 acquisition of its three dispensaries, along with its
18 cultivation, which was a cultivation in production.
19 And Cannabiotix was a part of this, which was largely
20 recognized as a brand; but they also had a cultivation
21 production as well.

22 Q And what was the consideration that the buyer
23 was providing to Essence for those cultivation -- the
24 cultivation license, the production license, and the
25 three dispensary licenses?

1 A I recall from what was in the press,
2 280 million.

3 Q The last set of questions. Mr. Wiley and
4 Mr. Dushoff asked you -- both asked you questions
5 about your ability to raise money at NuVeda.

6 In your recollection, was the valuation the
7 problem standing in your way to raise money at NuVeda?

8 A I do not think so.

9 Q What do you think it was?

10 A Management team and concerns over management
11 actions.

12 Q And who in particular on the management
13 team?

14 A With Dr. Bady.

15 MR. FEUERSTEIN: I have no further questions.

16 ARBITRATOR BAKER: Thank you, Mr. Terry.

17 I have down Joint Exhibit 149 and 164, moving
18 those to admit as well as Joint exhibits?

19 MR. WILEY: I think we -- anything that's
20 going --

21 ARBITRATOR BAKER: Anything that's on
22 there is going to be --

23 MR. WILEY: -- has been admitted.

24 ARBITRATOR BAKER: Okay.

25 MR. FEUERSTEIN: Yes.

1 MR. WILEY: Stipulated to.

2 MR. FEUERSTEIN: Thank you, Mr. Terry.
3 That's it.

4 THE WITNESS: Thank you.

5 ARBITRATOR BAKER: Okay. It's a -- I think
6 we can go off the record.

7 (Break taken.)

8 Thereupon,

9 JENNIFER M. GOLDSTEIN,
10 called as a witness by the Claimant having
11 been duly sworn, testified as follows:

12 DIRECT EXAMINATION

13 BY MR. FEUERSTEIN:

14 Q Good afternoon, Ms. Goldstein.

15 A Good afternoon.

16 Q As we did with Mr. Terry, I'd like you to
17 give Arbitrator Baker just a brief background of your
18 education post high school.

19 A I graduated from UCLA, went to Tulane for law
20 school. I think that's the extent of my formal
21 education.

22 Q And when did you graduate Tulane?

23 A 1995.

24 Q Can you briefly tell the Arbitrator what you
25 did from 1995 'til, let's say, 2014?

Page 80

1 A I moved back to the Bay Area, took and passed
2 the California Bar. Worked for a law firm called
3 Wilson Elser Moskowitz Edelman & Dicker. Moved then
4 to Gordon & Rees. Moved then to Gray Cary Ware &
5 Freidenrich; which was then, I think, right when I got
6 there, shortened to just Gray Cary, and then merged
7 into DLA Piper.

8 Q And what did you do in your capacity as a
9 lawyer at those firms?

10 A Employment litigation.

11 Q We heard Mr. Terry testify a little bit about
12 his introduction to you. Can you sort of elaborate a
13 little bit on how you met, not just Mr. Terry, but
14 also the members of NuVeda?

15 A Mr. Terry and I camped next to each other,
16 became friends; as he described, met. And I had sort
17 of vaguely mentioned I was interested in pursuing
18 opportunities within the soon-to-be-created
19 medical-marijuana industry in the state of Nevada.
20 Thinking also about potentially going back -- I had
21 recently moved to Nevada and was thinking also about
22 investing potentially in California as well.

23 Q What did -- what do you recall about the
24 first meeting you had with Drs. Bady and Mohajer about
25 NuVeda?

1 A My very first meeting, other than my brief
2 conversation with Shane, was with Dr. Bady at the --
3 the Starbucks.

4 Q And what was discussed?

5 A It was just sort of a get to know one
6 another. We talked about the industry, trying to help
7 people, sort of forward thinking, patient care.

8 Dr. Bady mentioned that -- something to the
9 effect that the Obama Administration had asked him to
10 come and to help them to revamp it was either Medicare
11 or Medicaid. And that he had foregone that
12 opportunity to move to India.

13 We talked about spirituality. He recommended
14 some books for me to further my spirituality. We
15 decided, I think, that our goals aligned and perhaps
16 our skills and resources aligned and it was worth
17 discussing further.

18 Q And what do you recall about the
19 circumstances under which you received your
20 seven percent nondilutable interest?

21 A As I recall, I was offered two options. I
22 heard Shane testify that there were three; in his
23 recollection, that could be right.

24 In my recollection, there were two options,
25 one of which was seven percent nondilutable, no

1 capital contributions required of me.

2 And the second was for significantly more of
3 an ownership interest, but I would have to contribute
4 on par, in my recollection, with Shane and Pouya, who
5 were at that juncture equal in their capital
6 contributions to the company.

7 Q Do you recall ever making a demand that you
8 have to have nondilutable shares?

9 A No.

10 Q Ms. Goldstein, you also have a recollection,
11 I'm assuming, of the membership interest purchase
12 agreement that was marked and entered into evidence as
13 Exhibit 149?

14 A I do. Are you asking me to bring it up?

15 Q You can look at it if you'd like.

16 A I'm sorry, you said it was 149?

17 Q 149, yes.

18 A Okay.

19 Q And do you have a recollection sitting here
20 today as to what the consideration was in exchange for
21 Clark and Nye contributing the 65 percent interest?

22 A Without reviewing it in more detail, my
23 recollection was that it was about \$22 million from
24 CW.

25 Q I'll ask the same question I asked Mr. Terry:

1 Do you have any recollection sitting here today
2 whether you were ever asked to sign any document
3 consenting to your membership interest in Clark and
4 Nye being transferred to CW?

5 A I hesitate only because I don't recall
6 whether or not during the course of the instant
7 litigation we were ever posed with a request or
8 directive to sign anything and balked or whether it
9 just never happened, but not that I recall.

10 Q Do you know, sitting here today, whether the
11 licenses have in fact been -- whether the membership
12 interests have been transferred from NuVeda or its
13 subsidiaries to CWNV?

14 A Only based on Mr. Dushoff's representations
15 to me during my deposition in this office about a
16 month ago, and what Shane testified to earlier today.

17 Q Did there ever come a time, Ms. Goldstein,
18 when there was a discussion about exchanging your
19 nondilutable shares into dilutable shares?

20 A Yes.

21 Q What do you recall about that discussion?

22 A There were a number of discussions, the most
23 salient of which was a conversation that Pej and I had
24 at the Denny's in Nye County, where he presented to me
25 a formula where he would value my shares based on a

1 60 percent dilution with the intake of money.
2 Effectively what it did is it assumed that the
3 investment would require a 60 percent dilution of the
4 shares.

5 So what he offered me then was to increase my
6 nondilutable shares by that 60 percent such that once
7 the dilution happened, I would be back down to seven
8 percent dilutable shares; but that first tranche of
9 dilution with the 60 percent investment would have
10 already happened, thus I would have dilutable shares,
11 but after everybody else had diluted down by that
12 60 percent.

13 Q In essence, Dr. Bady was bumping your value
14 up and then taking away the dilutions?

15 A Correct.

16 Q And so what does that mean to you?

17 A That my nondilutable shares would have more
18 value as dilutable shares.

19 Q There came a time, Ms. Goldstein, where the
20 disinterested members -- I'll use air quotes around
21 disinterested members -- voted to expel you from the
22 do. Company you recall that?

23 A I do.

24 Q Do you recall ever having the discussion at
25 that time -- well, let me take a step back.

1 Do you recall when, approximately, that vote
2 took place?

3 A August 8, 2017.

4 Q Do you remember the time? Withdraw the
5 question.

6 Do you recall having a conversation at any
7 point during that meeting or thereafter about what the
8 fair market value of your interest should be?

9 A No.

10 Q Do you recall ever being presented with the
11 written agreement as to what the fair market value
12 should be between and among the members -- only the
13 members now?

14 A I'm sorry, I want to --

15 Q Let me withdraw -- let me withdraw the
16 question.

17 Did any member of NuVeda write you an e-mail
18 or send you a letter proposing -- I'm trying to get to
19 the point where we're not just talking about
20 conversation.

21 Was there any written proposal from any of
22 members from NuVeda?

23 A Not that I recall.

24 Q Was there ever a discussion among -- with you
25 involved -- among the members of NuVeda, talking about

1 hiring an appraiser to find the fair market value of
2 your shares in NuVeda?

3 A No.

4 Q Do you recall ever seeing an e-mail, letter,
5 piece of paper, document, that discussed among the
6 other members who to hire with respect to an appraiser
7 to value your shares in NuVeda?

8 A No.

9 Q Do you recall ever receiving anything from
10 respondents or their lawyers with respect to a value
11 for your shares in the company?

12 A I do.

13 Q And what do you recall?

14 A I recall receiving an e-mail with an
15 appraisal attached, between three weeks and a month
16 after they purported to expel me, that contained a
17 purported appraisal.

18 Q Okay.

19 A From Mr. Dushoff.

20 Q What do -- what was your reaction to that,
21 receiving that document?

22 A I mean, frankly, it was in keeping with what
23 had transpired up to that point with regard to dealing
24 with my partners in good faith. I did not think it
25 was in good faith or in any way accurate assessment of

1 the value of the company. I think it defied all of
2 our prior efforts to raise money based on various
3 valuations; but, you know, in each case, many, many
4 times higher than that stated in the appraisal.

5 I recall the appraisal being brief and with
6 no substantive support for the result.

7 I wrote back to Mr. Butell, who either at
8 that point or at some point became general counsel to
9 the company, and asked for the documents underlying
10 the appraisal, because at that point they hadn't been
11 given to me as a member of the company.

12 And, as I recall, there was no
13 response from -- well, I'm sorry, I take that back.
14 He did respond saying something to the effect of, I'll
15 get those to you shortly.

16 And, in my recollection, that was the last I
17 heard with regard to the appraisal or the purchase of
18 the shares.

19 Q You've also claimed that there are expenses
20 that you have that are reimbursable by the company; is
21 that correct?

22 A Correct.

23 Q Do you recall, sitting here today,
24 approximately what those expenses are?

25 A What they are?

1 Q Or how much, I'm sorry?

2 A I recall the big expenses. I think they're
3 between 50- and \$60,000.

4 Q Do you recall whether the proposed offer from
5 NuVeda contemplated returning your expenses?

6 A Not to my understanding.

7 Q Ms. Goldstein, in response to one of my
8 questions a moment ago, you mentioned the valuations
9 that you were going out to raise capital on.

10 Do you recall, sitting here today, whether an
11 individual named Dr. Bahri made a claim with respect
12 to having an interest -- an equity interest -- in
13 NuVeda?

14 A I do.

15 Q Do you recall whether -- well, were you
16 involved in making that offer to Dr. Bahri?

17 A I was not.

18 Q Do you recall who made the offer to
19 Dr. Bahri?

20 A In my understanding, it was Pej Bady.

21 Q And do you recall whether there was a
22 valuation attached to the company in that offer?

23 A In my recollection, Dr. Bady told us that the
24 valuation that he prescribed for Dr. Bahri's
25 investment was \$25 million.

1 Q Sitting here today, Ms. Goldstein, almost
2 18 months after you first made the request for the
3 underlying information for the, quote/unquote,
4 "appraisal," have you still to this date seen the
5 backup information supporting that number?

6 A I have not.

7 MR. FEUERSTEIN: No further questions.

8 ARBITRATOR BAKER: Mr. Wiley?

9 MR. WILEY: Why don't we go ahead and break
10 according to the plan, then we'll come back. 1:30?

11 ARBITRATOR BAKER: That's fine with me.
12 We'll be in recess until 1:30.

13 (Recess taken.)

14 ARBITRATOR BAKER: Back on the record.

15 Ms. Goldstein, do you understand you're still
16 under oath?

17 THE WITNESS: I do.

18 ARBITRATOR BAKER: Please proceed, Mr. Wiley.

19 MR. WILEY: Sure.

20 CROSS-EXAMINATION

21 BY MR. WILEY:

22 Q Ms. Goldstein, do you recall in November 2015
23 the attempts that you and the other minority members
24 of NuVeda attempted to expel Dr. Bady and Dr. Mohajer
25 from NuVeda?

1 A I don't recall specifically the time frame,
2 but I do recall the efforts, yes.

3 Q And do you recall whether or not that issue
4 was litigated in a preliminary injunction before
5 Judge Gonzalez?

6 A I recall the preliminary injunction hearing,
7 yes.

8 Q And do you further recall that the parties
9 participated in an evidentiary hearing before the
10 judge?

11 A Yes.

12 Q At close of the hearing, Judge Gonzalez
13 issued an order; isn't that correct?

14 A Correct.

15 Q Have you reviewed that order?

16 A I have.

17 Q Let's go ahead and look at Joint Exhibit 165.
18 And I know we're dealing with the Texas Instruments
19 over there so --

20 MR. WILEY: TRS-80.

21 THE WITNESS: Okay.

22 BY MR. WILEY:

23 Q Have you had a chance to adequately review
24 the document?

25 A Yes.

1 Q Is it your understanding that the judge's
2 order denied the parties' attempts to cross-expel each
3 other?

4 A Correct.

5 Q And also, in looking specifically at
6 paragraph 14, the judge's order, and it provides, and
7 I quote, "The terms of an operating agreement should
8 be given their plain meaning." Did I read that
9 correctly?

10 A Yes.

11 (Court reporter requests clarification.)

12 MR. FEUERSTEIN: "Should be given their plain
13 meaning."

14 BY MR. WILEY:

15 Q And to me, "plain meaning" refers to the
16 literal interpretation of the language provided.
17 Would you agree with that assessment?

18 A My understanding of "plain meaning" would be
19 that of having a common-usage definition, so the usual
20 standard understanding of a term or phrase.

21 Q And then you would further agree with me that
22 Judge Gonzalez' opinion is that the provisions of the
23 operating agreement, including the NuVeda operating
24 agreement, should be given their plain meaning in
25 interpretation of the provisions that are set forth

1 therein?

2 A Correct.

3 Q All right. Let's go ahead and turn to the
4 events that are before us today. And again, I want to
5 clarify and make sure that we're clear for the record,
6 you are not challenging the validity of the NuVeda
7 members' expulsion of your interest in the company;
8 correct?

9 A Restate that for me, please.

10 Q Okay. So you're not looking for a
11 reinstatement, as a remedy, into the company?

12 A Correct.

13 Q Instead, the challenge is whether or not the
14 provisions of the operating agreement dealing with
15 expulsion were properly followed?

16 A Correct.

17 Q Let's go ahead and turn to Exhibit 8, the
18 operating agreement. Specifically, you can go ahead
19 to turn to section 6.2.

20 A Okay.

21 Q All right. Would you agree that section 6.2,
22 entitled, "An expulsion or death of a member," that
23 provides the procedures for expulsion of a member's
24 interest in NuVeda?

25 A Correct.

1 Q There's no other section in the operating
2 agreement or addendum or amendment which governs the
3 expulsion procedures?

4 A I don't know.

5 Q Do you recall testifying last month in your
6 deposition that you were the primary author of the
7 operating agreement?

8 A I do.

9 Q Do you know as the primary author of the
10 operating agreement whether or not there is any other
11 sections in the operating agreement that deal with
12 expulsion?

13 A I don't know.

14 Q You don't know?

15 A Correct.

16 Q Have you reviewed the operating agreement
17 recently?

18 A Not recently, not in its entirety.

19 Q Do you know whether or not you prepared any
20 addendums or amendments to the operating agreement?

21 A I have not.

22 Q But if there were to be -- well, strike that.
23 Let's go back.

24 Do you know whether or not anybody else
25 provided or prepared any addendums or amendments to

1 the operating agreement?

2 A I was presented with addendums or amendments
3 to the operating agreement I believe in 2016.

4 Q Do you know whether or not those addendums or
5 amendments dealt with the expulsion procedures?

6 A I don't recall.

7 Q So the second paragraph of section 6.2 that
8 begins with "Upon the expulsion," you would agree with
9 me that that paragraph provides that "An expelled
10 member is entitled to receive fair market interest in
11 his or her membership interest in the event of an
12 expulsion"; correct?

13 MR. FEUERSTEIN: I think you misspoke, Jason.
14 I think you meant "fair market value."

15 MR. WILEY: I'm sorry. "Fair market value."

16 THE WITNESS: So as I read it, it says, "The
17 fair market value of that member's ownership
18 interest."

19 BY MR. WILEY:

20 Q And in the event that the voting members --
21 and that's a defined term we'll get to in a second --
22 and the expelled member cannot agree on a price for
23 the expelled member's interest in the company, this
24 paragraph provides for the determination of the value
25 of the interest; right?

1 A It does.

2 Q And specifically it states, "In the absence
3 of a formal agreement as to the fair market value, the
4 voting members shall hire an appraiser to determine
5 the fair market value." Did I read that correctly?

6 A Tell me where you're reading, please.

7 Q It is in the second paragraph, about five
8 lines down -- six lines down, maybe?

9 A I see it.

10 Q It begins with "In the absence of an informal
11 (sic) agreement as to the fair market value, the
12 voting members shall hire an appraiser to determine
13 the fair market value." Did I read that correctly?

14 A Almost.

15 Q Where did I ...

16 A You added that article -- but okay.

17 Q The gist of it was correct?

18 A Correct.

19 MR. FEUERSTEIN: You got the spirit down.

20 BY MR. WILEY:

21 Q So that term "voting member" as defined, you
22 set forth in your arbitration brief that even after
23 notification of your expulsion, you were still
24 classified as a voting member. Is that your
25 position?

1 A I'm sorry, restate that for me.

2 Q Your arbitration brief argues -- and, again,
3 this is for the first time -- that after notification
4 of your expulsion, that you were still classified as a
5 voting member; is that correct?

6 A You're asking if an arbitration brief reads,
7 and I haven't -- I haven't reviewed the final copy, so
8 I don't know what the arbitration brief reads.

9 Q Okay. As you sit here today and testifying
10 in your capacity as you, the individual claimant who
11 is prosecuting claims against the company, do you know
12 whether or not you are still alleging that you are a,
13 quote/unquote, "voting member" pursuant to the terms
14 and condition of the operating agreement?

15 A I believe when you and my counsel reached an
16 agreement whereby I was waiving my right to seek
17 reinstatement, at that juncture I became a nonvoting
18 member.

19 Q So any argument where you allege that you, as
20 a voting member, should have been consulted regarding
21 the appraisal, would be in error?

22 A No.

23 Q So this is what I'm trying to pin down. I'm
24 trying to figure out exactly where it's coming from,
25 because this is the first time we've seen this

1 argument.

2 Your previous testimony was that you do not
3 believe that you were a voting member once the
4 agreement between counsel was made, wherein we're just
5 trying to figure out the determination of your value,
6 not whether or not the expulsion was wrongful?

7 A Correct.

8 Q So is it your testimony or is it your
9 position today that you should have had a part in the
10 retention of an appraiser back in August of 2016?

11 A Yes.

12 Q Excuse me, 2017?

13 A Yes.

14 Q And you're relying upon what provision in
15 asserting that allegation?

16 A So if you scroll up under 6.2, the plain
17 language of the paragraph states the mandatory number
18 of votes one must have in order to expel or expulse a
19 member. In that case, they use what's called
20 disinterested voting interest. Thus, we would assume
21 that everybody who is not being expelled, whose
22 memberships are not at risk, would be the
23 disinterested voting interest. If you move --

24 Q I agree with that.

25 A Okay. So if you move down in that paragraph,

1 what you don't see is the word "disinterested." What
2 you -- so what we then do, it becomes more inclusive.
3 Giving the plain meaning to each of the words in that
4 same section, we differentiate between the
5 disinterested voting members and voting member.

6 And so I think patently the distinction
7 between the disinterested member, which would be not
8 me, when they're voting on my shares --

9 Q Okay.

10 A -- and the voting members, which would be
11 everybody, is a plain reading of 6.2.

12 Q But wouldn't you agree with me that once you
13 were expelled from the company, you were no longer a
14 voting member, either, because you weren't a member at
15 all?

16 A Well, I think you and I have different
17 understandings as to when I was expelled. My belief
18 is that my expulsion was done in bad faith, without
19 good cause. The respondents failed to adhere to the
20 plain meaning of 6.2. They failed to make the
21 payments required by 6.2. They failed to obtain the
22 appraisal on a good-faith basis from an independent
23 party as required by 6.2. And thus, I don't think any
24 of the circumstances giving rise to my expulsion
25 would, in fact, satisfy the requirements of 6.2.

1 Q Yeah.

2 A So you're -- go ahead.

3 Q So again, I think we're kind of going back in
4 time as to different causes of action that were
5 alleged prior to the agreement between the parties.
6 So once you were expelled from the company, my
7 question is, you were no longer a voting member;
8 correct?

9 A Once I was properly expelled from the
10 company, I would no longer be a voting member;
11 correct.

12 Q And there's nowhere in section 6.2 of the
13 operating agreement which provides that an expelled
14 individual is still a member of the company until
15 payment of his or her interest is tendered, is
16 there?

17 A It would be my understanding that unless and
18 until the terms of the operating agreement regarding
19 an expulsion had been fully and finally satisfied,
20 that one could not say that that member had been
21 expelled.

22 Q But, again, that wasn't my question.

23 There's nowhere in the section 6.2 of the
24 operating agreement which provides that an expelled
25 individual is still a member of the company until

1 payment is tendered; correct?

2 A But I believe you're assuming facts not in
3 evidence; because what I'm saying is that unless one
4 has been fully and fin- -- and actually expelled, then
5 one would remain a voting member.

6 So I don't think the company could just --
7 I'll rephrase.

8 I don't think any company could just
9 ceremoniously expulse someone, not abide by the rest
10 of the terms of the operating agreement, not pay the
11 person, and then assume that that person had no rights
12 in the company. So --

13 Q But you would agree with me that there is a
14 time provision within that provision within which
15 payment was to be tendered; correct?

16 A Point it to me, please.

17 Q Okay. So in that same second paragraph --

18 A Okay.

19 Q -- about nine lines down --

20 A Right.

21 Q -- "The voting members may elect by written
22 notice that is provided to the expelled or deceased
23 member's successor in interest, estate, or beneficiary
24 or beneficiaries, within 30 days after the member's
25 expulsion or death, to purchase the former member's

1 ownership interest." Did I read that correctly?

2 A Yes.

3 Q So let's assume for purposes of my question
4 right now --

5 A Right.

6 Q -- that expulsion was proper, you would agree
7 with me that the company had a period within which to
8 tender the payment; correct?

9 A I believe there is a period during which the
10 company had to tender the payment, but I don't believe
11 that it's based on the portion of the sentence that
12 you said.

13 I think that -- my understanding of that
14 language relates to the notice, and that they would
15 have that period of time in which to elect in writing
16 how they wanted to proceed with their payment.

17 Q Okay.

18 A And thereafter, that would determine when in
19 fact the payment would be due.

20 Q So I agree with that assessment. I agree
21 that the notice has to be provided within 30 days, as
22 to how they were going to proceed; correct?

23 A Correct.

24 Q So you would agree with me that in a perfect
25 world if the expulsion was proper, in the pendency of

1 that 30 days the expelled party would no longer be a
2 member of the company?

3 A I don't.

4 Q Well, doesn't it say former member?

5 A Okay.

6 Q Okay.

7 A But I think you're only making my argument
8 that if the company purports to expulse a member and
9 then does nothing further to satisfy the company's
10 obligations under the terms of the operating
11 agreement, one can't thus just proceed and say, Oh,
12 it's a former member, a current member, now a voting
13 member, et cetera.

14 The mechanisms in place for triggering the
15 expulsion were not followed by the respondents. And
16 as such, in my understanding, unless and until I
17 decided that -- that I wouldn't contest the expulsion,
18 I was still a member of the company. And that's what
19 I testified to at my deposition, I still believed
20 myself to be a member of the company until my counsel
21 entered into the agreement with you.

22 Q All right. And again, breaking down the
23 provision of the agreement, okay, sets forth that in
24 the event an expulsion occurs, the voting interests --
25 excuse me -- the voting members are entitled to obtain

1 an appraiser for determination of the fair market
2 value of the company; correct?

3 A I'm sorry, say it for me again.

4 Q Okay. 6.2 --

5 A Yes.

6 Q -- provides for the vehicle in which to
7 proceed in the event of an expulsion; correct?

8 A Correct.

9 Q And in the event an expulsion occurs, 6.2
10 provides that the voting members of the company are
11 entitled to retain an appraiser; correct?

12 A Correct.

13 Q And that's for the determination of the
14 expelled party's -- the fair market value of their
15 interest; correct?

16 A Correct.

17 Q And the agreement further states that notice
18 is to be provided to the former member as of -- or
19 after expulsion occurs, as to how the company is going
20 to proceed with notice of the fair market value;
21 correct?

22 A Correct.

23 Q It's your understanding that NuVeda retained
24 Mr. Webster to provide an appraisal?

25 A Yes.

1 Q And they provided Mr. Webster's appraisal to
2 you, setting forth the company's fair market value;
3 correct?

4 A They provided the Webster appraisal to me,
5 yes.

6 Q And as you testified in your deposition,
7 Mr. Butell contacted you by e-mail with the Webster
8 appraisal attached; isn't that correct?

9 A I did receive it via e-mail from Mr. Butell;
10 correct.

11 MR. WILEY: Okay. Let's go ahead -- what is
12 that, 258?

13 MR. FEUERSTEIN: Yep.

14 MR. WILEY: 258.

15 (Joint Exhibit 258 was marked for
16 identification.)

17 BY MR. WILEY:

18 Q Ms. Goldstein, do you recognize this
19 document?

20 A I do.

21 Q Are any of these the e-mails you received
22 between you and Mr. Butell?

23 A They are.

24 Q And you were provided with the Webster
25 appraisal at that time?

1 A In one of these e-mails, yes.

2 Q Let's go ahead and turn to the Webster
3 Business Group appraisal.

4 A Okay.

5 Q Previously you testified you believe this
6 appraisal was not done in good faith; correct?

7 A Correct.

8 Q Not prepared in good faith, I should say.
9 Let's look at the assets. Cash in hand,
10 \$35,000. Do you have any reason to dispute that that
11 was the amount of cash that NuVeda had at the time the
12 appraisal was prepared?

13 A I have no basis to make an opinion either
14 way.

15 Q Second asset is 35 percent of CWNV, LLC. Is
16 it your understanding that at the time the appraisal
17 was conducted that NuVeda possessed a 35 percent
18 interest in CWNV, LLC?

19 A I don't know.

20 Q Had you reviewed the MIPA by and between the
21 parties?

22 A I have.

23 Q Is it your understanding that the MIPA
24 provided for the creation of CWNV, LLC?

25 A Yes.

1 Q And that CWNevada was to retain its
2 65 percent interest in the company?

3 A Yes.

4 Q And that NuVeda would have a 35 percent
5 interest in the company?

6 A Yes.

7 Q And you would agree with me that a 35 percent
8 valuation in the amounts set forth at 3.5 million
9 would provide for a \$10 million overall value of
10 CWNV?

11 A If you're asking me to confirm the math, then
12 yes. If you're asking me to confirm anything further,
13 I wouldn't.

14 Q I'm just asking you to confirm the math.

15 A Okay.

16 Q And then the assets of Clark Natural
17 Medicinal Solutions, LLC, \$350,000; is that correct?

18 A That's what it reads.

19 Q Do you know what assets Clark Natural
20 Medicinal Solutions possessed as of August 19, 2017?

21 A I had no licenses.

22 Q And what kind of license?

23 A Clark Natural Medicinal Solutions I believe
24 had a dispensary -- I'm sorry, a production and a
25 cultivation license.

1 Q A production and cultivation license is
2 valued at \$350,000; correct?

3 A Well, all I'm reading here is the asset is
4 list as the Clark Natural Medicinal Solutions and an
5 amount.

6 So with regard to what constitutes the assets
7 of Clark Natural Medicinal Solutions and/or the
8 calculation of the value, I -- as you see, I requested
9 the documents that would underlie either and both of
10 those and received none.

11 Q Understood. And all I'm asking you to do is
12 to confirm the math again.

13 So Clark Natural Medicinal Solutions, the
14 sole assets that they possess as of August 19, 2017,
15 was two licenses: One cultivation and one production?

16 A I don't know the --

17 MR. FEUERSTEIN: Objection. I think you're
18 misleading the witness in the evidence in the case. I
19 mean, I think you're misleading the witness.

20 MR. WILEY: She testified --

21 MR. FEUERSTEIN: I'll rebut it, but -- okay.

22 MR. WILEY: Okay.

23 Q You testified that Clark Natural Medicinal
24 Solutions possessed a cultivation and a production
25 license; correct?

1 A Correct.

2 Q Do you know whether or not any assets were
3 owned by Clark Natural Medicinal Solutions?

4 A I don't know.

5 Q And this appraisal affixes an amount of
6 \$350,000 to Clark Natural Medicinal Solutions;
7 correct?

8 A Correct.

9 Q And NuVeda was a 100 percent owner of Clark
10 Natural Medicinal Solutions?

11 A Not according to our legal documentation,
12 which showed that we were all individual members with
13 separate ownership interests in each of the
14 entities.

15 Q Okay. But the operation of NuVeda and
16 documentation that was provided to certain individuals
17 and entities show that NuVeda was the 100 percent
18 owner of Clark Natural Medicinal Solutions?

19 MR. FEUERSTEIN: Object to the form, with
20 respect to time, when it was done.

21 ARBITRATOR BAKER: Sustained.

22 BY MR. WILEY:

23 Q Okay. So the amount affixed to Clark Natural
24 Medicinal Solutions in this appraisal is \$350,000?

25 A Correct.

1 Q And you previously testified that Clark owned
2 a cultivation license and a production license;
3 correct?

4 A Correct.

5 Q You heard Mr. Terry's testimony regarding his
6 acquisition of a cultivation and a production
7 license?

8 A I did.

9 Q And the amount that he paid for the
10 cultivation and production license in July -- June or
11 July of 2016 -- excuse me, 2017 -- was
12 approximately -- was \$20,000 each; correct? \$200,000
13 each?

14 A Correct.

15 Q With respect to the dispensary license, you
16 heard Mr. Terry's testimony regarding the sale of the
17 dispensary license and assets by Terra Tech; right?

18 A I did.

19 Q And the amount affixed to that was about
20 \$6.7 million?

21 A I -- I don't recall.

22 Q Okay. Approximately 6.25?

23 A I don't recall.

24 Q And that was for a dispensary at Terra
25 Tech's --

1 A In my understanding, yes.

2 Q So again, based upon those amounts, the
3 comparable sales, you would admit that Webster
4 Business Group appraisal and the amounts affixed to
5 that were in the same ballpark as outside sales and
6 valuations of other licenses?

7 MR. FEUERSTEIN: Objection.

8 THE WITNESS: I would not.

9 MR. FEUERSTEIN: I think he's asked -- he's
10 asking for some sort of opinion as to what this is
11 based on doing the arithmetic problem that has nothing
12 to do with value. And the experts are going to come
13 in and testify to that.

14 ARBITRATOR BAKER: Overruled.

15 BY MR. WILEY:

16 Q Turn to the liabilities.

17 A Yep.

18 Q Do you have any reason to dispute the amount
19 of the liabilities that are set forth in the
20 appraisal?

21 A Again, I requested the underlying information
22 and it was not provided.

23 Q And as you sit here today, in your testimony
24 that you're providing today, you have no reason to
25 dispute the amounts of the liabilities that are set

1 forth in the appraisal?

2 A Well, as we sit here today, my understanding
3 is the judgment to 2113 investors was since withdrawn,
4 or he decided that he wouldn't -- would not exercise
5 it. Attorneys' fees for litigation, I understand that
6 the respondents were very busy in the Forefront
7 litigation and have been paying you guys for this
8 litigation. I understand that the Forefront
9 litigation resulted in an adverse judgment of almost
10 \$4 million.

11 The debt to prove 2 Prime would be something
12 that I would dispute because, as I testified to
13 previously, Pej is an owner of 2 Prime; and thus,
14 servicing that debt over any of the other debts would
15 be self-dealing and thus inappropriate, especially to
16 include in the liability sheet when trying to come up
17 with the fair market value.

18 Debt to the Windmill Group, I have no
19 understanding as to how that number was obtained.
20 Liability is not stated here. I see "Shane Terry
21 litigation, future attorneys' fees and award to
22 Terry." Notably, I'm absent from that.

23 But, yeah, I mean, I think it's -- it's
24 certainly not how I would proceed to be a fair market
25 value assessment of a medical-marijuana company with

1 six licenses in Southern Nevada.

2 Q But you have no information or knowledge, as
3 we sit here today, disputing any of the liabilities
4 set forth in this appraisal?

5 A Other than what I just testified to?

6 Q Other than the 2 Prime; is that correct?

7 A Correct.

8 Q Did you ever execute a litigation consulting
9 and expert services agreement with Gryphon Valuation
10 Consultants?

11 A I believe so. I -- I've certainly executed a
12 contract with the company.

13 Q Do you know whether or not it was a
14 litigation consulting and expert services agreement?

15 A I don't know.

16 Q Have you had an opportunity to review
17 Mr. Parker's expert reports compared in conjunction
18 with this litigation?

19 A I've -- I've not read them.

20 Q But you would agree with me that Mr. Parker
21 was initially retained by Shane Terry; correct?

22 A Correct.

23 Q And do you know whether or not -- or strike
24 that.

25 Mr. Parker prepared an expert report for

1 Mr. Terry in May of 2016. Do you have any knowledge
2 as to that?

3 A I recall that he was Shane's expert in this
4 matter and I don't recall the timing.

5 Q But at that time, May of 2016, you still
6 possessed an ownership interest in NuVeda; correct?

7 A Correct.

8 Q Do you recall Mr. Parker preparing a
9 supplemental report in February of 2018?

10 A I don't recall.

11 Q Have you reviewed the February 2018
12 supplement or any portions thereof?

13 A Not that I know of.

14 Q In February 2018 you had been expelled from
15 NuVeda at this time?

16 A Excuse me?

17 Q In February of 2018 you had been expelled --
18 or purportedly expelled from NuVeda?

19 A Purportedly expelled; correct.

20 Q And February of 2018 you hadn't obtained an
21 expert witness of your own; right?

22 A I don't recall.

23 Q You don't recall whether or not you ever
24 retained an expert -- or excuse me -- disclosed an
25 expert witness?

1 A No. I don't remember when it was.

2 Q You certainly never disclosed Mr. Parker as
3 an expert witness in a disclosure, did you?

4 A I don't recall when I did.

5 Q Would you agree with me that the first time
6 that you indicated that Mr. Parker was going to serve
7 as an expert witness for you was in this second
8 supplement that he provided in December of 2018?

9 A I promise that I still don't recall.

10 Q And you haven't had a chance to review any of
11 Mr. Parker's methodologies?

12 A I've not, other than to speak with my
13 counsel.

14 Q Are you aware that Mr. Parker bases his
15 opinion, in large part, on CWNV projections?

16 A No.

17 Q Are you aware whether or not Mr. Parker uses
18 the same methodology in determining yours and
19 Mr. Terry's purported value of the respected interests
20 in the company, even though the expulsions occurred
21 17 months apart?

22 A I don't.

23 Q At the time of Mr. Terry's expulsion in March
24 2016, do you know whether or not the NuVeda
25 dispensaries were open?

1 A I don't know.

2 Q Do you know whether or not the NuVeda
3 dispensaries were open at the time you were
4 purportedly expelled?

5 A I believe so.

6 Q And in that that -- it's your testimony that
7 they were open, which you say you believe so, you
8 would agree with me that NuVeda had tangible revenues
9 and profits at that time, in August of 2017?

10 A Yeah, I don't know that to be the case.

11 Q Did you ever provide any sales information to
12 Mr. Parker to assist with the preparation of his
13 reports?

14 A I did not.

15 Q It's your testimony that your percentage
16 interest in NuVeda was always equal to seven
17 percent?

18 A Say that to me again, please.

19 Q Is it your testimony that your percentage
20 interest in NuVeda was always equal to seven
21 percent?

22 A Yes.

23 Q Previously you testified that there was a
24 \$22 million consideration as part of the MIPA; is that
25 correct?

1 A Yeah.

2 Q What provision in the MIPA are you relying
3 upon?

4 A If my recollection serves, in the preliminary
5 injunction hearing before Judge Gonzalez, Brian
6 Padgett testified -- and I wasn't present because I
7 had to leave to go to my job -- and subsequently read
8 his transcript. As I recall, he testified during his
9 testimony that the value that CW was bringing to this
10 deal was not less than \$22.

11 Q That was never set forth anywhere in the
12 actual MIPA written document, though; correct?

13 A I don't recall; but as I testified to, I
14 believe that that's what Padgett testified to in order
15 to overcome the preliminary injunction.

16 Q And isn't it true that Mr. Padgett's
17 valuation of the 22 million wasn't simply all cash,
18 but there was also other considerations?

19 A I don't recall that.

20 MR. WILEY: I have nothing further.

21 ARBITRATOR BAKER: Mr. Dushoff?

22 MR. DUSHOFF: Thank you. And, actually,
23 we'll be brief on this one. I just think we need to
24 clear up something.

25 CROSS-EXAMINATION

1 BY MR. DUSHOFF:

2 Q I wonder, do you have the operating agreement
3 in front of you?

4 A I do.

5 Q On August 8th, the members of NuVeda voted to
6 expel you; is that correct?

7 A That's correct.

8 Q And it's also fair to say in here that after
9 a party is expelled, then that's when they try and get
10 the fair market value of a membership's interest;
11 correct?

12 A I think you and I are heading down the same
13 direction that --

14 Q No, I'm just asking -- I'm just -- I'm asking
15 you a question.

16 After a party is expelled, that's when they
17 hire -- the voting members hire an appraiser in order
18 to determine the value of the expelled member; is that
19 correct?

20 A I believe that once a member has -- their
21 interest have been voted for expulsion, the company
22 still has an obligation to abide by the remainder of
23 that paragraph and pay fair market value for those
24 shares in order for the -- for the member to be
25 expelled.

1 Q I'm going to -- I'm going to ask you to
2 please answer my question, and it's a simple question.

3 A Okay.

4 Q All right. Only after -- under 6.2, only
5 after a member is expelled from the corporation under
6 6.2, that that's when it goes into effect to determine
7 the fair market value of that member's shares? I'm
8 not asking anything else but that specific question.

9 A I disagree.

10 Q So let's read this. It says, "Upon the
11 expulsion or death of a member, the member's successor
12 in interest, estate, or beneficiary -- or
13 beneficiaries as the case may be -- shall be entitled
14 to receive from the company in exchange for all the
15 member's ownership interest, the fair market value of
16 that membership's interest." Okay. Then it says
17 "adjusted" and so forth.

18 It says, "upon the expulsion or death."
19 Well, you didn't die, so it's upon the expulsion;
20 correct?

21 A Okay.

22 Q Okay. So upon the expulsion, then all the
23 rest of the par- -- all that stuff about the fair
24 market value happens; correct? That's all I'm asking.

25 A I'm reading what you're reading, but I think

1 you need to read them in pari materia, which would
2 lead you to say that they have to actually continue to
3 go by the step-by-step directions --

4 Q I'm --

5 A -- to ex- --

6 Q Right.

7 A -- to expulse a member.

8 Q I'm not -- I'm not asking --

9 A You keep talking over me --

10 Q I'm not asking you about that.

11 A -- but I'm just telling you my answer.

12 MR. FEUERSTEIN: I'm sorry, Mr. Dushoff, let
13 her finish her answer, please.

14 THE WITNESS: So my answer to your question
15 is, I don't believe that a member can be expelled from
16 the company without the company having adhered to the
17 terms of the agreement.

18 BY MR. DUSHOFF:

19 Q Okay.

20 A And I think the agreement is clear in stating
21 that there needs to be a good-faith appraisal and
22 value paid.

23 Q Okay, good. Okay. Let's go there. All
24 right. And that's where I want to go. That's a
25 question we keep circling around to, and we get to the

1 same point.

2 The only way they can determine fair market
3 value is after somebody either dies or gets expelled.
4 That's the plain meaning of this agreement that you
5 drafted; correct?

6 Your question -- what you brought up is that
7 you don't think they did a correct fair market value;
8 therefore, they breached it; correct?

9 MR. FEUERSTEIN: Objection. It's compound;
10 two questions.

11 BY MR. DUSHOFF:

12 Q Okay. So let me ask you this question: You
13 believe that NuVeda breached the agreement because
14 they didn't give you proper fair market value;
15 correct, in a breach of good faith and fair dealing?

16 A Among other things; correct, yes.

17 Q No, but -- no, that's the only thing that's
18 left. I know you have other things in your complaint,
19 but you're saying because they did not provide you
20 good faith value in the fair market value through
21 Webster's, that they breached the section -- breached
22 the good faith and fair dealing; correct?

23 A My hesitation is that you -- you will say
24 that your question is simple, and your question isn't
25 simple to me. Your question is sort of a multi-part

1 recitation of what you believe the facts to be, with a
2 "correct" at the end.

3 What I respectfully ask you is to ask me when
4 do I think somebody was -- could be expelled. Because
5 what I believe is a vote happened and we are no longer
6 contesting the validity of that vote. But unless and
7 until the expelled member gets the compensation due to
8 the expelled member -- please don't put your hand up
9 to stop me, because I'm just --

10 Q I'm not stop- --

11 A -- going to finish my thought --

12 Q No. Whoa. Hold on, Ms. Goldstein, all
13 right. I'm not putting my hand up to stop you. All
14 right.

15 ARBITRATOR BAKER: Let her finish.

16 Ms. Goldstein.

17 MR. FEUERSTEIN: Do you remember where you
18 were, Jen?

19 THE WITNESS: I don't believe one can be
20 expelled, just on a vote, without payment. That's
21 what I believe.

22 BY MR. DUSHOFF:

23 Q Okay. Right. And payment, and discussing
24 the fair market value or having to determine the fair
25 market value, is after somebody is expelled. I'm not

1 talking about whether it's right or wrong or the
2 incorrect number, I'm just talking in order: One,
3 two. You don't determine fair market value and then
4 you expel them under this section. You expel them,
5 then determine the fair market value. That's all I'm
6 asking.

7 A So I would recharacterize it a bit and I
8 would say there's a vote at the first step; that's the
9 vote for expulsion.

10 Q Good. Okay.

11 A Then there's a come together, let's try to
12 come up with a fair dollar amount. Then there's an
13 appraisal. And then there's payment.

14 And I agree with you, there was a vote. And
15 we're no longer contesting the validity of the vote.

16 What didn't happen was everything thereafter.
17 So what you're saying is an expulsion, I think was a
18 vote.

19 Q Right, they voted to expel you?

20 A Correct.

21 Q And the fact that you just stated, you're not
22 challenging whether they had good cause at that time
23 to expel you, that -- that ship has sailed in this
24 matter; correct?

25 A Yes, sir.

1 Q So in order of dates, your challenge is after
2 the expulsion they did not give you the proper payment
3 or fair market value of your shares in NuVeda?

4 A Correct. And in addition, they didn't try to
5 engage me in the informal resolution of it, yes.

6 Q Okay.

7 A Correct.

8 Q And that happened after they -- after they
9 voted to expel you?

10 A Correct.

11 Q That -- that's all I was trying to get out of
12 that.

13 MR. DUSHOFF: One moment.

14 I'm good. Thank you.

15 ARBITRATOR BAKER: Mr. Feuerstein?

16 MR. FEUERSTEIN: I have some rebuttal for the
17 witness.

18 ARBITRATOR BAKER: Okay.

19 REDIRECT EXAMINATION

20 BY MR. FEUERSTEIN:

21 Q Ms. Goldstein, both Mr. Wiley and Mr. Dushoff
22 spent some time with you about section 6.2. And I am
23 awfully concerned about beating and then kicking the
24 dead horse, but I think we should walk through a
25 little bit of it with you.

1 As you noted a moment ago in 6.2, what it
2 says is after the "upon" language that Mr. Dushoff was
3 focusing on, was that "fair market value may be
4 determined * informally by a unanimous, good-faith
5 agreement of all the voting members." Did I read that
6 correctly?

7 A You did.

8 Q In that sense, does it make sense to you that
9 the expelled member, or the member who was voted to be
10 expelled, is not included in the definition of voting
11 members?

12 A No, that would not make sense.

13 Q Can you explain why that would not make
14 sense?

15 A Because the idea would be to bring both the
16 voted-upon member and the voting members together to
17 try to work out this informal agreement.

18 Q Okay. In the very next sentence, do you see
19 the term "voting members"?

20 A I do.

21 Q Is there anything that suggests that that
22 term has been changed in the definition from the
23 sentence that precedes it to the sentence that it's
24 used therein?

25 A No, sir.

1 Q And you're not suggesting that they had to
2 have unanimity; right? It doesn't say "all voting
3 members" in that sentence; does it?

4 A No.

5 Q It just says that you should be involved in
6 the process of hiring --

7 MR. DUSHOFF: Objection, misstates. It
8 doesn't say "you." It says "voting members."

9 MR. FEUERSTEIN: All right. It says that --

10 Q But "voting members," it's your under- --
11 it's your contention in this arbitration that you were
12 still a voting member at that time?

13 A Yes.

14 Q Okay. Now, Mr. Dushoff -- Mr. Wiley went
15 through a little math exercise with you.

16 So if it's okay with the Arbitrator, I'm
17 going to pass you my phone with the calculator -- with
18 the calculator on it. Is that okay?

19 ARBITRATOR BAKER: That's fine.

20 BY MR. FEUERSTEIN:

21 Q Okay. Now, it's been --

22 MR. WILEY: Do the answers pop up?

23 MR. FEUERSTEIN: It doesn't. She gets the
24 right numbers. Watch, it's so cool.

25 Q It's our -- it's your contention,

1 Ms. Goldstein, that the consideration that was paid
2 pursuant to the MIPA was \$22 million; correct?

3 A No, sir, that's not my testimony.

4 Q Well, the con- -- I'm sorry, the
5 consideration that Mr. Pej had testified to --

6 A Yes.

7 Q -- was \$22 million?

8 A Yes.

9 Q Okay. And if that was indeed true testimony,
10 can you tell me, sitting here today, how one would go
11 about calculating what the value of the 35 percent
12 interest would be?

13 A Ask me the question again, I'm sorry.

14 Q Well, let me --

15 A I wasn't a science major, so you need to go
16 slowly.

17 Q Let me walk you through it.

18 A Please.

19 Q If 65 percent --

20 A Yes.

21 Q -- if one pays 22 million for 65 percent, how
22 does one calculate what a hundred percent --

23 A So you're asking me for new co, for CWNV,
24 effectively?

25 Q That's right.

1 A So what I would do is I would effectively say
2 66 percent and 33 percent is 99, which is pretty
3 darned close to a hundred; and I would make it in
4 thirds.

5 Q Okay.

6 A I would say that each third is therefore
7 worth a million dollars. They had 22 million, because
8 they had two-thirds. We had one-third, we'd have
9 11 million.

10 Q Okay. I was a psychobiology major, so I
11 would do some science.

12 A I went to Yale.

13 Q So let's talk about how we would do it
14 arithmetically.

15 A Okay.

16 Q If it's \$22 million --

17 A Yes.

18 -- it's 65 percent. The one way to figure
19 out a hundred percent is to take \$22 million -- and if
20 you could put that number in --

21 A Got it.

22 Q -- and divide it by .65, or 65 percent. And
23 what's that number?

24 A 33,846,153.8.

25 Q Okay. And if I multiplied that by

1 35 percent, because that's what we're saying that
2 NuVeda retained, what's that number?

3 A 11,846,153.8.

4 Q Okay. Now, from January 1, 2016, when
5 Mr. Padgett -- or January 2016, when Mr. Padgett
6 testified to your expulsion, what facts changed in the
7 world with respect to the cannabis market in Nevada?

8 A Probably most significantly, Nevada passed
9 what's called adult use, or adult recreational use, of
10 marijuana.

11 Q And you were in the room when Mr. Terry
12 testified that the increase, in his view, was a
13 five-fold increase?

14 A Correct.

15 Q Okay. And if you multiply the number you
16 have done right there just by five, what's the number
17 you get?

18 A 59,230,769.2.

19 Q Okay. Now, other things happened in between
20 January of 2016 and August of 2017; correct?

21 A Yes.

22 Q Now, for example, the dispensaries that were
23 operating under CWNV became oper- -- were operational;
24 correct?

25 A Correct.

1 Q In addition, you've learned through this
2 litigation, I believe, that there was an agreement
3 with respect to the other Clark licenses; is that
4 true?

5 A By other Clark, you mean the Apex licenses?

6 Q The ones that were not -- yes --

7 A Yes.

8 Q -- the ones that were not put forward in the
9 MIPA?

10 A That's correct, yes.

11 Q Do you recall, sitting here today, what
12 that -- what that agreement roughly was?

13 A I don't. I know that Joe Kennedy and I had
14 coffee a couple weeks ago, and I know over the course
15 of coffee he told me --

16 MR. WILEY: Hold on. Objection. I'm going
17 to object to any testimony that is elicited from that
18 discussion. My understanding is that discussion had
19 to do with settlement purposes.

20 MR. FEUERSTEIN: All right. Well, we don't
21 have to use it.

22 Let me put in front of the witness a document
23 which should have been on the joint exhibit list. And
24 I can't imagine it's objectionable because it was
25 produced by respondents. It's a document

1 Bates-labeled RESP 54429 to 54432.

2 ARBITRATOR BAKER: Let's see if they have any
3 objection.

4 MR. FEUERSTEIN: Oh, I'm sorry.

5 MR. WILEY: No objection.

6 MR. FEUERSTEIN: So let's mark this as
7 JX 259 --

8 ARBITRATOR BAKER: 58.

9 MR. FEUERSTEIN: -- or 59 -- 58 was the
10 e-mail, I believe.

11 (Joint Exhibit 259 was marked for
12 identification.)

13 BY MR. FEUERSTEIN:

14 Q Take a moment, Ms. Goldstein, to read this
15 document. Let me know if it refreshes your
16 recollections as to any agreement with respect to the
17 other two Clark licenses.

18 (Witness reviewing document.)

19 Q Had a chance to review that document?

20 A I have.

21 Q Just by way of background, Ms. Goldstein,
22 when you were a member in August of -- I'm sorry --
23 April of 2016, you were still a member of NuVeda;
24 correct?

25 A Correct.

1 Q You recall ever having any discussions about
2 this agreement?

3 A No.

4 Q You see that this agreement contemplates a,
5 quote/unquote, "loan" of \$6 million?

6 A Yes.

7 Q That's in paragraph 1?

8 And do you have a recollection, sitting here
9 today, of what was -- given that \$6 million loan, what
10 Apex or Land/OPS was receiving for that loan?

11 A I'm sorry, ask me that question again.

12 Q Yeah. What was -- what was the consideration
13 for that? What was Land -- the entity that's
14 abbreviated Land/Ops, what are they receiving for that
15 loan of \$6 million?

16 A My understanding, but -- is not actually from
17 this document. But my understanding is that they were
18 going to receive the licenses that were previously
19 held by Clark Natural Medicinal Solutions.

20 Q Okay. Does it refresh your recollection,
21 Ms. Goldstein, that the Apex entities would have
22 60 percent of an ongoing enterprise?

23 A Yes.

24 Q And does it refresh your recollection that
25 NuVeda was retaining a 40 percent interest in an

1 ongoing enterprise?

2 A Yes.

3 Q And back to our math equation. \$6 million --
4 \$6 million --

5 A Oh, I'm sorry. I was just getting out --

6 Q It's okay. You don't need it -- you
7 shouldn't need it for this one.

8 If \$6 million was getting or buying someone
9 60 percent of an enterprise, what's the other
10 40 percent valued at?

11 A Four million.

12 Q Do you recall Mr. Terry when he was
13 testifying today -- I think Mr. Dushoff or Mr. Wiley
14 asked you the question as to what Mr. Terry testified
15 as to the purchase of the licenses. Do you recall
16 that?

17 A I do.

18 Q And do you recall what he said, that within
19 30 days what he -- he financed those or brought any
20 investment money in --

21 A Correct.

22 Q -- for those licenses.

23 A Yes.

24 Q Do you recall that?

25 A Yes.

1 Q And what was the number he gave?

2 A Three million.

3 (Court reporter requests clarification.)

4 MR. FEUERSTEIN: I think she said three
5 million.

6 Q Now, Mr. Wiley, in his math problem with you
7 used the number 6.25 million, the sale of Terra Tech;
8 that happened in October of 2018, to sort of back his
9 way into the number of 3.5 million, on page 1 of the
10 Webster report. Do you recall that?

11 A I do.

12 Q If Mr. Wiley, instead of using Terra Tech,
13 used Essence, what would 35 percent of Essence be,
14 plus or minus?

15 A A hundred million.

16 MR. FEUERSTEIN: I have no further questions.

17 ARBITRATOR BAKER: I have a couple
18 questions.

19 CROSS-EXAMINATION

20 BY ARBITRATOR BAKER:

21 Q Is it your position in this case that
22 section 6.2, the one we've been going over at length,
23 is clear and unambiguous?

24 A Yes.

25 Q There was a bunch of questions about the

1 first few sentences in that paragraph. I'm interested
2 in the -- I think it's one, two, three -- or the fifth
3 line down, that starts on the left side saying, "The
4 voting members." Do you see that? Sort of about, not
5 halfway down the paragraph, but --

6 A Is it initial cap "Voting"? Is it --

7 MR. FEUERSTEIN: Yes.

8 THE WITNESS: -- "The"?

9 BY ARBITRATOR BAKER:

10 Q "The" -- yeah, "The voting members may
11 elect." Do you see that, comma --

12 A Oh, is it "notice"? Yeah, yeah.

13 Q I'm sorry.

14 A Yes.

15 Q The second paragraph.

16 A Correct.

17 Q Thank you. Is it your position that voting
18 members, under this paragraph, includes you after the
19 expulsion?

20 A After the vote, yes.

21 Q How do you reconcile that theory with "the
22 voting members may elect by written notice that is
23 provided to the expelled or deceased member's
24 successor in interest, the estate or beneficiary or
25 beneficiaries within 30 days after the member's

1 expulsion or death to purchase the former member's
2 ownership interest"?

3 A Because --

4 Q In other words, if you're one of the voting
5 members, how could you purchase your own, I guess,
6 stock or your own interest after expulsion?

7 A The same way I would differentiate between
8 how we refer to former member. I mean, we distinguish
9 between disinterested voting interest -- voting
10 members and former member.

11 Q Okay. Now, is it -- and if you'll go ahead
12 and read the rest of that sentence. It starts with
13 "The voting members may elect" and then ends with
14 "expulsion or date of death." If you could just read
15 that entire sentence, I have a question.

16 (Witness reviewing document.)

17 A Okay.

18 Q Is it your position that that sentence means
19 that the voting members may elect -- and I'm skipping
20 through -- to purchase the interest, you know, over a
21 one-year period of four equal installments, in the
22 amount of the fair market value determined by the
23 appraiser?

24 A Right. I agree that in that sentence it
25 would be ambiguous.

1 Q Okay.

2 ARBITRATOR BAKER: Does anyone have any
3 follow-up questions?

4 MR. WILEY: None from NuVeda.

5 MR. FEUERSTEIN: No.

6 MR. DUSHOFF: Can we take a five-minute for
7 your expert now?

8 MR. FEUERSTEIN: Yeah, that's fine.

9 ARBITRATOR BAKER: Of course.

10 MR. DUSHOFF: Five minutes?

11 ARBITRATOR BAKER: Let's take a five-minute
12 break.

13 (Break taken.)

14 Thereupon,

15 DAVID PARKER,

16 called as a witness by the Claimant, having
17 been duly sworn, testified as follows:

18 DIRECT EXAMINATION

19 BY MR. FEUERSTEIN:

20 Q Good afternoon, Mr. Parker.

21 A Good afternoon.

22 Q As I've done with the witnesses so far today,
23 can you give a brief description of your education
24 post-high school?

25 A Yes. Graduated with a bachelor's in business

1 management and a minor in computer science from the
2 University of Southern Florida, where up until a
3 couple of weeks ago had 125 games in a row, thank you
4 very much.

5 Q Weak conference. Weak conference.

6 ARBITRATOR BAKER: Yeah. Didn't you have a
7 former OU player? Isn't he your coach?

8 THE WITNESS: No.

9 ARBITRATOR BAKER: Oh, okay.

10 THE WITNESS: After that, I went to work as a
11 computer programmer and ended up working for a firm
12 that just happened to be a money-management firm, so
13 that's how I got into finances. And we're talking
14 about when I was 19, so this is right -- right out of
15 high school and second year of college.

16 I'm a chartered financial analyst, or CFA.
17 I'm also a certified valuation analyst. I picked up
18 those particular accreditations in, I think, 2000 and
19 2002, respectively.

20 I spent over 20 years in the investment
21 banking industry as a portfolio manager and an equity
22 analyst.

23 In 2003, I opened up Gryphon Valuation
24 Consultants here in Las Vegas. I actually started
25 doing business valuations in 2001-2002 arena, so we're

1 in our 15th year now.

2 I don't know what else you want me to say.
3 We've performed literally hundreds of business
4 valuations that I personally have been involved in..

5 There's kind of three legs to the stool of
6 our practice: One is traditional business valuation;
7 the other is estate and gift-tax valuations; and then
8 the third leg is litigation consultant concerning
9 business valuation and economic damages.

10 BY MR. FEUERSTEIN:

11 Q How much of your -- how much of your business
12 is litigation consulting?

13 A 20, 25 percent.

14 Q In the context of litigation consulting, is
15 it strictly business valuation?

16 A Business valuation and economic damages,
17 usually associated with some form of business
18 valuation.

19 Q In the course of your work at Gryphon, can
20 you estimate how many companies you personally have
21 provided a business valuation of?

22 A Literally be hundreds. And they're not just
23 here in Las Vegas either. We give value to companies
24 globally.

25 Q In the context of your litigation consulting,

1 how often do you work for the plaintiff?

2 A I think it's probably pretty evenly split
3 between the plaintiff and defendant. I have no
4 preference.

5 Q How often have you worked with me?

6 A This is the first and only time. Not that I
7 wouldn't want to work with you again.

8 Q I'm not offended.

9 In the course of your work at Gryphon
10 Consulting, how many times have you been asked to
11 evaluate a nascent company, newly formed company?

12 A It comes up quite a bit. Not just in
13 business consulting -- excuse me -- not just in the
14 litigation sense, but also in estate and gift-tax
15 sense.

16 Q Can you explain what you mean by when it
17 comes up in the estate and gift-tax sense?

18 A Yes. There's a technique called a
19 estate-freezing technique. If people are starting up
20 a company, they often want to tuck that company away
21 out of their estate before it actually starts
22 receiving revenues and is up and running, so as to
23 have it at the minimal value as a gift. It's a
24 gifting technique. And we actually see that quite a
25 bit.

1 Q Can you say how many sort of newly formed
2 companies you valued in the course of your work at
3 Gryphon, roughly?

4 A It's going to be a wild guess, between 50 and
5 60.

6 Q And the techniques that you used for -- can
7 you tell me what sort of techniques you've used for
8 valuing those 50 or 60 newly formed companies?

9 A It's largely dependent upon the type of
10 company. If you're talking about a company which its
11 intention is to be a going concern, we use projected
12 financials and forecasted financials.

13 We pair those up with various industry
14 reports that we obtain through our subscription
15 services, and we talk a lot with the owners of those
16 companies.

17 Q In the course of you testifying as an
18 expert -- well, let me fix that. How many times have
19 you testified as an expert witness?

20 A Roughly 40, 42, maybe 43.

21 Q In the course -- and, by the way, I want to
22 say in testifying, that means giving oral testimony
23 either in a deposition or in court. Is that -- is
24 that what your number reflects?

25 A That was my understanding.

1 Q Is that how many reports you've drafted as an
2 expert in litigation consulting?

3 A Probably drafted more reports than I've
4 testified to.

5 Q In the course of your working as a litigation
6 consultant or expert, have you ever been excluded
7 based on the reliability of your conclusions or
8 opinions?

9 A No.

10 Q Have you ever been excluded for any reason?

11 A No.

12 Q In the course of forming your opinions with
13 respect to NuVeda --

14 MR. DUSHOFF: May I? Is this the point that
15 I may voir dire, if he's going to start talking about
16 NuVeda?

17 ARBITRATOR BAKER: What are you going to voir
18 dire on?

19 MR. DUSHOFF: Oh, the issue I'm going to say
20 is that his first, very primary original one that he
21 did for Shane, specifically states that this is not an
22 expert report. Specific language is, if you look on
23 page 2 of his first one, which would be RESP 57617, it
24 says, "This report is not intended to serve as a basis
25 for expert testimony in a court of law or other

1 government agencies without further analysis and any
2 resulting documentation. Such services require a
3 separate litigation consulting and expert service
4 agreement, and Gryphon is under no obligation to enter
5 into such an agreement."

6 So any reliance on the first -- on the
7 original, it's not an expert -- it's not an expert
8 opinion, should not be used in an expert opinion. Any
9 reliance upon that should not be -- should be excluded
10 in here.

11 Now, under Goldstein's, if you look under
12 No. 11, here, specifically on page 6, and if you look
13 under -- it will say, "Historical implied fair market
14 value." You see that graph?

15 ARBITRATOR BAKER: Yes.

16 MR. DUSHOFF: Above it, it says the interest,
17 7 percent, applying to 28 percent discount, for lack
18 of control and lack of marketability, which is
19 footnote 5, see appendix K of the orig- -- BV is the
20 original report.

21 The original report is not an expert report,
22 cannot be used as an expert report, can't be relied
23 upon as an expert report.

24 And since the discount value that he has in
25 his -- in Ms. Goldstein's report relies solely -- not

1 on any of her supplement reports -- it relies solely
2 upon a report that is not an expert report, I did --
3 it has to be that it needs to be excluded, by not my
4 language, but by the language that Mr. Parker puts in
5 his agreement.

6 And there is no testimony whatsoever --
7 the -- we know that Terry did not sign an expert
8 service agreement -- a litigation consulting and
9 expert service agreement -- for the first one, because
10 it would be in here; and it wasn't signed.

11 So, therefore, if this first one's out,
12 anything relying on the first one by -- just pull out
13 the house of cards -- all of them else -- they all
14 fail; but especially Ms. Goldstein's, who doesn't rely
15 on any of the other four -- any of the other four
16 expert reports by Mr. Parker, but specifically only
17 relies upon Exhibit K in the first -- in the original
18 opinion.

19 As a matter of fact, she specifically
20 states -- or Mr. Parker specifically states that he's
21 incorporating the May 25, 2016, which is the original,
22 into his Goldstein report; therefore, since the
23 first -- since the original report is not an expert
24 report, any reliance on it can't be used as expert;
25 therefore, the whole thing needs to be thrown out.

1 ARBITRATOR BAKER: Do you have any objections
2 to his qualifications?

3 MR. DUSHOFF: No, I don't have any objection
4 to his qualifications.

5 ARBITRATOR BAKER: Okay. Then I'm going to
6 allow this to proceed. You have the opportunity to
7 certainly cross-examine him on his statements.

8 But any objections pursuant to the
9 preliminary hearing and scheduling order No. 6, any
10 objections to expert testimony or evidence shall be
11 raised no later than January 4, 2009.

12 I think your point now should have been
13 raised in a motion in limine and we could have
14 addressed it. So I'm going to allow the testimony to
15 proceed. You certainly have the opportunity to
16 cross-examine him and challenge him on the points that
17 you have raised.

18 Mr. Feuerstein.

19 BY MR. FEUERSTEIN:

20 Q So I'd like to, if you would, Mr. Parker, I
21 just want you to open the binder that's in front of
22 you. And I'd like you to, just for the record,
23 identify what is tab 1.

24 A That one would appear to be my business
25 valuation report with respect to NuVeda.

1 Q Okay. What is tab 5?

2 A Tab 5 would appear to be my expert rebuttal
3 report.

4 Q Tab 8 -- I'm sorry -- yes, tab 8?

5 A Tab 8 would appear to be my supplemental
6 business valuation and expert report, dated
7 February 23, 2018.

8 Q And tab 9?

9 A Would appear to be my expert rebuttal and
10 retrospective summary report as of March 16, 2018.

11 Q And last, but not least, tab 11?

12 A That would appear to be my supplemental
13 valuation and expert report as of December 14, 2018.

14 Q You haven't written any more or other reports
15 other than the five that you just named; correct?

16 A Those are the only ones that I recall.

17 Q Okay. Oh, that just reminds me. Thank you.
18 In the course of all your business valuations, have
19 you had any other opportunity to do a valuation on a
20 cannabis business?

21 A Yes.

22 Q How many times have you done a valuation on a
23 cannabis business?

24 A This would be the third or fourth business
25 that we've done one for.

1 Q And without giving me the specific entity
2 names, can you at least give a description as to the
3 businesses that you provided valuations for?

4 A Yes. One was a vertically integrated
5 cannabis business, meaning that they had both
6 cultivation, production, and retail. In fact, two of
7 them were vertically integrated, as such. One, I
8 believe, was just retail, that was not in respect to
9 litigation; it was a partnership dispute that they
10 resolved internally.

11 Q And in the two instances when you did
12 appraisals -- or valuations, rather -- of vertically
13 integrated entities, did -- what sort of methodology
14 did you apply?

15 A We applied the income approach.

16 Q And when you're talking about the income
17 approach, that's the same -- that's an approach that
18 you used in one of your five reports?

19 A That's correct.

20 Q Do you recall which report you used the
21 income approach?

22 A It was the original report.

23 Q Can you explain for the Arbitrator what the
24 income approach is?

25 A Sure. Sure. I'd be happy to. In fact, I'll

1 just give a quick thumbnail sketch.

2 There's three basic approaches to any
3 business valuation, whether it's the asset approach,
4 better known as book value, something like that.

5 There's the market approach, where you
6 compare your subject company with other companies in
7 the marketplace -- either the public marketplace or in
8 cases where private transactions have occurred, and so
9 you can match up particular value metrics, such as a
10 price to earnings or a price to sales, something like
11 that.

12 Then there's the income approach by where in
13 this particular case we used what's called a
14 discounted cash-flow approach. So we took certain
15 projections from management, thoroughly vetted those
16 with the owner of the company, one of the owners of
17 the company, felt comfortable enough to use those, and
18 developed our what we call discounted cash flow. And
19 we project out five years what the cash flow is going
20 to look like.

21 We boiled it down to net income at the end of
22 each one of those years, and then discounted each one
23 of those years back to present value. So in a sense,
24 the present value of a future stream of income is
25 representative of today's market value for the

1 company.

2 Q Is there a particular rationale, Mr. Parker,
3 for picking one methodology over the other?

4 A It comes down to appropriateness. It also
5 comes down to available data, available information.

6 Q Now, you said, I think, in your testimony
7 that in the March 10, 2016, report, which is tab 1,
8 you used the income approach?

9 A That is correct.

10 Q And why did you use the income approach with
11 respect to your initial report dated March 10, 2016?

12 A Yeah. Well, in all cases, we look at all
13 three approaches to it.

14 I decided on the income approach because we
15 had projections or forecasts from management or from
16 the owners of the company that they had actually used
17 in order to raise money for this particular business.

18 I sat down with Mr. Terry and, once again, we
19 thoroughly vetted those so that I felt comfortable
20 with them as opposed to just accepting them at face
21 value. We made some adjustments here and there.

22 But because that information was available, I
23 felt comfortable using that approach.

24 At that time, back in March of 2016, there
25 just was not enough market information available on

1 cannabis companies. There were publicly traded
2 cannabis companies, but they were very thinly traded
3 and there was very little analytical data available
4 for them.

5 Q And you mentioned the third approach, prior,
6 in your description, it was the asset approach or book
7 value. Did you use that approach at all in your
8 initial report?

9 A I did not.

10 Q Why not?

11 A It didn't, in my professional judgment, lend
12 itself to an appropriate valuation of the company. I
13 think we -- I think we calculated -- I forget if it's
14 in the report or not -- but I think at that point in
15 time there had been about \$5 million invested in the
16 company.

17 It had no other debt that I was aware of. So
18 that would have been on an asset-approach basis what
19 you would have valued it as on a book-value basis.
20 That was just not, in my professional judgment,
21 reflective of the fair market value of the company at
22 that point in time.

23 Q And why do you say that?

24 A Well, the company's intention was not to
25 liquidate and sell its assets. It was not -- its

1 intentions, as it was relayed to me, was to utilize
2 those assets in order to construct a -- what we call a
3 going-concern enterprise, that is, a company that is
4 up and running in selling product or services. In
5 other words, it was their intention to utilize what
6 they had invested in order to create a going-concern
7 company.

8 Q Do you recall what you concluded -- well, let
9 me take a step back.

10 In March of 2010 -- or 2016, rather -- do you
11 have a recollection as to the marketplace for cannabis
12 in the state of Nevada; and, in particular, whether it
13 was medicinal, recreational, or medicinal and
14 recreational?

15 A It was medicinal only.

16 Q Do you have a view, sitting here today,
17 Mr. Parker, whether the addition -- well, do you know,
18 sitting here today, Mr. Parker, whether the state of
19 Nevada is still medicinal only?

20 A No, it's recreational and medicinal. In
21 fact, at the time this report was printed,
22 recreational was anticipated; it was not yet legal,
23 though.

24 Q And do you have a view as to what the
25 promulgation of recreational laws and regulations does

1 to the value of the cannabis business in the state of
2 Nevada?

3 A It apparently has inflated it quite a bit.

4 MR. DUSHOFF: I'm sorry, I can't hear.

5 MR. FEUERSTEIN: I think he said it inflated
6 it.

7 THE WITNESS: It inflated the business as a
8 whole. Recreational sales have largely -- in fact,
9 entirely -- overtaken medicinal sales.

10 BY MR. FEUERSTEIN:

11 Q Now, in March of 2016, do you have a
12 recollection as to what you valued NuVeda to be
13 worth?

14 A If I can look at the report?

15 Q I'll allow it, as long as my adversaries
16 won't --

17 MR. FEUERSTEIN: You have no problem with
18 that, Matt?

19 MR. DUSHOFF: What?

20 MR. FEUERSTEIN: Having him take a look at
21 his report.

22 MR. DUSHOFF: No, he can look at it.

23 THE WITNESS: 8.7 million.

24 (Court reporter requests clarification.)

25 ///

1 BY MR. FEUERSTEIN:

2 Q Wait, that was the value of -- of --

3 A I'm sorry.

4 Q -- NuVeda?

5 A Of -- not of NuVeda; that was the value of
6 the particular interest.

7 (Court reporter requests clarification.)

8 MR. FEUERSTEIN: It was 8.7, and it was
9 incorrect anyway.

10 Q Help you along and direct you to page 40.

11 A Thank you. Conclusion of value for NuVeda as
12 a whole was 53 million.

13 Q On the very next page, on page 41, you have a
14 title that says "Sanity check." Very reassuring thing
15 to have from your expert. Can you tell me what the
16 "sanity check" is?

17 A Yes. It has nothing do with my mental
18 well-being.

19 Q Thank you.

20 A We use a sanity test, otherwise known as a
21 test of reasonableness, using what information we
22 might have. In this particular case, we had a
23 specific piece of information, and we used that to
24 just see if our -- if the conclusions that we came to
25 using more conventional means of valuation are at

1 least within the ballpark.

2 Q Okay. So can you explain in what sort of
3 traditional means you employed as your sanity check to
4 determine whether the \$53 million valuation was
5 accurate?

6 A Yes. It's my understanding that at least it
7 was an intention, and in concordance with the letter
8 of intent that was provided to me, that four of the
9 licenses were going to be sold for what amounted to a
10 value of \$22 million.

11 Q And they were going to be sold in whole or in
12 part?

13 A It was my understanding they were going to be
14 sold in part. So 35 -- excuse me -- 65 percent of
15 those licenses were going to be sold.

16 Q So can you explain the arithmetic that you
17 performed in your sanity check to confirm your
18 sanity?

19 A Of course. It would be 22 million for
20 65 percent is equivalent to 35.85 million for a
21 hundred percent. So I took that 33.85 (sic) million
22 and divided that by four, the license in question, and
23 came up with an approximate value for the license, for
24 each license, of \$8,462,500, then multiplied that
25 number by six to estimate what the value for all six

1 licenses might be in the marketplace, based on that
2 particular transaction.

3 Q And you understand, Mr. Parker, that the six
4 licenses were not all the same; correct?

5 A I understand that, yes.

6 Q And do you have, sitting here today, any view
7 as to whether every license -- meaning all three
8 licenses -- meaning, dispensary, cultivation, and
9 processing -- should all be valued as equivalents?

10 A I think it depends whether they're going to
11 be valued as a vertical-integrated enterprise or
12 whether they going to be valued separately.

13 Q Okay. And -- well, you know what, we'll move
14 on.

15 In arriving at your conclusion, at the
16 \$53 million number, was that -- what assumptions did
17 you make with respect to NuVeda?

18 A We actually used a multiple or a
19 multi-scenario approach. It was based upon -- let me
20 put it another -- the base assumption was the
21 projections received from management. And then we
22 said, Well, what if they underperform that by X, and
23 underperform that by even more? What if they hit a
24 home run and they overperform by a couple of
25 scenarios? So we took a weighted average of those

1 five scenarios in order to reach the amount of
2 53 million.

3 Q Okay. What assumptions about NuVeda and its
4 assets did you make in order to conclude that the
5 valuation was \$63 million?

6 A Well, the assumption was that the company
7 would utilize those assets, the assets being the
8 licenses, and use those to construct a going-concern
9 enterprise, a cannabis company -- a vertically
10 integrated cannabis company.

11 Q Did you make any assumptions with respect to
12 ownership of those licenses?

13 A No.

14 Q Who did you assume --

15 A Only in respect to being able to determine
16 the value for Mr. Terry's shares.

17 Q Who did you assume -- when -- okay. In
18 determining the valuation for Mr. Terry's shares, what
19 assumption did you make with respect to the ownership
20 of NuVeda's assets? That's a terrible question.

21 MR. FEUERSTEIN: Can I withdraw it?

22 ARBITRATOR BAKER: Yes.

23 BY MR. FEUERSTEIN:

24 Q Ultimately you calculated Mr. Terry's shares;
25 correct?

1 A In this particular report, yes.

2 Q And you made a number of assumptions with
3 respect to -- with how to get to the valuation for
4 his, I believe it was 22-and-change percent;
5 correct?

6 A Correct.

7 Q Can you discuss what assumptions you made?

8 A Well, I don't know if it's an assumption, so
9 much. It -- we assumed, for lack of a better term,
10 that his shares were minority shares; in other words,
11 that they didn't have any control and they were not
12 marketable either.

13 Q And you concluded that his -- at the end of
14 day, his valuation or his value of his interest was
15 8.7 million; correct?

16 A That is correct.

17 ARBITRATOR BAKER: May I ask a quick
18 question?

19 MR. FEUERSTEIN: Yes.

20 ARBITRATOR BAKER: In this -- in its original
21 analysis did you assume that at some point NuVeda
22 would be selling recreational marijuana?

23 THE WITNESS: I don't believe that that was
24 baked into the projections at that point in time.
25 Those projections were produced and developed as they

1 were presented to potential investors. It's my
2 understanding that recreational marijuana was not
3 included in those projections.

4 ARBITRATOR BAKER: Thank you. That's all I
5 have.

6 THE WITNESS: Yeah, I might just add, too,
7 that those projections were developed well before the
8 date of this report. I don't recall the exact date.

9 BY MR. FEUERSTEIN:

10 Q I'm going to skip tab 5 for the moment and go
11 to tab 8, which is entitled your "Supplemental
12 Business Valuation Expert Report," dated February 23,
13 2018.

14 Now, Mr. Parker, what prompted you to submit
15 a supplemental report on February 23, 2018?

16 A I was asked to by counsel.

17 Q And by counsel in this case, you're talking
18 about Ms. Turner; correct?

19 A That is correct.

20 Q What, if anything, changed between your
21 original report in March of 2016, and your
22 supplemental report as of February 23, 2018? Well,
23 let's -- let me take that question back.

24 Did your opinion change with respect to
25 Mr. Terry's shares --

1 A Yes, sir.

2 Q -- and the value of NuVeda between October --
3 I'm sorry -- between March of '16 and February of
4 '18?

5 A Yes, sir.

6 Q And what was the -- explain what the change
7 was.

8 A Yes. The cannabis industry was a fast-moving
9 industry; still is to today. It had matured to the
10 point where there were actually publicly traded
11 cannabis stocks that we could look to in the
12 application of the market approach at this time, that
13 we didn't originally have back in 2016.

14 I believe the feeling at the time was that
15 this matter had gone on for so long that there was a
16 need to update that valuation as new information had
17 come to light.

18 Q The information that you provide in your
19 supplemental report at tab 8, when was that
20 information acquired?

21 A It's in a footnote. I just don't want to
22 misspeak.

23 (Witness reviewing document.)

24 A It was acquired as of the date of the
25 report.

1 Q Okay. Is the information all information
2 that was first made available as of the date of
3 report, or was it made available prior to the
4 report?

5 A It had become available in the time between
6 the first report and the supplemental report.

7 Q Do you recall more precisely when it became
8 available?

9 A It had evolved over time. I don't know
10 precisely when each one of those companies gained
11 market share that made them what I considered valid
12 proxies for the selling company.

13 Q Was any of this information that you used in
14 your supplemental report available prior to August of
15 2017?

16 A Not in the form that it was available as of
17 the date of the report.

18 Q Does any of the information that you acquired
19 and put into your supplemental report relate to the
20 businesses operating between March of '16 and August
21 of '17?

22 A Which businesses?

23 Q Well, let me take a step back.

24 Is the information you used just generally
25 reflective of operations or financial information

1 between March of '16 and August of '17?

2 A They would have been reflective of the
3 culmination of the maturation of those companies over
4 that time period and probably even before that time
5 period.

6 Q Okay. Well, let's go through this
7 supplemental report. In the supplemental report, do
8 you use the income method again?

9 A No, I did not.

10 Q What do you use?

11 A We use the market approach.

12 Q Just remind me again why you decided to use
13 the market approach.

14 A Information had become available regarding
15 certain publicly traded cannabis companies.

16 And the purpose of this report, as I
17 understood it to be and why I was asked to perform it
18 and produce it, was to verify or corroborate that the
19 original report's market value determination was at
20 least \$8.7 million.

21 Q And did you confirm that?

22 A The conclusion in the supplemental report
23 would seem to have confirmed that the fair market
24 value of Mr. Terry's interest was at least
25 27 million.

1 Q And what does that mean for the fair market
2 value of NuVeda?

3 A The fair market value of NuVeda was
4 determined to be 1. -- excuse me --164.7 million.

5 Q Is it fair, in your view, Mr. Parker, to
6 compare a publicly traded company and a privately
7 traded company in order to make valuations?

8 A It's done all the time. The key is to make
9 the appropriate adjustments.

10 Q And what adjustments did you make in order to
11 compare the public companies that you were looking at
12 and the company of NuVeda?

13 A We took the multiple, that is, the price
14 to -- price-to-revenue multiple that we observed in
15 the public marketplace; and we used information from
16 IPOs, or initial public offerings, to determine that
17 the value -- excuse me -- that the -- how can I
18 concisely put this -- that the multiple observed in
19 the public marketplace was about twice that of the
20 multiple observed in the private marketplace. So we,
21 in a sense, took the public company multiple and
22 halved it; we took 50 percent of the public company
23 multiple and applied it to NuVeda.

24 Q Well, let's narrow that down a little bit.
25 What is the -- what was the public market multiple

1 that you observed in the IPOs that you referenced in
2 your opinion?

3 A You mean the multiple for the price to
4 sales --

5 Q Yes.

6 A -- the public marketplace?

7 Q Yes.

8 A Okay. 13.2.

9 Q And what that -- just so we understand what
10 that means, that means -- well, why don't you tell me
11 what that multiple means.

12 A If a company was earning a hundred dollars --
13 or, excuse me -- if its sales were a hundred dollars
14 and we take a 13.2 multiple to determine the price of
15 that company, then the price of that company is going
16 to be -- and going through a map without a net -- 13.2
17 times a hundred.

18 ARBITRATOR BAKER: I feel your pain.

19 BY MR. FEUERSTEIN:

20 Q And when you're doing that arithmetic, the
21 sales number that you're talking about, is that gross
22 sales? Net sales? Some other sales? Where are we
23 looking on the line?

24 A It's top-line revenue.

25 Q Top-line revenue.

1 And so it was a determination that was made
2 by -- by the way, in drafting these reports -- I
3 should have asked these early on -- did you work with
4 anybody at Gryphon to form these reports?

5 A No, these are my product.

6 Q So you've done everything with respect to all
7 the appendices and everything with respect to the
8 research, and there's nobody else who helped you
9 formulate these opinions?

10 A That's correct.

11 Q For purposes of calculating the fair market
12 value of NuVeda's business, did you make any
13 assumptions as to who owned which licenses?

14 A No, the assumption was that NuVeda owned all
15 six licenses.

16 Q I'm sorry. Just bear with me for a second.
17 Mr. Parker, did you do anything to
18 confirm where -- well, let me withdraw the question.
19 I think you answered it.

20 Now, in December of 2018 you submit another
21 report, which is tab 11; correct?

22 A Yes.

23 Q And what methodology did you use for
24 calculating the fair market value of NuVeda in your
25 December 2018 report?

1 A It was the market approach, same methodology
2 used in the prior report.

3 Q And if you look at page 6 of your report, you
4 have a fair market value of \$164,695,000; correct?

5 A That's correct.

6 Q I'm just trying to confirm whether that was
7 the same number you concluded in your earlier report.

8 And if you look back at tab 8 on page 5,
9 you'll see the same number. You see that?

10 A Close to -- close to the same number.

11 Q Is it different?

12 A Well, it's only because it's rounded --

13 Q Okay.

14 A -- in the prior report. In all likelihood
15 it's the exact same number.

16 Q Just so we're clear, if you look at the -- on
17 page 5 of tab 8, the fair market value of the company
18 is 164,695-, which is the same number, I think, on
19 page 6 of 11?

20 A Yeah.

21 Q Okay. Did you do anything in checking to see
22 whether you had the right fair market value of the
23 company? Did you take any more -- you know, include
24 any more data from -- from the time you wrote the
25 supplemental report to the time you wrote the report

1 in December of 2018?

2 A Well, let me back up just a little bit.
3 You're talking about both of these supplemental
4 reports?

5 Q Yes, I am.

6 A Both of these supplemental reports I used to
7 revise projections from management.

8 Q Okay.

9 A So we not only had available market data
10 now -- publicly traded market data -- but we had
11 revised projections from management.

12 Q And why -- how did the projections from
13 management get factored into --

14 MR. DUSHOFF: One clarification. When we
15 talk about management, who you talking about?

16 MR. FEUERSTEIN: Well, you can -- I'll ask
17 the question.

18 Q But, Mr. Parker, who are you talking about
19 with respect to the management?

20 A I'm not sure the direct source, but my
21 understanding is they came from the management of
22 NuVeda.

23 Q Now, how does -- how does the projection from
24 NuVeda factor in to your market approach?

25 A The market multiples that we derive from

1 publicly available data. In other words, the number
2 that we multiply revenue by in order to determine or
3 estimate the value of the company, we take that
4 multiple -- or I took that multiple and multiplied
5 that by the expected revenue from NuVeda, given
6 management's revised projections.

7 It was just pure coincidence that the market
8 multiple happened to be the same.

9 Q Okay. And that same number is, just remind
10 me, 6.6?

11 A 6.6, as revised, to account for this being a
12 private company as opposed to a publicly held
13 company.

14 Q And that's -- again, that's 6.6 of the
15 top-line revenue?

16 A That's correct.

17 Q Now, in the binder that's before you -- well,
18 I'm sorry, before I get to the rest of these
19 reports -- ultimately, based on the \$164 million
20 valuation, you had reached an opinion as to the value
21 of Ms. Goldstein's interest; correct?

22 A That is correct.

23 Q And the value of that interest is what?

24 A \$8 million, rounded.

25 Q Can you just explain how you went from

1 164 million to 8 million?

2 A Let's see, the 164 -- call it 165 million --
3 multiply that by .07 to account for the interest in
4 question being seven percent interest.

5 And then I took a combined adjustment for
6 lack of control and lack of marketability of
7 28 percent, to boil that down to 8.3 million, which I
8 rounded to 8 million.

9 Q And just to be clear, that conclusion assumes
10 that NuVeda has 100 percent of the licenses;
11 correct?

12 A That is correct.

13 Q And if the Arbitrator ultimately finds that
14 NuVeda only had 35 percent of the licenses, what's
15 that mean with respect to your opinion?

16 A 35 percent of all licenses?

17 Q Well, let's say -- let's say 35 percent of
18 all licenses?

19 A Okay. I would multiply that number by .35.

20 Q That number being 8 million?

21 A Yes.

22 Q Do you know what that is?

23 A I'm going to leave it to those with
24 calculators.

25 Q Okay.

1 MR. WILEY: 2.8.

2 MR. FEUERSTEIN: You did that in your head,
3 Jason?

4 MR. WILEY: Well, 35 times --

5 MR. FEUERSTEIN: I'm just ... all right.

6 MR. WILEY: You double the 35. You take 8
7 divided by --

8 MR. FEUERSTEIN: You've lost --

9 MR. WILEY: -- 2 is 4.

10 MR. FEUERSTEIN: You've lost me. You lost
11 me.

12 MR. WILEY: I think it's 2.8.

13 MR. FEUERSTEIN: It is 2.8.

14 Q Mr. Parker, you've seen in the course of this
15 case other reports filed by the respondents;
16 correct?

17 A I have.

18 Q Do you have an opinion as to the report
19 submitted by a group called Anthem?

20 A I do.

21 Q And what's your opinion?

22 A My opinion is that they provided no
23 alternative value.

24 Q Now, you understand that Anthem takes issue,
25 in part, with the fact that some of the data that you

1 provided for the valuation really with Mr. Terry's
2 interest was postdated; in other words, there wasn't a
3 value available in order do an evaluation or a
4 valuation at the time. Is that your understanding?

5 A Yeah, my understanding is that the data --
6 excuse me -- the publicly available data that was used
7 for Mr. Terry's supplemental report was meant to
8 estimate the value in current time of that, even
9 though I know it says in the report that the valuation
10 date is March 10th. That just got stuck in there, but
11 the real purpose of that report was to update it as of
12 current time. That said, yes, I'm aware that that
13 criticism -- of that criticism.

14 Q Okay. Does that apply to Ms. Goldstein?

15 A No, it does not.

16 Q Why not?

17 A Are you talking about the criticism?

18 Q Yeah, the criticism.

19 A No, the calculation that's done in respect to
20 Ms. Goldstein's shares were time appropriate, date
21 appropriate. In other words, the market data that we
22 utilized was from on or about August of 2017.

23 Q You're also aware, I assume, that a -- I
24 butchered his name -- a Mr. Clauretje?

25 MR. WILEY: Clarity.

1 BY MR. FEUERSTEIN:

2 Q Clarity? He spells it wrong. Mr. Clauretie.

3 MR. DUSHOFF: Is that coming from Feuerstein?

4 MR. FEUERSTEIN: Touche, touche, Mr. Dushoff.

5 Q You're also aware that Mr. Clauretie
6 submitted expert reports in this matter; correct?

7 A I am.

8 Q And do you have a view on his opinions?

9 A I disagree with his opinions.

10 Q Can you tell me why?

11 A He offers several opinions. I could think of
12 one off the top of my head. I believe that he said
13 the discount rate I use should be higher because
14 there's now litigation involved in the case and it
15 didn't account for that risk.

16 Q Okay. And why is that? Why do you take
17 issue with that?

18 A Well, but for the bad -- alleged bad actions
19 of those in control of the company, there wouldn't be
20 any litigation involved. So, in a sense, you're
21 punishing the plaintiff, for lack of a better term, in
22 this case, for the bad actions of the respondents, if
23 you were to take that into consideration. It's a
24 circular argument and it just doesn't make any
25 sense.

1 Q Are you aware that Dr. Clarity provided an
2 alternative valuation to you?

3 A I am, yes.

4 Q And if you -- if you'd like to refresh your
5 recollection, I'll point you to tab 7, which is
6 Clarity's report, called his -- I'm sorry, it's his
7 retrospect -- it's a report and retrospective comment.

8 A Is there a particular page?

9 Q Well, the first thing I'd like you to kind of
10 look at is if you can just skim through it and maybe
11 get a -- refresh your recollection as to what kind of
12 methodology he uses to evaluate -- provide one
13 valuation of NuVeda.

14 A I believe he uses a book value in one
15 instance.

16 Q And you take issue with book value;
17 correct?

18 A I do in the particular case of this company,
19 yes.

20 Q And why -- and why is that?

21 A There was no liquidating event anticipated.
22 All intentions were to take these assets, i.e., the
23 licenses, and construct a going-concern enterprise in
24 the cannabis industry.

25 Q And you're aware -- look -- just turn to

1 page 5, Mr. Parker, and take a look at that. Do you
2 have a recollection as to what your thoughts were of
3 his -- Dr. Clauretie's table 1?

4 A I have no idea the source for that
5 information. That was my first thought.

6 My second thought was, if I could buy a
7 dispensary for \$500,000, I'd probably do it all day
8 long, every day.

9 I don't know what those values represent or
10 where these particular licenses were issued. I don't
11 even know if they were in the state of Nevada.

12 Well, here you go, here's the source of the
13 data. They were provided to Mr. Clarity by
14 Dr. Bady.

15 Q But you haven't seen any documents that
16 reflect those -- those amounts for the licenses, have
17 you?

18 A No. In fact, it says right here in
19 Mr. Clarity's report that he accepted those as being
20 true transaction values, but not did review any
21 documentation regarding them.

22 MR. FEUERSTEIN: Okay. I'd like to take two
23 quick minutes just to make sure I'm done with what I
24 want to present in direct.

25 ARBITRATOR BAKER: Sounds like a good break.

1 Short break.

2 (Break taken.)

3 MR. FEUERSTEIN: I have no further questions
4 for Mr. Parker at this time.

5 ARBITRATOR BAKER: Mr. Wiley and Mr. Dushoff?

6 MR. DUSHOFF: Thank you.

7 CROSS-EXAMINATION

8 BY MR. DUSHOFF:

9 Q Mr. Parker, you prepared five reports in this
10 matter; right, that you're aware of?

11 A Best of my recollection.

12 Q You have the -- we're going to call it -- you
13 have the May 25th report, which is the original report
14 from Mr. Terry; correct?

15 A Yes.

16 Q You also have the November 29th rebuttal
17 report in this matter; correct? Call it rebuttal
18 report.

19 A Two rebuts on Mr. Clauretie, yes.

20 Q Then you also have the February 23, 2018,
21 supplemental report. Is that accurate?

22 You can just look at the index, it'll be
23 on --

24 A Oh, duh. Trying to take the hard way out.
25 Yes.