

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

NUVEDA, LLC,

Appellant,

v.

JENNIFER GOLDSTEIN,

Respondent.

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

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**JOINT APPENDIX VOLUME X**

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JASON M. WILEY  
Nevada Bar No. 9274  
E. DANIEL KIDD  
Nevada Bar No. 10106  
WILEY PETERSEN  
1050 Indigo Drive, Suite 200B  
Las Vegas, Nevada 89145  
702.910.3329

*Attorneys for Appellant NuVeda, LLC*

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1           A     Yes.

2           Q     You've heard of CW Cowan -- Cowan Bank?

3           A     No.

4           Q     You heard of Canacort Bank (phonetic)?

5           A     No.

6           Q     Have you heard of World Bank of Canada?

7           A     Are there any banks in Nevada you want to  
8 talk about?

9           Q     My question wasn't about banks in Nevada.

10          A     If they bank, they have fed access for their  
11 bank, then they won't touch it. It's the fed that is  
12 the controlling factor.

13          Q     Did you talk to any --

14          A     I don't know if there were banks that don't  
15 use the fed.

16          Q     Did you talk to any brokers in the cannabis  
17 business in determining whether those numbers you got  
18 from Dr. Bady is correct?

19          A     That's a good question. No.

20          Q     You talk to -- now, you have a view or you'd  
21 agree with me, Mr. Kennedy, that when you combine  
22 these licenses such as to create a vertical, you  
23 increase the value substantially; correct?

24          A     Potentially.

25          Q     When would you increase the value?

1           A     Well, if you had a cultivation that could  
2     supply your production that could then put the product  
3     on your dispensary, you would have a guaranteed  
4     source, a guaranteed method of preparing your edibles  
5     and everything and a place to vend it from.

6           Q     What do you believe the estimate value of  
7     those three licenses combined would be?

8           A     I don't know they would be any different than  
9     they would be separately.

10          Q     So your view now is, if I combine the  
11     licenses so I can sell them in the vertical, they  
12     would be the same price as otherwise?

13          A     I have a reason for saying that.

14          Q     I'm just asking is that your testimony now?

15          A     Yes.

16          Q     Now, do you recall giving your deposition in  
17     this case, Mr. Kennedy?

18          A     I do.

19          Q     Do you recall testifying if you had the  
20     ability to sell a vertically-integrated license, it  
21     would add significant value? Do you recall it?

22          A     I do.

23          Q     So, in that case, you could add significant  
24     value, but today when you're testifying you can't?

25          A     Because I've learned since then.

1           Q     But when you testified in this case, it  
2     was -- previously, it was in 2018; correct?

3           A     Correct.

4           Q     And your belief then was it would add  
5     significant value; correct?

6           A     Correct.

7           Q     And your belief in 2017 was the same, that it  
8     would add significant value; correct?

9           A     I want to explain why.

10          Q     Your lawyer can redirect you.

11          A     That's fine.

12          Q     It was in 2017, correct, that a  
13     vertically-integrated license would add significant  
14     value; correct?

15          A     Thought so.

16          Q     So back to my question, Mr. Kennedy, if I can  
17     put you back in time.

18          A     Okay.

19          Q     When you thought it would add significant  
20     value, how much value is "significant" in your view?

21          A     I don't recall what I thought at the time.

22          Q     Going back, if you can go back, what you  
23     think is significant value?

24                     MR. WILEY: Asked and answered.

25                     ARBITRATOR BAKER: Overruled.

1 MR. WILEY: You can answer.

2 THE WITNESS: I can't recall what I thought  
3 then. I can only recall what I think now.

4 BY MR. FEUERSTEIN:

5 Q Now, Mr. Kennedy, are you aware of a man  
6 named Thomas Hanyie, H-A-Y-N-I-E?

7 A No.

8 Q Are you aware of, Mr. Kennedy, of licenses  
9 for sale in Nevada in or around April of 2017, for a  
10 dispensary for \$12 million?

11 A I was only looking at completed sales, not  
12 what was for sale.

13 Q I'm asking were you aware of it?

14 A I was not.

15 Q Were you aware there was a cultivation and  
16 production facility available for sale for \$12 million  
17 in or around April of 2017?

18 A No.

19 Q Were you aware, Mr. Kennedy, that there was a  
20 vertical enterprise in Nevada being for sale in April  
21 of 2017 for \$25 million?

22 MR. WILEY: I'm going to object; lacks  
23 foundation.

24 MR. FEUERSTEIN: I'm asking if he's aware of  
25 it.

1 ARBITRATOR BAKER: Overruled.

2 THE WITNESS: Respond?

3 ARBITRATOR BAKER: Yes, please.

4 THE WITNESS: No.

5 BY MR. FEUERSTEIN:

6 Q Were you aware there was a cultivation  
7 facility for sale for \$7 and a half million?

8 A No.

9 Q As you testified, you didn't do anything to  
10 make yourself aware when you were valuing the licenses  
11 that were on NuVeda's balance sheet; correct?

12 A As far as I knew, there were only two or  
13 three sales in Clark County, the total of Clark  
14 County. I didn't look for what was offered for sale  
15 because some of the asking prices were -- had no  
16 correlation to what they sold for.

17 Q Have you ever heard of a company called  
18 Canadian Bioceutical Corporation?

19 A I know a lot of Canadian some things.

20 Q I'll take it that you're not familiar?

21 A I'm not familiar.

22 Q And I guess you're not aware that in May of  
23 2017, Canadian Bioceutical Corporation, that it was  
24 buying a U.S. subsidiary for \$19 million?

25 A I heard about significant purchases of

1 cannabis companies from Canadian companies.

2 Q And were you aware of that in 2017?

3 A I didn't even know if they were done by then.

4 Q See if I can refresh your recollection, Mr.  
5 Kennedy. I'll mark as I think we're marking it as  
6 Claimant's Exhibit 1, marking for identification to  
7 see if we can refresh his recollection.

8 MR. WILEY: I think he testified, no, he  
9 doesn't.

10 MR. FEUERSTEIN: I thought he said what he  
11 knew about was, he's heard of Canadian companies  
12 buying, makes lots of acquisitions.

13 MR. WILEY: Not with respect to what you're  
14 showing him. He's not saying he has any information  
15 or knowledge as to this purported sale that you're  
16 discussing.

17 MR. FEUERSTEIN: Let me lay some  
18 foundation.

19 Q Mr. Kennedy, do you have any knowledge  
20 whatsoever about Canadian Bioceutical Corporation  
21 exercising an option to purchase 100 percent of Green  
22 Mart of Nevada?

23 A I am not.

24 Q So you have no idea whether it would spend  
25 \$19 million for a cultivation and production

1 facility?

2 MR. WILEY: Objection.

3 ARBITRATOR BAKER: Sustained.

4 MR. FEUERSTEIN: I'm going to move the  
5 document nonetheless as an exhibit, given that it's a  
6 newspaper article, again, that is two pages long with  
7 a URL link so you can check the authenticity of the  
8 document. From our perspective, it's no different  
9 than the Terra Tech article that was admitted  
10 earlier.

11 ARBITRATOR BAKER: I don't see any basis to  
12 get it in through this witness based upon his  
13 testimony.

14 MR. FEUERSTEIN: Okay. We'll save it for  
15 another one.

16 Q Mr. Kennedy, were you involved at all in the  
17 Clauretie reports, or in helping form the Clauretie  
18 reports that are going to be testified to in a little  
19 bit?

20 A I did meet with Dr. Clauretie, yes.

21 Q What did you discuss with him?

22 A I gave him a balance sheet and income  
23 statement and had discussions with him about  
24 responding to questions about the company.

25 Q How many balance sheets did you provide?

1           A     I gave him the same balance sheet that I gave  
2 to Mr. Webster.

3           Q     Do you happen to know whether -- do you have  
4 any recollection whether you gave him a balance sheet  
5 from 2016 as well?

6           A     I don't recall.

7           Q     Take a look at the expert report, tab 2, in  
8 front of you. If you would, take a look, Mr. Kennedy,  
9 page 13 of that report.

10                   (Witness reviewing document.)

11          A     I see it.

12          Q     Is that a balance sheet that you provided  
13 him?

14          A     I don't specifically recall.

15          Q     If it wasn't you, who would it have been?

16          A     I was going to say in all probability it was  
17 me.

18          Q     Do you see, Mr. Kennedy, that in that, in the  
19 third asset down, the asset CWNV Investment, do you  
20 see that?

21          A     I do.

22          Q     What did you say? You see it's valued at  
23 \$4,470,000?

24          A     I do.

25          Q     That's as of March 10, 2016; correct?



1           A     Correct.

2           Q     And that's approximately a million 2.7, more  
3     than what it was valued at in March -- in August of  
4     2017; correct?

5           A     Correct.

6           Q     And in August of 2017, the licenses were  
7     recreational as well as medical; correct?

8           A     Yes.

9           Q     And in August of 2017, they were affiliated  
10    with permanent structures; correct?

11          A     Yes.

12          Q     And they were operational; correct?

13          A     Not all of them.

14          Q     Really? So your testimony now is the  
15    dispensary licenses in -- let me finish the  
16    question -- that the dispensary licenses were not  
17    operational in August of 2017?

18          A     No, the dispensary licenses were, but not all  
19    of the licenses were.

20                MR. WILEY: You asked about license.

21                MR. FEUERSTEIN: I realize that.

22          Q     The cultivation and production licenses, they  
23    were not operational in CWNV; correct?

24          A     Correct.

25          Q     But they were permanent; correct?

1 A Not yet.

2 Q They're still not permanent today?

3 A They are now; we made a pod.

4 Q When did you make that pod?

5 A In late '17.

6 Q I'll ask the same testimony question I asked  
7 Dr. Bady: You understood that in the MIPA, there was  
8 an obligation for CW to pay money for not getting the  
9 cultivation up and running by end of '16; correct?

10 A Yes.

11 Q And that obligation still exists today;  
12 correct?

13 A No. I think it was offset.

14 Q What was it offset by, Mr. Kennedy?

15 A Well, we had a right to 35 percent of the net  
16 income, but we also were obligated for 35 percent of  
17 the net losses.

18 Q Where does it say that in the MIPA?

19 A That's what we agreed to at some point down  
20 the line.

21 Q So even though Dr. Bady testified that the  
22 MIPA was never amended, now you're suggesting that the  
23 MIPA was changed because you agreed to offset the  
24 losses?

25 A I'm saying it was interpreted to agree that

1 we would bear our share of the losses.

2 Q Can you point -- what document says that, Mr.  
3 Kennedy?

4 A The document would be the MIPA.

5 Q So let's look at the MIPA. MIPA, I believe  
6 it's Exhibit 149 on the computer?

7 Okay. Why don't you take a look at it, Mr.  
8 Kennedy, and find me the provision that says that  
9 NuVeda would be responsible for 35 percent of the  
10 losses.

11 (Witness reviewing document.)

12 A It's on page 2, 1.1 B.

13 Q You had 35 percent of the issue and  
14 outstanding membership interest of CWNV. Is that what  
15 you're suggesting?

16 A Yeah.

17 Q If you look down to 1.1 E, CW was obligated  
18 to pay Romanette iii, sufficient working capital for  
19 the operations of the businesses of Clark and Nye; you  
20 see that?

21 A Yes.

22 Q And it was 100 percent of that; correct?

23 A For operating capital, yes.

24 Q One hundred percent of that?

25 A Yeah.

1           Q     And one hundred percent of build-out for the  
2     dispensaries; correct?

3           A     Yes.

4           Q     And one hundred percent for the build-out for  
5     the cultivation and for the production; correct?

6           A     Yeah.

7           Q     So what losses are there, if all -- if CW is  
8     paying 100 percent of --

9           A     Paying the capital. We have a partnership,  
10    and the partnership is defined by the federal tax code  
11    says that unless you have exceptions in the DLLC,  
12    we're liable for 35 percent of the losses, and we're  
13    also going to be credited with 35 percent of the  
14    profits. It says nothing to do with the capital  
15    expenses. The capital expenses are a different  
16    story.

17          Q     Let me ask you a question: You're getting 35  
18    percent of the losses as 35 percent partner; correct?  
19    That's what you're suggesting?

20          A     I'm saying once the capital has been invested  
21    and the business is up and operating, if the business  
22    has a loss, then we're to bear what our proportionate  
23    share of the loses. If the business has a profit, we  
24    receive that proportion of the profit.

25          Q     With all due respect, Mr. Kennedy, you agree

1 with me there's a difference between a tax loss or an  
2 actual loss; correct? You can allocate --

3 A Yeah, it's worse for the marijuana  
4 business.

5 Q If a business is --

6 A Because of the way the entities are treated.  
7 2 ADE says you can't deduct your normal expenses.

8 Q Is it your testimony sitting here today, Mr.  
9 Kennedy, that NuVeda, there was a shortfall of  
10 capital, cash in the business, that NuVeda had an  
11 obligation to pay 35 percent of that short-fall,  
12 notwithstanding what we just read in section 1.1 E?

13 A No, not the capital. I'm talking about the  
14 income.

15 Q So let's make sure we're on the same page.  
16 If at the end of the day CW puts in all the money to  
17 operate the business; correct?

18 A Yes.

19 Q And at the end of the day, you didn't make --  
20 CWNV did not make a profit; it has a loss; right?

21 A Okay.

22 Q That loss gets allocated 65 percent to CW and  
23 35 percent to NuVeda?

24 A Precisely.

25 Q And that loss technically will flow down to

1 the members of NuVeda?

2 A Correct.

3 Q Which is a tax benefit when you're reporting  
4 your taxes because you can offset with your gains;  
5 correct?

6 A The K-1 will show a loss, yes.

7 Q And you can offset that loss or any gains you  
8 made from that tax year or carry them forward;  
9 correct?

10 A Correct.

11 Q That's what you bargained for in the MIPA;  
12 correct?

13 A We weren't anticipating losses when we  
14 created the MIPA. I mean, I know as a person who does  
15 taxes, that if we have a loss, how those losses will  
16 be distributed, yes.

17 Q So are you suggesting that at some point down  
18 the road, the members of NuVeda got together and  
19 agreed to waive the provision of lost profits?

20 Let me ask the question differently: What  
21 did you give up? What was the consideration that  
22 NuVeda gave to then, to CW, in order to release CW  
23 from its obligation to pay the loss profits?

24 A Well, we didn't give up anything because  
25 there were no loss profits, so ...

1 Q Let me withdraw the question and ask another  
2 the question.

3 You had a benefit. NuVeda had a benefit of  
4 lost profits coming to it at some point in time under  
5 the MIPA; correct?

6 A Yes.

7 Q And that was an obligation of CW; correct?

8 A Correct.

9 Q You released -- you're saying now for the  
10 first time that you released CW from that  
11 obligation?

12 A I didn't say relieved them. I said offset.

13 Q Okay. You offset them. You offset them.

14 What did you offset them with?

15 A We offset them with the promises that the  
16 cultivation would be up and running in Nye County and  
17 that we would be receiving benefits from that, that  
18 cultivation facility by November of 2016.

19 Q I think you mis -- that's an obligation?

20 A That's an obligation.

21 Q CW had an obligation to pay you?

22 A Right.

23 Q And that obligation existed all the way into  
24 the future, correct, as it's written in the  
25 agreement?

1           A     Correct.

2           Q     Explain to me the arithmetic as to why you  
3 would offset anything; right? It sounds to me what  
4 you're giving up your tax benefit of loss, to relieve  
5 CW of an obligation to pay you profits?

6           A     There are two aspects to the loss: One of  
7 them is that it passes through to the members, so the  
8 members, correct, do receive a tax benefit of a loss,  
9 which incidentally had to go two other entities before  
10 it got to the taxpayer. But the second is that  
11 somebody had to fund that loss, and we didn't have to  
12 fund the loss.

13                     In exchange for not having our cultivation  
14 facility in Nye, that loss was funded by NuVeda.

15           Q     We just talked about the fact that that loss  
16 was an obligation of CW --

17           A     By CWNV.

18           Q     Paying that loss was an obligation of CWNV  
19 because 1.1 E said they had to pay all the working  
20 capital?

21           A     That's not working capital. It's loss by  
22 revenue. The capital is your investment into the  
23 facilities and everything else. It's not used for  
24 paying for the staff and the product and all the other  
25 things. That's operating capital.



1           Q     Really, Mr. Kennedy? Your testimony is --  
2     the distinction you're making is that working capital  
3     and operating capital are two different terms?

4           A     Yes.

5           Q     There's no question pending. If that's your  
6     testimony.

7                     What document reflects the deal that you just  
8     described, Mr. Kennedy?

9           A     The 1065 for CWNV.

10          Q     What's that?

11          A     The tax return.

12          Q     What document agreement between you and CW  
13     exists to reflect what you just described in the  
14     record?

15                     MR. WILEY: Objection. Asked and answered.

16                     ARBITRATOR BAKER: Overruled.

17                     THE WITNESS: What document describes our  
18     agreement?

19     BY MR. FEUERSTEIN:

20          Q     That agreement that you just described.

21          A     It was a verbal agreement at the time we were  
22     preparing the tax returns.

23          Q     Is there any -- has it been memorialized in  
24     writing?

25          A     I think it was in the minutes of the

1 meeting.

2 Q In whose minutes?

3 A CWNV's.

4 Q Do you know if those losses were passed on to  
5 Ms. Goldstein, by the way, in 2017?

6 A I'd have to look at the tax returns.

7 Q Mr. Kennedy, with respect to going back to  
8 the Claurette report, can you just explain to me why  
9 the asset went down between 2016 and 2017?

10 A No.

11 Q I'd like to direct your attention to what  
12 we've marked as 263. It's not in the computer. It's  
13 a paper document.

14 A Okay.

15 Q Mr. Kennedy, we'll go through the document in  
16 a moment.

17 If you'll turn the page to the last page, I  
18 just want to confirm that's your signature on the  
19 third signature line of Glad 2B Home?

20 A That is my signature.

21 Q And you understand what your signature means  
22 when signing a document?

23 A Means I signed it.

24 Q Means you agreed to the terms?

25 A I agreed to the terms of the document.

1           Q     And you agreed to the terms of the purchase  
2     and sale agreement in or around September 20, 2017?

3           MR. WILEY: I'm going to object. Outside the  
4     scope of direct.

5           ARBITRATOR BAKER: Overruled.

6     BY MR. FEUERSTEIN:

7           Q     You did hear my question? You agreed to the  
8     terms what's been marked as Joint Exhibit 263 in or  
9     around September 2017?

10          A     Yeah. I wouldn't have signed it otherwise.

11          Q     Glad 2B Home is an entity where you're the  
12     resident agent?

13          A     I think Pro Advice is, but I own Pro  
14     Advice.

15          Q     Have you ever done -- did you ever calculate  
16     the minimum amount of money that would be entitled to  
17     Glad 2B Home pursuant to this agreement?

18          A     It was somewhere just about \$20 million.

19          Q     Did you give a valuation with respect to the  
20     interest in CW?

21          A     Could be anywhere from zero -- I never  
22     thought it was very much.

23          Q     Do I understand this agreement correctly,  
24     which is that NuVeda and its members were essentially  
25     giving all of its right in CWNV to an entity owned a

1 100 percent by you, then you were going to receive all  
2 the money from CWNV or from CWNevada, rather?

3 A No, not me.

4 Q Who are the members of Glad 2B Home, LLC?

5 A Different members over different times. But  
6 at this moment -- what's the date on here? I think it  
7 was Michelle Thompson and myself.

8 Q Who was it, I'm sorry?

9 A Michelle Thompson and myself.

10 Q Who is Michelle Thompson?

11 A An individual who lives in Las Vegas.

12 Q So all of the rights that Dr. Bady had and  
13 any profit from CWNV he was giving away?

14 A The intent of this agreement was that Glad 2B  
15 Home would act as an escrow agent. It was never  
16 intended that Glad 2B Home would receive the funds.

17 Q Why was Glad 2B Home acting as escrow agent  
18 in September 2017?

19 A Because we needed an entity to act as an  
20 escrow agent because the two parties couldn't agree on  
21 payment a recipient, and I happened to have an  
22 available LLC that didn't have any function.

23 Q Was there an escrow agreement that was  
24 entered into?

25 A If it's not in this agreement, then the

1 answer is no.

2 Q You recognize the -- you recognize the  
3 signature on the bottom of the last page on behalf of  
4 CWNevada?

5 A I do.

6 Q And that's Brian Padgett?

7 A That's Brian Padgett's signature.

8 Q You'd agree with me based on the date of the  
9 document, Mr. Kennedy, that this was entered into  
10 approximately one month after Mr. Webster provided his  
11 appraisal; correct?

12 A Correct.

13 Q And do you recall how long it took for the  
14 members of NuVeda to negotiate this document that's  
15 been marked as Exhibit 263 with Brian Padgett?

16 A I don't recall how long it took to negotiate  
17 it.

18 Q Did it take six months?

19 A I just don't recall. It could be a lengthy  
20 agreement, or it could have been a lengthy time or a  
21 short time.

22 Q You testified a little bit in your deposition  
23 about the Apex transaction we'll call it?

24 A Okay.

25 Q What was the thought process of entering into

1     that transaction?

2           A     We didn't have any capital to build a  
3     facility -- a cultivation or production facility in  
4     North Las Vegas, so the thought process was that  
5     somebody else would build it; that we would utilize  
6     our license to allow them to use the facility to  
7     generate cash.

8                     When sufficient amounts were generated to  
9     retire all of the debt, that then the three different  
10    parties would have their proportionate shares. So we  
11    would have shared 40 percent a facility which we  
12    thought at the time was going to cost 6 million to  
13    build, and turned out to cost 9 million to build, but  
14    we would have a 40 percent share of that after enough  
15    revenue had been generated.

16           Q     How big is the facility on the Apex  
17    property?

18           A     32,000 square feet.

19           Q     How big was the contemplated facility in Nye  
20    County?

21           A     I don't know.

22           Q     Do you recall Brian Padgett testifying he was  
23    looking to build a cultivation facility of 25,000  
24    square feet?

25           A     I do not recall that. You don't want me to

1 finish the logic?

2 Q No, not yet.

3 Is there something spectacular about the  
4 cultivation and processing facility of Apex that would  
5 cost \$9 million of capital?

6 A First of all, it includes a significant  
7 amount of land that goes with it. It's 12.4 acres,  
8 and it's right next to the North Las Vegas airport.  
9 So we were able to get it in town, green house  
10 facility because we didn't have complaints from the  
11 neighbors about odor and things like that because the  
12 neighbor was the airport.

13 Then, lastly, it was built to use a lot less  
14 power because it was designed originally made for  
15 Saudi Arabia, and they have 30 years of experience  
16 using these, and can even keep the temperature in the  
17 green houses in the 70s without using air  
18 conditioning.

19 Q Besides from this build-out, do you have any  
20 view, Mr. Kennedy, of what it cost to build the  
21 cultivation facility in Nevada?

22 A You mean a green house? There are three  
23 options.

24 Q Tell me the three options.

25 A The three options, are, you can have a green

1 house; you can have an indoor, which is a concrete  
2 tilt-up building, or you can have an outdoor  
3 facility.

4 Q Well, I don't need to know how much it cost  
5 to build an outdoor facility.

6 A Okay.

7 Q How much is a green house?

8 A A green house is probably about a hundred  
9 dollars a square foot.

10 Q So if it's a 25,000 square foot facility, you  
11 think it cost \$2.5 million build-out?

12 A Yes.

13 Q And indoor?

14 A Indoor would be a little bit higher. It  
15 would be about \$145 a square foot.

16 Q So almost 50 percent more than --

17 A Yes.

18 Q What about the production facility, how much  
19 does that cost?

20 A Variable. I would say they're all going to  
21 be either the concrete tilt-up or steel buildings, so  
22 they're going to be in the ballpark of \$150 a square  
23 foot. Depends on the power requirements.

24 Q Depends on the equipment as well; right?

25 A That's why the power requirements are for the



1 equipment.

2 Q But I'm asking the total cost of the building  
3 it's going to depend greatly on the type of machinery  
4 you put in there; correct. The machines have varying  
5 costs?

6 A I wasn't thinking about the machines, I was  
7 just thinking about the building.

8 Q We talked a little bit about the experts and  
9 you talked about Clauretie. I think you testified  
10 that you met with him; correct?

11 A I did.

12 Q How many times did you meet with him?

13 A Four, maybe five times, one of them being  
14 social.

15 Q You're friends with Mr. Clauretie?

16 A I like Mr. Clauretie.

17 Q How long have you known him?

18 A Since '16.

19 Q Do you remember the timing of those visits?  
20 Was it mostly in '16? Was it '18?

21 A About four months ago we moved into a new  
22 house and invited Dr. Clauretie and his wife over for  
23 dinner.

24 Q I was talking more about the times you met  
25 with him in preparation for his reports. For those in

1 '18, more than they were in '16?

2 A Yes, they were in '18 more than in '16.

3 Q What about Joe Lahoney?

4 A Leauanae, I think. Close enough.

5 Q Did you meet with him at all?

6 A I have seen him twice.

7 Q How many hours you spend with Dr. Clauretie  
8 in discussing the report?

9 A Five or six hours, total.

10 Q Did you ever see drafts of his report?

11 A Yes.

12 Q Did you edit those drafts?

13 A No.

14 Q Same question with Mr. Leauanae.

15 A I did not see a draft of his report.

16 Q Aside from giving them the balance sheet of  
17 NuVeda, did you give them any other documents?

18 A No. Well, the income statement.

19 Q The conversations you had with Dr. Bady about  
20 the license transactions, can you give me the time  
21 frame when these conversations took place?

22 A I see Dr. Bady all the time. I couldn't give  
23 you a date.

24 Q Is there a particular reason, Mr. Kennedy,  
25 that you chose Mr. Webster in doing the quote/unquote

1 appraisal for this case?

2 A Yes.

3 Q Why?

4 A One of the lawyers I dealt with, George  
5 Maglares, M-A-G-L-A-R-E-S, recommended him.

6 Q At the time you were aware there were expert  
7 reports -- withdraw the question.

8 At the time that you went back to Mr. Webster  
9 in August of 2017, you were aware there were expert  
10 reports exchanged by the parties; correct?

11 A For the --

12 Q In connection with this arbitration?

13 A Yes. Shane Terry's report.

14 Q Right. And NuVeda's --

15 A NuVeda report.

16 Q And the individual respondents' report;  
17 correct?

18 A I wasn't involved in the production of those,  
19 but I was aware they existed.

20 Q You certainly had conversation with  
21 Dr. Clauretje in 2016 in preparation of that report;  
22 correct?

23 A Yes.

24 Q So you must have known they were being done  
25 or perculating somewhere; correct?

1           A     Yeah, but I didn't know they were  
2 submitted.

3           Q     Any reason you didn't provide them to Mr.  
4 Webster so he could do his own assessment as to the  
5 value of NuVeda?

6           A     Because I provided him with what he asked me  
7 for, and no more.

8           Q     Did you tell him at the time that there was  
9 litigation? Their expert reports had been exchanged  
10 between the parties?

11          A     I told them there was litigation,  
12 obviously.

13          Q     Did you tell him there were expert reports  
14 already submitted between the parties?

15          A     I didn't know there were expert reports  
16 already submitted.

17          Q     You were aware, Mr. Kennedy, there were sales  
18 figures for CWNV and around August 2017?

19          A     There were what?

20          Q     Sales figures.

21          A     Sales figures?

22          Q     Yes.

23          A     For CWNV?

24          Q     Yes.

25          A     Yes.

1           Q     As I recall, you were the liaison between  
2     NuVeda and CW. You were the CWNV representative, is  
3     that fair?

4           A     We all met every week on a Tuesday morning,  
5     so everybody was there. I didn't have any special  
6     standing.

7           Q     Ms. Goldstein was never there, was she?

8           A     No.

9           Q     Mr. Kennedy, during those meetings you would  
10    get sales figures; correct?

11          A     No. That's not how we got them.

12          Q     How did you get them?

13          A     We got text messages.

14          Q     When you went with Mr. Webster, did you tell  
15    Mr. Webster you had sales figure for the  
16    dispensaries?

17          A     I didn't have the sales figure and the  
18    expenses. I only had sales figures.

19          Q     Did you tell Mr. Webster that you had sales  
20    figures?

21          A     Yes.

22          Q     And he didn't want them?

23          A     He didn't need them.

24          Q     Now, you testified in response to one of  
25    questions from Mr. Wiley that you believe that the

1 sales figures were accurate. Do you recall that  
2 testimony?

3 A Yes.

4 Q And you recall testifying previously that you  
5 didn't know if the records were accurate because  
6 there's a lot of cash in the business?

7 A I think those were in response to two  
8 different questions.

9 Q Well, they're definitely two different  
10 questions because one of those questions was mine, and  
11 one was Mr. Wiley's.

12 A Well --

13 Q Let me direct your attention back to your  
14 deposition on, I guess you're going to have to call it  
15 up. I want -- well, let me ask the question first,  
16 Mr. Kennedy.

17 That I asked you as the chief financial  
18 officer of NuVeda, how is it that you monitor how much  
19 CW is actually contributing to the CWNV enterprise?  
20 You remember me asking you that question?

21 A Yes.

22 Q You said, "CWNV has a CPA who does basically  
23 all the bookkeeping and accounting, and I have a close  
24 relationship with him. I spend a significant amount  
25 of time with him and review those together." Do you

1 recall that answer?

2 A I do.

3 Q Then you said, "As I explained to you,  
4 though, if you're going to ask me that I absolutely  
5 know that records are accurate, the problem is that a  
6 lot of it is cash. So I am taking their word for what  
7 the cash amounts are." You recall that?

8 A Yes.

9 Q And cash amounts would be part of sales;  
10 correct?

11 A Yeah, sure.

12 Q So are you sitting here today -- when you  
13 said you think they're accurate, they're taking CW's  
14 word for it; correct?

15 A Well, there are some controls, and that's the  
16 reason that I think they're accurate. Doesn't matter  
17 whether -- in fact, all transactions at the  
18 dispensaries are done in cash. But they have to go  
19 through a state-mandated point of sale machine called  
20 MJ Freeway, and the MJ Freeway sales are correlated to  
21 something called metric, which measures the amount of  
22 cannabis in all of the -- in the cultivation, in the  
23 production and in the dispensaries.

24 So because they're correlated, I have  
25 confidence in the figures.

1 Q Do you audit that yourself?

2 A I have had to do that just recently for a  
3 transaction.

4 Q What transaction?

5 A I don't audit the entire spectrum of them.

6 Q What transaction did you have to do it for?

7 A We had some material that had been spoiled in  
8 transit, and it was returned to the Clark facility,  
9 and I had to make sure that the green waste was  
10 accounted for in metric before we could issue  
11 replacement material on MJ Freeway.

12 Q I'm sorry. Maybe I'm confused in the  
13 transaction.

14 A In other words --

15 Q Where were you distributing cannabis to?

16 A One of the dispensaries in Las Vegas.

17 Q And where were you distributing it from?

18 A Clark Natural in North Las Vegas.

19 Q So Clark Natural is now operational?

20 A The production facility had some prerolls.

21 Q And how long has Clark Natural been  
22 operational for?

23 A Four months.

24 Q Are they growing cannabis in the green  
25 houses?



1           A       Growing it. We had to get rid of the first  
2 crop, and we are now on a second crop which, we hope  
3 will be selling in February.

4           MR. FEUERSTEIN: Let me confer with my client  
5 and make sure I don't have anything else.

6           ARBITRATOR BAKER: Okay. Let's take  
7 five-minute break.

8                   (Break taken.)

9 BY MR. FEUERSTEIN:

10          Q       Mr. Kennedy, very quickly, if, in fact, the  
11 fair market value of NuVeda's interest in CWNV  
12 increases, even if we accept the Webster report, you'd  
13 agree that the fair market value of Ms. Goldstein's  
14 share would increase as well; correct?

15          A       You mean after August 8, 2018?

16          Q       I'm just asking, if we replaced \$3.5 million,  
17 the number that you provided, Mr. Webster, with, say,  
18 the \$22 million that's in the purchase and sale  
19 agreement, you'd agree with me that the full value of  
20 NuVeda would increase?

21          A       Yes.

22          Q       And Ms. Goldstein's interest would increase  
23 concomitantly; correct?

24          A       Yes.

25          MR. FEUERSTEIN: No further questions.

REDIRECT EXAMINATION

BY MR. WILEY:

Q Mr. Kennedy, turning to Exhibit 263, the purchase and sale agreements, you were in the room for Dr. Bady's testimony?

A I was.

Q Dr. Bady testified that that document is no longer in full force and effect; correct?

A That's correct.

Q Is it your understanding that that document was rescinded?

A It was.

Q And that the terms and conditions of the MIPA were always in full force and effect?

A Yes.

Q Did Glad 2B Home, LLC, ever receive any monies pursuant to this purchase and sale agreement that they put in a, quote/unquote, escrow account?

A No.

Q Were any of the obligations required of any of the parties of this purchase and sale agreement ever undertaken?

A No.

Q Did Glad 2B Home ever disburse any funds, regardless of the source, to any of the parties to

1 this purchase and sale agreement?

2 A No.

3 Q Mr. Kennedy, you agree with me that Section  
4 6.2 of the operating agreement simply requires that  
5 NuVeda acquire an appraisal as to the determination of  
6 an expelled member's interest; correct?

7 A Correct.

8 Q You were in the room for the testimony of Mr.  
9 Webster; is that correct?

10 A I was.

11 Q Mr. Webster testified that the methodology he  
12 used was the asset method in determining the fair  
13 market value of the company?

14 A He did.

15 Q You recall Mr. Webster testifying that that  
16 was an approved methodology used by appraisers?

17 A I recall that.

18 Q You recall Mr. Webster testifying that he has  
19 used the asset method in prior business valuations?

20 A Yes.

21 Q Turning your attention to the sales figures.  
22 I don't know if you still have them up; you don't have  
23 to access them.

24 As you sit here today, you have no reason to  
25 doubt the veracity of sales numbers that you received

1 from CWNV, do you?

2 A I have no reason to doubt it.

3 Q Let's talk about the judgment of 2113  
4 investors has. Is it your testimony that that  
5 judgment remains valid?

6 A It does.

7 Q You recall Mr. Feuerstein asking you  
8 questions about payment of rents?

9 A I do.

10 Q And payment of rents from CW?

11 A If CW made a payment to -- on that to 2113  
12 investors, it would be credited against the judgment  
13 amount.

14 Q But as of August 8, 2017, no payments had  
15 been made; correct?

16 A No payments had been made.

17 Q And it's your understanding that that is the  
18 appraisal date or -- excuse me, the expulsion date of  
19 Ms. Goldstein?

20 A Yes, it is.

21 Q Mr. Feuerstein asked you some questions about  
22 purported sales of license here in Clark County. Do  
23 you recall that line of questioning?

24 A I do.

25 Q As you sit here today, you don't know one way

1 or the other regarding veracity of any of those  
2 purported sales and the figures, do you?

3 A No. I sought out all the sales information I  
4 could get.

5 Q For clarification purposes, I think  
6 Mr. Feuerstein was going down the right road with  
7 respect to section 6.2 and the percentage of voting  
8 interest needed to expulse Ms. Goldstein. Instead of  
9 the 50 percent you testified to, is it your  
10 understanding now that that is 60 percent?

11 A It's 60 percent of the disinterested  
12 parties.

13 Q Did Dr. Bady and Dr. Mohajer possess greater  
14 than 60 percent interest in August 2017 at the time  
15 the expulsion occurred?

16 A Yes.

17 Q You recall we talked about the MIPA and  
18 certain events related thereto. In the event that the  
19 license were transferred and the terms and conditions  
20 of the MIPA were not effectuated, would that open up  
21 NuVeda to any liability from CWNV?

22 A Yes.

23 Q Can you give an overview of the summary of  
24 the liabilities that would be owed to CWNV in that  
25 instance?

1           A     In that instance, then all of the build-outs  
2     that CWNV paid for would have to be repaid to them,  
3     plus 16 percent per year from the time that they were  
4     completed, and the other expenses that they may have  
5     paid, other costs they had on behalf of NuVeda would  
6     have to be reimbursed with the same conditions.

7                     MR. WILEY:  Nothing further.

8                                 CROSS-EXAMINATION

9     BY ARBITRATOR BAKER:

10           Q     Mr. Kennedy, I have a couple questions.

11           A     Okay.

12           Q     Can you look at 262, the exhibit.  Do you  
13     have it?

14                     MR. WILEY:  It's going to be the last one  
15     there.  I think it's the last one.  You want this one?

16                     ARBITRATOR BAKER:  Yes, if you don't mind.

17           Q     I just want to clarify a couple of points.  
18     You testified that this first page of Exhibit 262 is  
19     something that you prepared; correct?

20           A     Yes, I prepared it.

21           Q     Did you prepare this before you spoke with  
22     Mr. Webster on August 13th?

23           A     I did.

24           Q     And so when you spoke with him on August  
25     13th, did he tell you what he was looking for?

1           A     Told me before we met what he was looking  
2     for.

3           Q     Okay. Then did you speak with him before you  
4     prepared this first page Exhibit 262?

5           A     Yes.

6           Q     So you spoke with him over the phone?

7           A     This was in response to making our  
8     appointment.

9           Q     And he says, this is what I need from you, so  
10    you went and prepared this first page, and then you  
11    brought it to him on August 13th?

12          A     He came to me actually, but, yes.

13          Q     And when you went to prepare this document,  
14    what did you look at?

15          A     I looked at the P&Ls and the balance sheets,  
16    the prior ones, and I just updated them. Not that  
17    complex, so...

18          Q     So in order to prepare this document, which  
19    you prepared in anticipation of meeting with Mr.  
20    Webster; correct?

21          A     Correct.

22          Q     You went and looked at other profit and loss  
23    documents, balance statements, updated them. Did you  
24    look at anything else?

25          A     No.

1 ARBITRATOR BAKER: Any follow up?

2 MR. FEUERSTEIN: Can I follow up on something  
3 Mr. Wiley said or just on you?

4 ARBITRATOR BAKER: Just on me.

5 MR. FEUERSTEIN: No.

6 ARBITRATOR BAKER: Thank you, Mr. Kennedy.  
7 Who is up first?

8 MR. WILEY: It's going to be Dr. Clauretjie.  
9 Thereupon,

10 DR. TERRENCE CLAURETIE,  
11 called as a witness by the Respondent  
12 having been duly sworn, testified as  
13 follows:

14 DIRECT EXAMINATION

15 BY MR. DUSHOFF:

16 Q It's pronounced Clauretjie?

17 A Clauretjie.

18 Q Dr. Clauretjie, can you spell your last name  
19 for the record.

20 A C-l-a-u-r-e-t-i-e.

21 Q Dr. Clauretjie, can you give us your  
22 educational background after high school?

23 A Got a B.A. in economics from Stonehill  
24 College, which is south of Boston. M.A. in economics,  
25 and Ph.D. in economics, both from Washington State

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1 University, and at one time several years ago I had a  
2 CPA certificate, and that's my educational  
3 background.

4 Q How about teaching experience?

5 A I taught at Moss University for a year, then  
6 in West Virginia for total of eight years, Shepherd  
7 State University. I thought for about eight years at  
8 LSU in Shreveport, Louisiana, and finished up my  
9 teaching career beginning 1988 through 2011 at UNLV.

10 Q What do you teach?

11 A I started off by teaching basic economics and  
12 statistics, monetary theory, but ended up going more  
13 into finance and real estate. So I ended up teaching  
14 a lot of finance, mainly corporation finance, as well  
15 as real estate and real estate finance.

16 So it was more or less of a move from  
17 economics at the beginning to heavily concentrated  
18 teaching in finance. In fact, at UNLV I was on the  
19 finance department. Only in the last year was I in  
20 the economics department. It was more finance than  
21 economics.

22 Q Have you ever testified in court as an  
23 expert?

24 A Yes.

25 Q And how many times is that?

1           A     Several hundred. I've been deposed over  
2     1,500 times.

3           Q     And where have you been -- have you ever been  
4     certified as an expert in District Court here in  
5     Nevada?

6           A     Many times, yes.

7           Q     That would also the hundred times you've  
8     testified?

9           A     Oh, yes.

10          Q     Have you ever testified as a business  
11     valuation expert?

12          A     Yes.

13          Q     Can you tell me how many times you've done  
14     that?

15          A     Probably half a dozen to a dozen maybe,  
16     around that area.

17          Q     Is that here in the state of Nevada?

18          A     Yes.

19          Q     Were you certified as an expert in doing the  
20     business valuations?

21          A     I was certified, qualified to do that because  
22     of my educational and experience background.

23          Q     So you were qualified as an expert when you  
24     were doing --

25          A     Yeah, yeah.

1 Q And how long have you been testifying as an  
2 expert witness?

3 A Since 1983.

4 Q Bring you up to today of why we're here  
5 today.

6 You were retained by NuVeda to provide a fair  
7 market value of NuVeda at the time, initially of March  
8 10, 2016, is that correct?

9 A I believe so.

10 Q I want you to -- you have a book right there.

11 A Okay.

12 Q The book has an index, if you look on the  
13 very first page.

14 A Got it.

15 Q And tab 2.

16 A Tab 2. That makes it easy.

17 Yes, Report, Fair Market Value as of March,  
18 10, 2016.

19 Q And that's a report you prepared; correct?

20 A Yes.

21 Q You also prepared report tab 3, Updated  
22 Report of Fair Market Value as of 3/10 by yourself, as  
23 of 11 -- on 11/28 2016; correct?

24 A Yes.

25 Q Both of those were done for Mr. Shane Terry

1 as of the value on March 10, 2016; correct?

2 A I didn't do it for him.

3 Q You did it for NuVeda?

4 A Right.

5 Q As of that date?

6 A In regards to Shane Terry; not for him,  
7 correct.

8 Q You were retained by NuVeda, not retained by  
9 Shane Terry?

10 A Yes. I did those reports in regards to Shane  
11 Terry's case; correct.

12 Q So let's go, because I don't want to spend  
13 time on Shane Terry since he's no longer in this case.  
14 Let's go to tab 7.

15 A Yes, sir.

16 Q I want to look at tab 7.

17 A Yes.

18 Q You recognize tab 7?

19 A Yes.

20 Q What do you recognize tab 7 to be?

21 A Tab 7 was a report that I did -- really had  
22 two parts to it, but the main part, the first part was  
23 the market value of NuVeda as of August the 8th,  
24 2017.

25 Q And NuVeda retained you to prepare this

1 report for -- as of August 8th, 2017; is that  
2 correct?

3 A Yes.

4 Q And what did you -- I'm going to put you down  
5 on page 1. You write here, "Materials relied upon."  
6 The first that you have here is "Report of Michael  
7 Webster valuating NuVeda on a liquidation basis."

8 MR. FEUERSTEIN: I'm sorry, Matt, you're  
9 reading from page --

10 MR. DUSHOFF: Page 1 of 7.

11 MR. FEUERSTEIN: On 8 --

12 ARBITRATOR BAKER: 7.

13 MR. FEUERSTEIN: I'm there.

14 BY MR. DUSHOFF:

15 Q Report of Mr. Michael Webster valuating  
16 NuVeda on litigation basis. What, if anything, did  
17 you reply upon Mr. Webster's for your report?

18 A There were two things: No. 1, I wanted to  
19 see if he did the evaluation on the liquidation basis  
20 the same way I would do, and it was consistent with  
21 the way it was done. And I also wanted to see if for  
22 some reason my numbers might be different from his,  
23 and there was a slight difference, but pretty much the  
24 same numbers for the liabilities, so forth.

25 So I didn't rely on it for my opinion. I

1 just relied upon it to see if there was a consistency  
2 between what we were doing, so if there was not a  
3 consistency, then I could take that into  
4 consideration, but you didn't find any  
5 inconsistencies.

6 Q You also have here various discussions --  
7 withdrawn.

8 You also relied on -- skip over the articles.  
9 You said you relied on a balance sheet of NuVeda as of  
10 August 8, 2017. Who provided you that balance sheet;  
11 do you remember?

12 A Yes. I sat down with Mr. Joe Kennedy. And,  
13 actually, some of the elements were provided by Mr.  
14 Kennedy; some of the elements were provided by outside  
15 information. So I can go over that for you, but  
16 most -- all of the liabilities were provided by Mr.  
17 Joe Kennedy.

18 Q I'm asking you right now about the balance  
19 sheet. We'll get to the other stuff, but you relied  
20 on the balance sheet from Joe Kennedy. Joe Kennedy  
21 gave you the balance sheet?

22 A Except for a couple of items, yes.

23 Q We'll get to those in your Tables. I just  
24 want to go over this right here.

25 And you have here No. 4, meeting with Paris

1 Bal --

2 A Balaouras.

3 Q I think we have the proper spelling of  
4 Balaouras. Meeting with Paris Balaouras of Acres  
5 Cannabis?

6 A Yes.

7 Q What did you meet with him about?

8 A I had been provided with a list from  
9 principals of NuVeda a list of sales.

10 MR. FEUERSTEIN: Arbitrator Baker.

11 ARBITRATOR BAKER: Is there an objection?

12 MR. FEUERSTEIN: Yeah, I'm going to object  
13 for a moment.

14 As you know, we made a motion in limine with  
15 respect to Dr. Clauretie's testimony, and in  
16 particular, to the fact when we had made a request for  
17 all documents provided to the expert that he based his  
18 opinion on. We have received no list that was  
19 provided to him. They have not claimed or shown the  
20 list to us in the production, so the idea of him  
21 testifying on this matter now, I think is prejudicial  
22 to, or, in fact, contrary to what your order was.

23 MR. DUSHOFF: We have that balance sheet that  
24 you have that we have admitted, it's the exact same  
25 balance sheet. If you look at the numbers, it's the

1 exact same balance sheet.

2 MR. FEUERSTEIN: I'm not objecting to the  
3 balance sheet. I'm objecting with respect to what I  
4 think the doctor just said, that he was provided a  
5 list of transactions.

6 MR. DUSHOFF: This is the list.

7 MR. FEUERSTEIN: If that was the list  
8 provided to him in a document, which is what it sounds  
9 like when someone says "a list," then I'm objecting to  
10 his testimony because we were never provided that  
11 list.

12 ARBITRATOR BAKER: I understood his testimony  
13 that there was a list of questions provided to you by  
14 NuVeda management, and then you started to talk about,  
15 I think, meeting with him, and that's when the  
16 objection happened. Was that your testimony?

17 THE WITNESS: Well, my testimony was that I  
18 was provided with the list indicated in Table 1.

19 MR. FEUERSTEIN: It was provided as a  
20 document?

21 THE WITNESS: Yes.

22 MR. FEUERSTEIN: I'm objecting.

23 ARBITRATOR BAKER: I'm sorry. You provided  
24 the list for what? In what? This is -- in Section 2,  
25 we're going to --



1 MR. FEUERSTEIN: He's on Table 1, page 5.

2 ARBITRATOR BAKER: Okay, okay.

3 THE WITNESS: That's the list I was provided  
4 with.

5 MR. DUSHOFF: Which is what we've already  
6 discussed with many of the other experts already in  
7 this case.

8 ARBITRATOR BAKER: Who provided this list to  
9 you?

10 THE WITNESS: I believe it was Pej Bady, but  
11 I met with several principals at the time, but I  
12 believe it was him.

13 MR. DUSHOFF: Mr. Feuerstein actually even  
14 asked Dr. Bady regarding that.

15 ARBITRATOR BAKER: I'm going to note your  
16 objection. I want to hear the testimony, and then we  
17 can address it after the testimony. Okay?

18 BY MR. DUSHOFF:

19 Q Let me ask you before we go to this. Why did  
20 you come -- how did you come to meet with Paris?  
21 Let's talk about that first.

22 A Fine. After I was provided the list, I  
23 wanted to verify -- because it was provided by the  
24 principals of NuVeda, I wanted to independently verify  
25 whether the values in that list were reasonable.

1           They gave me the name of someone who they  
2   thought was very, very knowledgeable of the industry  
3   because of his position. I met with that gentleman  
4   and that was Paris Balaouras.

5           Q     And do you have Paris Balaouras -- I believe  
6   it's in your report. You have his bio; is that  
7   correct?

8           A     Yes. It's on page 20.

9           Q     And what did you find out about Paris  
10   Balaouras -- I'll just call him Paris. What did you  
11   find out about Paris and his involvement in the  
12   marijuana industry?

13          A     Well, from the bio which he gave me -- I did  
14   not write that -- he gave me that bio, and from my  
15   discussions with him, I came to believe that he was  
16   knowledgeable enough to look at the values in Table 1  
17   and tell me if he thought that those were reasonable  
18   estimates of what the value were for dispensary,  
19   cultivation, production licenses.

20                So Paris, to me, was an outside source that I  
21   could go to, to verify the reasonableness of the  
22   values that were given to me.

23          Q     So let me run something by you in here.  
24   Let's go to Exhibit A that you have here.

25                So according to Mr. Balaouras, he told you

1 that he assisted in raising over a hundred million  
2 dollars to oversee the development, construction and  
3 launch of cannabis businesses in Arizona, California  
4 and Nevada; is that correct?

5 A We didn't discuss that verbally.

6 Q What did you discuss?

7 A We discussed in general his background. This  
8 bio was given to me by him.

9 Q What did you discuss with Paris?

10 A The main reason I sat down with him, and I  
11 told Mr. Balaouras, the reason I am here because I  
12 have a list of recently sold licenses -- excuse me,  
13 licenses to produce, cultivation and dispense  
14 marijuana products.

15 I want to know if the values in this table,  
16 in this list, are reasonable in light of your  
17 experience and your knowledge of the market as it  
18 exists at this time.

19 His discussion with me, they are very, very  
20 reasonable, and I don't see anything in these values  
21 that are maybe out of the ordinary. But there was one  
22 value that I think was very low for dispensary. But  
23 other than that, he said, these are reasonable in  
24 light of my experience.

25 Q I want you to turn to Table 1, that's on

1 page 5. In regards to the dates, the type, and the  
2 amount.

3 A Yes.

4 Q Are those the same exact numbers, the same  
5 exact, word for word, number for number, that you were  
6 given in the list you were given? You just reproduced  
7 it on here?

8 A Correct.

9 Q You said there was an outlier. I want you to  
10 look at May 16th. You see that dispensary?

11 A I sure do.

12 Q \$500,000?

13 A Yes.

14 Q As compared to the rest of them, that is  
15 about, at the very least, that is way off compared to  
16 the values, is it not?

17 A Yes.

18 Q Approximately 5 million, 4 and a half million  
19 dollars?

20 A Right.

21 Q You don't know why that is, do you?

22 A No.

23 Q And you came to a conclusion of value in this  
24 matter for NuVeda; isn't that correct?

25 A Yes.

1 Q I want you to turn to page 3 in your report,  
2 please, and No. 10.

3 A Yes.

4 Q And No. 10 says the liquidation value of the  
5 enterprise as of August 8 is estimated to be  
6 \$1,605,277; is that correct?

7 A Correct.

8 Q What methodology did you use to get to that  
9 number?

10 A I looked at the market value of the asset,  
11 the book value and the liabilities, subtracted off the  
12 book value the liabilities from the market value of  
13 the assets, and that difference is the estimated  
14 equity for market value of the company at that time  
15 based on liquidating the company.

16 Q Why did you use the liquidation method?

17 A That's probably the best question here.

18 MR. FEUERSTEIN: Way to go, Matt.

19 THE WITNESS: I was informed by principals in  
20 NuVeda again, that they had acquired the licenses to  
21 cultivate, produce, distribute, and they wanted to go  
22 forward with their business.

23 But what they told me was very reasonable,  
24 that just because you have the license, doesn't mean  
25 that you're ready to go. Requires other investments:

1 Production facilities, rental payment for -- working  
2 capital, as we call it in corporate finance. They  
3 needed significant investments to go forward.

4 They indicated that they had had trouble  
5 getting investments into the company because of the  
6 ongoing litigation that was ongoing at the time.

7 Now, I had read some reports, and I can tell  
8 you that the plaintiffs in that particular ongoing  
9 litigation had reports done that indicated that their  
10 value was as much as \$10 million. So I concluded it  
11 was reasonable to suspect that no banker or no  
12 investor, reasonable investor, would put the kinds of  
13 money that they needed to continue -- to commence and  
14 continue their operations into that business, with the  
15 potential large amount of money that might be settled  
16 against the company in litigation.

17 So my conclusion was that a liquidation value  
18 can be made with relative certainty if we have good  
19 values there, and under the understanding that this  
20 business could not attract the investment necessary to  
21 be an ongoing concern at that time.

22 MR. FEUERSTEIN: I'm going to move to strike  
23 that last answer on the following basis, that is, it  
24 falls outside the scope of the expert's opinion.  
25 He's listed in his reports the documents that he has

1     relied upon, and you can look at tab 7, page 1, you  
2     can do the same for tab 3, page 1, and tab 2, and I'll  
3     represent that there is no reference whatsoever to  
4     some articles about investing in cannabis.

5             And it sounds to me, based on his last  
6     answer, and we can have the court reporter read it  
7     back, that he's basing his opinion on that article.  
8     So he's testifying now, and his opinion based on  
9     information he did not list in his actual report.

10            MR. DUSHOFF: My response is he wasn't  
11     testifying about some article. He was testifying  
12     about this litigation and the effect on value and why  
13     he pulled a liquidation value, because there's not an  
14     investor, in his opinion as an expert, that would  
15     invest the money they would invest on the basis of the  
16     litigation, which he provides for in here saying that  
17     the litigation really has had a negative effect on the  
18     value, that's why he chose the liquidation.

19            ARBITRATOR BAKER: But is his opinion that he  
20     was talking about no investor and those conclusions,  
21     are those conclusions contained in this report?

22            MR. DUSHOFF: Yes, he talks about --

23            ARBITRATOR BAKER: Can you point me to where?

24            MR. DUSHOFF: Yes.

25            THE WITNESS: Page 4.

1 MR. DUSHOFF: Page 4 he talks about the  
2 absence of litigation, and the litigation effect on  
3 whether an influx of cash investment. So he does talk  
4 about that and afraid that litigation will have a  
5 negative effect on there.

6 ARBITRATOR BAKER: I still don't see where he  
7 talks about can't get an investor.

8 MR. DUSHOFF: What he's talking about, and  
9 also if you look in -- he's talking about they can't  
10 get investors, nobody would invest because of the  
11 litigation. Litigation is affecting the value of it.  
12 And his opinion, because of the litigation, that it's  
13 going to affect the value, and hence why he did  
14 liquidation. That's what his testimony is.

15 MR. FEUERSTEIN: Arbitrator Baker, just to be  
16 clear, I'm not objecting to what he's testifying to in  
17 his report. All I'm objecting to is the fact he's  
18 embellishing with some report that he did not  
19 identify.

20 ARBITRATOR BAKER: That's what I was trying  
21 to get to. I'm going to sustain your objection. I  
22 won't consider the testimony about investments. I'll  
23 have the transcript, so I'll know exactly what I won't  
24 consider.

25 MR. FEUERSTEIN: Thank you.



1 MR. DUSHOFF: I'll move on, but if I may at  
2 some point revisit that.

3 Q I want you to turn to Table 3.

4 A Yes, sir.

5 Q Before we go to Table 3, which is on page 9,  
6 is the liquidation method an acceptable method to  
7 determine fair market value of a company?

8 A Yes, depending on the circumstances.

9 Q How about in this circumstance?

10 A Yes, very much so.

11 Q So why is that, or did we already go through  
12 that?

13 A In this case it is because of the necessity,  
14 as I indicated on page 4, that they would need cash  
15 flows to continue their operations as a going concern.  
16 The cash flows would be in jeopardy because of the  
17 litigation.

18 Q So let's go to Table 3.

19 A Yes.

20 Q Table 3 contains assets. You see that it's  
21 your assets, liabilities, and equity. You see that?

22 A Yes.

23 Q And also license holding --

24 A Yes.

25 Q -- Of CWNV.

1           Now, you have -- I want you to look at the  
2 balance sheet. This information that you have here in  
3 Table 3, some of this information was given to you by  
4 Joe Kennedy in the balance sheet; correct?

5           A     Yes.

6           Q     And some of this information you got,  
7 specifically let's talk about the dispensaries down in  
8 your expert report. You see that where it says  
9 "Dispensaries, \$9 million"?

10          A     Yes, held by CWNV.

11          Q     How did you get to that number?

12          A     Okay, that you'll have to go back. That  
13 information was not given to me by Mr. Kennedy.

14                 You have to go back to my Table 1 and see  
15 that the dispensaries had an average value of  
16 3,541,000. But then what I did when I was preparing  
17 Table 3, I said what sort of values would we get if we  
18 left out the low value of \$500,000. I came up with  
19 something closer to like 4 million or something, so I  
20 said, let's say 4.5 million, and we'll give a value of  
21 the dispensaries at \$4.5 million a piece that were  
22 owned by CWNV at the time. That's where I got the \$9  
23 million, the two dispensaries, 4.5 each.

24          Q     From the operating agreement, that's where  
25 you've got -- if you can look under Padgett, 35

1 percent of the CWNV, LLC -- I apologize, from the  
2 MIPA. Is that where you got that?

3 A I got that actually from discussions with the  
4 principals. That's the case --

5 Q And 35 percent of 9 million would come out to  
6 3,360,000?

7 A 9 million 6.

8 Q 9 million 6, I apologize.

9 A Correct.

10 Q So you valued the cultivation license at  
11 \$300,000?

12 A Yes. I increased that as well, just to give  
13 an alternative estimate of the value of those  
14 licenses.

15 Q So you valued on the higher end than  
16 lesser?

17 A Yes. I did two valuations: The low one was  
18 at 7.4 back on Table 2, I believe, and this one would  
19 be a high value of 9.6.

20 Q And you used the high value in order to get  
21 the 1,605,277; correct?

22 A Exactly. I took the 9 million 6, take 35  
23 percent of that, and that gives you up above  
24 3,360,000. All the other numbers -- excuse me, the  
25 \$400,000 there is the Clark County Medical Solutions.

1 All the others numbers, especially when you get to the  
2 liabilities, all the liability numbers were given to  
3 me by Mr. Kennedy.

4 Q And here for the liquidation purposes, you  
5 did assets minus liabilities equals 1.605; correct?

6 A Market value of the assets minus book value  
7 of the liabilities, correct.

8 Q Just I want to bring you to page 9.

9 A Yes, sir.

10 Q You did a value of an ongoing concern?

11 A Right.

12 Q But you never used -- this is not something  
13 you used in determining the value -- used in  
14 determining the value of NuVeda; correct?

15 A That's correct, I was just doing a  
16 hypothetical example of where those licenses might  
17 come into play in the absence of a litigation.

18 If you want to try to value this as a going  
19 concern, with the information you have on the valuable  
20 licenses, that's the best you could do if there were  
21 no litigation, that you could do with the data.

22 Q Right. That's why on page 11 you have  
23 just -- a hypothetical -- you use the same numbers for  
24 revenue from 1 through 25, and expenses and net  
25 income, because it really wasn't about the numbers as

1 much as it was about the value of the licenses;  
2 correct?

3 A It's a hypothetical example of how you can  
4 look at just the license and come up with some theory  
5 of why that could help, estimate the value of a  
6 company as a going concern based on the balance  
7 sheet.

8 Q Okay. And let's turn to page 13 of your  
9 report.

10 A Okay.

11 Q Page 13 of your report, if you look at -- I  
12 want you to look at the second to last sentence. It  
13 says in this case from Tables 2 and 3, you have values  
14 of -- you have these two values. Now, what are those  
15 values?

16 A Again, if you're put in a position to say,  
17 you know what, can you take this balance sheet and  
18 tell me in any way what possible, what the value would  
19 be as a going concern, you would look at the value of  
20 the licenses and say, well, that's about the best you  
21 can do because they do represent in a sense -- the  
22 licenses are valued in the marketplace based on how  
23 they will produce revenues and expenses.

24 Now, you want to know where those figures  
25 came from?

1 Q Sure.

2 A The 2,990,000 figures comes from --

3 Q Table 2?

4 A Table 2. And you would go and you would look  
5 at the value of the licenses. 35 percent of CW is  
6 2,590,000. The Clark County Medical Solutions at  
7 400,000; that's 2,990,000. 3,760,000 would come from  
8 Table 3, and you go up and you take the 3,360,000 from  
9 the 35 percent CW, and add in the 400,000 from the  
10 Clark Medical Solutions.

11 If you wanted to try to attempt to say, Well,  
12 if you could do this with just this information as a  
13 going concern, could you possibly come up with some  
14 sort of a method, and that's the only thing I could  
15 think of.

16 Q So, in your testimony, your estimation, in  
17 your expert opinion, that the liquidation value is a  
18 reasonable and accepted method in this case to use to  
19 determine the value of NuVeda?

20 A Yes.

21 MR. DUSHOFF: Pass the witness.

22 MR. FEUERSTEIN: Take two-minute break. I'll  
23 get into my cross.

24 ARBITRATOR BAKER: Sure.

25 (Break taken.)

CROSS-EXAMINATION

BY MR. FEUERSTEIN:

Q Good afternoon, Dr. Clauretie. My name is David Feuerstein. I'm a lawyer on behalf of Ms. Goldstein.

I have some questions on your direct testimony and the reports that you've written in this case. Is that okay?

A Did you say reports in this case, with a plural?

Q Reports with a "S" yes.

A Okay.

Q You submitted three reports in this arbitration; is that correct?

A I believe that is probably accurate.

Q Is the entirety of your opinions contained in those reports?

A Well, to the best of my knowledge and belief they are.

Q You don't intend to offer any opinions that are not set forth in your report; is that fair to say?

A Unless the questions is going in that direction, no, I don't.

Q Do your reports reflect all the documents you

1     reply on?

2           A     I believe so.

3           Q     You're familiar with the phrase,  
4     Dr. Claurette, "garbage in/garbage out"?

5           A     You betcha.

6           Q     What does that mean to you?

7           A     It means the results of calculations are only  
8     as good as the inputs into those calculations.

9           Q     Now, you testified a little bit in response  
10    to Mr. Dushoff's questions about your expert testimony  
11    experience. I have a few questions about that.

12          A     Sure.

13          Q     Have you ever testified with respect to a  
14    cannabis company before?

15          A     Only to a leasehold interest, that's it.

16          Q     So it was a property valuation?

17          A     Leasehold interest of a cannabis company,  
18    correct, not the value -- not the operations itself,  
19    correct. Other than that, no, sir.

20          Q     Have you ever worked with Kolesar and Leatham  
21    before?

22          A     Yes.

23          Q     Have you ever worked with Mr. Dushoff  
24    before?

25          A     I don't believe so.



1           Q     How about Mr. Wiley, you worked with him  
2 before, Jason Wiley?

3           A     Other than this case?

4           Q     Yes.

5           A     No.

6           Q     Now, you testified in response to some  
7 questions about the fact you have a conclusion that  
8 the litigation in this case would -- affected the  
9 valuation of the company. Is that fair to say?

10          A     To be precise, there's two different ways to  
11 value the company. The litigation did not value --  
12 the litigation did not affect it on valuing on the  
13 liquidation basis. It would have affected the value  
14 as an ongoing concern because the litigation would  
15 prevent the influx of cash flow necessary to continue  
16 the operations.

17          Q     And that's what I want to focus on.

18          A     I want to be certain we distinguish those  
19 two.

20          Q     I appreciate the clarity.

21                 Your understanding -- what was your  
22 understanding of NuVeda's business as of August 2017?

23          A     Their business was that they had licenses for  
24 production and cultivation, the stages of which I'm  
25 not certain of at that time. They also had 35 percent

1 interest in two dispensary licenses.

2 Q What's the basis of that testimony right  
3 there? Where did you learn that?

4 A Information that was given to me by Mr.  
5 Kennedy.

6 Q Was it documentary information or just  
7 conversation?

8 A I don't recall.

9 Q Did you ask for any documents to understand  
10 why NuVeda held a 35 percent interest in two  
11 dispensary licenses?

12 A Did I ask if he had any documents?

13 Q Did you ask any documents to support it?

14 A No.

15 Q Did you have any understanding of what was  
16 going on in or about August 2017 with respect to the  
17 dispensary licenses?

18 A No.

19 Q Did you ask whether the dispensary licenses  
20 were operational or stagnant?

21 A No.

22 Q Did you know whether who was responsible --  
23 let me take a step back.

24 Is it important to you in determining whether  
25 or not to evaluate a company on a liquidation basis or

1 going concern to know whether the business is actually  
2 operational or not?

3 A Well, it's a great question. One may have  
4 the opinion that once you begin an operation, then you  
5 should move away from perhaps looking at it from a  
6 liquidation standpoint. But just because you commence  
7 operations in some fashion doesn't mean that you're  
8 going to be successful without an influx of a lot more  
9 capital.

10 That's what I was told, that they had trouble  
11 raising the capital to continue operations at any  
12 significant level. So if that was the case because of  
13 litigation, until that litigation would go away, they  
14 were not able to raise the capital sufficient to  
15 continue operations or to bring them to any level that  
16 would be profitable.

17 Therefore, if you can't bring your operations  
18 to a profitable level, the best valuation is the  
19 liquidated value.

20 Q Let me interrupt you -- are you finished?

21 A No. It's an unfortunate circumstance where  
22 the plaintiffs in the case bringing litigation seeking  
23 damages for which they have now, because of the  
24 litigation, have limited the ability of the company to  
25 operate.

1           Q     I just want to make sure you're done. I  
2     didn't mean to interrupt you before.

3           A     That's okay. But that's what I believe is  
4     the case where you have significant numbers in a  
5     litigation reasonable to say that it's difficult to  
6     attract investors to operate at a profitable level.

7           Q     So let me ask you a hypothetical.

8           A     Sure.

9           Q     Does your opinion change at all if I told you  
10    that NuVeda did not have responsibility for funding  
11    the operations of the dispensaries; that they didn't  
12    have to raise capital in order to continue the  
13    business?

14               MR. DUSHOFF: Objection. Beyond the scope of  
15    his knowledge. He testified on what he was given and  
16    what he did this on.

17               ARBITRATOR BAKER: Overruled.

18               THE WITNESS: I do not know. I cannot sit  
19    here and tell you precisely the amount of investments  
20    and capital they would have to raise at the time I did  
21    the report. The only thing I can tell you is that  
22    they told me they had significant problems raising the  
23    monies necessary to continue operations. I can't tell  
24    you anymore than that.

25    ///

1 BY MR. FEUERSTEIN:

2 Q I'm going to ask you again a hypothetical,  
3 because I want you to see, sitting here today having  
4 the expert qualifications that you have, if, in fact,  
5 we took away the component of them having to raise  
6 capital.

7 Assume for the moment NuVeda had no  
8 obligation to raise capital and no need to raise  
9 capital because there was a contractual source that  
10 was required to pay for all the operating expenses of  
11 the company, everything. Are you with me so far?  
12 Following my hypothetical?

13 A Not really but, go ahead.

14 Q I want to make sure you understand because I  
15 want to get clarity on this.

16 A I think you have an argument you can present,  
17 but not to me.

18 Q I want to make sure we're on the same page.  
19 Suppose that NuVeda entered into a contract,  
20 and that contract required that a third-party, or the  
21 contracting party, had to pay all the expenses going  
22 forward to develop the business, to develop the  
23 licenses, run the dispensaries, build the cultivation.  
24 That's what the contract provided.

25 In exchange for that contract, NuVeda would

1 give 65 percent of the interest in the licenses to  
2 that party. You with me so far?

3 A 65 percent? NuVeda would?

4 Q Yes.

5 A Not 35 percent?

6 Q They give 65 percent, retaining 35 percent.

7 A Thank you.

8 Q In that situation, does it change your  
9 conclusion with respect to the fact that whether or  
10 not to use a going concern model or a liquidation  
11 model?

12 A I'd have to know a lot more information about  
13 that aspect.

14 Q What else would you need to know?

15 A I can't tell you as I sit here.

16 Q Well, you just said you needed to know more  
17 information so I'm asking to follow up, what  
18 information did you need?

19 MR. DUSHOFF: Objection. Asked and answered.  
20 He's at the point of badgering. He already answered  
21 he doesn't know. He provided a hypothetical. He  
22 doesn't know the answer to the hypothetical, and now  
23 he wants to ask questions regarding, finding more  
24 information on a hypothetical.

25 ARBITRATOR BAKER: Overruled. I'll ask that

1 you ask it one more time just so we're clear what  
2 information you would need.

3 BY MR. FEUERSTEIN:

4 Q In the hypothetical I provided to you with  
5 respect to a contract between NuVeda and another  
6 party, and the other party would be paying all of the  
7 expenses for operations -- build-out, development,  
8 et cetera, such that NuVeda didn't have to raise  
9 money -- would that change your conclusion as to  
10 whether to use the going concern method or the  
11 liquidation method?

12 A I'd have to have a lot more information than  
13 I have.

14 Q Can you tell me -- I don't need an exhaustive  
15 list, but a list of what items you would need to know.

16 A Well, let me start with one obvious answer:  
17 What are the financial resources of the guarantor of  
18 funds? If we don't know what the financial resources  
19 are and the obligations -- I'd have to read the  
20 contract, I'd have to read all sorts of things. There  
21 are legal arguments involved, and I'm not a legal  
22 expert.

23 So you're really going into an area I don't  
24 have enough information to give you an answer, and I'm  
25 not going to give an answer that, oh, yes, that would

1 definitely change my opinion, without knowing a lot  
2 more about that situation which you're talking about.  
3 And you asked for examples, and it could be many more  
4 as I sit here today.

5 Q Without the -- I understand your reluctance  
6 to say it would definitely change it. Would it affect  
7 your conclusion?

8 A It wouldn't affect my valuation at all.

9 Q I'm not asking the valuation. Would it  
10 affect your decision to use the going concern method  
11 or the liquidation method?

12 A Anything is possible. I don't know. I can't  
13 go down that route.

14 Q What did you base your determination on when  
15 you claimed that the litigation in this case would  
16 prevent an investor from investing in NuVeda? What's  
17 your basis for that statement?

18 A No. Let me be precise. What I stated was  
19 that the instigation of litigation presented a  
20 substantial financial risk to potential investors.

21 Q What's the basis of that conclusion? What  
22 are you basing that on?

23 A Well, couple of things: I mean, I've talked  
24 to the principals, and they've told me they had  
25 trouble raising money for the company, for the firm as



1 a result of the litigation.

2 I base it on the fact that litigation itself  
3 depresses the value of companies in the marketplace  
4 even. So if litigation or the threat of a litigation  
5 affects the value of a company, then clearly it could  
6 affect the value of the company in this particular  
7 case, particularly it would affect the value of the  
8 company if it cut off sources of funds for growth or  
9 development.

10 Q I assume -- let me ask you a question. Is it  
11 always the case when there is a litigation the  
12 valuation of the business is depressed?

13 A Yes. Well, unless it's de minimis. It's  
14 almost always. In fact, there's literature on the  
15 effect of litigation on values of companies. Of  
16 course, it's going to affect the value of the  
17 company.

18 Q But you didn't site any of that literature in  
19 your report; correct?

20 A No. You asked the question, and I answered  
21 it.

22 Q I assume the principals -- in your  
23 discussions with the principals, nobody involved with  
24 NuVeda revealed to you that there was an agreement  
25 called the Membership Interest Purchase Agreement or

1 MIPA; is that fair to say?

2 A I'm not familiar with that.

3 Q And I assume --

4 A I'm not familiar with it. It doesn't ring a  
5 bell.

6 Q And I assume that in the discussions with the  
7 members of NuVeda, that nobody revealed or discussed  
8 an operating agreement for CWNV; is that fair to  
9 say?

10 A An operating agreement with CWNV? I don't  
11 believe I've seen that or heard about that.

12 Q In the course of your report, drafting your  
13 report, Dr. Clauretje, did you ever ask for the  
14 discovery documents in this case?

15 A No.

16 Q Did you ask for the pleadings in this case?

17 A No.

18 Q Did you ask for any of the deposition  
19 transcripts in this case?

20 A I did not.

21 Q I want to turn to -- let me ask you a  
22 question. If I looked at your report that's on tab 7.

23 A Tab 7?

24 Q Yes, tab 7.

25 A Let me go to that, please.

1 Q Yes.

2 A That's the one we're talking about?

3 Q Yes. Did that report incorporate your prior  
4 reports and the opinions set forth therein?

5 A I believe I may have referred to my prior  
6 report on page 15 where I valued 3/10/16 liquidation  
7 value, 1,684,368 and on this report 1,605,277. That's  
8 the only reference I think I made to that report.  
9 There may be something else in there, but that's the  
10 only thing I recall, sir.

11 Q You recall having an issue about statements  
12 about a report filed by Don Parker; correct?

13 A Yes.

14 Q And one of your -- I'm going to leave that  
15 alone.

16 Now, I want you to turn to the balance sheet  
17 that you provided in your report on Table 2. Table 2  
18 was with the --

19 A Table 2 was the lower of the estimate of the  
20 license estimates; yes.

21 Q I appreciate that. I'm just going to ask  
22 some general questions.

23 Did you do anything, Dr. Clauretje, to  
24 actually confirm any of the numbers other than with  
25 respect to CWNV and Clark, did you confirm any of the

1 other numbers on this list?

2 A I did not audit this.

3 Q You did not?

4 A I did not audit it.

5 Q And you think it's important in issuing an  
6 expert report to provide an independent assessment of  
7 a balance sheet if you're going to be doing a  
8 liquidation value of a company?

9 A Would you ask that again?

10 Q I guess what I'm asking, maybe we'll do it  
11 stepwise.

12 When you do a liquidation value of a company,  
13 which you're effectively doing I think you said,  
14 you're taking the assets, subtracting the liabilities  
15 and figuring out what the equity is; correct?

16 A Market value of the assets?

17 Q Yes. Do you think it's important as an  
18 expert to provide an independent valuation of all of  
19 those numbers on the balance sheet such that you're  
20 comfortable issuing a report on the accuracy of what  
21 the equity is in the document or in your conclusion?

22 A It's important that the numbers accurately  
23 reflect reality.

24 Q What did you do to confirm --

25 A I didn't say it's important for me to confirm

1       them.   Okay.

2               In this particular case, I met with Mr.  
3       Kennedy -- the real issue is the liabilities because,  
4       except for the cash items, the assets are pretty much  
5       the value of the licenses, which I went over with Mr.  
6       Paris Balaouras.   So if you look at the liabilities,  
7       that's where you would want to perhaps do an  
8       investigation.

9           Q       And you didn't do that investigation?

10          A       I did not, and there is a reason for that.  
11       The reason for that is --

12          Q       Mr. Dushoff can ask you the reason.

13          A       Okay.

14          Q       Now, you testified, Dr. Clauretje, that one  
15       of the individuals at NuVeda provided you a list is  
16       how you comprised Table 1; is that your testimony?

17          A       Yes.

18          Q       Does the list that you received look exactly  
19       like that?

20          A       No.   I mean this is vertical, but it was  
21       horizontal.

22          Q       Was there any other information on the list  
23       other than what's on this page?

24          A       No.   Oh, was there any other information on  
25       the list?

1 Q Yeah.

2 A Yeah, I think there was some footnotes, but I  
3 can't recall.

4 Q Was there --

5 A Let me put it this way: I don't think there  
6 was any essential information on the list in terms of  
7 the valuation -- of determining the valuation of the  
8 licenses, but there may have been. I did not peruse  
9 the entire sheet other than the value of the  
10 licenses.

11 Q Is there anything, in your view, that would  
12 be essential in being able to determine whether the  
13 value of the licenses in this list is somehow  
14 comparable to the licenses held by NuVeda?

15 A I'm not following that.

16 Q Let me flesh it out for you.

17 A Okay. Sure.

18 Q Is a cultivation facility -- rather, is a  
19 dispensary in Clark County the same as a dispensary in  
20 Nye County?

21 A I see what you're saying. No.

22 Q Is a cultivation facility that's 500 feet the  
23 same as a cultivation facility that's 25,000 feet?

24 MR. DUSHOFF: Objection; beyond the scope.

25 ARBITRATOR BAKER: Overruled.

1           THE WITNESS: They wouldn't be the same. I  
2   don't know if they would be the same, and that's  
3   precisely the reason why I went to Mr. Balaouras and  
4   said these are the licenses which has NuVeda given me  
5   as comparable to their licenses.

6           In your opinion, are these license values  
7   reasonable to apply to the NuVeda situation? It was  
8   reasonable.

9   BY MR. FEUERSTEIN:

10          Q     That was the extent of your conversation with  
11   Paris?

12          A     That's was the essential part, yes.

13          Q     How long was your conversation with him?

14          A     20 minutes, half an hour.

15          Q     You know that Paris was referred to you by  
16   Dr. Bady; correct?

17          A     Correct.

18          Q     And you have no idea if Dr. Bady had a  
19   conversation between the time he referred you and the  
20   time you arrived; correct?

21          A     Do not know that.

22          Q     Did you have a conversation with Paris in  
23   person? Over the phone? By e-mail? How was it?

24          A     With Paris?

25          Q     Yes.

1           A     In person. I went to his office.

2           Q     When did that conversation take place?

3           A     It took place -- within a week, I didn't  
4 write the date down. Within a week when I authored my  
5 report, because I knew the deadline was coming up when  
6 they wanted me to write the report, so I saw him  
7 relatively soon.

8           Q     Is there a reason, Dr. Clauretje, that you  
9 took into account sales from January or in January of  
10 2018?

11          A     Any reason I took them?

12          Q     Why did you accept them as indicative of what  
13 the value of Ms. Goldstein's interest is worth?

14          A     What date again?

15               MR. DUSHOFF: Objection. That was not the  
16 testimony. Indicative of what the licenses --

17               MR. FEUERSTEIN: You're right. Let me  
18 withdraw the question and ask it better.

19               THE WITNESS: Yeah, ask it a little bit  
20 better.

21               MR. DUSHOFF: That wasn't a great question,  
22 by the way.

23 BY MR. FEUERSTEIN:

24          Q     Is there a particular reason that the  
25 licenses sold in January of 2018 were considered in



1 arriving at the conclusion of what the licenses were  
2 worth in August of 2017?

3 A No particular reason. So --

4 Q Sitting here --

5 MR. DUSHOFF: There's no question before you,  
6 Dr. Clauretie.

7 THE WITNESS: I did not see as I look -- as I  
8 look at it now, I don't see there's big decline in  
9 prices. In fact, the cultivations went up. I didn't  
10 see any change from pre July 2017 to post July 2017.  
11 I didn't see any appreciable changes there.

12 So I had a larger number. The larger the  
13 number you have, the better.

14 BY MR. FEUERSTEIN:

15 Q So it's okay in your view when valuing a  
16 business to use data points that come after a certain  
17 date for which you're evaluating that business?

18 MR. DUSHOFF: Objection. Misstates his  
19 testimony.

20 MR. FEUERSTEIN: I just asked him a question  
21 and he answered it.

22 MR. DUSHOFF: Objection; misstates the  
23 testimony. He took them into account --

24 ARBITRATOR BAKER: Okay. Sustained.

25 Can you rephrase your question.

1 BY MR. FEUERSTEIN:

2 Q Dr. Clauretje, is it acceptable in your  
3 opinion, to use data points that come after the date  
4 on which you're supposed to be valuing the business to  
5 determine valuation?

6 A Under certain circumstances, yes.

7 Q What circumstances?

8 A If you have reason to believe there's no  
9 substantial change in values.

10 Q Let me ask you another question,  
11 Dr. Clauretje.

12 You have independent familiarity with the --  
13 with Nevada's cannabis market. Are you familiar  
14 what's going on in the cannabis market in Nevada?

15 A Today?

16 MR. DUSHOFF: Objection; vague.

17 THE WITNESS: No.

18 BY MR. FEUERSTEIN:

19 Q Did you happen to know, for example, whether  
20 the licenses that sold in February 2016 were medical  
21 licenses or recreational licenses?

22 A I can tell you in 2016 those were licenses  
23 that were sold prior to recreational being approved.

24 Q In 2017, did you know whether those licenses  
25 were recreational or medicinal?

1           A       I don't know; I can't tell you.

2           Q       In 2018 whether those licenses were  
3 recreational or medicinal?

4           A       I don't know.

5           Q       Is it your opinion, Dr. Clauretje, that when  
6 you have an operating business that doesn't require  
7 capital to continue to run, that the book value is the  
8 best way to assess fair market value?

9                   MR. DUSHOFF: Define "book value." Are you  
10 talking liquidation value?

11 BY MR. FEUERSTEIN:

12           Q       Liquidation value. Want me to say it again  
13 for you?

14           A       You better do that.

15           Q       Is it your opinion, Dr. Clauretje, that you  
16 have an operating business that doesn't require any  
17 outside capital --

18           A       Assume you're operating.

19           Q       That the best way to figure out the fair  
20 market value is to use the liquidation method?

21                   MR. DUSHOFF: Objection. Vague; overbroad.  
22 In this case was it the best, or you're talking  
23 overall?

24                   MR. FEUERSTEIN: I'm saying overall. In his  
25 expert opinion.

1 ARBITRATOR BAKER: Overruled.

2 THE WITNESS: The best value between values  
3 of liquidating the company and values of ongoing  
4 concern, the best value is always a function of the  
5 situation that you're looking at. So I can't answer  
6 that question. I can just say that if you had a going  
7 concern that didn't make (unintelligible), maybe value  
8 of an ongoing concern might be better.

9 There is a determination to be made, in my  
10 opinion, that this was the best method at that time  
11 for this company in this circumstance, but you can't  
12 say uniformly in every case which is best. It's a  
13 case-by-case analysis you would have to make.

14 BY MR. FEUERSTEIN:

15 Q So there's no rule of thumb, in your view,  
16 that says when you ought to use the liquidation value  
17 versus when you should use the ongoing concern  
18 value?

19 A There would be a circumstance using a rule of  
20 thumb like bankruptcy or something like that. But  
21 generally, no absolute determination. It goes on the  
22 facts of the case at hand.

23 Q And you'd agree with me if the facts you were  
24 provided were inaccurate or incomplete, your  
25 determination to use the liquidation value may not be

1 correct?

2 A To the extent they were de minimus, it would  
3 be de minimus, or substantial, could be substantial.

4 Q And would you view the fact that NuVeda  
5 didn't require any outside capital to fund its  
6 operations in August 2017 to be a de minimus fact or  
7 fairly relevant fact?

8 MR. DUSHOFF: Objection. Beyond the scope of  
9 his knowledge; improper hypothetical.

10 He doesn't know anything about any of that.

11 ARBITRATOR BAKER: Overruled.

12 THE WITNESS: That's correct. I don't know  
13 anything about their situation other than the fact  
14 what they told me, and they're the best people to  
15 answer that question.

16 BY MR. FEUERSTEIN:

17 Q I want you to turn, Dr. Clauretje, to your  
18 report.

19 A Yes.

20 Q I'm looking for the right page. First, I'd  
21 like you to go on tab 2.

22 A Tab 2. One second; got it.

23 Q And the first thing I'd like you to look at  
24 is on page 13. There's a balance sheet as of 3/10  
25 2016?

1           A     I see that.

2           Q     And you see there's, again -- first of all,  
3     where did you get the information for that balance  
4     sheet?

5           A     Mr. Joe Kennedy.

6           Q     What did you do to confirm the accuracy of  
7     that information?

8           A     Nothing.

9           Q     Did you do anything to confirm the  
10    accuracy --

11          A     I did not audit it.

12          Q     Did you at that time have this so-called list  
13    with respect to the asset -- with respect to the  
14    valuation of licenses?

15          A     I did not.

16          Q     How did you get to the valuation of licenses  
17    there?

18          A     I'm not sure. I'm not sure in this report.  
19    Let me explain something to you: I could take some  
20    time, an hour, a day, go through all of these past  
21    reports and be able to answer your questions a lot  
22    better. But these reports were done a couple of years  
23    ago, and my memory would only be improved by taking  
24    the time to go through them again.

25                I have not looked at these reports in some

1 months. So to be able to answer questions completely  
2 and accurately as you would like, I may not be able to  
3 do. I hope you appreciate that.

4 Q I do. I'll direct you and help refresh your  
5 recollection, so I hope you appreciate that.

6 A Okay.

7 Q I would like to know, because you sort of  
8 raised it, what did you do in preparation for today's  
9 testimony?

10 A I read my report. That is on tab 7.

11 Q Okay. Did you meet with counsel to talk  
12 about anything?

13 A Yes.

14 Q When did you meet with counsel?

15 A I met with counsel yesterday.

16 Q When did you meet with them?

17 A I think it was about 2:00 o'clock.

18 MR. DUSHOFF: I think you're mistaken. Two  
19 days ago.

20 THE WITNESS: Two days ago, Monday.

21 BY MR. FEUERSTEIN:

22 Q Dr. Clauretje, before we move off this, I  
23 want to point you to page 14. You say on page 14 in  
24 paragraph 2, do you see that? You're looking on the  
25 wrong page, sir.

1           A     I see it.

2           Q     It says \$4.5 million valuation was based on  
3 recent sale for \$5 million. That also included a  
4 leasehold advantage and options. Do you see that?

5           A     Yes, I see that.

6           Q     Does that refresh your recollection as to how  
7 the number was calculated in the balance sheet?

8           A     Yes.

9           Q     Did you actually look at the leasehold and  
10 options?

11          A     I did not at that time.

12          Q     Was that something that was told to you by  
13 one of the principals of NuVeda?

14          A     It was.

15          Q     Did you do anything to confirm the accuracy  
16 of that?

17          A     I did not.

18          Q     Now, turn the page if you would,  
19 Dr. Clauretjie, to page 15.

20          A     Yes.

21          Q     I'm sorry, page 16. And if you look at page  
22 16, there's a -- right below paragraph 7 it says  
23 "Member Loans." Do you see that?

24          A     Yes.

25          Q     It says number about Jennifer Goldstein,



1       \$47,660.50. Do you see that?

2           A       Yes.

3           Q       And that was a number, I assume, was provided  
4       to you by the members of NuVeda; correct?

5           A       Yes. That would have been a liability.

6           Q       Let me ask you another question,  
7       Dr. Claurette. Assume for the moment -- I want to go  
8       back to my hypothetical with the contract, where the  
9       contract is there to provide financing to NuVeda's  
10      licenses so they can operate, they can run, and they  
11      don't need to get any sort of outside capital. You  
12      with me so far?

13          A       Yes.

14          Q       Suppose also there's a provision in that  
15      contract that requires this outside source who's  
16      funding NuVeda to provide payments, future payments  
17      based on certain terms of the contract; so NuVeda is  
18      assured of getting money as profits in the future. Is  
19      that an asset of the company?

20          A       I don't know.

21          Q       What would you need to know to determine  
22      whether a contract promising further payments is an  
23      asset to the company?

24          A       The way you're structured; there's so many  
25      questions. I can come up with lots of questions

1 unless you can give me more details.

2 For example, you'd have to give me a lot more  
3 details about that particular contract. The contract  
4 itself, the obligations, liquidated damages in the  
5 case of the contract, financial position of the  
6 obligor.

7 I mean, you're asking an open-ended question.  
8 You're asking a question of me that I can't give you a  
9 yes or no on your hypothetical without knowing a lot  
10 more about your hypothet. I'm not trying to gemiset  
11 (phonetic) around the matter, I'm really not, but I'm  
12 not going to allow you to get me to provide an answer  
13 yes or no on something that is so open-ended.

14 Q Okay. I was simply asking a question. I  
15 appreciate your response.

16 I'm going to give you a -- well, in  
17 determining whether to use the book value or the  
18 liquidation value -- let me take the question back  
19 because I started off and I kept getting worse.

20 In determining to use the liquidation value,  
21 did you ask the principals of NuVeda whether they had  
22 provided you all the assets of the company?

23 A Yes.

24 Q Did you ask them for any contracts that might  
25 provide beneficial contributions to the company?

1           A     No. I just asked for a list of their  
2     assets.

3           Q     And they told you the only assets were what  
4     was set forth in Table 1 or Table 3 of your report; is  
5     that fair to say?

6           A     That's correct.

7           Q     Now, I want you to assume for the moment,  
8     Dr. Claurette, that in July of 2017, recreational  
9     sales of marijuana began in Nevada. Okay?

10          A     Okay.

11          Q     What do you think, sitting here today, that  
12     would do to the valuation of the dispensary  
13     licenses?

14               MR. DUSHOFF: Objection; speculation. What  
15     he thinks would happen? It's already beyond the scope  
16     of his knowledge. We keep doing these assumptions.  
17     It keeps dragging on and on.

18               If he has an actual question on the  
19     valuation, I ask that we get to it.

20               ARBITRATOR BAKER: Sustained.

21               MR. FEUERSTEIN: Arbitrator Baker, he  
22     provided a expert report. I feel compelled to  
23     expand --

24               ARBITRATOR BAKER: I think the testimony is  
25     he doesn't know.

1 BY MR. FEUERSTEIN:

2 Q Is that your answer, you wouldn't know what  
3 happens in the case of -- in the promulgation of  
4 recreational laws?

5 A I don't know what has happened to the values  
6 as we sit here today.

7 Q Okay. You understand, by the way, the  
8 reports that you're providing and that Mr. Parker  
9 provided are designed to calculate fair market  
10 valuation, not loss profits; correct?

11 A Yes. I take the term "fair market value" to  
12 incorporate -- fair market value is a -- the market  
13 value arrived between a willing seller and a willing  
14 buyer, and it would pertain to both an ongoing  
15 business and a liquidated business as well.

16 Q Is it your testimony or your understanding  
17 that NuVeda was in liquidation as of August 2017?

18 A No.

19 Q Do you have an understanding sitting here  
20 today, Dr. Clauretje, what a vertically-integrated  
21 enterprise is?

22 A Do I have an understanding?

23 Q Yes.

24 A In general.

25 Q Do you have an understanding how that applies

1 in the cannabis business?

2 MR. DUSHOFF: Objection; relevance. This  
3 doesn't go to the valuation, to anything he's  
4 testified to before here today.

5 He was given information. I hate speaking  
6 objections, but this is going far afield.

7 ARBITRATOR BAKER: I'm going to allow it.  
8 Overruled.

9 BY MR. FEUERSTEIN:

10 Q Do you know how the phrase  
11 vertically-integrated applies in the marijuana  
12 space?

13 A In general?

14 Q Yes.

15 A I believe so.

16 Q What's your understanding?

17 A A vertically-integrated company, in the  
18 marijuana business you would have a company that owns  
19 the cultivation facility, the production facility, and  
20 the dispensaries.

21 Q Sitting here today, do you know whether  
22 selling a vertically-integrated set of licenses does  
23 anything to the price of those licenses?

24 A No.

25 ARBITRATOR BAKER: No, you don't know or no

1 it doesn't? I want to be clear. You don't know?

2 THE WITNESS: No.

3 ARBITRATOR BAKER: Okay.

4 BY MR. FEUERSTEIN:

5 Q I want to turn to page 11 of your report.

6 MR. DUSHOFF: Which one?

7 MR. FEUERSTEIN: I'm sorry, tab 7.

8 Q I thought I understood you to say that the  
9 numbers you include in here in revenue, expenses were  
10 numbers that you derived from the balance sheet. Did  
11 I hear you correctly?

12 A No, not at all.

13 Q Can you explain to me then how you picked the  
14 number of \$900,000?

15 A Yes.

16 Q Okay.

17 A The question when I was writing the report,  
18 the question came to my mind: Is there any way to try  
19 to estimate the value of a going concern based solely  
20 on its assets? And in some situations, you can't.

21 If you assume that the value of the asset  
22 reflects the value of the company going forward, the  
23 cash flows that asset will make. Let me help clarify  
24 that for you.

25 There's a difference in the balance sheet

1 between the book value of an asset and the market  
2 value of an asset. Okay? In fact, the book value of  
3 their assets is like a couple thousand dollars maybe  
4 that they applied to get the license.

5 The market value reflects what those licenses  
6 can make on an ongoing basis as if it were ongoing  
7 concern. If you think about an investor that went to  
8 NuVeda and said you're in trouble, we'll buy your  
9 licenses because you can't operate, those investors  
10 are thinking about what the cash flows and revenues  
11 and expenses are going to be from that license, and  
12 they're not going to pay more for that license than  
13 what it's worth in terms of the cash flows that are  
14 generated.

15 That's what I'm showing in a hypothetical  
16 example in this section of the report. That, if you  
17 consider an investor in a license, valuing the license  
18 based on the cash flows of operating it, then, yes,  
19 you can come to the conclusion that, in a sense, the  
20 market value of the license represents the market  
21 value as an ongoing concern.

22 If they had to liquidate because they  
23 couldn't continue, they would sell it to an investor  
24 that could continue, and that investor would pay the  
25 market value of the license, which reflects basically

1 operating that license with revenues, cash flows,  
2 expected rate of return and so forth. The only reason  
3 I was doing that section of the (unintelligible.)

4 The numbers here have nothing do with the  
5 actual numbers of NuVeda.

6 Q I think I understand that. I guess my  
7 question, is the \$900,000 number in revenues just a  
8 number you picked out of thin air?

9 A Yes.

10 Q Could it have been \$2 million --

11 A Right. Exactly. It's probably a little bit  
12 too low because the value of that license in my  
13 hypothet comes out to be 2.2 million, something like  
14 that, exactly.

15 Q So I guess my question is how does Table 4 --  
16 if you're picking the numbers out of thin air and not  
17 basing it on any sort of numbers that are actual  
18 numbers of NuVeda, how does Table 4 do anything with  
19 respect to bolstering your opinion or refuting what  
20 NuVeda is alleging -- what claimant is alleging?

21 A It doesn't. I'll answer one more. It's an  
22 intellectual exercise to say that if you really wanted  
23 to look at the value of the licenses and extract from  
24 them some sort of value as a going concern, then you  
25 still come back to the value of the licenses.



1           Q     And if I told you that the revenue number in  
2     year one was in the millions, the actual number, that  
3     wouldn't mean anything to you?

4           A     If the actual number was a million?

5           Q     Multiple millions; how about 7 million?

6           MR. DUSHOFF: I'm going to ask some clarity.  
7     Are we talking about this example on page 11?

8           MR. FEUERSTEIN: No. I'm asking him --

9           Q     If you had a data point that said the actual  
10    revenue of the two dispensary licenses was north of \$7  
11    million in 2017 and 2018, that doesn't affect your  
12    opinion?

13          A     No.

14          Q     Now, I'm looking at page 17 to 18 of your  
15    report.

16          A     Okay.

17          Q     About this you say on the bottom of page 17  
18    next to the last line, "To my knowledge, there have  
19    been no market transactions of fractional share in a  
20    marijuana company in Clark County." You see that?

21          MR. DUSHOFF: Where are you looking at?

22          MR. FEUERSTEIN: Second to last line.

23          THE WITNESS: Yes.

24    BY MR. FEUERSTEIN:

25          Q     There have been no market transactions with

1 fractional share in a marijuana company in Clark  
2 County with an interest in six licenses. You see  
3 that?

4 A Yes.

5 Q I was asking, Matt.

6 A Oh.

7 Q So you don't know whether NuVeda ever sold  
8 fractional interests in the licenses that it holds  
9 sitting here today?

10 A Correct.

11 THE WITNESS: Can we take a break?

12 MR. FEUERSTEIN: You need a break?

13 Absolutely.

14 ARBITRATOR BAKER: Let's take a break.

15 (Break taken.)

16 BY MR. FEUERSTEIN:

17 Q Dr. Clauretje, I have one question, or one  
18 set of questions. I want you to assume for the moment  
19 that 30 days after Ms. Goldstein's expulsion, NuVeda  
20 sold its assets for \$30 million.

21 Does that affect your conclusion in any way?

22 MR. DUSHOFF: Objection. Improper  
23 hypothetical.

24 ARBITRATOR BAKER: Overruled.

25 THE WITNESS: That's a good question. Let me

1 tell you why. Because I'm not a legal expert, but  
2 there's also some legalese in there as to when you do  
3 valuations and what you know after a valuation was  
4 done should not affect that valuation, so that's a  
5 good question.

6 The other question is, was any of the  
7 information that would have produced the valuation of  
8 \$30 million generally known at the time of the  
9 valuation? That's another very important question.  
10 30 days after they discovered they owned this plot of  
11 land and discovered oil on it does not affect the  
12 valuation of 30 days prior to that. There's a  
13 serendipity. So it's the question of what they could  
14 have sold their assets for and paid off their  
15 liabilities as of that date of valuation.

16 The fact that a week later or two weeks later  
17 or a month later or a day later it was worth \$30  
18 million, you'd have to ask the question, if that  
19 information was available that produced the \$30  
20 million as of that date earlier, then that would have  
21 affected the value then. Does that help you out?

22 BY MR. FEUERSTEIN:

23 Q So if the members of NuVeda knew or had  
24 reason to know that they were going to sell an asset  
25 for \$30 million dollars 30 days or within a certain

1 amount of time after the expulsion, that would affect,  
2 in your view, the valuation of the company?

3 MR. DUSHOFF: Objection. Speculation as to  
4 what -- speculation as to what they know.

5 ARBITRATOR BAKER: Overruled. I believe that  
6 we're still in the hypothetical; right?

7 MR. FEUERSTEIN: We are.

8 MR. DUSHOFF: But hypothetical asking what  
9 members of NuVeda knew.

10 ARBITRATOR BAKER: Understood.

11 BY MR. FEUERSTEIN:

12 Q Did you get my question?

13 A Well, let me answer it this way: If they  
14 happen to have information when I sat down with them  
15 that this company may have a value of \$30 million  
16 dollars a week later than what I sat down with them,  
17 something like that, and they didn't tell me that  
18 information, then I wouldn't stand by this report.

19 MR. FEUERSTEIN: No further questions.

20 REDIRECT EXAMINATION

21 BY MR. DUSHOFF:

22 Q I wasn't going to have any questions until  
23 the follow-up.

24 Mr. Feurstein just put together a  
25 hypothetical, said 30 days later there was somebody

1 who offered them -- it was a sell for \$30 million.  
2 They offered for sale, somebody bought it. Isn't that  
3 one of the definitions of fair market value? Has  
4 nothing do with your value. If there's a willing  
5 buyer and a willing seller for \$30 million doesn't  
6 affect what you valued at on that given day, on  
7 August 8; correct?

8 A On that given day?

9 Q Yes.

10 A Correct.

11 Q Even two days later somebody offered \$30  
12 million to purchase that property, that's just a  
13 willing buyer; is that correct? And then a willing  
14 seller would assume that, and that would be fair  
15 market value; correct?

16 A It would be, yeah.

17 MR. DUSHOFF: Thank you. I have nothing  
18 further.

19 ARBITRATOR BAKER: I have one clarification  
20 question.

21 CROSS-EXAMINATION

22 BY ARBITRATOR BAKER:

23 Q Table 1 that's on page 5, tab 7 of your  
24 report, which I believe you testified you showed this  
25 to -- I'm going to say Mr. Paris because I won't

1 pronounce his last name correctly.

2 A Show the original document.

3 Q That was my question. It was exactly this  
4 information and nothing else that was shown to Mr.  
5 Paris? Understanding he didn't show him this page,  
6 but I'm just talking about --

7 A Correct.

8 Q -- the universe of information you provided  
9 to him is contained in this Table 1; is that  
10 correct?

11 A The document itself might have had a footnote  
12 or heading something here, but I said, Look at these  
13 values, and that's what he opined upon. Those values  
14 are reasonable, comparables to the licenses held by  
15 NuVeda.

16 Q Was there any information as to where the  
17 licensed were located in any other information?

18 A On the data sheet?

19 Q Yes.

20 A No, ma'am.

21 ARBITRATOR BAKER: I don't have any other  
22 questions. Thank you.

23 THE WITNESS: Thank you.

24 ///

25 ///

1       Thereupon,

2                               JOSEPH LEAUANAE,

3               called as a witness by the Repondent having  
4               been duly sworn, testified as follows:

5                               DIRECT EXAMINATION

6       BY MR. WILEY:

7               Q       Would you state your name for the record.

8               A       Joseph L-e-a-u-a-n-a-e.

9               MR. FEUERSTEIN:   Can you state it one more  
10       time.

11               ARBITRATOR BAKER:   Maybe twice.

12               THE WITNESS:   Joseph Leauanae.

13       BY MR. WILEY:

14               Q       Mr. Leauanae, can you provide your background  
15       post high school.

16               A       Bachelor of science in accounting from  
17       University of Utah as well as master's in business  
18       administration from Utah as well.

19               Q       Can you provide an overview of your  
20       professional certification.

21               A       CPA, certified public accountant in Nevada,  
22       California and Utah.  I'm actually -- do you happen to  
23       have my report?  Sometimes I forget.

24               ARBITRATOR BAKER:   Right here.

25               MR. FEUERSTEIN:   Tab 4, your initial

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1 report.

2 THE WITNESS: I'm a Certified Information  
3 Technology Professional, which is a designation  
4 granted by the American Institute of Certified Public  
5 Accountants. I'm a CFF, which is Certified in  
6 Financial Forensics, also by AICPA. I am a CFE, which  
7 is a Certified Fraud Examiner with the Association of  
8 Certified Fraud Examiners. I am an ABV, which is  
9 Accredited in Business Valuation by the AICPA, and I  
10 am an ASA, which is an Accredited Senior Appraiser  
11 with the American Society of Appraisers.

12 BY MR. WILEY:

13 Q That's it?

14 (Laughter.)

15 You have experience providing business  
16 valuations?

17 A I do.

18 Q And approximately how long have you been  
19 providing business valuations?

20 A Over 20 years.

21 Q Has that been exclusively in Nevada?

22 A No.

23 Q What are the jurisdictions that you've  
24 provided business valuations?

25 A Also in Utah and in California, but I've also



1     been involved in cases that span multiple  
2     jurisdictions.

3           Q     Have you previously been retained as an  
4     expert witness in any litigation proceedings?

5           A     Yes.

6           Q     Approximately how many times?

7           A     Hundreds of times.

8           Q     Have you ever been disqualified as an expert  
9     witness?

10          A     Not to my knowledge.

11          Q     I think you've already opened up tab 4 in the  
12     exhibit binder set forth in front of you.

13          A     Yes, I have.

14          Q     Do you recognize that document?

15          A     I do.

16          Q     And can you provide for the arbitrator what  
17     that document is?

18          A     This report was the first of three reports  
19     that I have issued in this case.

20          Q     What is the date of the report that's  
21     contained in tab 4?

22          A     November 29, 2016.

23          Q     If I refer to this report as the November  
24     26th report, you know I'm referring to tab 4?

25          A     Yes.

1           Q     What was the purpose of the preparation of  
2 the November '16 report?

3           A     We had been asked to review a report prepared  
4 by Don Parker as of May 2016 that opined as of value  
5 as of March 2016. This report spoke to Don Parker's  
6 report as of March 2016.

7           Q     Let's go ahead and thumb to page 7 of your  
8 report, please.

9           A     Okay.

10          Q     Under section 6 entitled, "Our Analysis of  
11 Parker's Key Considerations," it appears you addressed  
12 four considerations in that section; is that  
13 correct?

14          A     Yes.

15          Q     The first was with respect to Mr. Parker's  
16 valuation approaches. What did you determine with  
17 respect to those methodologies?

18          A     Mr. Parker looked at three approaches -- the  
19 income approach, the asset approach and the market  
20 approach -- and he ultimately determined that the  
21 market approach and the asset approach, in his  
22 opinion, did not apply as of that valuation date.

23          Q     Is that problematic in your view in any  
24 way?

25          A     Yes.

1 Q Why is that?

2 A In the qualitative sections of Mr. Parker's  
3 report, he referred to various characteristics that  
4 seems to better fit the asset approach application,  
5 meaning this is a company that had no operations at  
6 that point in time or limited operations, no revenues,  
7 was in a federally illegal industry, had limited  
8 access to financing, issues of that nature.

9 Whereas, the approach Mr. Parker ultimately  
10 used in that valuation was an income approach that  
11 anticipated significant revenue growth.

12 Q Did you agree with the revenue growth that  
13 was set forth?

14 A No.

15 Q And can you explain why not?

16 A Mr. Parker had five different projection  
17 scenarios, and each of the projection scenarios, he  
18 anticipated kind of a best case, worse case spectrum,  
19 then he applied what he considered the appropriate  
20 level of risk to those various projections.

21 I had concerns regarding the derivation of  
22 those projections and assessment of the risk applied  
23 against those projections.

24 Q What specifically?

25 A His income projections really were wide

1 ranging, and they also included initial periods, I  
2 think at least a couple of years, where there hadn't  
3 been sufficient equity.

4 He projected the company would have negative  
5 equity for the first couple of years without any  
6 explanation in his report as to how the company would  
7 overcome the issues that you would expect, which is,  
8 no capitalization, the potential inability to grow  
9 without other financing. Those issues were not  
10 addressed in Mr. Parker's report.

11 Q Were there any other considerations or  
12 analysis that you had with respect to the  
13 valuations?

14 A Yes. So, and this perhaps relates to what he  
15 did later as well.

16 At the time of his March 2016 analysis, he  
17 indicated that he did not believe there was sufficient  
18 companies to form a comparable market, meaning that he  
19 did not deem the market approach to be useful as of  
20 that valuation date.

21 Q And subsequently he did?

22 A That's correct.

23 Q I believe you touched briefly about not  
24 considering the asset approach, but do you believe  
25 that was a methodology that should have been

1 considered at this time?

2 A I do. For a company that hasn't generated  
3 really any substantive operations, you will at least  
4 have a value, that is the value if you close your  
5 doors. If you close your doors, you got a value as  
6 is. That would essentially be the asset approach. So  
7 that would at least serve as kind of a grounding or  
8 tempering basis for the determination of value.

9 What Parker did instead with the income  
10 approach, he projected out using five different  
11 scenarios, none of which, according to his own report  
12 and through the use of hypothetical restrictions in  
13 his report, he did not evaluate in any meaningful way.

14 So he has projections that were provided to  
15 him; he has an assessment of risk that I deemed  
16 excessively low for the projections he applied them  
17 against, and he determined their value under one  
18 approach that did not appear to be even close to the  
19 value that he determined under the asset approach that  
20 he ultimately disregarded.

21 I have issues with the way that he calculated  
22 his asset approach. But even his asset approach was  
23 significantly less than his income approach  
24 indications.

25 Q What issues do you have with Mr. Parker's

1     asset approach?

2           A     Just the -- he has various assessments of  
3     asset value that come from source unknown.

4           Q     The second consideration that you set forth  
5     in your report on page 10 dealt with Parker's  
6     assessment of projected income.  What issues did  
7     Anthem have with the assessment of the projected  
8     income?

9           A     With the projected income, some of the  
10    considerations were that, first of all, he had five  
11    different scenarios.  But then in addition to those  
12    scenarios, he didn't appear to consider some of the  
13    issues that he did list qualitatively, meaning he  
14    indicated this is a federally-illegal business with  
15    limited access to financing and some of these other  
16    issues.

17                   It's an early stage company, there's no  
18    necessarily proven track record as of the valuation  
19    date.  But then when he's projected this income and  
20    assessed the risk, he does not appear to consider  
21    those risks in his calculation of what we refer to as  
22    the discount rate.

23                   So when you're doing an income approach,  
24    there are two primary components:  There's the  
25    projected income, then there's the risk that you will

1 actually achieve that projected income.

2 The projected income we kind of talked about.  
3 The assessment risk associated with that income I also  
4 have issues with. He had what he determined to be an  
5 18 percent discount or that he applied against the  
6 income stream after adjusting it for, basically before  
7 tax dollars.

8 So he started with an 18 percent discount,  
9 and he adjusted it upwards by 8 percent to get to a  
10 discount rate of about 26 percent.

11 In my experience, if you're looking at a  
12 discount rate for post tax dollars of 18 percent,  
13 which is what that number represents, you're looking  
14 at companies that have been fairly well established,  
15 that have a long history of profits, that are  
16 federally legal, and don't -- that are not restricted  
17 by certain things such as there's a revenue ruling  
18 Section 280 E, which basically says that companies in  
19 this marijuana space are not allowed to deduct certain  
20 expenses. They can essentially just deduct cost of  
21 goods sold.

22 If you're looking at an income statement for  
23 any business, the expenses are primarily broken up  
24 into two different types: Costs of goods sold, which  
25 are essentially expenses required to generate the

1 revenues, then operating expenses, which are  
2 administrative, overhead-type expenses that are  
3 required -- the salary for your office staff,  
4 et cetera.

5 280-E basically only allows you to deduct the  
6 cost of goods sold and not all the other expenses.  
7 You're still going to generate, or cause to be  
8 incurred those expenses, but you're just not allowed  
9 to deduct them for tax purposes.

10 In his analysis, Parker uses 35 a percent tax  
11 rate. In my experience with marijuana companies, the  
12 effective tax rate you're looking is typically quite a  
13 bit more than that.

14 Q Mr. Leauanae, did you take any umbrage with  
15 respect to Mr. Parker's reliance and the projections  
16 that Shane Terry provided to him?

17 A I do to the extent he sought, at least in my  
18 opinion, to disqualify any potential due diligence he  
19 might have had to undertake.

20 So he had hypothetical conditions in his  
21 report that basically said essentially that he would  
22 accept these at face value. But then I believe he  
23 used that hypothetical condition to assess a  
24 relatively low discount rate. He assumed that this  
25 industry essentially was stable, management operations



1 would be consistent, some of which I don't know that  
2 he necessarily demonstrated elsewhere in his report.

3 So he makes assumptions through this  
4 hypothetical condition session that I think he then  
5 justifies or uses to justify what I believe are  
6 artificially high projections and artificially low in  
7 receiving those projections.

8 Q Your report addresses Parker's inclusion of a  
9 large income growth without the corresponding increase  
10 in expenses. Can you provide for the arbitrator an  
11 overview of your assessment on damage?

12 A To a certain extent this also touches on the  
13 280-E issue as well. In order to generate revenues,  
14 you have to incur expenses. The way that Parker  
15 builds his model, I see the revenue growth, but I  
16 don't see the expenses that you would otherwise expect  
17 to see with that level of growth.

18 So, essentially, if you imagine in Parker's  
19 model, he projects that after a certain point in time,  
20 relatively quickly, almost every dollar that is earned  
21 in revenues is going to go straight to the bottom line  
22 or straight to net income, which is not typically the  
23 case, especially a new industry that is federally  
24 illegal, has a lot of competitors, things of that  
25 nature.

1           Q     The report also addresses an issue with  
2     Parker's reliance on projected incomes for 2015 where  
3     he shifted those same amounts to March of 2016. You  
4     have any issue with that action?

5           A     I do. So essentially what Parker did, he had  
6     projections that were prepared or effective as of  
7     March of 2015, and then, he without anything more than  
8     I think a one-sentence explanation, moved them forward  
9     to be as of March 16th. And the only explanation that  
10    was provided was that he believed that that better fit  
11    the fact pattern or the facts set. I'm not quite sure  
12    what that means. He doesn't justify that any further.

13                In my opinion, if you have projections,  
14    again, even if you're comparing those projections  
15    March of 2015 to operations through March of 2016, you  
16    would have had a comparative. You would have  
17    projections for a year and actual activity for a year.

18                Had he done that comparison, I think he would  
19    have noticed that those March projections did not  
20    realize in that first year. His response to realizing  
21    that they wouldn't match is basically taking those  
22    exact same projections without modification and moving  
23    them forward one year.

24                So essentially he's saying it didn't work for  
25    the last year, but maybe for the next year,

1 essentially what he did.

2 Q The last topic covered under your second  
3 consideration has to do with Parker's application of  
4 generic industry growth. First of all, what is a  
5 growth rate?

6 A Growth rate basically is just the increment  
7 by which subsequent years, if we're using years as the  
8 period, increases over a base period.

9 Q And how was Parker's application of a generic  
10 industry growth rate problematic?

11 A Kind of corollary to, if I'm valuing a  
12 business, I'm valuing that particular business. I'm  
13 not valuing that industry. By applying an industry  
14 growth rate to a particular business. And, again, I  
15 have issues with his derivation of the actual income  
16 for the business.

17 Assuming that his derivation of income was  
18 accurate, applying an industry growth rate to a  
19 particular business without justifying why that  
20 industry growing rate applies, it's essentially saying  
21 you're valuing the industry.

22 There's no reduction from that growth to  
23 reflect the actuality of the company you're valuing.  
24 So to call that a business valuation I think is  
25 disingenuous.

1           Q     The third consideration that you set forth in  
2 your report on page 13 has to do with Parker's  
3 assessment of discount rates. First, can you provide  
4 a brief summary as to what a discount rate entails in  
5 a valuation?

6           A     So a discount rate essentially is the  
7 reflection, when it's used in an income approach, it's  
8 a reflection of the risk inherent in the projected  
9 income. So in this particular case, Parker used a  
10 build-up method, which essentially is an alternative  
11 investment theory. Meaning, instead of investing in  
12 the company, you could invest elsewhere. You could  
13 invest in treasury, you could invest in large or small  
14 publicly-traded companies.

15                 His build-up method getting to about 18  
16 percent I don't really have a particular issue with.  
17 The issue I do have with this derivation is that he  
18 stop short. The additional increment that he doesn't  
19 appear to consider quantitatively is the assessment  
20 that ties all the qualitative factors in his report to  
21 the number.

22                 You're looking at a company that is almost  
23 early stage venture capital levels. Typically in my  
24 experience, those discount rates start around 40, 45  
25 percent, as opposed to 18 percent. That's just for

1 early stages companies. Then you've got to factor in  
2 the characteristics of a federally illegal company,  
3 potential mismanagement, if there was any, issues that  
4 would increment the discount rate.

5 To use an 18 percent discount rate for a  
6 company that he qualitatively indicates had problems,  
7 I think is a mismatch that results in significant  
8 problems with his result.

9 Q You also briefly touched upon the fact that  
10 Parker's estimation of growth in net income is  
11 ridiculously high for years 1 through 5, but then  
12 levels out thereafter, and there is no reconciliation;  
13 is that correct?

14 MR. FEUERSTEIN: Object to the form. You're  
15 leading your own witness now. You use the phrase,  
16 "ridiculously high."

17 ARBITRATOR BAKER: Sustained. Rephrase.

18 BY MR. WILEY:

19 Q Your report talks about Parker's estimation  
20 of growth and net income for years 1 through 5, and  
21 then levels out thereafter.

22 Do you see any issue with that?

23 A Yes.

24 Q And what issue is that?

25 A So essentially what Parker has applied in the

1 income approach is what's referred to as a discounted  
2 cash flow method. The discounted cash flow method  
3 calculates out into the future a discrete period of  
4 time during which the company is going through either  
5 excessive or less than normal growth.

6 At a certain point in time it reaches what we  
7 refer to as terminal value, meaning after that point  
8 in time, things stabilize and they grow in perpetuity  
9 at a constant rate. Parker used a three percent  
10 constant growth rate. I have no problem with that.  
11 The problem I do have, though, is he's basically  
12 saying for the first five years there's this  
13 significant growth and all of a sudden it completely  
14 disappears.

15 Instead, so what he may argue, well, I could  
16 have grown it out for 10 years or 15 years and had  
17 even more growth, but instead I determined that after  
18 five years, it will go terminal.

19 I would have approached it from a slightly  
20 different perspective. I would say if you're going to  
21 say after five years something is going to happen,  
22 that causes everything to stabilize, it's not in his  
23 report. There's no demonstration in his report as to  
24 why this significant drop, which to me would lead me  
25 to question why there's significant growth during the

1 first five years as opposed to why there's a big drop  
2 after five.

3 Q Parker applied a 28 percent discount for lack  
4 of control and lack of marketability. Do you question  
5 that application at all?

6 A I did.

7 Q Why so?

8 A The derivation of that 28 percent is a  
9 combination of two different things: One is a  
10 discount for lack of control of 10 percent, and the  
11 other is a discount for lack of marketability of 20  
12 percent.

13 A discount for lack of control is basically a  
14 reflection of the inherent inability to manage 100  
15 percent operations of the company. So to the extent a  
16 company is not managed well and could be managed  
17 better had you controlled the company, then the  
18 discount for control would be greater. So to the  
19 extent as of the valuation date, the company may have  
20 been mismanaged or had other issues, that discount  
21 would have possibly been higher.

22 Typically in my experience, the discount for  
23 lack of control is closer to about 20 percent. His  
24 derivation of 10 percent came about through examining  
25 closed-end funds. It has a very specific application

1     that I don't believe is applicable to an operating  
2     company here. So that's the discount for lack of  
3     control.

4             The discount for lack of marketability is 20  
5     percent, and basically what that reflects is a  
6     discount for the fact this is a privately-held company  
7     and a minority interest in a privately-held company,  
8     and you can't just turned around and sell it and get  
9     cash in your account a day later. So there's various  
10    studies that speak to these discounts.

11            But ultimately what Parker did, he referenced  
12    a couple of studies, then he said the discount  
13    indication was 26 percent, but he was reducing it by  
14    six to 20 percent because he said in the operating  
15    agreement there's language of the buy-back of an  
16    expulsed partner.

17            To my opinion, the buy-back for an expulsed  
18    partner was no different than the language that would  
19    allow another departing partner to leave and get paid  
20    market value. I don't know that that reduction of six  
21    percent has any necessary play in the calculation of  
22    the discount rate.

23            Again, I also have an issue with his  
24    calculation of just the 26 percent unadjusted discount  
25    for the lack of marketability. He referenced a couple



1 of studies, but in my experience, those discounts,  
2 especially for a minority interest, can be fairly  
3 substantial. This creates a compounding issue when we  
4 are comparing a 22 percent interest, which was the  
5 case with Terry to a seven percent interest, which is  
6 the case with Goldstein.

7 A 22 percent interest has the ability to do  
8 certain things, perhaps needs the approval of only a  
9 few other people to reach super majority than a seven  
10 percent interest might. So there are discrepancies as  
11 well in the level of ownership interest that are not  
12 reflected in his 20 percent discount for lack of  
13 marketability.

14 MR. FEUERSTEIN: I'm going to move to strike  
15 that last part of his testimony. I don't think that  
16 there's any opinion or any part of his opinion that  
17 speaks to that. I think his first two opinions speak  
18 to Mr. Terry's interest, and then his actual opinion  
19 served in rebuttal simply says that you shouldn't pay  
20 attention to the report because all the prior reports  
21 of Mr. Parker were with respect to Terry. Now it's  
22 with respect to Goldstein. So I think he's speaking  
23 outside the scope of his reports.

24 MR. WILEY: I would offer that there's  
25 language in the report which expressly provides

1     that.

2                   ARBITRATOR BAKER:   Where?

3                   MR. FEUERSTEIN:   In fact, I would just note  
4     on page 6 of the rebuttal report, tab 12, Mr. Leauanae  
5     stated, "Given our foundational objection that these"  
6     -- paragraph 5 -- "that these theories and  
7     methodologies should be precluded because their use is  
8     predicated on an improper supplement, which is an  
9     opinion that we provide based upon our training and  
10    experience as business valuation and economy damage  
11    experts, we do not address these technical issues in  
12    this report."

13                  MR. WILEY:   Keep reading.

14                  MR. FEUERSTEIN:   I will, page 7.

15                  "Notwithstanding the foregoing, we reserve  
16    the right to address these technical issues in a  
17    report or through testimony if deemed necessary."

18                  I think you have a blanket sort of open  
19    opportunity to opine on things that are not in your  
20    report, doesn't give an opportunity to understand his  
21    opinions ahead of time and prepare for them.

22                  MR. WILEY:   Again, based upon the fact that  
23    we filed our motion to strike in the expert report,  
24    there was never an expert disclosure by Ms. Goldstein  
25    of Mr. Parker, and as such we didn't want to shoot

1 ourselves in the foot with respect to our argument on  
2 a motion to strike, just to make sure we've got belt  
3 and suspenders, we're going to address the  
4 methodologies when we believe they're improper. And  
5 that was the crux of our argument.

6 So we had to have language that provides for  
7 the testimony of the expert if deemed necessary, and  
8 based upon the arbitrator's ruling, it was deemed  
9 necessary.

10 MR. FEUERSTEIN: To the extent it was deemed  
11 necessary by the arbitrator's ruling, that was over a  
12 almost a week ago now, and this is the first we're  
13 hearing of any change.

14 ARBITRATOR BAKER: I don't believe when I  
15 made that decision that I had this December 27th  
16 report, because I think I asked during the call, was  
17 there any -- did respondent's have the opportunity to  
18 respond to Mr. Parker's report. My recollection is  
19 the answer was, yeah, it may not have exactly been  
20 produced on the right day, but we got it out.

21 And so I said I'm not striking that, and I'm  
22 not striking Mr. Parker's report. So I don't think I  
23 have this in front of me.

24 But let me -- I'm going to note -- let's put  
25 this to the side for a second, this issue of -- I

1 think he does challenge in his report, I'm looking at  
2 tab 4, about the lack of control, lack of  
3 marketability equal to 28 percent.

4 I have not read the entirety of it, so I  
5 can't tell you what other details there are. But  
6 let's get through his testimony. You can ask your  
7 cross, then we'll figure out how to handle that.

8 MR. WILEY: I don't believe he fully answered  
9 the last question, so can we have the question posed  
10 before counsel lodged his objection.

11 (Record read.)

12 MR. WILEY: We'll just move on. I think he  
13 did cover that answer.

14 Q Mr. Leauanae, let me ask you a question quick  
15 regarding the history of valuations.

16 Have you had the opportunity to render  
17 valuations for any marijuana companies in the past?

18 A Yes.

19 Q How many?

20 A I've been involved in probably ten or so,  
21 including currently.

22 Q Have you been retained as an expert witness  
23 in any of the marijuana valuation cases?

24 A Yes.

25 Q Approximately how many times?

1           A     At least three or four, possibly more.

2           Q     I want to turn your attention to tab 10 in  
3 the expert witness report.

4           A     I have it in front of me.

5           Q     You recognize this document?

6           A     I do.

7           Q     What is this document?

8           A     This was the second report that I issued in  
9 this case.

10          Q     For a minute, let's take tab 10 and tab 12.  
11 Let me ask you about tab 12. Do you recognize that  
12 document?

13          A     I do.

14          Q     What is that document?

15          A     This was the third report that I issued in  
16 this case.

17          Q     And the second report was issued -- has an  
18 issue date of December 13, 2018?

19          A     Yes.

20          Q     And the third has issue date of December 27,  
21 2018?

22          A     Yes.

23          Q     Explain to me the structure of your second  
24 and third reports.

25          A     Essentially at the time, from Parker's

1 analysis, I was rebutting an analysis of Terry's  
2 interest. So the facts that Parker in his second and  
3 third reports, the reports that I was rebutting,  
4 considered post valuation date information, meaning  
5 information as of March 2016, I determined that from a  
6 valuation perspective, that was improper.

7 Q And what specifically did you find is  
8 improper as far as part of Mr. Parker's methodology?

9 A Really it even goes beyond methodology to  
10 clearing.

11 Valuation is conducted as of a specific  
12 valuation date. So the only information that you  
13 should know, or use, is what was known or knowable as  
14 of that valuation date. The valuation date at the  
15 time of these reports was March of 2016, or at least  
16 the first two reports. The information, however, that  
17 he references in his second report and his third  
18 report was after March of 2016.

19 So my response is essentially to the second  
20 report or in my second report, which was dated  
21 December 13, 2018, was that Parker considered post  
22 valuation date information and, therefore, the  
23 analysis that he conducted and the conclusions he  
24 derived did not apply as of March 2016.

25 My criticisms of his third report for my

1 purposes, which was my rebuttal report dated December  
2 27th, was that it appeared he was taking an analysis  
3 that was, for all intents and purposes, calculated for  
4 Shane Terry, which was a different interest as of a  
5 different valuation date, which essentially could mean  
6 a different company, and trying to apply it to a  
7 different individual.

8 And so my rebuttal in the December 27, 2018,  
9 report was a rebuttal of Parker's analysis as it  
10 pertained to Terry, not really for any other  
11 purpose.

12 Q Mr. Parker in his second report switches his  
13 methodology from income approach to the market  
14 approach?

15 A Yes.

16 Q Do you find that problematic in any way?

17 A I do.

18 Q How so?

19 A I'm just trying to tab it in the binder,  
20 which I believe is the February 23rd report of  
21 Mr. Parker.

22 So, essentially, a valuation requires --  
23 always requires consideration of the three approaches:  
24 The income approach, the asset approach, and the  
25 market approach. I don't think I actually necessarily

1 describe what they are.

2 The income approach basically determines what  
3 the value for a company will be based on the  
4 assessment of the returns and the risk generating  
5 those returns, as I discussed before.

6 The asset approach basically is a reflection  
7 of the value of the company at a particular point in  
8 time when you consider its assets and it's  
9 liabilities. If the difference between assets and  
10 liabilities is positive, then it has a positive asset  
11 value.

12 The market approach is typically broken into  
13 two different methods: One is the guideline public  
14 company method, and the other is referred to as the  
15 transaction method. Essentially, the guideline public  
16 company method looks to public markets for companies  
17 that are actively traded and comparable, and  
18 determines from the share prices of those companies  
19 what a potential multiple might be for your subject  
20 company.

21 The transaction method, by contrast, looks  
22 for transactions in an entire company, meaning the  
23 sale of one hundred percent of an interest in a  
24 company, and determines multiples as well that then  
25 applies to the subject company. So those are the



1 three approaches.

2 In his first report, he ultimately used the  
3 income approach and disregarded the other two.  
4 Notably when he disregarded the market approach, he  
5 said there were no comparables. As of his February  
6 2018 report, again, when he's still referring to  
7 Terry's interest as of March 16, he suddenly deems the  
8 market approach to have comparables, and the income  
9 approach to have no value in his assessment. Again,  
10 there's no explanation as to why this change occurred,  
11 other than it did occur.

12 Q Turning to page 4 of Mr. Parker's second  
13 report there, tab 8.

14 A I have it in front of me.

15 Q That's under the heading "Guideline Public  
16 Company Method"?

17 A It is.

18 Q You spoke briefly about that.

19 MR. FEUERSTEIN: Where are you?

20 MR. WILEY: Page 4, tab 8.

21 MR. FEUERSTEIN: Thank you.

22 BY MR. WILEY:

23 Q You testified briefly about the public  
24 guideline company method. Did you find any issue with  
25 Mr. Parker's use of the four companies that are set

1     forth in the box in the bottom of that page?

2             MR. FEUERSTEIN:  Objection.  Goes beyond the  
3     scope of his opinion.  There's nothing talked about  
4     that in any of the docs submitted to date.

5             MR. WILEY:  Other than the fact he addresses  
6     the methodologies that are set forth in complete  
7     detail in his expert witness report of December 13th,  
8     specifically, when he's talking about in the second  
9     paragraph of section 4, "As demonstrated above, Parker  
10    mentioned the only reason he was able to supplement  
11    his original valuation analysis with the application  
12    of the market approach was he used information that  
13    was not known, knowable or applicable in March 10th,  
14    2016.  Fundamental consideration in business valuation  
15    is that the value should be determined as of a  
16    specific date using information that was known or  
17    knowable as of that date."

18            So, now, we have a switch in the fundamental  
19    methodology that it's being used to determine the  
20    application of the accounting principals, and as such,  
21    the expert witness should be able to testify as to and  
22    opine on as to those issues.  Switching from a market  
23    approach --

24            MR. FEUERSTEIN:  I believe what he opined on  
25    and what he said in his testimony was that Mr. Parker,

1 according to the witness, improperly used information  
2 post -- that became available post March 2016. Now  
3 Mr. Wiley is directing him to specific issues and  
4 specific companies and asking him to say do you have  
5 issue with those companies.

6 He doesn't say anything in his report that I  
7 take issue with any of the companies that are used,  
8 any of the facts, anything like that. He just says  
9 that he's using like a general statement to back his  
10 way into specific testimony that was never opined on  
11 in the report and, therefore, is outside his scope,  
12 improper.

13 MR. WILEY: The initial application as set  
14 forth in Parker's 2016 valuation dismisses this  
15 methodology and now comes back --

16 ARBITRATOR BAKER: This is the guideline  
17 public company method?

18 MR. WILEY: Yeah, under the market approach,  
19 because at that time, this is set forth in the  
20 expert's opinion, there were publicly-traded companies  
21 that were active in cannabis. We're talking about  
22 publicly-traded companies, which as the testimony will  
23 show, that this is the use of those companies in that  
24 box right there.

25 As the cannabis industry matures, largely due

1 to the push for legalization, publicly-traded  
2 companies involved in the marijuana trade became more  
3 widely followed both by the public at large and market  
4 analysts. So based upon that, that was the shift from  
5 Parker's methodology into the second report and --

6 ARBITRATOR BAKER: I'll allow a few  
7 questions. Let's keep this moving forward, so  
8 objection overruled.

9 BY MR. WILEY:

10 Q Mr. Leauanae, did you take umbrage with  
11 Mr. Parker's use of the publicly-traded companies as  
12 comparables as set forth in tab 8, page 4?

13 A Yes.

14 Q How so?

15 A So assuming even though the date August 2017  
16 does not show anywhere on Parker's February 2018  
17 report, assuming that this analysis applies to August  
18 2017, I have issues relative to the application of  
19 this guideline public company method because, in his  
20 own report, he references that the selection of these  
21 companies came from a list that was available only  
22 after August of 2017. It was available as of February  
23 2018, more than six months later. And he also used  
24 financial metrics that were only known as of February  
25 2018, as opposed to August 2017.

1           So in addition to the other issues I have  
2       with the market approach, the fact that he uses post  
3       valuation information subsequent to August 2017 in  
4       conducting his analysis is a problem.

5           MR. FEUERSTEIN: My objection --

6           ARBITRATOR BAKER: I understand. Let's move  
7       on.

8       BY MR. WILEY:

9           Q     In your second and third report, did you have  
10      ongoing concerns with the use of Terry provided  
11      revenue projections?

12      A     I did.

13      Q     Why so?

14      A     Those projections changed in Mr. Parker's  
15      February 23rd report. The only rationale provided was  
16      that the projections he then used were more current.  
17      There was no assessment as to any due diligence he  
18      undertook to verify the veracity of those numbers.

19      Q     Did the same issues you had with respect to  
20      the initial report regarding the 28 percent discount  
21      for lack of control and lack of marketable, did those  
22      remain?

23      A     They did.

24      Q     For the same reasons you testified  
25      previously?

1           A     Yes.

2           Q     Let's go ahead and look at Mr. Parker's  
3     December 14th report, which is tab 11.

4           A     I have it in front of me.

5           Q     Did you have an opportunity to review this  
6     report?

7           A     I did.

8           Q     Now, what are your initial thoughts regarding  
9     this report?

10                  MR. FEUERSTEIN: Just note my objection.

11                  ARBITRATOR BAKER: That's sustained.

12     BY MR. WILEY:

13           Q     You agree with me that the value of Ms.  
14     Goldstein's interest was determined for the first time  
15     in the report dated December 14, 2018?

16           A     In report is supposed to represent Ms.  
17     Goldstein's interest, yes.

18           Q     Turn your attention to page 5 of the report  
19     that's denoted in tab 11.

20           A     I have it in front of me.

21           Q     In the box at the top of the page are the  
22     four companies. Do you recognize those companies?

23           A     I do.

24           Q     Are any of those privately-held companies?

25           A     No, not to my knowledge.

1           Q     Do you have any issue with Mr. Parker using  
2     these companies to prepare a market cap/revenue  
3     multiplier to use in Nevada?

4           MR. FEUERSTEIN:  Objection; beyond the  
5     scope.

6           ARBITRATOR BAKER:  Sustained.

7           MR. DUSHOFF:  Your Honor, if I may be heard  
8     on this?

9           ARBITRATOR BAKER:  Yes, go ahead.

10          MR. DUSHOFF:  Thank you.  We had our motion  
11     in front you at the time when this was still going on,  
12     when they filed the report.  We had the motion and  
13     said, hey, wait a minute, this is not correct.  They  
14     cannot file this supplement, because clearly, his  
15     supplement was based off something off of the 2016  
16     that she never hired.

17                 So out of an abundance of caution, we said,  
18     hey, we told you what happened.  We told our expert,  
19     hey, this is what this is.  We think you're not going  
20     to be able to get this in because, as he said, it's an  
21     improper supplement.

22                 Now, he reserved the right to testify, but it  
23     wasn't something -- you didn't even rule on yet that  
24     their expert's supplementation was out.  This was --  
25     you ruled on that after, after the motion you heard

1 this, and you said, You know what, I'm going to allow  
2 that in as long as you had a rebuttal. But this was  
3 part of out rebuttal, knowing that there may be more  
4 information that he has been allowed to testify to  
5 regarding this. This was after your motion.

6 You could have said, You know what, I'm not  
7 letting that in. And I'm not letting that in, and  
8 then a rebuttal would have been moot anyhow if you  
9 weren't letting that in.

10 He should have a right to be able -- what  
11 you're doing now is foreclosing us on being able to  
12 have our person rebut their expert witness that you  
13 allowed to come testify after he submitted a rebuttal  
14 report on it. What he's trying to say, Listen, I'll  
15 reserve -- this is not right. You said, I'll allow it  
16 based on a rebuttal when he said it was not right.  
17 But he should have a right to absolutely testify  
18 regarding what's wrong with this report.

19 MR. WILEY: More importantly, we are talking  
20 about the multiplier issue, which hasn't been  
21 addressed yet in rebuttal. Mr. Parker was able to  
22 opine as to the use of the market cap/revenue  
23 multiplier, how he addressed that methodology.

24 We believe it's improper. We believe that  
25 the expert will opine why it is improper. And, again,



1 we're talking about an issue where we do have language  
2 set forth in the third report from Anthem as to what  
3 will allow Mr. Leauanae to be able to opine as to  
4 valuation of Ms. Goldstein, which of course, we saw  
5 for the first time 32 days ago.

6 MR. FEUERSTEIN: Can I respond?

7 ARBITRATOR BAKER: Yes.

8 MR. FEUERSTEIN: I feel little bit that this  
9 is somewhat to an extent of trial by ambush. Don  
10 Parker had a report, he's actually submitted multiple  
11 reports in this case, and Anthem has had the  
12 opportunity to respond to those reports.

13 The market multiplier, revenue multiplier was  
14 not produced for the first time in Ms. Goldstein's  
15 report. It was actually produced way back when, in  
16 tab 8, back in February of 2018, to which Anthem filed  
17 a rebuttal report. It was at that time Anthem could  
18 have said just like it said in its rebuttal report to  
19 tab 11, that we take issue with the revenue  
20 multiplier, and here's why we take issue with the  
21 revenue multiplier, and I would have had an ample two  
22 weeks to prepare and talk about why I take issue with  
23 his issue.

24 Instead they've punted twice. They punted  
25 back in February 2018, they didn't take issue with it,

1 and they punted here again.

2 The fact there was no knowledge of whether  
3 Mr. Parker's report was going to get in as of December  
4 2017 doesn't mean they couldn't prepare for it as it  
5 was. It's the old boycott rule, always prepare. But  
6 I don't think it's fair to say now without anything.  
7 It's not even produced in their pretrial brief as to  
8 why they're taking issue and what basis they're taking  
9 issue with the revenue multiplier. They're just  
10 dropping it on us now for the very first time.

11 As Mr. Wiley said, they had 32 days to  
12 prepare for this.

13 MR. DUSHOFF: If we may. He doesn't address  
14 what I discussed before. I think it's humorous coming  
15 out when I cross-examined Mr. Parker, he somehow comes  
16 out with this proxy thing; that was never brought up,  
17 never in any of his reports anywhere when I said, You  
18 used CWNV report for the NuVeda reports. Now all of a  
19 sudden that's not a surprise? That gets in? No.

20 He has a right to testify regarding this. We  
21 never had the opportunity because there was no ruling.  
22 If we had a ruling before he did -- before he did his  
23 rebuttal, we could have said, Okay, listen, you need  
24 to do your specific rebuttal regarding the facts in  
25 here. You can't just reserve your right to testify.

1 But we never had that opportunity because you  
2 ruled on it afterwards. If they're asking us to do a  
3 rebuttal to the rebuttal, that's a different  
4 situation. That would be nuts, but you did not rule  
5 on it yet. What they're asking for us to do is a  
6 rebuttal to a rebuttal and that is not fair.

7 If they're saying trial by ambush, that's  
8 ridiculous. What do they think, we're not going to  
9 try and rebut the actual facts in here, that  
10 Mr. Parker can just make up stuff and we're not going  
11 to go against it?

12 The same four companies, the Terra Tech and  
13 Marafam (phonetic) was the same ones that were used in  
14 eight, the exact same companies. So if he was able to  
15 testify regarding that, how was he not able to testify  
16 regarding this? It's not ambush. They had all the  
17 information regarding this.

18 ARBITRATOR BAKER: Did he testify, or in his  
19 expert reports talk about this market capitalization  
20 issue with these companies?

21 MR. FEUERSTEIN: No, he did not.

22 MR. WILEY: Let the expert --

23 THE WITNESS: I did speak to those because  
24 they were post valuation date as they related to  
25 Terry. So in my opinion, it was improper to even

1 consider that information.

2 ARBITRATOR BAKER: Here's the issue that I  
3 have: I understand your arguments to Parker's report  
4 on December 14th. We hashed this out as the subject  
5 of the motion.

6 I recall being told, because I asked, did you  
7 have -- did the respondents have the opportunity to  
8 respond, and the response I recall was, Well, yeah,  
9 but it may not have gotten out exactly on December  
10 29th or whenever rebuttals were due to reports, in  
11 which case I said -- I think I asked you, are you  
12 going to move to strike it?

13 I think you kind of wobbled a little bit.  
14 Well, I want to take a look at it and I'm not sure.  
15 You hadn't even had the chance to look at it yet. I  
16 said, Well, forget it. I'm not going to exclude it  
17 because I'll let yours in, and I'll let their report  
18 in. But I did not have this report in front of me,  
19 and I was never informed that it was a reservation of  
20 a right to rebut it later. And my recollection is you  
21 haven't had the opportunity to look at it even at that  
22 point?

23 MR. FEUERSTEIN: Correct.

24 ARBITRATOR BAKER: That's my recollection of  
25 the conversation. So here's what I'm going to do.

1 I'm going to allow it, and this is already -- we're  
2 already at 5:19.

3 So I'm going to allow a few more questions.  
4 I'm going to look through these reports in detail, and  
5 I will note your objection and decide whether to give  
6 any weight to what he is testifying to or not. And I  
7 think that's the quickest way and the fairest way to  
8 sort of move this along.

9 MR. DUSHOFF: May I ask, weight as to Ms.  
10 Goldstein's -- as to 11?

11 ARBITRATOR BAKER: What he is testifying  
12 to -- I mean, I need to read his report in detail. I  
13 don't even know -- there's some reviews and opinion, I  
14 don't even know what he's trying to say right now is  
15 even marginally can be inserted in that. I don't know  
16 at this point because I have not read it.

17 So let's finish with some testimony. Let's  
18 move this along. I'm going to go back and read these  
19 reports, and then decide in my decision how much  
20 weight, whether to consider it, how much weight to  
21 give it at that point.

22 MR. WILEY: Arbitrator Baker, I'll be brief.

23 Q Mr. Leauanae, what is your opinion on the use  
24 of four public companies as a base line determination  
25 for the market cap revenue multiplier?

1           A     I would say having that few number of  
2     companies does not constitute a market for purposes of  
3     guideline public company method.

4           Q     What would need to be done to make it  
5     compatible and usable as far as a comparable?

6           A     There needs to be a correlation between the  
7     general database from which these companies were  
8     derived and their application in this case. Those  
9     details were not provided in Mr. Parker's report other  
10    than reference to a list that he then modified as well  
11    without any justification or explanation.

12          Q     Do you have any issue with Mr. Parker  
13    providing that a private company's market cap revenue  
14    multiplier is 50 percent of a public company?

15          A     Not necessarily, but, again, that's a  
16    subjective assessment. And when you're looking at  
17    these four companies, these are all what we refer to  
18    as over-the-counter companies, OTC. While they are  
19    publicly-traded, they could be very well be thinly  
20    traded.

21                So if you image the bottom of the bucket in  
22    terms of public companies, these would be them. And I  
23    would say they would not constitute a freely and  
24    actively traded market that is a requirement of  
25    comparables under the guideline public company

1 method.

2 Q If you were preparing a market approach  
3 valuation of NuVeda, what would you look for in a  
4 comparable?

5 A I would look for a company that had revenues  
6 that were comparable to the extent of 10 to 20 times  
7 revenues to get the right size. I would look for a  
8 company that was actively traded. I would typically  
9 disregard OTC companies, which are all four of these,  
10 because they would not represent an active market.

11 I would identify the criteria I used in the  
12 selection of my companies, which is not something  
13 that's present in any meaningful way in Parker's  
14 report.

15 Q In your opinion, would you dismiss Parker's  
16 report and his methodology in its entirety?

17 A I would say the way he narrowed down to this  
18 market approach and excluded consideration of the  
19 asset income approach is problematic, and that problem  
20 is only exacerbated by the problems I see in his  
21 application of the market approach. Again, I'm not a  
22 trier-of-fact obviously, but from a valuation  
23 standpoint, I would say this analysis is improper.

24 MR. WILEY: I have nothing further.

25 ARBITRATOR BAKER: Mr. Feuerstein.

CROSS-EXAMINATION

BY MR. FEUERSTEIN:

Q Good evening, Mr. Leauanae.

A Joe.

Q I'm going to call you Joe.

A That's perfect.

Q Now, you don't provide an independent valuation of Ms. Goldstein's interest; correct?

A That's correct.

Q You weren't asked to calculate what the interest should be given the corrections; is that right?

A That's right.

Q You didn't do a review of any the other expert reports from respondents to determine whether those analyses are correct; isn't that true?

A I didn't review any other reports.

Q Before I continue, let me make sure we're on the same page.

Your report at tab 4, your report at 10, and your report at 12, that is the entire scope of your opinion that you're offering in this case, correct, subject to what we've been fighting about today on the record?

A Yes.



1           Q     And it contains all the documents that you  
2     relied on and all the information that you processed  
3     in the course of your analysis; correct?

4           A     That's fair, yes.

5           Q     How long did those reports take you to do?

6           A     I can't recall.

7           Q     Can you estimate for me?

8           A     The first one would have taken the majority  
9     of the time; the last two, less so.

10          Q     Can you estimate how long the first one took  
11     you?

12          A     I cannot.

13          Q     Did you meet with any of the members of  
14     NuVeda to talk about facts that were troubling to you  
15     or interesting to you?

16          A     I believe I would have, yes.

17          Q     Who did you speak to?

18          A     Most likely Pej and Joe Kennedy. I'm not  
19     sure if I spoke with any other individuals.

20          Q     I think you testified -- I'm going to turn  
21     back to my notes so I quote you correctly. That you  
22     took issues with the asset approach because they came  
23     from sources -- "there was asset value that came from  
24     sources unknown," did I write that down correctly?

25          A     That's fair, yes.

1           Q     Is it your view that when asset values come  
2     from sources unknown, that's not a proper expert  
3     report?

4           A     When asset values come from --

5           Q     Let me restate the question.  When an expert  
6     uses asset values that come from sources unknown, does  
7     that detract from the reliability of the report?

8           A     Not necessarily.

9           Q     What situations can it still be considered  
10    reliable?

11          A     It would depend on the level of due diligence  
12    that should be undertaken by the appraiser.  For  
13    example, if I value a business that has a fair amount  
14    of real estate, I'm not a real estate appraiser, so I  
15    may rely on the appraisals done by real estate  
16    appraisers.

17          Q     Let me ask you a hypothetical:  Would you  
18    view it to be -- an expert report to be reliable if  
19    the expert took his client's data, spoke to a person  
20    referred to him by the client, and did no other due  
21    diligence whatsoever to confirm the values of the  
22    assets or the liabilities?

23          A     It would depend on how the result of those  
24    discussions were presented.

25          Q     What do you mean?

1           A     If I were presenting the results of those  
2     discussions as a valuation opinion, then the question  
3     would go to the level of due diligence that was  
4     undertaken to verify the statements that were made to  
5     you.

6           Q     Let me stop you right there.  If there was no  
7     due diligence taken to verify the statements made to  
8     you, other than by relying on the principles and one  
9     other person, does that seem reliable in your  
10    opinion?

11          A     It would depend on the nature of the assets.  
12    It could be, it could not be, it just depends.  For  
13    example, if the representation in the balance sheet  
14    says there's \$100,000 in cash, that's something that's  
15    easily verifiable.  If the assessment is that there's  
16    a million dollars in intangible value, that's less so.

17          Q     So if an expert, for example, provided a  
18    valuation of a marijuana license, cannabis license and  
19    relied on the statements of his clients, the  
20    statements of one other person and nothing else, is  
21    that reliable to determine the valuation of a cannabis  
22    license?

23          A     I would say that would probably be an issue  
24    without additional due diligence for verification.

25          Q     You mentioned during your testimony that

1 you've been involved with approximately ten marijuana  
2 company valuations; is that right?

3 A That's fair.

4 Q Have those all been in the state of Nevada?

5 A Some operations outside but, yes.

6 Q You were an expert witness in three or four  
7 of those matters; correct?

8 A A was designated in at least three or four,  
9 possibly more.

10 Q Did you testify in those matters?

11 A Not yet.

12 Q Did you provide reports in those matters?

13 A Some of them, yes.

14 Q Did you provide actual valuations or just  
15 criticisms of other expert's valuations?

16 A It's a combination, but some of those did  
17 provide values or estimates of value.

18 Q What -- were they businesses that were akin  
19 to NuVeda in the sense they were operating companies  
20 with vertical licenses?

21 A That's fair.

22 Q And did you use the -- what approach,  
23 methodology did you use to determine the valuations of  
24 those companies?

25 A Look at all three approaches, and typically

1 in the ones that resulted in the report, I think the  
2 genesis for was most of the opinions was the income  
3 approach.

4 Q Why did you use the income approach instead  
5 of the asset approach?

6 A It wasn't so much a selection on my part, but  
7 a comparison of the three approaches, and which  
8 provided the best amount of data and potentially the  
9 most reliable outcome.

10 Q Is there a rule of thumb, in your view, Joe,  
11 when one doing evaluations should choose the  
12 liquidation approach or asset approach versus the  
13 other two approaches?

14 A A rule of thumb, not necessarily. Really the  
15 appraiser has discretion, but they should consider all  
16 three approaches.

17 Q Were you aware in drafting your two rebuttal  
18 opinions whether at the time that you did that,  
19 whether NuVeda was operational?

20 A I don't recall.

21 Q Do you recall whether the dispensary licenses  
22 that NuVeda possesses were operational?

23 A As of the two December reports?

24 Q Yes, as of the two December reports.

25 A I can't recall.

1           Q     Do you recall or have any knowledge whether  
2     NuVeda was -- those dispensary licenses were recording  
3     any sales?

4           A     I can't recall.

5           Q     Is the fact that those dispensary licenses  
6     that they were recording sales, is that important in  
7     any way in your decision of which valuation approach  
8     to apply?

9           A     You should apply all three approaches, but it  
10    would be probative in terms of how it would apply in  
11    each of the approaches.

12          Q     By the way, you don't have an opinion -- you  
13    didn't provide an opinion with respect to the revenue  
14    multiplier, correct, what it should be?

15          A     Again, when I was reviewing this in terms of  
16    it being a Terry report, it's my belief that even  
17    getting to a criticism of a revenue multiplier was  
18    improper.

19          Q     In the course of your valuations for the  
20    other 10 marijuana companies, have you used a revenue  
21    multiplier in those instances?

22          A     For some of those it's been a consideration,  
23    yes.

24          Q     Have you used it, yes or no?

25          A     For ones that I've been designated as an

1 expert that result in a report, not to my knowledge.

2 Q How about just the valuations and conducting  
3 valuation rather than being an expert or not?

4 A Yes. Typically when assisting in the  
5 consulting area, meaning in a mergers and acquisitions  
6 area, looking at potential during the due diligence  
7 phase of a transaction, assisting with what  
8 indications a value might exist, I have looked at  
9 various indications, including revenue multiples as  
10 well as net income multiples.

11 Q Is there any sort of standard in the industry  
12 that you're aware of, of revenue multiples for private  
13 companies in assessing value?

14 A It's a hard question to answer because --

15 Q I only ask hard questions.

16 (Laughter.)

17 A There's various multiples. Whether or not  
18 they are applicable is really the issue.

19 Q Have you seen in the course of your  
20 evaluations of other marijuana companies, the revenue  
21 multiplier of six being applied on top line revenue?

22 A Yes.

23 Q You're aware -- withdrawn.

24 Are you aware, Joe, there was a document  
25 called the MIPA that was entered into between NuVeda

1 and a company called CWNevada?

2 A I'm not sure about the name of the document,  
3 but I believe -- I have a general understanding of an  
4 agreement.

5 Q What's your general understanding of that  
6 agreement?

7 A Just there was -- if you're referring to the  
8 2015 transaction, just there was a combination of two  
9 entities that resulted in an entity known as CWNV.

10 Q Do you know what any of the parties'  
11 obligations in CWNV -- let me withdraw the question.

12 Do you know any of the parties' obligations  
13 in CWNV, meaning what's NuVeda's obligations and what  
14 are CWNV's obligations?

15 A Just the general recollection that I believe  
16 CW was going to be responsible for management. As to  
17 what management functions specifically, I don't know.

18 Q So you have no recollection or idea sitting  
19 here today whether one party or the other was  
20 responsible for paying operating cost and expenses in  
21 the build-outs?

22 A My understanding, CW was to contribute, but  
23 the totality of those contributions, I don't know.

24 Q Would it be important or relevant in your  
25 valuation of NuVeda if, in fact, CW was responsible



1 for paying all the costs and expenses in building out  
2 the dispensaries, the operating costs, and the  
3 production and cultivation?

4 A It could be, yes.

5 Q You mentioned, or you noted in your report --  
6 I go to your tab 4.

7 If I go to your report, on page 21 you  
8 identify the letter of intent between NuVeda and  
9 CWNevada. You see that?

10 A I know it's in here. Can you point me to it.

11 Q 16.

12 A Yes, I see that.

13 Q Did you ask for any additional information?

14 A I can't recall.

15 Q Do you recall having any conversations with  
16 either the lawyers or the individuals at NuVeda for  
17 additional information in framing your opinions?

18 A As of that November 2016, I can't recall.

19 Q How about at any point in time?

20 A Most likely, because I think there's a  
21 commentary in here regarding not being able to see \$22  
22 million referenced in Parker's report, so I believe I  
23 would have sought clarification.

24 Q To that end, you mention in your -- by the  
25 way, did you read all the documents on here what's

1       been marked as Appendix 1?

2           A       No, I don't believe I would have.

3           Q       Did somebody in your office read all the  
4 documents?

5           A       Possibly not.

6           Q       Possibly not?

7           A       Yes. This is just a reflection of the  
8 documents we received.

9           Q       Were those documents -- did you ask for those  
10 documents, or those were the documents that were just  
11 provided to you?

12          A       It probably would have started with a general  
13 request for information. I don't know if it was  
14 supplemented for additional information we did not  
15 request.

16          Q       Do you recall reviewing the transcript of  
17 Brian Padgett in connection with the preliminary  
18 injunction hearing?

19          A       I don't know.

20          Q       If I directed you to No. 25.

21          A       I see that.

22          Q       It says transcript of preliminary injunction  
23 hearing. You see that?

24          A       I do.

25          Q       You don't recall ever reviewing that?

1           A     I may have reviewed it, I just don't  
2 recall.

3           Q     Let me direct you, Joe, to Exhibit 164. So  
4 you're going to have to play computer expert.

5           MR. WILEY: Let me help you. Go ahead and  
6 minimize that one.

7           MR. FEUERSTEIN: Instruct him how to pull up  
8 the answers.

9           MR. WILEY: Yeah. See the one that says  
10 Feuerstein's a bad guy. Click on that one.

11                 (Laughter.)

12           THE WITNESS: I've got the document in front  
13 of me.

14           MR. FEUERSTEIN: Move to strike.

15                 (Laughter.)

16 BY MR. FEUERSTEIN:

17           Q     Take a look at the document, Joe. Tell me if  
18 you've seen it before.

19           A     I don't recall.

20           Q     You know who Brian Padgett is, though?

21           A     I do.

22           Q     Who is he?

23           A     I believe he was counsel at one point in this  
24 case.

25           Q     Would you accept my representation he's also

1 a principal in CWNevada?

2 A Sure.

3 Q I'd like you to turn to page 89, or scroll  
4 down to page 89.

5 A I'm there.

6 Q And I want you to look -- you can look at the  
7 question beginning on page 6 -- excuse me, line 6, and  
8 I want you to see in particular, beginning on line 15,  
9 where Mr. Padgett testified, "In total value, I mean,  
10 we came up with a total value for the deal, which  
11 includes cost savings when you don't have pay a loan  
12 of \$4 and a half million back, total value of  
13 approximately \$22 million." You see that?

14 A I do.

15 Q Do you have any recollection whether you saw  
16 that prior to issuing your report?

17 A I can't recall.

18 Q If you had seen that prior to issuing your  
19 report, would it have affected your opinion therein?

20 A It would have, but I think my opinion was  
21 regarding the LOI referenced in Mr. Parker's report.  
22 I don't know if this was any portion of the LOI.

23 Q I think what you say, you mention on page 8  
24 that you were referring -- there was talk of the LOI,  
25 and you say it bears noting that the LOI received by

1 our office does not reference \$22 million; you see  
2 that?

3 A I do.

4 Q I'm asking if, in fact, you had the testimony  
5 from one of the principals of the party who we claim  
6 was paying the \$22 million, would that change your  
7 opinion in anyway?

8 A I would say this is a reference to 22  
9 million. I don't know if this would be a  
10 representation of the value it represented.

11 MR. FEUERSTEIN: I think I'm finished. I'd  
12 like to sort of look at my notes. If I have anything,  
13 it's going to be very brief.

14 ARBITRATOR BAKER: Let's take a couple minute  
15 break.

16 (Break taken.)

17 MR. FEUERSTEIN: I don't think I have any  
18 further questions at this time.

19 MR. DUSHOFF: Your Honor, and I apologize,  
20 just walking in. I know from your prior ruling that  
21 basically the exchange, and I apologize speaking out  
22 of order -- but basically based on Mr. Feuerstein's  
23 motion to strike, it was summarily stated that since  
24 he didn't mention anything about in 12 regarding 11,  
25 that it's summarily out. That, therefore, if he

1       didn't mention it --

2               ARBITRATOR BAKER:   That's not what I said.   I  
3       allowed questions to continue, been given over his  
4       objections.   And what I'm going to do is get the  
5       transcript, I'm going to read back through it.   I'm  
6       going to read through these reports is what I said,  
7       because I don't know whether something he said,  
8       because there appears to be some sort of analysis and  
9       considerations, even in this December -- I don't know  
10      whether what he said then encompass what was objected  
11      to or is it fairly included.

12              So I noted the objection.   I'm going to go  
13      back and read through the transcript, and I'm going to  
14      read these before I issue an opinion.   That was my  
15      decision.

16              MR. DUSHOFF:   I apologize.   I was just  
17      getting a case regarding that very issue you were  
18      talking about.

19              ARBITRATOR BAKER:   Okay.   Anything else?

20              MR. WILEY:   No redirect for me.

21              MR. FEUERSTEIN:   Nothing from me.

22              ARBITRATOR BAKER:   Thank you.   Let's go off  
23      the record for now.

24              (TIME NOTED:   6:00 p.m.)

25

REPORTER'S CERTIFICATE

I, the undersigned, a Certified Shorthand Reporter of the State of Nevada, do hereby certify:

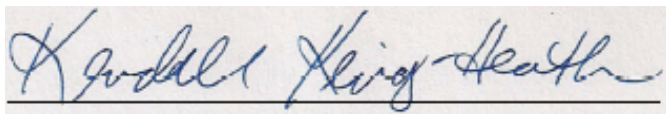
That the foregoing proceedings were taken before me at the time and place herein set forth; that any witnesses in the foregoing proceedings, prior to testifying, were duly sworn; that a record of the proceedings was made by me using machine shorthand which was thereafter transcribed under my direction; that the foregoing transcript is a true record of the testimony given.

Further, before completion of the proceedings, review of the transcript [ ] was [ ] was not requested.

I further certify I am neither financially interested in the action nor a relative or employee of any attorney or party to this action.

IN WITNESS WHEREOF, I have this date subscribed my name.

Dated: January 31, 2019

A handwritten signature in blue ink, reading "K. J. King-Heath", is written over a horizontal line.

NV. CCR NO. 475

CALIF. CSR NO. 11861

<b>&amp;</b>	<b>100</b> 365:8 381:21	<b>149</b> 331:15,15,18	383:7 386:12
<b>&amp;</b> 260:16 262:12	386:22 387:8	362:12 386:6	388:7 418:15,16
<b>0</b>	395:1 494:14	<b>14th</b> 509:3 515:4	423:24 430:2
<b>01-15-005-8574</b>	<b>100,000</b> 522:14	<b>15</b> 329:11,13	434:18 436:13
259:7 260:7 265:6	<b>10001</b> 261:4	359:23 372:6	437:3,4 450:17,17
<b>1</b>	<b>10017</b> 261:20	450:6 463:19	450:19 460:21,22
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[passes - pledge]

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[providing - rampart]

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AMERICAN ARBITRATION ASSOCIATION

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

REPORTER'S TRANSCRIPT OF PROCEEDINGS  
BEFORE ARBITRATOR NIKKI BAKER  
THURSDAY, JANUARY 17, 2019  
LAS VEGAS, NEVADA  
VOLUME 3

REPORTED BY:  
KENDALL D. HEATH  
NEV. CCR NO. 475  
CALIF. CSR NO. 11861  
JOB NO.: 3196610  
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AMERICAN ARBITRATION ASSOCIATION

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

ARBITRATION PROCEEDINGS - VOLUME 3,  
held Thursday, January 17, 2019, commencing  
at 10:13 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  
NIKKI BAKER, ESQ.  
PETERSON BAKER  
10001 Park Run Drive  
Las Vegas, NV 89145  
(702) 786-1001  
nbaker@petersonbaker.com

APPEARANCES OF COUNSEL:

For the Plaintiff  
Jennifer Goldstein:

FEUERSTEIN KULICK LLP  
BY: DAVID FEUERSTEIN, ESQ.  
NANCY BAYNARD, ESQ.  
205 E. 42nd Street  
20th Floor  
New York, New York 10017  
(646) 768-0591  
david@dfmklaw.com

1 APPEARANCES OF COUNSEL (Cont'd):

2 For the Defendant

3 NuVeda, LLC:

4 WILEY PETERSEN

5 BY: JASON M. WILEY, ESQ.

6 1050 Indigo Drive

7 Suite 130

8 Las Vegas, NV 89145

9 (702) 909-5487

10 jwiley@wileypetersonlaw.com

11

12 KOLESAR & LEATHAM

13 BY: MATTHEW T. DUSHOFF, ESQ.

14 400 South Rampart

15 Suite 400

16 Las Vegas, NV 89145

17 (702) 362-7800

18 mdushoff@klnevada.com

19 ALSO PRESENT:

20 Jennifer Goldstein

21 Pejman Bady

22 Pouya Mohajer

23 Joe Kennedy

24

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1 Las Vegas, Nevada

2 Thursday, January 17, 2019

3 -o0o-

4 ARBITRATOR BAKER: This is the last day of  
5 the final hearing in the Goldstein versus NuVeda  
6 matter. Again, rather than going around the table and  
7 making appearances, will counsel stipulate that the  
8 same individuals that were here yesterday and the  
9 first day are also present?

10 MR. FEUERSTEIN: Confirmed.

11 MR. WILEY: Confirmed.

12 ARBITRATOR BAKER: I don't want to interrupt  
13 closing arguments. I have a couple fairly broad  
14 issues I would like counsel to briefly touch on during  
15 their closings, and I ask that no one read into the  
16 questions.

17 I know that's something that I always tend to  
18 do when a judge asks, or an arbitrator asks me  
19 questions and I try to read the tea leaves. Please  
20 don't do that.

21 These are just some overall issues that, you  
22 know, I was thinking about last night and this morning  
23 and that I would like just briefly touched on in your  
24 closings.

25 First, section 2 of the operating agreement

1 states, in pertinent part, quote, "Upon the expulsion  
2 or death of a member, the member's successor in  
3 interest, estate or beneficiaries, as the case may be,  
4 shall be entitled to receive from the company, in  
5 exchange for all of the former member's ownership  
6 interest, the fair market value of that member's  
7 ownership interest, adjusted for profits and losses to  
8 the date of the expulsion or death."

9 I noted in both the prehearing arbitration  
10 briefs, the parties quoted that sentence up to the  
11 point of -- then it goes on to say, "Adjusted for  
12 profits and losses to the date of the expulsion or  
13 death."

14 In other words, it seemed to be on both sides  
15 that that was omitted in the parties' briefs. So I  
16 would like the parties to briefly address if and how  
17 the expert opinions and Mr. Webster's appraisal comply  
18 or do not comply with the entirety of that sentence,  
19 not just the fair market value, but the fair market  
20 value as adjusted for profits and losses to the date  
21 of expulsion or both. That's the first one.

22 The second issue that I've been going over is  
23 that the expert witnesses have opined, and I'm going  
24 to paraphrase, the term "fair market value" means the  
25 amount a willing buyer would pay and a willing seller

1 would accept.

2 Understanding that there's disagreement as to  
3 which approach should be used for the fair market  
4 value analysis, I would like a brief explanation as to  
5 if and how the values determined in the expert  
6 opinions and Mr. Webster's appraisal comply or do not  
7 comply with this definition of fair market value.

8 Then the last thing, and I would like a  
9 statement on the record now or from the parties,  
10 whether they agree or disagree.

11 But I understand from the parties arguments  
12 in evidence that for purposes of making a decision in  
13 this arbitration, I am to assume, without deciding,  
14 that the subsidiaries, Clark NMSD, LLC, Clark Natural  
15 Medicinal Solutions, LLC, and Nye Natural Medicinal  
16 Solutions, LLC are wholly-owned by NuVeda.

17 And in determining Ms. Goldstein's fair  
18 market value of her ownership interest in NuVeda, I am  
19 to include the value of those licenses.

20 So in other words, I'm not making a decision  
21 as to whether NuVeda -- as to whether those  
22 subsidiaries are, in fact, wholly-owned, that is an  
23 assumption I'm supposed to use in my opinion. And  
24 that the licenses held by these subsidiaries are  
25 included in the fair market value.

1           So my question is, is that correct?

2           MR. FEUERSTEIN: I think that's correct from  
3           our professional perspective.

4           MR. WILEY: That's correct from NuVeda as  
5           well.

6           ARBITRATOR BAKER: Thank you.

7           Now, Mr. Feuerstein.

8           MR. FEUERSTEIN: It's my turn first?

9           ARBITRATOR BAKER: You are the claimant.

10          MR. DUSHOFF: Burden of proof.

11                   CLAIMANT'S CLOSING ARGUMENT

12          MR. FEUERSTEIN: Good morning, Arbitrator  
13          Baker. And I would say on the record, thank you for  
14          your professionalism and conduct in the arbitration.

15                 I think you've been fair and listened to all  
16          of the parties and have been obviously very patient.  
17          I think that I would be remiss not to thank you ahead  
18          of time because I'm going to get up caught up in the  
19          argument here in a moment.

20                 I think there are two main issues for you to  
21          decide in this arbitration. The first is whether in  
22          expelling Ms. Goldstein from NuVeda, whether NuVeda  
23          actually attempted to acquire a, quote/unquote, fair  
24          market value of her seven percent nondilutable  
25          interest.



1           Section 6.2 of the operating agreement  
2 provides that in the event all of the voting members  
3 cannot come to an informal agreement to the fair  
4 market value of the expelled member's interest, the  
5 voting members shall hire an appraiser to determine  
6 the fair market value of the shares.

7           As I'll explain in a moment, there's simply  
8 no question that the disinterested members of NuVeda  
9 did nothing to try and reach an agreement with Ms.  
10 Goldstein and get an actual appraisal of the fair  
11 market value of her shares.

12           In fact, the evidence that we've elicited at  
13 this hearing shows that what the disinterested members  
14 did was that they valued the assets of NuVeda  
15 themselves and then simply asked Mr. Webster to form a  
16 simple calculation.

17           Mr. Webster did absolutely nothing to confirm  
18 any of the numbers provided to him by Mr. Kennedy. He  
19 just spent 10 minutes adding and subtracting certain  
20 numbers that Mr. Kennedy provided upon request.

21           That's not what section 2 is intended to  
22 accomplish. It wasn't intended to allow the  
23 disinterested members to make up their own valuation  
24 of the assets and then just have a third party add and  
25 subtract the numbers.

1           The point of the appraisal is to have someone  
2       independently value NuVeda's assets so that the  
3       expulsed member could receive a fair market value of  
4       her shares.

5           What makes this whole situation even worse,  
6       in our view, is that how arbitrary NuVeda's valuation  
7       actually was. The balance -- for example, the balance  
8       sheets that Mr. Kennedy provided to Dr. Clauretjie for  
9       his reports revealed that NuVeda actually determined  
10      that the fair market value of NuVeda's licenses went  
11      down from March 2016 to August 2017, even though  
12      virtually every witness testified that those values  
13      should have gone up, given the enactment of the rec in  
14      Nevada.

15          Thus, in our view, the appraisal provided by  
16      Mr. Webster has to be disregarded. It doesn't comply  
17      with section 6.2. And once that happened, the second  
18      question is what's the actual fair market value of Ms.  
19      Goldstein's shares as of August 8, 2017.

20          The parties have submitted no less than a  
21      dozen expert reports. And I hate to break the news to  
22      you, none of them is an exciting read.

23          While the paid experts predictably do not  
24      agree with each other's methodologies or their  
25      approaches, there are a few absolutes that I think you

1 can take from the reports and the expert's testimony.

2 First, respondent's experts do not provide  
3 any legitimate number for the fair market value of  
4 NuVeda or Ms. Goldstein's shares, nor do they provide  
5 even the tools for you as the decider of fact to even  
6 begin to arrive at a number.

7 In fact, Anthem -- I'm not going to try to  
8 pronounce his name -- did not even provide any  
9 valuation of NuVeda. And Dr. Clauretje's calculations  
10 and opinions should be entirely excluded or  
11 disregarded for the reasons I'll get to in a few  
12 moments.

13 Second, NuVeda and its members withheld  
14 critical information from their experts that plainly  
15 would have affected their conclusions. They never  
16 told them about the MIPA. They never told them about  
17 the operation. They never told them that the  
18 dispensary licenses were actually earning more than \$7  
19 million in annualized revenue.

20 Third, while Anthem takes issues with some of  
21 Mr. Parker's conclusions and his assumptions, there  
22 are multiple ways for Mr. Parker and Ms. Goldstein to  
23 establish that the fair market value of her interest  
24 is worth anywhere from 2 million to \$2.8 million,  
25 assuming, assuming that the MIPA is honored and

1 considered in a truly intellectually and honest  
2 matter.

3 Fourth, the contemporaneous evidence, factual  
4 evidence, corroborates Mr. Parker's calculations and  
5 refutes the opinions of NuVeda's witnesses and  
6 experts. So with that said, let's dig in just a  
7 little bit.

8 As I said, the first issue today is whether  
9 NuVeda complied with section 6.2 of the operating  
10 agreement. Initially, I would note that there's no  
11 dispute that respondents did not attempt to reach an  
12 informal agreement with Ms. Goldstein about the fair  
13 market value of her interest.

14 Instead, it appears that Mr. Kennedy reached  
15 out to Mr. Webster and asked him to perform what  
16 NuVeda now calls an appraisal. Well, what the  
17 testimony yesterday confirmed is that Mr. Webster  
18 literally did nothing to appraise the value of NuVeda.

19 Instead, he asked Mr. Kennedy to provide him  
20 with a balance sheet of NuVeda's assets and  
21 liabilities, and then spent approximately 10 minutes,  
22 10 minutes adding and subtracting the numbers that Mr.  
23 Kennedy had provided to arrive at his valuation of  
24 approximately \$1.6 million.

25 Leaving everything else aside for a moment,

1 to suggest that a company like NuVeda that held 35  
2 percent in two operating recreational dispensaries in  
3 Las Vegas, Nevada, with a combined annual revenue of  
4 \$7.2 million, with two cultivation licenses, either in  
5 whole or fractional, and two production licenses, in  
6 whole and fractional, had a fair market value of \$1.6  
7 million, which is just absurd on its face.

8 Of course, Mr. Webster did not care about  
9 that because he was not asked to make any independent  
10 assessment of whether the numbers Mr. Kennedy provided  
11 were correct or reflective of NuVeda's fair market  
12 value.

13 In fact, he specifically disclaimed doing so,  
14 both in his actual appraisal and in his testimony.  
15 And he had no prior experience with cannabis companies  
16 to determine independently whether Mr. Kennedy's  
17 assessments of value were actually accurate.

18 Before we get to the numbers, the process  
19 itself seems to be a breach of section 6.2's purpose.  
20 Indeed, NuVeda essentially rendered 6.2 superfluous  
21 because all that happened here is that NuVeda itself  
22 valued the assets of the company, and then just asked  
23 Mr. Webster to do nothing more than serve as a human  
24 calculator.

25 Even worse, Mr. Kennedy admitted yesterday

1 that he had created the balance sheet after Mr.  
2 Webster had asked for one. In other words, the  
3 document was not one kept in the usual course of  
4 business. It wasn't something that was routinely  
5 updated, it was done after they decided to expel Ms.  
6 Goldstein.

7 Mr. Kennedy further confirmed that the source  
8 of the valuation he used for CWNV was Pej Bady, who is  
9 the largest shareholder in NuVeda, had the most to  
10 gain by depressing the value of NuVeda in Ms.  
11 Goldstein's interest.

12 Mr. Kennedy then did nothing, literally  
13 nothing to confirm whether the valuation numbers he  
14 had provided were at all reasonable to an independent  
15 individual. The process cannot be consistent with  
16 what section 6.2 was intended to do.

17 Indeed, the parties were first supposed to  
18 meet together to see if they could arrive at a number  
19 that they believe was the fair market value.

20 Then, if they couldn't come to an agreement,  
21 the idea was to send it to an appraiser, an  
22 arbitrator, if you will, to determine what was the  
23 fair market value of NuVeda's assets such that you can  
24 then deduct what the expelled member's interest were.

25 That's not what they did here. What they did

1 here is they picked the number themselves, arbitrarily  
2 in our view, and just gave it to an appraiser and said  
3 add and subtract these numbers.

4 Of course in this case, as I just mentioned,  
5 the conduct seems that much more egregious because  
6 virtually all the evidence indicates that the four  
7 licenses contributed to CWNV were worth far more than  
8 \$10 million.

9 For example, prior to Nevada converting to a  
10 rec state, Dr. Bady and his friend, Dr. Bahri, agreed  
11 that Dr. Bady would pledge two percent of his interest  
12 in NuVeda at a \$25 million valuation.

13 Shane Terry testified that he thought the  
14 valuation in NuVeda was anywhere between \$35 million  
15 and \$50 million. Brian Padgett from CW Nevada, who is  
16 a lawyer, testified under oath that CW Nevada was  
17 providing \$22 million of value to CWNV for 65 percent  
18 of the licenses in Nye and Clark and MSD, meaning that  
19 those four licenses alone were worth approximately \$34  
20 million in or around December of 2015.

21 Virtually every witness testified that upon  
22 the conversion to a rec state, license values would  
23 increase. In fact, Mr. Terry testified that he  
24 thought license values would increase by a factor of  
25 five, given the additional customer count anticipated

1 for rec as deducted by RAND and other evidence in  
2 Washington, and I believe Colorado.

3 Thus, whatever the license values were in  
4 2016 should only have gone up in 2017. But as I said  
5 in the opening, Mr. Kennedy's valuations actually went  
6 down. Virtually every witness testified that the  
7 valuation of licenses would increase if they sold them  
8 as a vertical enterprise rather than single licenses.

9 And perhaps most tellingly, the members of  
10 NuVeda entered into September 20, 2017, purchase and  
11 sale agreement marked as Exhibit 263, wherein one  
12 month after expelling Ms. Goldstein and telling Mr.  
13 Webster that the value of their interest in CWNV were  
14 worth three and a half million dollars, the members of  
15 NuVeda agreed to sell 100 percent of the interest in  
16 Clark and Nye to CW for more than seven times that  
17 amount.

18 The purchase and sale agreement offered more  
19 than \$22 million in cash payments. It offered a two  
20 percent interest in CW, with, if you did some simple  
21 math using the documents that are in evidence, you can  
22 approximate the three and a half million dollars in  
23 present day, and a promise of indemnification in a  
24 Forefront litigation, which obviously has some value.

25 There is not a single piece of paper, not



1 one, that respondents have provided that corroborates  
2 Mr. Kennedy's self-serving testimony. Just like  
3 there's not a single piece of paper that corroborates  
4 Mr. Kennedy's claim that NuVeda somehow agreed to,  
5 quote/unquote, offset the money that CW owes to  
6 NuVeda, because NuVeda was concerned that it would  
7 have to pay 35 percent of the operating capital  
8 despite the plain and unambiguous terms of the MIPA.

9 Despite all of this evidence, NuVeda would  
10 still have you believe that it somehow followed the  
11 letter of the operating agreement and to not breach  
12 the covenant of good faith and fair dealing.

13 The other purpose of section 6.2 is clear:  
14 It was supposed to ensure that if the parties couldn't  
15 reach agreement to a fair market value, that there  
16 would be appraisal to arrive at that number.

17 It simply defies common sense in our view to  
18 suggest that 6.2 could be satisfied by selecting the  
19 values yourselves and then giving those values to a  
20 third party to simply add and subtract, to make no  
21 independent judgment as to whether or not those values  
22 are at all reasonable, but that's what happened here.

23 Without ever speaking to Ms. Goldstein,  
24 NuVeda and its remaining members agreed among  
25 themselves and only themselves to a valuation and then

1 asked Mr. Webster to put it on his letterhead.

2 In fact, when Ms. Goldstein requested  
3 underlying information, she went completely  
4 unanswered.

5 Now, I suspect that NuVeda will argue that  
6 Mr. Kennedy's valuation was made in good faith and  
7 corroborated by perhaps Exhibit 257, the 2018 article  
8 about the sale of Terra Tech dispensary, and it will  
9 also be corroborated by Shane Terry's acquisition of  
10 the cultivation and production license.

11 But as Mr. Terry testified, there are  
12 extenuating circumstances to the Terra Tech sale.  
13 What's more, if you're inclined to consider the sale  
14 of Terra Tech's one dispensary as probative to the  
15 value of dispensary licenses held by CWNV, then we  
16 submit that you also have to consider the Essence  
17 transaction, where Essence sold a vertical operation  
18 with three dispensaries for almost \$300 million.

19 Mr. Terry also testified about the  
20 extenuating circumstances concerning his acquisition  
21 or his company's acquisition, including the fact that  
22 they were provisional licenses.

23 Moreover, Mr. Terry explained that within 30  
24 days, literally 30 days of acquiring these two  
25 licenses, he raised money at a \$3 million post

1 valuation.

2 So with respect to the first issue,  
3 Arbitrator Baker, we think there's no question that  
4 the Webster report cannot satisfy the purpose of  
5 section 6.2.

6 The next question then is what is the actual  
7 valuation of Ms. Goldstein's interest. As I said  
8 earlier, there's literally 12 experts in this case,  
9 and yet among those 12 experts, NuVeda does not  
10 provide one credible valuation of Ms. Goldstein's  
11 shares. Anthem Street reports do not provide any  
12 evidence of the fair market value of Ms. Goldstein's  
13 shares, and yesterday Joe testified that he's not  
14 offering a value.

15 And Dr. Clauretje's three reports should  
16 either be excluded or given very little weight. In  
17 fact, Dr. Clauretje admitted yesterday that his report  
18 is based entirely -- not somewhat, entirely -- on  
19 hearsay evidence.

20 Specifically, he testified that the source  
21 for his market value of the licenses was none other  
22 than Dr. Bady, who evidently gave him a document that  
23 did not provide to us, despite our discovery request,  
24 even though Dr. Bady testified that he had no  
25 recollection of giving Dr. Clauretje a document.

1 Dr. Clauretie also testified that he  
2 confirmed the accuracy and applicability of that list  
3 with an individual who was never brought before the  
4 arbitrator and asked to testify as to his bona fides  
5 or why he thought the valuations were reasonable.

6 Beyond that single 20 to 30-minute  
7 conversation, Dr. Clauretie did nothing to call --  
8 nothing, literally nothing, to confirm the accuracy of  
9 the so-called list that he was provided. So there's  
10 not a single reliable data point in his report that  
11 should merit it being considered expert testimony.

12 Even if it were to be considered, the  
13 calculation contains numerous assumptions that are  
14 belied by the record evidence.

15 For example, Dr. Clauretie concedes that he  
16 never heard of the MIPA. Never considered the MIPA as  
17 an asset to his calculation of liquidation value of  
18 NuVeda, that his opinion and conclusions depended in  
19 part on NuVeda's inability to raise money from outside  
20 investors, even though NuVeda didn't have to raise any  
21 money from outside investors because it was CW's  
22 responsibility and Apex's responsibility. And that he  
23 had never valued another cannabis company before.

24 In short, Dr. Clauretie is nothing more than  
25 a more educated version of Mr. Webster. He did

1 virtually nothing more than add and subtract the same  
2 valuations that Mr. Kennedy arbitrarily provided,  
3 without providing his own independent confirmation of  
4 those numbers.

5 As Mr. Dushoff likes to say, garbage in,  
6 garbage out. Even worse, if that were -- I gave you  
7 credit.

8 MR. DUSHOFF: I do like to say that.

9 MR. FEUERSTEIN: Even worse, if that were  
10 possible, is that NuVeda other expert, Anthem, made  
11 clear that in order to be reliable, experts should  
12 conduct some due diligence to determine whether the  
13 numbers provided by the client are accurate. Here, as  
14 I said, Dr. Clauretie admitted that he did none of  
15 that. So Anthem is actually making the argument for  
16 me.

17 I understand that Anthem takes its shots at  
18 Mr. Parker's reports and that there's a dispute as to  
19 whether to apply the going concern method, which we  
20 think applies, or the liquidation method which  
21 respondents choose.

22 But neither NuVeda or its members ever  
23 provided any credible data points to its experts for  
24 them to make an informed decision as to which  
25 methodology to apply.

1           For example, none of NuVeda's experts knew  
2       that the dispensary licenses were operational, that  
3       the dispensaries were earning \$7 million in top line  
4       revenue. They didn't know that there was a MIPA that  
5       was allowing or providing that some other party had to  
6       provide the operating capital for the operations.

7           But even if you were going to say that you  
8       wanted to apply the liquidation method, so long as you  
9       used proper inputs, you would end up at roughly the  
10      same number.

11          So while Anthem is critical of Mr. Parker,  
12      it's really throwing stones in glass houses because  
13      it, too, didn't have the data to make the proper  
14      underlying assumptions. However, Anthem conspicuously  
15      does not provide its own valuation of NuVeda, or even  
16      can correct a number that Mr. Parker provides.

17          What's more, there's plenty of evidence in  
18      this record that supports Mr. Parker's conclusion,  
19      assuming again that the MIPA is honored in an  
20      intellectually honest fashion that Ms. Goldstein's  
21      shares are worth approximately \$2.8 million, that is,  
22      35 percent of the \$8 million that Mr. Parker  
23      concluded.

24          For example, as I mentioned, Brian Padgett  
25      testified that CW is providing \$22 million of capital

1 to earn 65 percent of CWNV, leaving NuVeda with \$12  
2 million of equity in the enterprise.

3 If you credit Shane Terry's testimony, he  
4 corroborated that number and believe that the value of  
5 NuVeda's licenses should have increased by a factor of  
6 five after rec became legal in Nevada because how many  
7 more customers you would expect, you would end up with  
8 a valuation of \$2.72 million for Ms. Goldstein's  
9 interest.

10 That is, you would take the \$12 million of  
11 equity, multiply it by five, and then reduce it by  
12 seven percent to reduce Ms. Goldstein's interest, and  
13 then another 28 percent for lack of control and a lack  
14 of marketability.

15 You also have Mr. Parker's calculation that  
16 he did on the record where he testified that if we use  
17 the actual rec numbers for CWNV's dispensaries in July  
18 2017, which Mr. Kennedy claimed were accurate, and  
19 then use the actual numbers for CW's production and  
20 cultivation facilities as a proxy to what NuVeda  
21 should be entitled to under the terms of the MIPA, and  
22 then you use the number six as the revenue multiplier,  
23 as Anthem confirmed has done with private cannabis  
24 companies, you get approximately \$2.1 million as the  
25 valuation for Ms. Goldstein's interest.

1           Finally and perhaps most tellingly, you have  
2     the purchase and sale agreement that was marked as  
3     Exhibit 263. I'm sure NuVeda will argue that the  
4     document should not be considered because it was never  
5     performed, it was ultimately rescinded, it's dated  
6     beyond the date of the expulsion and so on.

7           Of course, NuVeda's own expert, Dr. Clauretie  
8     date post expulsion, so NuVeda cannot have it both  
9     ways. Moreover, whether the agreement was ever  
10    performed or not or ultimately rescinded does not  
11    change the fact that the parties that entered into the  
12    agreement 32 days after Webster issued his appraisal.

13          The agreement reflects that the parties,  
14    including NuVeda and its members, had a meeting of the  
15    minds and had agreed that the fair market value of  
16    NuVeda's interest in CW would be worth at least \$22  
17    million in monthly payments, approximately three and a  
18    half million dollars in CW stock, and an additional  
19    valuation for the indemnification in the Forefront  
20    litigation.

21          In other words, there was at least -- well,  
22    there was at that moment, a willing buyer and a  
23    willing seller, willing to pay more than 25 and a half  
24    million dollars cash, plus additional value.

25          This agreement reflects that NuVeda did not



1     itself believe that its interest in CWNV was worth  
2     only three and a half million dollars. It's beyond  
3     credible to suggest that any member of NuVeda truly  
4     believed that its assets were worth almost seven times  
5     less than they actually were.

6             That the parties later had buyer's or  
7     seller's remorse or realized that they had entered  
8     into an agreement that wholly undermined their  
9     litigation position is no consequence.

10            The simple point is that they cannot  
11     reasonably claim that they believed in good faith that  
12     the valuation of CWNV was three and a half million  
13     dollars on August 7, 2018, and then literally sit here  
14     and claim that that agreement somehow morphed, or that  
15     interest somehow morphed seven times in 32 days  
16     without any explanation.

17            So even if you conclude that you can't use  
18     the data point to truly value NuVeda, we would submit  
19     that the purchase and sale agreement is terrific  
20     evidence to discredit respondent's ipse dixit claims  
21     that they deem in good faith believe NuVeda's interest  
22     was only three and a half million dollars.

23            Of course in our view, the evidence shows  
24     that NuVeda actually had reason to believe that the  
25     agreement or its terms was probable or likely to

1 happen when Ms. Goldstein was being expelled.

2 This was an act of cold blood. The fact is  
3 recreational sales began in 2017. One month later,  
4 the members of NuVeda decided to expel Ms. Goldstein.  
5 Remember, Ms. Goldstein sued the company in 2015.  
6 Only months later the members expelled Mr. Terry, but  
7 they waited more than a year and a half to expel Ms.  
8 Goldstein.

9 And that timing just so happened to coincide  
10 with the onset of rec sales, and it just so happened  
11 to come one month after this phony -- one month before  
12 they sold their interest to CW for over 25 and a half  
13 million dollars.

14 To be sure, no one from respondents denied  
15 that they knew about the agreement of August 2017. In  
16 fact, when Mr. Wiley and Mr. Dushoff redirected the  
17 witnesses and asked them about the purchase agreement,  
18 they never once asked the question, when did you start  
19 discussing the agreements? When did you think those  
20 agreements were going to come into existence?  
21 Nothing.

22 I happened to ask Mr. Kennedy how long it  
23 took to negotiate 263, or the purchase and sale  
24 agreement. He didn't really answer. He said it could  
25 have taken over a month.

1           And given some of Mr. Kennedy's other  
2     testimony, including his claim that operating capital  
3     is somehow different than working capital, his lack of  
4     commitment speaks volumes.

5           If there was any way Mr. Kennedy could have  
6     said in good faith that the agreement had been  
7     conceived after Ms. Goldstein had been expelled, he  
8     would have surely done so.

9           Similarly, Pej Bady testified that the  
10    decision to enter into 263 was not just happenstance,  
11    rather, there was a conscious decision to, in his  
12    words, streamline NuVeda's business. I cannot imagine  
13    such a decision was made lightly and they just came up  
14    with the idea right before executing the agreement.

15           By using the purchase and sale agreement to  
16    estimate the value of NuVeda's assets as of August 8,  
17    2017, you again arrive at a number of \$2.1 million.  
18    And just to note, this does not include the member  
19    loan or expenses that Ms. Goldstein has in the total  
20    of \$47,000 and change as reflected in Dr. Clauretie's  
21    report.

22           Now, you asked us to consider two separate  
23    issues at the outset of this hearing, the first --  
24    I'll take them in reversal order. The first question  
25    was a willing buyer and willing seller and how the

1 experts either considered that or valued that to  
2 comply with that determination.

3 I think quite frankly that the -- Mr. Parker  
4 applies both the discount for lack of marketability  
5 and discount for minority interest at combined 28  
6 percent to account for the fact that it is not  
7 necessarily a freely tradable interest.

8 As for the first question with respect to  
9 adjusted for profits and losses, as far as I can tell,  
10 there have not yet been profits and losses at NuVeda.  
11 Whatever losses there were incurred are now the  
12 responsibility of CW pursuant to the terms of the  
13 MIPA.

14 And one final note before I conclude, the  
15 fact is here, that Ms. Goldstein had a nondilutable  
16 interest of seven percent. That interest in  
17 negotiations with Pej Bady were evidenced to be even  
18 more valuable than a straight equity interest.

19 If you recall, there were discussions about  
20 providing her with more equity to compensate the fact  
21 that you have to actually dilute her when investment  
22 came in. So any investor who would be in the fair  
23 market buying a nondilutable interest would obviously  
24 get some minor value.

25 With that, Your Honor, we would rest our

1 closing. Thank you.

2 RESPONDENT'S CLOSING ARGUMENT

3 MR. DUSHOFF: Arbitrator Baker, I want to  
4 thank you again for also being here and being very  
5 patient with us and taking the time to look over all  
6 these documents and hanging with us with the  
7 machinations in this case over the past year with us,  
8 because it is definitely a lot going on back and  
9 forth.

10 I'm going to start off with this, what they  
11 don't mention. Burden of proof is not with us. The  
12 burden of proof is with them. The burden of proof is  
13 with Ms. Goldstein, and the number she put out is \$8  
14 million. That's the number her expert testified to  
15 and that's her burden of proof. Her burden of proof  
16 is to come forward with that number.

17 Computation. Remember, we talked about this,  
18 a computation of damages. We can't just throw it in  
19 here and go and start throwing 12, 13, 14 different  
20 numbers. She had her number from her expert.

21 Her expert said her value is \$8 million, and  
22 she has to meet that burden. And I'm going to tell  
23 later on as we go through this, not even close, and  
24 not able to do so.

25 Judge Gonzalez ruled that on the operating

1 agreement, that it was the plain meaning of the  
2 operating agreement should be taken into place. And  
3 under the operating agreement, which you quoted this  
4 morning under section 6.2, 6.2 does govern the  
5 expulsions.

6 There was disinterested voting members 60  
7 percent to expel Ms. Goldstein, not challenged. Mr.  
8 Kennedy testified that Dr. Bady and Dr. Mohajer had  
9 that 60 percent. And only upon -- and there was an  
10 issue, only upon expulsion, then you have the right to  
11 get to -- for the appraisal for the fair market value.

12 You don't have -- once expelled, you don't  
13 have that right as they had in their brief to suddenly  
14 become a voting member once you're expelled to be able  
15 to vote on who the appraiser is. That's not your  
16 right, and you brought this out. You are expelled.

17 Any ambiguity in that, as Ms. Goldstein  
18 testified, for a clause that you brought out was  
19 ambiguous would be construed against her. Why?  
20 Because she was the drafter of the operating  
21 agreement.

22 We acknowledge that Ms. Goldstein needs to be  
23 compensated for her seven percent interest. Section  
24 6.2 doesn't state we need to hire an expert. Section  
25 6.2 says we need to have an appraisal done.

1 Ms. Goldstein is arguing, or argued in her  
2 brief, again, as we talked about, needed to be  
3 included with the choice, but we know that didn't have  
4 merit. So what did we do? Mr. Kennedy hired an  
5 appraiser, hired Mr. Webster.

6 Mr. Webster has been a certified appraiser  
7 for over 30 years. You can't challenge his  
8 experience. Has done hundreds of business appraisals.  
9 Mr. Webster asked for the balance sheet. Mr. Kennedy  
10 provided it.

11 Now, they question, well, that's just a  
12 simple number you do as -- Mr. Feuerstein, well,  
13 that's just balance sheet, you just do assets minus  
14 liabilities equals what we call an asset methodology,  
15 and says that is incorrect.

16 Well, I think all of the experts beg to  
17 differ because all the experts said an asset  
18 methodology, what we call liquidation, is a proper way  
19 to determine value.

20 I'm sorry that it's simple. I'm sorry that  
21 it didn't involve a 145 page expert opinion to do so,  
22 but it didn't need to do so. You have your assets,  
23 liabilities. That's what you do in asset -- when you  
24 do an asset methodology, and that's what was done  
25 here.

1           Once the appraisal was done, Mr. Butell  
2       contacted Ms. Goldstein. She testified that she  
3       received that appraisal. Had the numbers in front of  
4       her. She didn't like the numbers.

5           And we know that because two months later  
6       after she went radio silent on the numbers, she filed  
7       her second amended complaint again and charged 18  
8       causes of action, not against and -- well, and 18 of  
9       them against my clients in their individual  
10      capacity.

11          We hired -- under 6.2, she was expelled  
12      properly. Upon that point, we hired the appraiser.  
13      She wouldn't talk with us. She didn't want to be  
14      anywhere near them. You could tell there was whole  
15      bunch of animosity between these people. I get it and  
16      I understand that when you expel a member, that that's  
17      the case.

18          We hired the appraiser. Appraiser just met  
19      Mr. Kennedy. It wasn't like he was not an old friend  
20      of his. The appraiser says, Okay. In order to be  
21      able to properly perform this, I need the balance  
22      sheet. I need the liabilities.

23          Now, you're right, Mr. Webster didn't do an  
24      audit on this. Dr. Clauretje didn't do an audit on  
25      this. You know who also didn't do an audit on this?



1 Their expert. Nobody did an audit on this. They  
2 relied on the numbers that were given them.

3 Mr. Kennedy testified that those were  
4 accurate numbers. Never challenged whether those  
5 numbers were accurate. At that point, we should be  
6 done. We followed our operating agreement. We  
7 followed 6.2 to the letter.

8 Now, you talked about and you brought this  
9 up, and I'm going to bring it up here, is that you  
10 know what, but where's the lost profit? Where's the  
11 profit of her loss into the fair market value?

12 And you heard testimony, there was no profit.  
13 Everything was a loss. But you know what you didn't  
14 do? Didn't subtract the losses. Didn't say, you know  
15 what, you make 116. We're evaluating at 116 or 105 --  
16 I apologize, I think it was 116, but we're subtracting  
17 \$50,000 because we haven't made any money. As a  
18 matter of fact, we're in a deficit.

19 We gave her that extra. We didn't subtract  
20 it. But yet, still now and for the first time in this  
21 case, literally at here she said there was a breach of  
22 good faith against NuVeda for failure to bring -- for  
23 the numbers, however, saying that those numbers are  
24 improper.

25 However, we didn't go to Kinkos for this.

1 There were three numbers that you heard here, the only  
2 three numbers that you heard here that are completely  
3 unbiased. They put forth numbers through their  
4 witness.

5 We put forth numbers through the witnesses  
6 and our experts and their experts, but there were  
7 three numbers here that you heard that were completely  
8 unbiased, not from either side, and they are 6.25, 200  
9 and 200. These are the known numbers.

10 How do we know that? Well, we know in  
11 October of 2018, and this is the only numbers that are  
12 in evidence, by the way. They pull out Essential  
13 saying well, Essential sold for \$90 million in a  
14 vertical (unintelligible.)

15 Where's that evidence before you? Somebody  
16 said it. There was no proof. There was nothing  
17 before you saying that. We could say a lot of things,  
18 but there was no proof. This is evidence. 6.25 three  
19 months ago.

20 Three months ago, Terra Tech bought an asset  
21 sale for 6.25 million of a distribution center --  
22 dispensary. I apologize. I keep calling it a  
23 distribution. Of a dispensary.

24 Now, this was an asset purchase, so this just  
25 wasn't the license, but this was everything. So at