

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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District Court Case No.: A-15-728510-B

JOINT APPENDIX VOLUME XI

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 Ms. Goldstein's best, at her best, this number would
2 be 6.2499999, and asset was worth one dollar. Okay?
3 But they paid 6.25.

4 Mr. Terry came in and bought two licenses
5 that he testified to. He bought cultivation for
6 200,000. He bought production for 200,000. They made
7 short shrift of that. Why? Because they know that's
8 the only evidence in front of you. Now, they tried to
9 make it quick to saying well, he got financing for \$3
10 million of it. I don't care.

11 You just stated on here, I want to talk about
12 fair market value. Right. Fair market value. If
13 there is a willing buyer and a willing seller. But we
14 know only three instances in evidence, the only
15 evidence before you of fair market value that neither
16 their expert nor our experts or Mr. Webster, that
17 anybody came forth.

18 That was Terra Tech, bought for 6.25 that
19 Terry bought the \$200. Fair market value, willing
20 buyer and willing seller at 200.

21 Now, they say our numbers were out of whack
22 and, therefore, we did not do it in good faith. So
23 let's look at this. Mr. Webster valued the dispensary
24 at the time back in 2017.

25 Remember, they talked about the growth rate,

1 we know it's just skyrocketing. Well, we know in
2 2018, three months ago, dispensaries sold fair market
3 value of 6.25.

4 Well, 2017 August, 4.8. That's not bad
5 faith, that's in the ballpark. You can't say that
6 that's bad faith. What did Clauretie do with that?
7 \$4.5 million. Again, once again, this is not bad
8 faith. And that is their burden, not ours, to show.

9 Cultivation. This was my favorite.
10 Cultivation, Terry admitted he bought that. He bought
11 it for 200. Mr. Webster -- and this is high, by the
12 way. I upgraded because he had it at 175, but we'll
13 say 2. We'll give it the benefit of the doubt,
14 200,000.

15 Mr. Clauretie put the range at 200 to
16 300,000, exactly the same, and he bought it during the
17 same period of time, the only numbers that are before
18 you. And the same thing with the production, they
19 can't say that there wasn't fair market value when
20 there was actual -- three actual sales in front of you
21 for -- in this range.

22 They can't do it. They try and do it, but
23 they can't do it because we actually have the actual
24 numbers. And those are the only numbers in evidence
25 before you. And let me rephrase that. Also, the only

1 unbiased numbers in front of you.

2 There is no calculation necessary because
3 we've shown Mr. Webster whether they say how he did it
4 was too simplistic, too easy. He shouldn't be able to
5 do it in 10 minutes. Guess what? Under the numbers
6 that we have seen, the actual numbers, he's on it.
7 Right. He's on it. It's not bad faith.

8 They have the burden of proof to show that it
9 was bad faith, not us. Sometimes simple is the best
10 way to do it. And you know what? In this case, we're
11 right.

12 In the liability issues, Ms. Goldstein did
13 not challenge anything in there except for the 2
14 Prime. We'll talk about 2 Prime and 2113. 2 Prime
15 was a loan. Simple. It was a loan. Liability.
16 2113, Ms. Goldstein is challenging now that the
17 agreement with 2113, not a proper agreement, it's
18 unfair. Should be considered liability.

19 But you know what? The members voted on it.
20 The members approved. Ms. Goldstein didn't, but you
21 know what? Pursuant to the operating agreement, it
22 was approved.

23 And that's going to bring us to probably my
24 most salient point here, and where we've been thrown
25 off on very many different directions. This case at

1 this point when we started Tuesday morning was a value
2 case. Pure and simple. That's it. Let me tell you
3 what this case is not about. This is not about the
4 scrutiny of the MIPA.

5 As you stated at the end of day one, listen,
6 I'm not here to talk about whether MIPA's valid,
7 invalid, what we should do, what we shouldn't do and
8 how this works because that wasn't the issue. That is
9 not the issue.

10 They gave up all the issues regarding that
11 when they dismissed all the causes of action in this
12 case and focused simply on value.

13 That's the same thing with the Glad 2B Home.
14 They want to challenge that, the Glad 2B Home. We
15 want to challenge that. We want to go with it. That
16 is unfair. No. You had the opportunity, you chose to
17 dismiss it.

18 We didn't have an opportunity to
19 cross-examine Ms. Goldstein on this area. They never
20 brought this up. They never brought up 2113 during
21 her testimony. That was never an issue before you.

22 Moreover, you heard the testimony because we
23 had to get it out, the Glad 2B Home was rescinded and
24 nobody paid a dime on it. Nothing.

25 Nobody acted on it. It was like it was not

1 there. Nobody did anything with it. And the MIPA was
2 still in full force and effect and still is today.

3 This case is also not about an
4 unsubstantiated amount provided by Padgett three years
5 ago in a testimony at a hearing. Not about that.
6 Once again, it's about value in here and proof that we
7 provided to you in this case. It's also not been an
8 intercompany agreement between NuVeda and Apex.

9 During this hearing, as I sigh, during this
10 hearing --

11 ARBITRATOR BAKER: I'm sorry. That's why I
12 smiled. I was thinking back to that story.

13 MR. DUSHOFF: During this hearing, it got
14 convoluted at the very beginning because suddenly what
15 we thought was a value case and was to be a battle of
16 experts and experts were going to testify, all of a
17 sudden turned into a cluster and that's what it wasn't
18 supposed to be.

19 We had an agreement. My clients gave up
20 their attorneys' fees rights in order to make this a
21 value case, and we've got to look at it that simply.
22 It is a value case.

23 All of the other stuff is white noise and it
24 takes away the focus from a value case. The only
25 evidence that we have of fair market value that is

1 unbiased are the numbers we have up here. That is it.

2 So I want to talk -- let's talk about value
3 and let's talk about who they brought. Mr. Parker.
4 By proxy, you can't rely on his opinion. God, I
5 thought that would have got laughs. It was funny last
6 night when I wrote it, but clearly I got to hit that
7 point.

8 We know that his numbers are wrong from the
9 onset. Right. And you saw him floundering. When I
10 pointed out to him that he actually used -- when he
11 projected NuVeda's numbers, here's NuVeda revenues, in
12 his report, Ms. Goldstein's -- and let's refer back to
13 what are the actual numbers that he used.

14 He used the CWNV projected revenues to
15 determine NuVeda's numbers. But that was -- now I
16 remember, that was a proxy. He didn't even know who
17 CWNV was before this. Had no clue who CWNV was.

18 That's why I asked him beforehand and he
19 started floundering, instead of just admitting. God
20 forbid you actually think, you know what, I was given
21 the wrong numbers. I used the wrong numbers.

22 And those numbers were used to project the \$8
23 million. Garbage in, garbage out. Was given the
24 wrong numbers. His numbers are fatally flawed because
25 they were based entirely on not NuVeda's numbers, but

1 CWNV, and that was improper to use. He used the wrong
2 numbers.

3 And everything flows from those numbers.
4 Revenue projections, the multiplier. And I thought it
5 was funny when I heard -- and Mr. Feuerstein actually
6 highlighted on here, he says, you know what?
7 Dr. Clauretie and Mr. Leauanae, they didn't use the
8 proper inputs so, therefore, they got the wrong
9 valuations. Our clients said he used the proper
10 inputs. Your client used a completely different
11 company to use for their inputs.

12 Moreover, when they talk about that, they
13 said you're doing basically an audit. Did you check
14 if they were real? You know who also didn't check if
15 the projections were real? Their expert.

16 Their expert didn't check to see what the
17 projections were. Their expert just got them from
18 Shane Terry and just said, here they are. Here are
19 the numbers. Didn't check. Didn't do an audit.
20 Didn't see if they were real.

21 And what was incredibly fascinating, he
22 didn't even know that they were real income numbers.
23 He didn't check. He didn't ask. He didn't even know
24 that they were still working.

25 And you know what the worse part about that

1 was that shocked me? He didn't care. I'm sorry. Did
2 I miss that part in expert school? He said there were
3 three methodologies, and there was income, market and
4 asset.

5 And in his very first opinion, he actually
6 went through and said, I can't use market, I can't use
7 this, I can't use that. I'm going to use this part of
8 the income approach. Never did that again. Basically
9 dismissed the -- he used market approach in the first
10 one with having the same projections.

11 But suddenly all of a sudden when Ms.
12 Goldstein completely flip-flopped and now used the
13 market approach -- and we'll get to that in a little
14 bit. I hate people saying a little bit because oh, my
15 God. How much more? Not much more.

16 ARBITRATOR BAKER: I'm not thinking that.

17 MR. DUSHOFF: Yeah. But using the public
18 company method, when he had projections with just
19 different numbers, but the same five-year projection.
20 Didn't use income method then. Oh, no, certainly did
21 not. He used the market approach.

22 As a matter of fact, completely dismissed.
23 Didn't even take it into account. Why didn't you take
24 it into account? I just didn't. You gave
25 explanations in your first one why you didn't take

1 certain things into account. You didn't do that here?
2 Nope.

3 So let's talk about the GPCN approach,
4 basically the public guideline approach. There's two
5 of them. There's market and there's comparable
6 transactions. Right. There's two of them. You could
7 use the public or comparable transactions.

8 And his evidence and what you just talked
9 about, his testimony, what is fair market value?
10 Well, willing buyer, willing seller. That really fits
11 into transaction mode. Right? Because if you use the
12 marketing approach, well, seller A sold to buyer B for
13 X amount. This person sold to this person. That's
14 fair market value.

15 You even admitted in your own definition, in
16 your own report, willing buyer, willing seller. What
17 he didn't do, he never researched. Never did anything
18 to find out if that was the case. Completely
19 dismissed it without even checking, yet his opinion is
20 that a fair market value is a willing buyer and a
21 willing seller.

22 You tell me under the GPCN approach how that
23 is even willing buyer and willing seller. That does
24 not even come close to that. The one that he could
25 have used on the market approach, he never did

1 anything. What did we do? We found that in a
2 heartbeat. Public companies have to report it, and we
3 found Terra Tech. He found nothing because he never
4 searched for anything.

5 So let's talk about his approach. Under the
6 GPCN approach, you have to find like companies similar
7 to the company that you're appraising, similar to
8 NuVeda. In his very first appraisal, he said listen,
9 here's the reason why I didn't use the GPCN approach.

10 It's very difficult to use that approach,
11 especially when you're truly difficult to compare,
12 especially in cases of small or mid-level companies.
13 And I asked him, like NuVeda? Yes.

14 So NuVeda didn't change. It was still a very
15 small company. But that didn't change, but he still
16 used it. Also, whether that company has meaningful
17 revenues. Well, we know he didn't know that because
18 he never asked for the revenues.

19 As a matter of fact, when I said, did you ask
20 for the income, did it matter, he said it doesn't
21 matter to me. So he doesn't even know what revenues
22 they had.

23 So how are you going to compare a company
24 that you had the question mark to companies that you
25 have revenues of over \$25 million? How do you know

1 that that's comparable? You don't, if you don't know
2 the revenues.

3 He also said in here that he doesn't use this
4 approach with the small companies because public
5 companies are more established than closely held
6 companies. We agree. Because the companies he used
7 were much more established and not even close to
8 NuVeda.

9 How do we know that? Okay. We weren't able
10 to get in a certain exhibit about Terra Tech, but we
11 know certain other things about Terra Tech that did
12 get into evidence.

13 We know Terra Tech, I believe, as their
14 expert testified is not just in California, but is all
15 over California and Nevada and Sparks -- in Nevada in
16 Sparks. I know, I know, I said in Nevada and Sparks
17 like it's a different state. But in Sparks and Reno.
18 They're in Clark County. They're nowhere in
19 California.

20 We know Golden Leaf is a Canadian company
21 with stuff more than in Nevada, in other licenses and
22 other jurisdictions. We also know Friday Night is
23 another Canadian company that is also not just here in
24 Nevada. All right.

25 So he's taking three of these top companies,

1 not knowing our revenues, knowing that we are a small
2 company and saying, well, these are the same. He
3 picked -- how many companies did he have?

4 He had only 15, whittle it down to six, chose
5 two of those six, which was Terra Tech and Golden
6 Leaf. Then chose two others indiscriminately, Friday
7 Night and Marathon, without any explanation why he
8 even chose those.

9 And as Mr. Leauanae said, if you are going to
10 do -- use this form, you need more than just three.
11 You're going to do a comparison, you need to have 15,
12 20. You're using three. It's too small a sample
13 size. And of course, now you're going to get a number
14 of \$127 million or something like that.

15 And I'm going to tell you, if somebody
16 offered them \$127 million right now, take it in a
17 heartbeat. I'm going right now. But you know what?
18 That's not there. His numbers are absolutely flawed
19 and they're skewed, and they're purposely skewed
20 because he wanted to increase the value as much as
21 possible.

22 That's why he didn't use the income or didn't
23 use any other approach but this approach, which he
24 completely disavowed in his first one. He also -- and
25 you heard Mr. Leauanae talk about the risk factor, and

1 I thought that this was interesting. He never took
2 into account -- their expert never took into account
3 the risk factors.

4 For instance, 280E, the tax ramifications
5 that the write-offs are not available to marijuana
6 companies that are done to regular businesses. Where
7 was that? Never took that into account. But the fact
8 that it's federally illegal, never took that into
9 account regarding the valuation.

10 That a fact that it is a new industry, never
11 took that into account. He's doing this like it's
12 Westinghouse, like it's been in business forever.
13 Never took it -- then he brings up a 35 percent fed
14 tax rate, which is low.

15 And banking issues, never took that into
16 account. Try and get a bank to loan you money for any
17 marijuana company in the United States. You can't
18 because it's a tier one.

19 And I thought what was interesting that's in
20 his report, he says, but the federal government in
21 2020, he projected, will no longer make it a tier one
22 and make it legal.

23 And I laughed and in my head I'm going, yeah,
24 based on what? Because right now under this
25 administration, that's not happening.

1 And my favorite, this one was my favorite,
2 and I questioned him and questioned him. His first
3 expert report specifically says that this is not an
4 expert report. Do not rely on this as an expert
5 report. It specifically says that.

6 Now, I asked him, you wrote that language?
7 Yes. And this is your language; right? Yes. And
8 it's fair to say that you cannot use this in a court
9 of law for expert report testimony? That's not what
10 it is.

11 I said, no, no, this is what it says. All
12 I'm asking you, that's what it says. He goes, well,
13 this is a business valuation. No. You're putting
14 this out as an expert report, and you say this can't
15 be used as an expert report.

16 And what was interesting about that, he says
17 fine, business valuation. In his valuation of Ms.
18 Goldstein, he refers back to this report, specifically
19 for the 28 percent discount rate that he used. So
20 he's referring back to a nonexpert report.

21 I have about -- and I listed it last night,
22 about 30 other things wrong with his report, but I
23 don't think we need to go into all those because his
24 report is so fatally flawed from the beginning using
25 the wrong numbers, we just go thank you, good night.

1 No proxy. Nothing. There's no proxy
2 anywhere in here. I think he made up that word at
3 that time. He was panicked because he knew he used
4 the wrong numbers.

5 Mr. Feuerstein was now doing some
6 calculations in front of you and used -- added five
7 times. Well, the five times that he used, the five
8 times that he used was the -- what Terry said. Yeah,
9 he thinks it's five times as much. Based on what?
10 Well, we know one number, the only number in evidence,
11 Terra Tech, 6.25. That doesn't seem to be five times
12 4.8, and that's the only thing before you.

13 When we sold our arbitration brief and they
14 brought up the big issue regarding this case is that
15 Ms. Goldstein did not have the ability to rule -- had
16 a right to rule in picking on the arbitrator. That
17 was the first time we've ever heard this argument.

18 ARBITRATOR BAKER: Appraiser.

19 MR. DUSHOFF: Huh?

20 ARBITRATOR BAKER: Appraiser.

21 MR. DUSHOFF: The appraiser. I apologize.

22 ARBITRATOR BAKER: You said arbitrator. Make
23 sure that's clear on the record.

24 MR. DUSHOFF: That is correct, the appraiser.
25 Thank you. For the appraiser. First time we've heard

1 that. Basically we've heard almost everything, but
2 specifically on valuation. When we heard on
3 valuation, they challenged the one person that
4 actually under the operating agreement Ms. Goldstein
5 signed, performed that number.

6 They say it's not in good faith. They said
7 it was too simple. But the actual numbers that we
8 have don't bear that out.

9 The actual numbers that we have bear out that
10 it wasn't done in bad faith, that it was done in good
11 faith. She just doesn't like the numbers and wants
12 more money. That is their burden of proof and not our
13 burden of proof. And she hasn't met her burden of
14 proof.

15 Now, one of the interesting things about this
16 case, the last thing I'll talk about is I'm not even
17 sure what cause of action they're going under to prove
18 their case, because all the causes of action were
19 dismissed against my client. There's no breach of
20 good faith and fair dealing against NuVeda. That just
21 doesn't exist.

22 So we've been looking through the second
23 amended complaint last night trying to discover what
24 cause of action does she have to prove in order to do
25 this, if anything.

1 Is she dismissing all her claims, now it's
2 just a valuation case? If that's the case, then it's
3 just experts' opinions that we all agree, but there's
4 no cause of action against NuVeda for that.

5 So what we're going to ask you is she
6 deserves valuation and the number, and we believe the
7 number that Mr. Webster came up with is the accurate
8 number. We'd ask that you give that number.

9 And the number that their expert gave you is
10 so fatally flawed, you can't rely on that, and that's
11 the calculation of damages they came into this case
12 with.

13 Thank you.

14 ARBITRATOR BAKER: Do you have anything
15 briefly?

16 MR. FEUERSTEIN: Yeah.

17 MR. DUSHOFF: Another way I know this is
18 unorthodox for somebody who has to use symbols as
19 demonstrative, but I will let Mr. Feuerstein do that.

20 ARBITRATOR BAKER: I appreciate that.

21 MR. FEUERSTEIN: I really -- I sat there and
22 I think he did a fine job, but I almost fell out of my
23 chair when he said here's my corroborating evidence,
24 6.25 million. And he said what's the date that he
25 thinks that is. 10/18, fourteen months after the

1 expulsion. And the best and only evidence he can show
2 is that.

3 What he ignores, entirely ignores is that his
4 own clients entered into a signed agreement where they
5 all confirmed that they understood what the terms
6 meant and agreed to those terms on 9/17.

7 And that number took NuVeda's assets not to
8 the calculation of 6.65 million or whatever this adds
9 up to, but instead, \$25.5 million. That is the
10 interest -- by the way, 25.5 million plus. That's the
11 value of the interest and the best indicator of what
12 the value of interest is as of August 2017.

13 You want to use the liquidation method, you
14 want to use the GPCN method, you want to use any of
15 the other methods. The number you have to put into
16 that calculus is 25.5.

17 And if you add 22 million to Mr. Webster's
18 report and then take the -- and then play out the
19 numbers, you get to a number of almost 1.7 million and
20 that doesn't even put a fair valuation on the interest
21 in Apex. So quite frankly --

22 ARBITRATOR BAKER: Real quick. When you say
23 "Apex," you're talking about the Clark County Natural
24 and Medicinal Solutions aspect of it?

25 MR. FEUERSTEIN: Yes. So the idea that

1 somehow this date and that valuation is at all
2 indicative of what the valuation was for Ms. Goldstein
3 simply ignores that number.

4 What's more, it ignores Essence. Mr. Dushoff
5 says, well, you can't listen to Essence because it was
6 only testified to by Mr. Terry. Mr. Terry is the only
7 one that testified to the cultivation value and the
8 production value, and yet they accept that value. So
9 they're not going to accept the 300.

10 So from our perspective, the case, as soon as
11 Mr. Dushoff went to here, the case was done because it
12 was absolute proof that the valuation could not be
13 anywhere near \$3.5 million. Couldn't.

14 That's all I have to say.

15 MR. DUSHOFF: By the way, that was the
16 shortest rebuttal.

17 ARBITRATOR BAKER: One follow-up question for
18 you, Mr. Dushoff.

19 MR. DUSHOFF: Yes.

20 ARBITRATOR BAKER: In order for me to accept
21 the Webster appraisal numbers under the fair market
22 value, again, just sort of paraphrasing, willing
23 seller, willing buyer, do I need to determine whether
24 NuVeda would have sold its interest for the fair
25 market value, I'm just going to say \$1.6 million set

1 forth in the letter on or about August 8, 2017?

2 In other words, do I need to make that
3 determination based upon the evidence before me that I
4 believe NuVeda would have sold its interest for that
5 amount and, therefore, that satisfies the willing
6 seller aspect asset of fair market value?

7 MR. DUSHOFF: You bring up a very good point.
8 Understand that's an aspect that's one issue of fair
9 market value. They wouldn't have sold it for \$1.1
10 million.

11 But that is under the asset method, income
12 method and so forth, that is one of the absolute
13 acceptable methods in order to determine fair market
14 value, and that's what they did here. You know,
15 balance sheet minus five equals what that is.

16 They would have not sold that for the \$1.6
17 million. Right. I don't think that's a determining
18 factor, it's just you asked me
19 whether (unintelligible.)

20 (Court reporter asks for clarification.)

21 ARBITRATOR BAKER: That was why I wanted
22 clarification from your perspective of whether I need
23 to determine based on the evidence that that would, in
24 fact, that NuVeda would, in fact, sell for that
25 amount.

1 MR. DUSHOFF: No.

2 ARBITRATOR BAKER: Okay. Quickly, thank you
3 both. While we're still on the record, pursuant to
4 the preliminary hearing and scheduling order, I
5 believe it's No. 2 and I don't think it changed, I was
6 supposed to do a reasoned award.

7 Still willing to do that, but I'm looking for
8 the parties for direction because we have narrowed the
9 issue so I don't need to go into a bunch of the
10 factual background.

11 But as far as when I'm determining, you know,
12 and I come to my number, how much detail do the
13 parties want as far as what I considered -- you know,
14 what I gave little weight to, what I gave no weight
15 to, because I could tell you that I will do that
16 analysis. I will go through all the experts and I
17 will do that analysis in order to get to that
18 conclusion.

19 I'm just wondering for purposes of anyone
20 wants to challenge with Judge Gonzalez, whatever the
21 situation may be, I just want to know how much detail
22 you guys want.

23 MR. DUSHOFF: I think I'd want it detailed
24 just in case if there's any other issues the way it
25 came out.

1 MR. FEUERSTEIN: I'm not going to fight to
2 say if he really wants it, I'm not going to object.

3 MR. DUSHOFF: I'm not going to say 40 page
4 long and it's not physics, so I'm not going to ask you
5 to do that. But the calculation, how you got the
6 number, I'd appreciate that.

7 ARBITRATOR BAKER: I will include a
8 reasonable, what I think is a reasonable amount of
9 detail, or I suppose if I was one of the parties, the
10 details I would want to see.

11 Again, both sides have made numerous
12 challenges to the expert testimony and the evidence,
13 and I will try to hit on what I think the emphasis of
14 both sides, and hopefully it will be clear how I got
15 to my decision.

16 So that will certainly be my goal, but I just
17 wanted to make sure that that's what the parties
18 wanted and not just a number on a sheet of paper and
19 then everyone can try to guess how I came up with
20 that.

21 I do have one last question, which I
22 officially have to ask by rule so I want to make sure
23 I get it right.

24 Do the parties have any additional evidence,
25 testimony, arguments that they wish to offer for this

1 case?

2 MR. FEUERSTEIN: We do not.

3 DR. BADY: No.

4 ARBITRATOR BAKER: So the evidentiary part of
5 this hearing is now closed. We are leaving it open
6 for the other issues as to attorney's fees and costs,
7 which will be decided after I offer -- put out my
8 initial decision as far as valuation.

9 And then as I indicated before, there will be
10 a final order, which will set both amounts.

11 Thank you all.

12 The transcript order will be normal delivery
13 and 0&2 and 50/50 on the cost.

14 (TIME NOTED: 11:40 a.m.)

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REPORTER'S CERTIFICATE

I, the undersigned, a Certified Shorthand Reporter of the State of Nevada, do hereby certify:

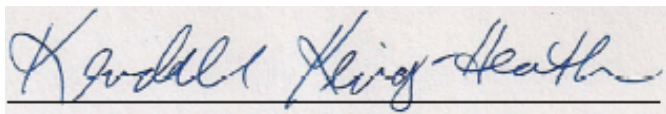
That the foregoing proceedings were taken before me at the time and place herein set forth; that any witnesses in the foregoing proceedings, prior to testifying, were duly sworn; that a record of the proceedings was made by me using machine shorthand which was thereafter transcribed under my direction; 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

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DECL

DICKINSON WRIGHT PLLC

BRIAN R. IRVINE

Nevada Bar No. 7758

BROOKS T. WESTERGARD

Nevada Bar No. 14300

100 West Liberty Street

Suite 940

Reno, Nevada 89501

Tel.: (775) 343-7500

Fax: (844) 670-6009

Email: birvine@dickinsonwright.com

Email: bwestergard@dickinsonwright.com

Attorneys for Plaintiff Jennifer M. Goldstein

DISTRICT COURT

CLARK COUNTY, NEVADA

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

Plaintiffs,

vs.

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

Defendants.

Case No.: A-15-728510-B

Dept. No.: 11

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

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

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

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

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

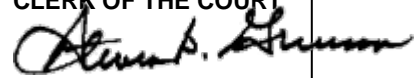
5 3. Attached to the Opposition as **Exhibit 3** is a true and correct copy of the
6 Arbitration Transcript of Proceedings, June 15-17, 2019.
7

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

10 DATED this 25th day of July, 2019.

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

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28



JASON M. WILEY, ESQ.
Nevada Bar No. 9274
RYAN S. PETERSEN, ESQ.
Nevada Bar No. 10715
WILEY PETERSEN
1050 Indigo Drive
Suite 130
Las Vegas, Nevada 89145
Telephone: 702.910.3329
jwiley@wileypetersenlaw.com
rpetersen@wileypetersenlaw.com

MATTHEW T. DUSHOFF, ESQ.
Nevada Bar No. 4975
SCOTT D. FLEMING, ESQ.
Nevada Bar No. 5638
KOLESAR & LEATHAM
400 South Rampart Boulevard
Suite 400
Las Vegas, Nevada 89145
Telephone: 702.362.7800
mdushoff@klnevada.com
sfleming@klnevada.com

Attorneys for NuVeda, LLC

IN THE EIGHTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
IN AND FOR THE COUNTY OF CLARK

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

Plaintiffs,

v.

PEJMAN BADY, an individual; POUYA
MOHAJER, an individual; DOES I to X,
inclusive; and ROES I to X, inclusive,

Defendants.

Case No.: A-15-728510-B

Dept. No.: XI

**NUVEDA, LLC'S REPLY TO PLAINTIFF
JENNIFER GOLDSTEIN'S OPPOSITION
TO NUVEDA, LLC'S MOTION TO
VACATE ARBITRATION AWARD**

Date: August 12, 2019

Time: 9:00 a.m.

NUVEDA, LLC ("NuVeda"), by and through its counsel of record, Matthew T. Dushoff, Esq.
and Scott Fleming, Esq. of the law firm Kolesar & Leatham, and Jason M. Wiley, Esq. and Ryan S.
Petersen, Esq. of the law firm Wiley Petersen, hereby files NuVeda, LLC's Reply to Plaintiff Jennifer

Goldstein's Motion to Vacate Arbitration Award ("Reply").

The Reply is made and based upon the papers and pleadings on file herein, the attached exhibits, the memorandum of Points and Authorities submitted in support hereof, NRS Chapter 38 its sections and subsections, and upon any oral argument that this Court may entertain.

DATED this 5th day of August, 2019.

KOLESAR & LEATHAM

WILEY PETERSEN

/s/ Matthew T. Dushoff, Esq.

/s/ Jason M. Wiley, Esq.

MATTHEW T. DUSHOFF, ESQ.

JASON M. WILEY, ESQ.

Nevada Bar No. 4975

Nevada Bar No. 9274

SCOTT FLEMING, ESQ.

RYAN S. PETERSEN, ESQ.

Nevada Bar No. 5638

Nevada Bar No. 10715

400 South Rampart Boulevard

1050 Indigo Drive

Suite 400

Suite 130

Las Vegas, Nevada 89145

Las Vegas, Nevada 89145

Telephone: 702.362.7800

Telephone: 702.910.3329

mdushoff@klnevada.com

jwiley@wileypetersenlaw.com

sfleming@klnevada.com

rpetersen@wileypetersenlaw.com

Attorneys for NuVeda, LLC

Attorneys for NuVeda, LLC

POINTS AND AUTHORITIES

I.

LEGAL ARGUMENT AND ANALYSIS

A. Goldstein Failed to File a Timely Opposition to NuVeda's Motion to Vacate Arbitration Award and the Court Should Deem NuVeda's Motion Unopposed and Meritorious

As has been demonstrated and recited in the pleadings filed with this Court the past 45 days, Plaintiff Jennifer Goldstein ("Goldstein") consistently and continuously fails to adhere to the applicable rules governing proceedings to which she is a party. This issue was first raised in NuVeda's Motion to Vacate Arbitration Award ("Motion") wherein NuVeda argued that Goldstein failed to timely disclose an expert witness in accordance with Arbitrator Nikki Baker's scheduling order and then, less than one month before the arbitration's Final Hearing, Goldstein disclosed expert Donald Parker under

1 the guise of a “supplemental report” (the “December 2018 Parker Report”). This matter will be
2 addressed in detail in subsequent sections of this Reply.

3 The second instance occurred when Goldstein (a) failed to timely oppose NuVeda’s Motion,
4 and, thereafter (b) petitioned this Court to extend the deadline within which to oppose the Motion
5 without citing or relying upon any authority in violation of applicable Court rules or without citing or
6 discussing the applicable standard. Based upon the egregiousness of Goldstein’s conduct in failing to
7 adhere to these rules and, as a result, that NuVeda continually finds itself “behind the eight-ball” in its
8 dealings with Goldstein, the Court should treat Goldstein’s Opposition to NuVeda, LLC’s Motion to
9 Vacate Arbitration Award (“Opposition”) as a rogue pleading and grant NuVeda’s Motion without
10 considering argument. Such action would not be unprecedented. *See e.g. Dickerson v. Downey Brand*
11 *LLP*, 408 P.3d 543 (2017) (“[g]iven Dickerson’s untimely opposition to the motion for fees and costs
12 . . . we perceive no abuse of discretion in the district court’s striking of Dicker’s opposition on in its
13 granting of attorney fees and costs.”); *King v. Cartlidge*, 121 Nev. 926, 124 P.3d 1161 (“King filed his
14 opposition twenty-four days after Cartlidge’s summary judgment motion was filed, well beyond the
15 ten-day deadline of DCR 13(3). This delay alone was sufficient grounds for the district court to deem
16 Cartlidge’s motion unopposed and thus meritorious.”); *Walls v. Brewster*, 112 Nev. 175, 912 P.2d 261
17 (1996) (“Walls had ten days to respond. DCR 13(3); WDCR 12(2) . . . however, no opposition was
18 filed prior to the deadline . . . we conclude that it was proper for the district court to construe Wells’
19 failure to respond to Brewster’s motion to dismiss as an admission that the motion was meritorious and
20 as a consent to grant the motion.”).

21 Simply put, the Court should determine that Goldstein failed to timely oppose NuVeda’s
22 Motion and, as such, deem the Motion granted and meritorious pursuant to EDCR 2.20. NuVeda filed
23 its Motion on June 17, 2019. Two days later, on June 19, 2019, Goldstein’s counsel contacted
24 NuVeda’s counsel requesting the parties stipulate to continue the hearing on the Motion and extend the
25 remaining briefing dates. That same day – only hours after Goldstein’s counsel’s request – NuVeda
26 conveyed it was amenable to the stipulation provided that Goldstein suspend the accrual of interest on
27 the arbitration’s final award until the parties conducted the hearing on the Motion. Nine days passed
28

1 before Goldstein responded or undertook any action. This delay was solely attributable to Goldstein's
2 conduct and in no way was due to NuVeda or its representatives' actions.

3 On June 28, 2019, and for purposes relevant hereto after an opposition to NuVeda's Motion
4 was due, Goldstein responded to NuVeda and indicated she was not willing to suspend the accrual of
5 interest.¹

6 On July 1, 2019, Goldstein filed her Motion to Continue Hearing on NuVeda, LLC's Motion
7 to Vacate Arbitration Award and to Extend Briefing Deadlines [First Requested Extension] ("Motion
8 to Extend") which – as a death knell to Goldstein's position – relies exclusively on EDCR 2.22(d).
9 And while that rule applies to a request to continue a hearing, the rule has zero applicability to a request
10 to extend deadlines within which to file pleadings. Thus, Goldstein failed to comply with EDCR
11 2.20(c) ("[a] party filing a motion must also serve and file with it a memorandum of points and
12 authorities in support of each ground thereof.") (emphasis added). Goldstein, in moving to extend
13 deadlines, should have cited EDCR 2.25 and NRCP 6.²

14 In addition, even if the Court takes the attenuated approach that Goldstein's Motion to Extend
15 should be considered on its merits despite the lack of points and authorities, Goldstein petitioned this
16 Court under an incorrect legal theory. Specifically, EDCR 2.25 and NRCP both clearly and
17 unambiguously provide that requests to extend time lodged with the Court after the expiration of the
18 specified period shall not be granted unless the moving party demonstrates that the failure to act was
19 the result of excusable neglect. Goldstein's Motion to Extend does not provide that the failure to timely
20 oppose was the product of excusable neglect, nor does it address excusable neglect.

21 Based upon the foregoing, Goldstein's actions were in contravention of applicable rules and
22 her request to extend the deadline date to oppose NuVeda's Motion must be denied. Thus, Goldstein's
23 deadline to oppose the Motion was June 27, 2019. Goldstein did not file her rogue Opposition until
24 July 25, 2019 (i.e., 28 days after it was due). The Nevada Supreme Court has consistently affirmed
25 district court orders granting motions where the opposition thereto was not timely filed. *See e.g. King*

27 ¹ EDCR 2.20 provides that an opposition to a motion must be filed within 10 days.

28 ² Goldstein's reply to the motion to extend acknowledges that EDCR 2.25 and NRCP 6 are the correct legal standards. However, as noted, the legal standard must be included in the motion and Goldstein's failure to do so results in a deficient pleading.

1 v. *Carlidge*, 121 Nev. 926, 928 124 P.3d 1161, 1162 (2005) (“King filed his opposition twenty-four
2 days after the summary judgment motion was filed, well beyond the ten-day deadline . . . This delay
3 alone was sufficient grounds for the district court to deem Carlidge’s motion unopposed and thus
4 meritorious.” (emphasis added)).

5 B. Arbitrator Exceeded Her Powers and Manifestly Disregarded the Law

6 1. Goldstein’s Opposition Admits that the December 2018 Donald Parker Expert Report
7 is an Initial Disclosure and Not a Supplement as Previously Asserted in Prior
8 Proceedings

9 On a cursory note, it is important to point out that Goldstein’s Opposition does not dispute
10 NuVeda’s assertion that Goldstein’s expert witness disclosure and the December 2018 Parker Report
11 was not a supplement as Goldstein previously alleged, but, instead, an initial report which was untimely
12 filed. Goldstein’s latest pivot on her legal position now provides that, while untimely, the Arbitrator
13 should have still considered Parker’s report and testimony during Final Hearing. This line of reasoning
14 is a vast departure from Goldstein’s prior positions and is the latest in a long list of Goldstein acting in
15 defiance of the applicable rules.

16 2. NuVeda’s Rule-Based Argument is Proper

17 Goldstein’s Opposition alleges NuVeda errs in arguing that the arbitration award should be
18 vacated based upon an application of the Federal Rules of Civil Procedure and the Nevada Rules of
19 Civil Procedure since the arbitration was “expressly governed by AAA’s Large Complex procedures
20 of its Commercial Arbitration Rules.” See Opposition 10:5-6. This is an incorrect statement of the
21 arbitration’s procedures. In support of its position, Goldstein cites page 1 of the Arbitrator’s
22 Scheduling Order #2. This Scheduling Order only provides that the pre-arbitration conference was
23 conducted pursuant to the AAA Rules (“[p]ursuant to the Large Complex procedures of the
24 Commercial Arbitration Rules as amended and in effect October 1, 2013, of the American Arbitration
25 Association (“AAA”), a preliminary hearing via telephone conference was noticed on October 26,
26 2017, by the AAA, and held on October 30, 2017.”). See Scheduling Order #2 appended to NuVeda’s
27 Motion as Exhibit 9. The proceeding – as expressly provided in Scheduling Order #2 was governed
28 by Nevada law. .”). See Scheduling Order #2 appended to NuVeda’s Motion as Exhibit 9. Moreover,
the parties – in all -prehearing matters and during the final hearing – were operating under Nevada law.

As such, Goldstein’s reliance on *Allied Professionals Ins. Co. v. Kong*, 492 Fed. Appx. 749 (9th Cir. 2012) and *U.S. Life Ins. Co. v. Superior Nat’l Ins. Co.*, 591 F.3d 1167 (9th Cir. 2010) is misplaced. In *Kong*, the Ninth Circuit failed to vacate an arbitration award where a party, like Goldstein, disclosed an expert witness and report in violation of FRCP 26. However, in so doing, the court interpreted and applied the Federal Arbitration Act rules (“[w]hen interpreting and applying the FAA, we are mindful not to impose the federal courts’ procedural and evidentiary requirements on the arbitration proceeding; rather, our responsibility is to ensure that the FAA’s due process protections were afforded”). In the present matter, the FAA did not apply – the arbitration was conducted under Nevada law. *See* Scheduling Order #2. Therefore, NuVeda’s reliance on the Nevada Rules of Civil Procedure and case law cited in the Motion which provides for exclusion of expert witnesses and reports disclosed after the mandated deadline is proper and Goldstein’s rule-based argument fails as a matter of law.

Goldstein’s second rule-based argument is similarly problematic. There, Goldstein asserts that NuVeda’s reliance and citation of expert disclosure requirements and sanctions in the context of form court proceedings is inapplicable since arbitration proceedings and arbitrator’s actions are “not constrained by formal rules of procedure and evidence.” *Rosensweig v. Morgan Stanley & Co.*, 494 F.3d 1328 (11th Cir. 2007) Basically, Goldstein alleges the orders and mandates espoused in the Arbitrator’s scheduling orders were not steadfast in any way and that Goldstein, in once again failing to adhere to court and arbitrator orders, is immune from penalty for her actions. Courts have held differently.

Misapplication of the clear language of a rule may be deemed and intentional and willful disregard of the law and grounds for vacatur. In *Kashner Davidson Sec. Corp. v. Mscisz*, 531 F.3d 68, 79 (1st Cir. 2008), the court found it clear that an arbitration panel had disregarded the unambiguous language of the relevant arbitration rules. There, the court held that where an arbitrator who “ignores the plainly stated procedural rules incorporated in the agreement to arbitrate . . . is subject to a manifest disregard of the law challenged.” *Id.* at 79 (citation omitted). Further, the court held that the arbitration panel’s “misapplication of the clear language of the rule can only be deemed an intentional and willful disregard of the law.”

1 In the instant matter, the arbitrator's scheduling orders clearly and unequivocally provides for
2 the dates for disclosure of expert witnesses and reports. And, while initially deeming its disclosure
3 was a "supplement," Goldstein has since relented (after being presented with argument in NuVeda's
4 Motion to the contrary) and acknowledged the disclosure of the December 2018 Parker Report was not
5 supplemental in any way, but simply a late-disclosed initial report. The arbitrator, in failing to exclude
6 the disclosure and Parker's testimony, misapplied the clear language of the arbitration rules which, as
7 provided, equates to an intentional disregard of the law necessitating vacatur.

8 3. Arbitrator's Disregard of the Scheduling Order Provides a Basis for Vacatur

9 Goldstein's Opposition relies upon the AAA's Commercial Rules for Large Complex Cases
10 and the AAA Commercial Rules in support of her position that arbitrators are given wide latitude and
11 discretion in management of an arbitration. In so doing, Goldstein cites rules which provide that
12 arbitrators shall issue orders to achieve a "fair, efficient, and economical resolution of the case" (AAA
13 Rule R-23) and "equality of treatment and safe guarding each party's opportunity to fairly present its
14 claims and defenses," (AAA Rule R-22). However, Goldstein's actions eliminated any fairness and
15 equality.

16 It is undisputed that, in the underlying arbitration, expert reports were to be disclosed in 2016.
17 NuVeda properly disclosed its experts as did Goldstein's co-claimant, Shane Terry ("Terry").
18 Moreover, NuVeda and Terry properly and timely disclosed supplemental expert reports as per the
19 arbitrator's scheduling orders. Goldstein never followed orders in disclosing experts and expert reports
20 despite the fact that she is an attorney and was cognizant of the filing of the multiple expert reports and
21 supplements filed by the other parties. Goldstein not only failed to disclose an expert, she failed to
22 petition the arbitrator for relief to submit a late-disclosed expert. In fact, Goldstein waited over one
23 year before disclosing Parker as an expert. This action defies the fairness, efficiency and economy
24 and equality of treatment set forth in Goldstein's Opposition and, on the contrary, affected NuVeda in
25 preparing for the Final Hearing.³

26
27 ³ The arbitration's initial expert witness disclosure was October 11, 2016. And, while Goldstein was a party to the
28 underlying litigation/arbitration on said date, she was not expelled from NuVeda until August 2017. Thus, looking at the
issue in a light most favorable to Goldstein and determining that she had a valuation controversy in August 2017,
Goldstein failed to disclose an expert for sixteen months and never petitioned the arbitrator to re-open the expert

1 Such action warrants vacatur as courts have held vacatur is appropriate when an evidentiary
2 decision by the arbitrator “so affects the rights of a party that it may be said he was deprived of a fair
3 hearing.” *Hoteles Condado Beach, La Concha & Convention Center v. Union de Tronquistas Local*
4 *901*, 763 F.2d 34, 40 (1st Cir. 1985). In *Hoteles*, the court found that the evidence effectively excluded
5 by the arbitrator was both “central and decisive” to the company’s position; therefore, the arbitrator’s
6 refusal to consider this evidence was “so destructive of [the company’s] right to present [its] case, that
7 it warrants the setting aside of the arbitration award.” *Id.* at 40. NuVeda’s prejudice is examined in
8 the following section.

9 4. NuVeda was Prejudiced by Arbitrator’s Decision to Consider Parker Report and
10 Testimony

11 The Opposition alleges NuVeda was not prejudiced by the Arbitrator’s decision to manifestly
12 disregard the law and consider the December 2018 Parker Report and Parker’s testimony. This is
13 wholly inaccurate.

14 First, despite the proceeding being commenced in 2016, Goldstein failed to “disclose” her
15 expert until December 2018. Such action precluding NuVeda from deposing Parker and, more
16 importantly, failed to inform NuVeda that Goldstein would be relying upon an expert and expert
17 opinions until less than one month prior to the Final Hearing. In addition, after NuVeda filed its motion
18 to strike the expert report and testimony, Arbitrator Baker’s decision to deny the motion hinged largely
19 in part on the fact that NuVeda filed a rebuttal disclosure to the December 2018 “Supplemental” Report
20 (which, as noted, has now been recharacterized by Goldstein as an initial report). In an ironic twist,
21 NuVeda was actually punished for following the rules – had it elected not to follow the rules and fail
22 to disclose a rebuttal expert and report, there is a strong possibility Arbitrator Baker would have granted
23 its motion to strike the December 2018 Parker Report.

24 In addition, and as initially asserted in NuVeda’s Motion, the Arbitrator relied upon Parker’s
25 testimony and opinions in rendering the final award. Specifically, the Interim Award provides “[t]he
26 evidence submitted during the Final Hearing regarding fair market value consisted of, among other
27 things, conflicting expert opinions.” (emphasis added). Had Parker been properly excluded, his opinion
28

1 and testimony would not have been considered (i.e., there would have been no conflicting expert
2 opinions). Also, the Arbitrator relied upon the December 2018 Parker Report and inclusion of a
3 multiplier of sales/revenue to determine NuVeda's fair market value and testimony that NuVeda
4 possessed an equity holding in CWNevada. Such inclusion prejudiced NuVeda as it is acutely related
5 to the award entered against it.

6 Goldstein's Opposition alleges she would be significantly prejudiced by any vacatur of the
7 Final Award. And, that if there was a possibility that the December 2018 Parker Report and testimony
8 would have been excluded, she would not have voluntarily dismissed her claims against Pej Bady and
9 Pouya Mohajer, in their respective individual capacities. Not surprisingly, this assertion is proffered
10 without anything supporting said position. Goldstein does not include an affidavit averring as much
11 nor does she point to any documentation substantiating the claim. It is much more plausible that
12 Goldstein abandoned her claims against Bady and Mohajer (which consisted of 17 causes of action
13 including such absurd allegations as RICO and corporate usurpation) because they were without merit.

14 Goldstein's allegation of significant prejudice is further belied in that NuVeda did not
15 undertake any action contrary to the arbitrator's orders. Any claim of prejudice from Goldstein was
16 the result of her own actions and failure to adhere to applicable rules

17 C. Arbitrator's Interpretation of Operating Agreement was Incorrect and Warrants Vacatur

18 1. Goldstein Should Have Been Precluded From Providing Expert Testimony Contrary to
19 NuVeda's Experts' Testimony

20 NuVeda's position that the Arbitrator erred in interpreting the provisions of the company's
21 operating agreement is part and parcel of NuVeda's argument that the December 2018 Parker Report
22 and testimony thereon should have been excluded. As set forth in the Motion, NuVeda and its members
23 followed the requirements and procedures in determining the fair market value of Goldstein's interest
24 in the company. The parties – through their experts – proffered differing testimony as to whether the
25 company's "book value" or its "liquidation method" was the appropriate valuation mechanism. Both
26 of NuVeda's properly-disclosed experts testified the liquidation method was a "customarily accepted
27 methodology for determining the fair market value of a company." Parker countered NuVeda and its
28 experts' position and argued book value was the proper valuation method.

1 The Arbitrator should have given the provisions of the operating agreement their plain meaning.
2 However, more importantly, the arbitrator should not have been presented with Parker's opinion.
3 Moreover, it is important to note that Goldstein was the author of the company's operating agreement.
4 Based upon the foregoing, vacatur is appropriate.

5 2. NuVeda Complied With the Provisions of the Operating Agreement and the Arbitrator's
6 Award in the Result of Error

7 As noted in NuVeda's Motion, the NuVeda Operating Agreement clearly and unequivocally
8 provides the mechanism for determining the value of an expelled member's interest in the company.
9 That is, that the company is to hire an appraiser to determine the fair market value of the company and,
10 by extension, the value of the expelled member's interest. That is precisely what NuVeda did with
11 respect to Goldstein's interest. NuVeda retained an appraiser who affixed the fair market value of the
12 company at \$1.695MM utilizing the liquidation method. Two separate experts (whose qualifications
13 were not in dispute) testified that the liquidation method "is a customarily accepted methodology for
14 determining the fair market value of a company" and that he had previously used said methodology in
15 preparation of business appraisals, and that the liquidation method was proper based upon NuVeda's
16 circumstances at the time of Goldstein's expulsion from the company.

17 The fact that the December 2018 Parker Report and his opinions arising therefrom were
18 contradictory is immaterial (in addition to the fact that they should have been stricken for reasons set
19 forth herein). NuVeda followed corporate formalities in determining the company's fair market value.
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II.

CONCLUSION

For the foregoing reasons and the rationale set forth in prior pleadings, NuVeda's Motion should be granted and the arbitration award should be vacated without rehearing and the Court should enter judgment accordingly.

DATED this 5th day of August, 2019.

KOLESAR & LEATHAM

WILEY PETERSEN

/s/ Matthew T. Dushoff, Esq.

/s/ Jason M. Wiley, Esq.

MATTHEW T. DUSHOFF, ESQ.

JASON M. WILEY, ESQ.

Nevada Bar No. 4975

Nevada Bar No. 9274

SCOTT FLEMING, ESQ.

RYAN S. PETERSEN, ESQ.

Nevada Bar No. 5638

Nevada Bar No. 10715

400 South Rampart Boulevard

1050 Indigo Drive

Suite 400

Suite 130

Las Vegas, Nevada 89145

Las Vegas, Nevada 89145

Telephone: 702.362.7800

Telephone: 702.910.3329

mdushoff@klnevada.com

jwiley@wileypetersenlaw.com

sfleming@klnevada.com

rpetersen@wileypetersenlaw.com

Attorneys for NuVeda, LLC

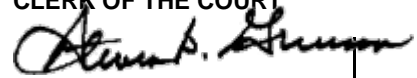
Attorneys for NuVeda, LLC

1
2 **CERTIFICATE OF SERVICE**

3 I certify that I am an employee of WILEY PETERSEN, and that on this 5th day of August,
4 2019, pursuant to NRCP 5(b), I am serving a true and correct copy of the **NUVEDA, LLC'S REPLY**
5 **TO PLAINTIFF JENNIFER GOLDSTEIN'S OPPOSITION TO NUVEDA, LLC'S MOTION**
6 **TO VACATE ARBITRATION AWARD** to the following individuals by Odyssey Electronic Service
7 and U.S. Mail:

8 Shane Terry
9 222 Karen Avenue, Suite 3305
10 Las Vegas, Nevada 89109

11 Briar R. Irvine, Esq.
12 Brooks T. Westergard, Esq.
13 DICKINSON WRIGHT PLLC
14 100 West Liberty Street, Suite 940
15 Reno, Nevada 89501
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TRAN

DISTRICT COURT
CLARK COUNTY, NEVADA
* * * * *

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|--------------------|---|------------------------|
| NUVEDA LLC, et al. | . | |
| | . | |
| Plaintiffs | . | CASE NO. A-15-728510-B |
| | . | |
| vs. | . | |
| | . | DEPT. NO. XI |
| PEJAM BADY, et al. | . | |
| | . | |
| Defendants | . | Transcript of |
| | . | Proceedings |
| | . | |

BEFORE THE HONORABLE ELIZABETH GONZALEZ, DISTRICT COURT JUDGE

**HEARING ON MOTION TO CONTINUE MOTION TO VACATE
AND MOTION TO VACATE ARBITRATION AWARD**

MONDAY, AUGUST 12, 2019

APPEARANCES:

| | |
|---------------------|--------------------------|
| FOR THE PLAINTIFFS: | BRIAN R. IRVINE, ESQ. |
| | JASON M. WILEY, ESQ. |
| | MATTHEW T. DUSHOFF, ESQ. |

| | |
|---------------------|---------------|
| FOR THE DEFENDANTS: | NO APPEARANCE |
|---------------------|---------------|

| | |
|-----------------|-------------------------|
| COURT RECORDER: | TRANSCRIPTION BY: |
| JILL HAWKINS | FLORENCE HOYT |
| District Court | Las Vegas, Nevada 89146 |

Proceedings recorded by audio-visual recording, transcript produced by transcription service.

1 LAS VEGAS, NEVADA, MONDAY, AUGUST 12, 2019, 9:13 A.M.
2 (Court was called to order)
3 THE COURT: Nuveda versus Bady.
4 MR. WILEY: Good morning, Your Honor. Jason Wiley
5 on behalf of Nuveda LLC.
6 MR. DUSHOFF: Good morning, Your Honor. Matthew
7 Dushoff on behalf of Nuveda LLC.
8 MR. IRVINE: Good morning, Your Honor. Brian Irvine
9 on behalf of Jennifer Goldstein.
10 THE COURT: So let's start with the motion to
11 continue.
12 MR. IRVINE: Yes, Your Honor. Thank you.
13 We filed the motion to continue under local
14 Rule 2.22 --
15 THE COURT: So you don't know half the rules were
16 suspended because the Supreme Court hasn't acted on the
17 petition to amend the Eighth Judicial District Court rules.
18 So you didn't realize that because you were up north.
19 MR. IRVINE: I certainly know that now, Your Honor.
20 THE COURT: Okay.
21 MR. IRVINE: I'm used to the ADKTs doing the rule
22 amendments. We looked at those. We didn't see it.
23 THE COURT: Well, it's a different process for local
24 rules, and it is much slower than anything you've ever been
25 involved in.

1 MR. IRVINE: Completely understand, Your Honor.

2 THE COURT: Unless the Supreme Court wants it.

3 MR. IRVINE: So we didn't know that the rule had
4 been suspended by the administrative order. We were certainly
5 aware that the Supreme Court had amended the NRCP Rule 6 to
6 eliminate the non-counting of the nonjudicial days and to get
7 rid of the three day for efilng. Obviously that was done in
8 conjunction with trying to harmonize the Nevada rules with the
9 federal rules. But that also is noted in the Advisory
10 Committee notes to the amendment to NRCP 6. Generally
11 extended out the response time.

12 THE COURT: So let's get past that issue and get to
13 why you need more time to oppose the motion, since you --

14 MR. IRVINE: Well, we filed our opposition.

15 THE COURT: I read it.

16 MR. IRVINE: It's fully briefed.

17 THE COURT: Do you still need more time?

18 MR. IRVINE: No. We're ready, Your Honor.

19 THE COURT: Okay. Great. Thanks.

20 The motion's granted.

21 MR. IRVINE: Thank you.

22 THE COURT: All right. Mr. Dushoff, Mr. Wiley,
23 we're now on the motion to vacate.

24 MR. WILEY: So, you know, Your Honor, just for
25 clarification, the motion to extend --

1 THE COURT: I granted his request to continue so
2 that his opposition is considered timely even though you think
3 it was late.

4 MR. WILEY: You do, Your Honor?

5 THE COURT: I do. I know. And I'm going to
6 consider it, and I read it. Okay. And even if it was really,
7 really late, I would have still considered it and read it.

8 Okay. Mr. Dushoff, we're up.

9 MR. DUSHOFF: Thank you, Your Honor.

10 I understand that the burden of vacating an
11 arbitration award is very high. I get that. However, Your
12 Honor --

13 THE COURT: And I don't usually boss arbitrators
14 around on how they decide to do their discovery and expert
15 disclosures.

16 MR. DUSHOFF: And I understand. And I've read the
17 caselaw, and I read the law in the statutes and so forth and
18 how it applies. However, in this case I think there are some
19 serious problems.

20 I wanted to talk about first about review of 6.2 and
21 the section in there regarding fair market value. Now, you
22 have to look at the plain meaning, and we are. And the plain
23 meaning of that statute is very simple. We, the voting
24 members, provide the fair market value of that. Whether
25 Arbitrator Baker liked that or not, I'm sorry, that's not up

1 to her to decide whether she liked or that it was too simple,
2 the numbers were never challenged, although they said, well,
3 Webster never looked at the numbers, they never challenged the
4 numbers. She can't -- she abused her discretion by looking --
5 by saying, no, we're going to go over Goldstein's experts.
6 You don't even get to the part of the experts, because it was
7 ours, and Webster's was an acceptable method. Was it a simple
8 method? Of course it was a simple method. It was just this,
9 my balance sheets, my -- what you have, and it's a liquidation
10 method. But even their expert said --

11 THE COURT: You know, if the fair market value is
12 what you said you would, I wouldn't be in the sixteenth day or
13 seventeenth day of my hearing on those licenses.

14 MR. DUSHOFF: Absolutely. This case goes back to
15 when my kids first went to school.

16 THE COURT: I know.

17 MR. DUSHOFF: They're 10 now. So I understand and I
18 know that this Court understands this matter and has a huge
19 history in this. But the fair market value is what our expert
20 -- that's what 6.2 -- and who drafted that? Ms. Goldstein
21 drafted that. So now she's challenging her document that she
22 drafted for this. And that has to be used against her. She
23 can't say that it's ambiguous or challenge it. I'm sorry, you
24 don't like the numbers, that's what it is, and it's left up to
25 the voting members. The voting members did that. The

1 arbitrator can't look beyond that. Looking beyond that is in
2 itself an abuse of discretion. She can't now say, well, you
3 know what, no, I'm going to go with that, I don't believe in
4 that. It's basically what she said, it was too simple. And
5 Webster didn't challenge the numbers, but, you know what, they
6 didn't, either. And we checked it, we had the numbers, the
7 numbers were provided by Joe Kennedy, the numbers -- and you
8 know what, it could take them -- it could take Mr. Webster 10
9 minutes, could take him 10 hours, it could take him
10 10 weeks. However, that's the number they gave, and any
11 challenge to that would be abuse of discretion.

12 Now, in regards to the expert -- and I understand
13 this Court saying, hey, wait a minute, you don't usually
14 challenge. But that leaves this portion. Ms. Goldstein
15 thought she was going to ride Mr. Terry's coattails in this
16 matter. Ms. Goldstein sat back, sat back, sat back. Terry
17 settled, she panicked, oh, my God, I don't have an expert,
18 well, you know, what I'm going to do, I'm going to try and
19 circumvent the rules and I'm going to try and say, this is my
20 supplement 11 months later -- or 12 months later. But, you
21 know what? It's not a supplement. Just because you call it a
22 supplement doesn't make it a supplement. It was her first
23 expert opinion in this, not a supplement. It was her first
24 based on her facts, not Mr. Terry's facts. Mr. Terry had
25 supplements. She did not. And she waited and waited and

1 waited. And it was right before the hearing that she decided,
2 oh, I'm going to produce one of these now. And it forced us
3 -- well, Arbitrator Baker said, well, you guys filed a
4 rebuttal. But we were supposed to do? There was a rogue
5 expert report out there, and if we didn't do anything for it
6 -- so we had to have a quick, maybe inefficient rebuttal to
7 this, because just to save our client we had to take that
8 chance. But she does not have a right to all of a sudden wait
9 11 months and do it a month before the trial, before the
10 arbitration, less than that, to say, okay, here's my expert
11 report, without giving us an opportunity to depose it,
12 actually really review it, and go over the numbers.

13 Arbitrator Baker relied on this expert report,
14 because without this expert report all you have is Webster's
15 numbers. That's it. You know, she said she relied on Terry.
16 Terry actually admitted at the hearing that he'd bought the
17 wholesaler for 400,000, the same number Webster put in, the
18 exact same number. So all she's relying on is an expert
19 report that should have never have been admitted, and Terry's
20 report, which actually supported ours, the actual numbers, not
21 made-up numbers Terry had no support for, but actual numbers
22 that he testified to, that they worth 400,000 each. But she
23 -- buy Arbitrator Baker went on her own and acted arbitrarily
24 and capriciously in coming up with this number and acted on an
25 expert report that should have never been admitted.

1 Your Honor, we believe that, though there are
2 opportunities, the opportunities to reverse and a higher
3 standard to reverse an arbitrator's work. We understand that
4 it's up here. But we believe that we have met that and
5 exceeded that, and we ask that you overturn this or, in the
6 instance where they had to do it, give us an opportunity,
7 remand it back, and let's have an arbitration hearing without
8 her expert report. Because that should have never been
9 admitted.

10 THE COURT: I understand your position, Mr. Dushoff.
11 Anything else?

12 MR. DUSHOFF: No.

13 THE COURT: All right.

14 MR. IRVINE: Thank you, Your Honor. I'll go in the
15 same order Mr. Dushoff did and start with their argument on
16 the contract interpretation. Essentially that's what the
17 arbitrator did. She was tasked with interpreting the contract
18 and figuring out whether Nuveda complied with its contractual
19 obligations to pay Ms. Goldstein the fair market value of her
20 shares, her ownership interest in Nuveda.

21 Now, the Arbitrator's analysis on that was pretty
22 clear. She looked at Section 6.1 of the contract, which
23 talked about when a member voluntarily resigns from the
24 company, at which point they would be paid the book value or
25 liquidation value of their interests. Section 6.2, which is

1 applicable here, says something different. It says fair
2 market value. The arbitrator said those two things need to
3 mean something different to me. Mr. Webster just did a book
4 value or liquidation value approach when he did his valuation
5 on behalf of the company, and the arbitrator found that that
6 didn't meeting the company's contractual obligations under
7 Section 6.2.

8 So the arbitrator decided what fair market value was
9 going to mean, and her award is clearly -- is clear on this.
10 She takes her definition of fair market value both from Ms.
11 Goldstein's expert, Mr. Parker, and from Nuveda's expert, Dr.
12 Clauretje -- I'm not sure I'm pronouncing that correctly --
13 which is the price at which the property would change hands
14 between a willing buyer and a willing seller not under any
15 compulsion to buy or sell and both having reasonable knowledge
16 of the relevant facts. And I would note that that definition
17 of fair market value is supported by Nevada law. We cited
18 the Go Harvey-State case in our opposition brief that has a
19 very similar definition.

20 Nuveda is essentially arguing here today that once
21 it hired Webster to value the company and Webster said, this
22 is fair market value, that's it, and the arbitrator can't go
23 farther than that and committed error in analyzing his opinion
24 at all. However, the arbitrator clearly had the authority
25 under the arbitration provisions in the contract to interpret

1 the contract and apply it. And she did. And she said that
2 Webster's opinion did not meet the definition of fair market
3 value, instead, he simply took a balance sheet that was given
4 to him by Nuveda, did about 10 minutes' worth of math, and
5 came up with what she called either book value or liquidation
6 value, which was impermissible under Section 6.2.

7 So I think it's pretty that the arbitrator had the
8 duty and the discretion to review the contract and figure out
9 what fair market value meant to her, and she clearly said the
10 Webster report did not meet that definition in the contract.
11 She said that Webster didn't appraise anything, he just did
12 simple math, he didn't verify the assets and liabilities were
13 accurate, he didn't account for the recreational sales of
14 marijuana that were going on, which obviously, as Your Honor
15 knows from your weeks of hearing on the preliminary injunction
16 that that's a very significant factor. Nuveda couldn't
17 explain why its valuation of its 35 percent interest in
18 CWNevada went down from the time recreational sales started.
19 That was a significant fact to her. And in fact at the
20 arbitration hearing Nuveda admitted that it would not have
21 sold its interest in CWNevada for the 3.5 million that was on
22 its books.

23 So we believe that Nuveda's position that the
24 arbitration award should be vacated based on the fact that the
25 arbitrator merely interpreted the contract and applied the

1 contract to the facts is a non starter and should be rejected.

2 With regard to the second argument having to do with
3 timeliness of the expert disclosure, I do think that the
4 Parker report was a supplemental report. If you look at what
5 Nuveda filed in its motion to vacate the arbitration, they
6 showed you that Parker had done several reports valuing both
7 Nuveda as a whole and valuing the minority interest of Mr.
8 Terry. Nuveda was well aware of Mr. Parker's methodology and
9 approach in valuing Nuveda and a minority interest in Nuveda,
10 and in fact if you look at the reports that Nuveda attached to
11 its motion, Mr. Parker's February 2018 report, which is
12 Exhibit 13, values the company at 165 million and it applies a
13 discount rate of 28 percent to a minority interest.

14 And then if you look at the report they're
15 complaining about, which is from December of last year,
16 Exhibit 17 to their report, the numbers are exactly the same.
17 He values the company at 165 million, discount rate of 28
18 percent. The only thing that changed was valuing Ms.
19 Goldstein's interest, which was 7 percent, as opposed to Mr.
20 Terry's interest, which was about 22. So it's simply a
21 mathematical change. They had every opportunity to explore
22 the valuation methodologies and discount rates that Mr. Parker
23 was using in his report, so there's no prejudice to them
24 there.

25 Even if the report is characterized as a direct

1 report, rather than a supplement, as Your Honor noted, the
2 arbitrator has ample discretion under the Triple A rules and
3 the caselaw to manage her docket, to manage the hearing, to
4 manage the pre-hearing exchange of information, excluding
5 expert reports, and that's what she did. And, again, there
6 was no prejudice to them. They had the opportunity to do a
7 rebuttal report, they had three different experts testify at
8 the hearing and were able to cross-examine Mr. Parker at the
9 hearing, as well.

10 Finally and I think most importantly here, with
11 respect to the disclosure of the expert it's clear that the
12 arbitrator's valuation of Ms. Goldstein's interest was not
13 even based on Mr. Parker's report. If you look at Exhibit 17,
14 which is his report, his valuation of Ms. Goldstein's interest
15 is between 5 and 8 million, depending on which path he took.
16 The arbitrator didn't go with anything close to that. If you
17 look at page 10 and 11 of her interim award, where she
18 determines the valuation, she actually shows her math, and she
19 derives her numbers mostly from the membership interest
20 purchase agreement and the testimony of Mr. Padgett that was
21 before this Court several years ago, I think late 2015 or
22 2016, where he valued what Nuveda was acquiring in CWNevada,
23 22 million, which turned out to be an \$11.8 million share of
24 Nuveda. She then applied a \$3.5 million multiplier to account
25 for the significant increase that was afforded by recreational

1 sales of marijuana, came up with a number of 41.46 million,
2 and then backed the numbers out there on 7 percent with a
3 discount rate from there. And there's absolutely no evidence
4 in the record that Ms. Goldstein's expert, Mr. Parker, that is
5 valuation was used at all. She shows her math, and it's taken
6 not even from expert testimony, it's taken from the testimony
7 of lay witnesses and documents produced in the case.

8 The only issue where she gets close to Mr. Parker is
9 the discount rate. He opined that the discount rate should be
10 28 percent. Nuveda's experts had varying discount rates that
11 they thought should be applied that ranged from 20 percent to
12 40 to 45 percent. The arbitrator simply split the baby on the
13 discount rate and actually went higher than what Mr. Parker
14 was arguing for.

15 So any error, we think, in the arbitrator allowing
16 Mr. Parker to testify and accepting his expert report, if it
17 was in fact late, was certainly harmless error, because here
18 award shows that she really didn't rely on that at all in
19 arriving at the valuation.

20 With that, unless you have any questions, Your
21 Honor, I'll pass it.

22 THE COURT: I don't.

23 MR. IRVINE: Thank you.

24 THE COURT: Mr. Dushoff, you have 4 minutes -- or
25 3 minutes and 23 seconds.

1 MR. DUSHOFF: Holy crap. That's all? So I'll be
2 slow. You can't interpret the plain meaning of a contract. If
3 it's ambiguous, yes, you can. But the plain meaning, it's
4 simple.

5 THE COURT: Were here for the first case, the
6 BrightSource case?

7 MR. DUSHOFF: Yeah. I was in Judge Denton's office.

8 THE COURT: Yeah. Okay.

9 MR. DUSHOFF: But I could hear it. It was loud.

10 When they try and say, well, the fair market value
11 is -- well, they said they wouldn't sell it at 3.5 million,
12 that therefore that determines fair market value, Judge, my
13 house was worth \$200,000 and I wouldn't doesn't mean it's
14 worth \$200,000 just because I wouldn't sell it at that time.
15 That doesn't make fair market value. Again, Judge, what Mr.
16 Webster does was an acceptable fair market value. It was
17 accepted by their expert --

18 THE COURT: Book value and liquidation value are not
19 typically used as fair market value.

20 MR. DUSHOFF: You are absolutely correct. Maybe
21 they're not typically used, but it is an acceptable method.
22 And the contract specifically states that the voting members
23 provide the fair market value. If it was not acceptable
24 method, I would see the arbitrator's point and what the Court
25 is insinuating. But it is an absolutely acceptable method.

1 Is it a simplistic method? Of course it's a simplistic
2 method. There's no discount rates or anything involved in
3 that. But what it is is an acceptable method. And as long as
4 it's an acceptable accounting method to determine fair market
5 value, then that's what has to be used.

6 Ms. Goldstein wrote that contract. She wrote the
7 operating agreement. She can't now say, well, wait a minute,
8 you know, yes, I understand that you voting members were
9 supposed to decide this but, you know what, your number's not
10 high enough so therefore I'm going to bring in my own fair
11 market value person. That's not the case. She can't do that.
12 And I think that when the arbitrator decided to say what she
13 was going to decide what determines fair market value, that
14 was a breach -- that was arbitrary and capricious, and she was
15 not allowed to do as such. Because as long as it's an
16 acceptable method -- they never challenged the numbers, and
17 you saw up here, never challenged the numbers that were given
18 to Mr. Webster, they never said, nope, those numbers are
19 different, then we're done right at that point. The fact that
20 they're saying, well, it was the Triple A discovery methods
21 and that's what should be used, Arbitrator Baker was clear
22 that we're running under Nevada law regarding that and we were
23 doing NRCP regarding that, regarding discovery methods.
24 That's what she used.

25 Your Honor, and finally, in regard to Mr. Padgett's

1 testimony, you were there, I was there, Mr. Padgett's puffery
2 should never -- Mr. Padgett never testified at this hearing,
3 there was no backing or any support of any of his numbers in
4 this case. The only support, the only backings we have in
5 this number are the ones that Mr. Webster put forward that Mr.
6 Clauretie from our side supported. And that's the value that
7 should be put in. Otherwise, I am done.

8 THE COURT: Thank you, Mr. Dushoff. And I
9 appreciate you recognizing the timer.

10 It is not appropriate for me to substitute my
11 judgment on the management of the docket and expert
12 disclosures by the arbitrator. Fair market value is a factual
13 determination to be made by the arbitrator. And while I
14 certainly understand Mr. Dushoff's position, book value is not
15 typically used as fair market value, although under certain
16 very limited circumstances it may be an appropriate valuation
17 method.

18 It does not appear in this case that there's any
19 abuse of discretion or that the actions of the arbitrate were
20 arbitrary and capricious.

21 For that reason and because there does not appear to
22 be an incorrect application of the law, the Court denies the
23 motion.

24 Mr. Wiley.

25 MR. WILEY: Your Honor, may you indulge me just 30

1 seconds so I can put Nuveda's position with respect to the
2 motion to extend on the record?

3 THE COURT: Uh-huh.

4 MR. WILEY: Your Honor, Goldstein's motion to extend
5 must be denied for the following. First, there were no points
6 and authorities in the motion in support of the extension of
7 the deadlines. They only cited EDCR 2.22. This runs afoul of
8 EDCR 2.20.

9 Second, even if the Court takes the attenuated
10 position that EDCR 2.20 was adhered to and there were points
11 and authorities presented in support of the motion to extend,
12 there's no analysis in that motion of the correct standard,
13 which is the showing of excusable neglect pursuant to EDCR
14 2.25 and NRCR Rule 6.

15 Number three, if the Court takes the position that
16 Goldstein's good-faith analysis is somehow akin to excusable
17 neglect, there's no showing in that initial motion of
18 excusable neglect, there's no analysis of excusable neglect.
19 It simply states that Ms. Goldstein engaged new counsel and
20 that's the reason why there should be an extension.

21 Number four, if the Court allows Ms. Goldstein to
22 attempt to demonstrate excusable neglect through her reply,
23 there was no showing good faith, of diligence, of a reasonable
24 basis, or the absence of prejudice to Nuveda.

25 Thus, we believe that the motion to extend must be

1 denied and Ms. Goldstein's opposition to the motion to vacate
2 the arb award was a rogue pleading, it was filed extremely
3 late, and should not be considered by the Court.

4 And we understand your position. Thanks, Your
5 Honor.

6 THE COURT: Thank you. It's the policy of the State
7 of Nevada that items be considered on their merits. For that
8 reason I read oppositions and replies even if they're really,
9 really, really late.

10 MR. WILEY: Understood, Your Honor.

11 THE COURT: Goodbye.

12 MR. DUSHOFF: 'Bye. Thank you.

13 THE PROCEEDINGS CONCLUDED AT 9:36 A.M.

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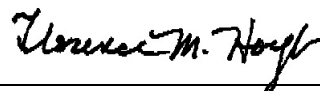
CERTIFICATION

I CERTIFY THAT THE FOREGOING IS A CORRECT TRANSCRIPT FROM THE AUDIO-VISUAL RECORDING OF THE PROCEEDINGS IN THE ABOVE-ENTITLED MATTER.

AFFIRMATION

I AFFIRM THAT THIS TRANSCRIPT DOES NOT CONTAIN THE SOCIAL SECURITY OR TAX IDENTIFICATION NUMBER OF ANY PERSON OR ENTITY.

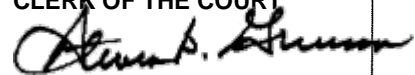
FLORENCE HOYT
Las Vegas, Nevada 89146



FLORENCE M. HOYT, TRANSCRIBER

8/21/19

DATE



FFCO
DICKINSON WRIGHT PLLC
BRIAN R. IRVINE
Nevada Bar No. 7758
BROOKS T. WESTERGARD
Nevada Bar No. 14300
100 West Liberty Street
Suite 940
Reno, Nevada 89501
Tel.: (775) 343-7500
Fax: (844) 670-6009
Email: birvine@dickinsonwright.com
Email: bwestergard@dickinsonwright.com

Attorneys for Plaintiff Jennifer M. Goldstein

DISTRICT COURT
CLARK COUNTY, NEVADA

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

Plaintiffs,
vs.

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

Defendants.

Case No.: A-15-728510-B
Dept. No.: 11

[PROPOSED] FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER: (1) GRANTING PLAINTIFF JENNIFER M. GOLDSTEIN'S MOTION TO CONTINUE HEARING ON NUVEDA, LLC'S MOTION TO VACATE ARBITRATION AWARD AND TO EXTEND BRIEFING DEADLINES; (2) DENYING DEFENDANT NUVEDA, LLC'S MOTION TO VACATE ARBITRATION AWARD; AND (3) CONFIRMING THE ARBITRATION AWARD

Hearing Date: August 12, 2019

This matter having come on for hearing related to Plaintiff Jennifer M. Goldstein's Motion to Continue Hearing on NuVeda, LLC's Motion to Vacate Arbitration Award and to Extend Briefing Deadlines (the "Motion to Continue") and Defendant NuVeda, LLC's Motion to Vacate Arbitration Award (the "Motion to Vacate") before the Court on August 12, 2019. Plaintiff Goldstein appeared by and through her counsel of record Brian Irvine of the law firm of

1 Dickinson Wright PLLC; and Defendant NuVeda, LLC appeared by and through its counsel of
2 record Matthew Dushoff of the law firm of Kolesar & Leatham and Jason Wiley of the law firm
3 of Wiley Petersen; the Court having read and considered the pleadings filed by the parties; the
4 Court having considered the oral and written arguments of counsel, and with the intent of
5 deciding the issues before the Court related to the Motion to Continue and the Motion to Vacate.
6 The Court makes the following findings of fact and conclusions of law:

7
FINDINGS OF FACT

8 1. On July 9, 2014, the parties entered into an Operating Agreement for NuVeda,
9 LLC (“NuVeda”) to operate dispensaries, cultivation and processing facilities for medical
10 marijuana (“MME”) pursuant to licenses obtained from certain political subdivisions.

11 2. The Operating Agreement for NuVeda provided that Plaintiff Goldstein
12 (“Goldstein”) held a 7% ownership interest in NuVeda.

13 3. Certain disputes arose between the parties over the existence and vesting of
14 certain membership interests, management and control of NuVeda.

15 4. On December 3, 2015, Goldstein and another minority owner of NuVeda, Shane
16 Terry (“Terry”), filed a complaint in this Court against the majority owners of Nuveda, Pejman
17 Bady (“Bady”) and Pouya Mohajer (“Mohajer”), and contemporaneously therewith, filed a
18 Motion for Preliminary Injunction, requesting that this Court enjoin any transfer of NuVeda’s
19 membership interests.

20 5. Goldstein and Terry also commenced a private arbitration proceeding with the
21 American Arbitration Association against NuVeda, Bady and Mohajer, which was captioned and
22 referred to as *Terry, et al. v. NuVeda, LLC, et al.*, AAA Case No. 01-15-005-8574 (the
23 “Arbitration”).

24 6. On December 28, 2015 and January 6 – 8, 2016, this Court held an evidentiary
25 hearing on the Motion for Preliminary Injunction (the “Preliminary Injunction Hearing”).

26 7. On January 13, 2016, this Court issued its Findings of Fact and Conclusions of
27 Law Denying the Motion for Preliminary Injunction.
28

1 8. On March 10, 2016, a NuVeda Officer Meeting was conducted, and Terry was
2 expelled from NuVeda.

3 9. On August 8, 2017, during the pendency of this case and the Arbitration, the
4 members of NuVeda conducted a meeting during which a majority of members possessing
5 greater than 60% voting interest in NuVeda voted to expel Goldstein from Nuveda pursuant to
6 Section 6.2 of the Operating Agreement.

7 10. The vote to expel Goldstein triggered certain obligations of NuVeda. Specifically,
8 Goldstein was “entitled to receive from the Company, in exchange for all of the former
9 Member’s Ownership Interest, the fair market value of that Member’s Ownership Interest,
10 adjusted for profits and losses to the date of expulsion.” (*See* Operating Agreement at Section
11 6.2) If the fair market value of Goldstein’s interest could not be agreed upon, the NuVeda Voting
12 Members were required to “hire an appraiser to determine fair market value.” (*Id.*)

13 11. On August 19, 2017, after being retained by NuVeda, the Webster Business
14 Group provided a Certified Business Appraisal based upon the Asset Valuation Approach
15 (Liquidation) of NuVeda (the “Webster Valuation”), affixing NuVeda’s fair market value at
16 \$1,695,277.00.

17 12. During the pendency of the Arbitration, the parties disclosed numerous expert
18 reports offering competing opinions as to the fair market value of NuVeda.

19 13. On December 14, 2018, Goldstein disclosed the supplemental expert report of
20 Donald Parker (“the Parker Report”), in which Mr. Parker opined that the fair market value of
21 NuVeda was approximately \$165 million and that Goldstein’s interest in NuVeda had a fair
22 market value of \$5 million to \$8 million after applying a discount rate of 28%.

23 14. NuVeda filed a Motion to Strike the Parker Report in the Arbitration, arguing that
24 the report was not timely disclosed pursuant to the deadlines established by the Arbitrator.

25 15. On January 9, 2019, the arbitrator held a telephonic hearing on NuVeda’s Motion
26 to Strike, as well as several other motions that were pending prior to the Arbitration hearing. The
27 Arbitrator denied NuVeda’s Motion to Strike and also ruled that NuVeda’s expert report
28

1 rebutting Mr. Parker's December 14, 2018 supplemental report would not be stricken on the
2 basis that the rebuttal report had not been timely disclosed.

3 16. The parties conducted the three-day Arbitration hearing on January 15-17, 2019.
4 The parties agreed prior to the Arbitration hearing that the only issues that remained for the
5 Arbitrator to decide was the valuation of Goldstein's interest in NuVeda as of August 8, 2017,
6 the date on which Goldstein was expelled from NuVeda, and whether Goldstein was entitled to
7 an attorneys' fees award because she did not receive the fair market value of her interest in
8 NuVeda.

9 17. Following the Arbitration hearing, the Arbitrator issued her Interim Award of
10 Arbitrator Regarding Value ("Interim Award"), finding that NuVeda had failed to meet its
11 obligations under the Operating Agreement to hire an appraiser to establish the fair market value
12 of Goldstein's interest in NuVeda for several reasons; most importantly because the Webster
13 Valuation computed the "book value" or "liquidation value" of Goldstein's interest rather than
14 the fair market value of her interest.

15 18. The Arbitrator's Interim Award concluded that the fair market value of NuVeda
16 was approximately \$41.5 million as of August 8, 2017, based in part upon the testimony of Brian
17 Padgett, a member of CWNevada, LLC, during the preliminary injunction hearing before the
18 Court in January 2016, and after applying a discount rate of 30% for lack of marketability and
19 control, valued Goldstein's 7% interest in NuVeda at \$2,051,215.38 and ruled that NuVeda owed
20 Goldstein that amount.

21 19. On March 19, 2019, the Arbitrator issued her Final Award, which incorporated
22 the valuation of Goldstein's interest contained in the Interim Award and ruled that NuVeda owed
23 Goldstein \$2,051,215.38, plus prejudgment interest from August 8, 2017 to the date of the Final
24 Award in the amount of \$222,655.07, and also awarded Goldstein attorneys' fees and costs in the
25 amount of \$152,293.35 as the prevailing party under Section 12.10 of the Operating Agreement,
26 for a total award of \$2,426,163.80.

27 20. On June 17, 2019, NuVeda filed the Motion to Vacate, arguing that the Final
28 Award should be vacated for two reasons: (a) the Arbitrator exceeded her powers and manifestly

1 disregarded the law and her own scheduling orders in considering the opinions contained in the
2 Parker Report, which NuVeda characterized as a direct expert report rather than a supplemental
3 expert report, and which NuVeda argued was disclosed past the deadline established by the
4 Arbitrator for the disclosure of direct expert reports; and (b) the Arbitrator exceeded her powers
5 and manifestly disregarded the law in looking outside the plain language of the Operating
6 Agreement and the provisions relating to the valuation of an expelled member's interest.

7 21. On July 1, 2019, Goldstein filed the Motion to Continue seeking to (a) continue
8 the hearing on NuVeda's Motion to Vacate; and (b) extend the deadline within which to file an
9 opposition to NuVeda's Motion to Vacate. In so moving the Court, Goldstein cited EDCR 2.22
10 as the only point and authority in support of her legal positions set forth therein. In its July 12,
11 2019 Opposition to the Motion to Continue, NuVeda argued that the Motion to Continue should
12 be denied because the lone points and authorities in support of Goldstein's position was EDCR
13 2.22(d), which applied to the request to continue the hearing. NuVeda argued that Goldstein
14 failed to cite the applicable rules and standards – that being EDCR 2.25 and NRCP 6 – in support
15 of her petition to extend the briefing deadline. Moreover, NuVeda argued that Goldstein's
16 Motion to Continue should be disregarded since it was not timely filed.

17 22. Goldstein filed her Reply in support of the Motion to Continue on July 16, 2019
18 and filed her Opposition to the Motion to Vacate on July 25, 2019.

19 22. If any finding of fact is properly a conclusion of law, it shall be treated as if
20 appropriately identified and designated.

21 CONCLUSIONS OF LAW

22 Motion to Continue

23 23. The Motion to Continue was made pursuant to ECDR 2.22(d), which provides
24 that the Court may continue a hearing “upon a showing by motion supported by affidavit or oral
25 testimony that such continuance is in good faith, reasonably necessary and is not sought merely
26 for delay.”
27
28

1 24. Goldstein's basis for the Motion to Continue was that she had engaged new
2 counsel to oppose the Motion to Vacate, and that her counsel was in the process of obtaining the
3 file from Goldstein's prior counsel so they could review it in order to prepare Goldstein's
4 opposition, which necessitated additional time to brief the Motion to Vacate and a brief
5 continuance of the hearing on the Motion to Vacate.

6 25. In its Opposition to the Motion to Continue, NuVeda argued that the Motion to
7 Continue should be denied because the lone points and authorities relied upon in support of
8 Goldstein's position was EDCR 2.22(d), which applied to the request to continue the hearing.
9 NuVeda argued that Goldstein failed to cite the applicable rules and standards – that being
10 EDCR 2.25 and NRCP 6 – in support of her petition to extend the briefing deadline. Moreover,
11 NuVeda argued that Goldstein's Motion to Continue should be disregarded since it was not
12 timely filed, and that this Court should deny the Motion to Continue on that basis and, by
13 extension, grant the Motion to Vacate pursuant to EDCR 2.20(e).

14 26. In her Reply in support of the Motion to Continue and at the hearing, counsel for
15 Goldstein acknowledged that the Motion to Continue was not filed within the deadline set forth
16 in EDCR 2.20(e) because counsel was not aware that this Court had suspended EDCR 1.14(a)
17 through (c) in a March 12, 2019 Administrative Order, which had the effect of reducing
18 Goldstein's time to respond to the Motion to Vacate.

19 27. In her Reply in support of the Motion to Continue and at the hearing, Goldstein
20 also requested that this Court consider the Motion to Continue under EDCR 2.25(a), which
21 provides, in relevant part, that "a request for extension made after the expiration of the specified
22 period shall not be granted unless the moving party, attorney or other person demonstrates that
23 the failure to act was the result of excusable neglect."

24 28. The Court finds that Goldstein has demonstrated excusable neglect in failing to
25 file the Motion to Continue or the Opposition to the Motion to Vacate prior to the expiration of
26 the deadline established by EDCR 2.20(e), and this Court will therefore consider Goldstein's
27 Opposition to the Motion to Vacate and decide that Motion on the merits.

28

1 29. In addition, the Court finds that there was no prejudice to NuVeda due to the late
2 filing of the Motion to Continue, as NuVeda was able to file its Opposition to the Motion to
3 Continue, Goldstein filed her Opposition to the Motion to Vacate well in advance of the hearing,
4 NuVeda was able to file a Reply in support of the Motion to Vacate, and this Court reviewed and
5 considered all of those pleadings prior to the hearing.

6 30. Moreover, this Court's decision to allow Goldstein to file her Opposition to the
7 Motion to Vacate and to consider that Opposition is consistent with both this Court's stated
8 policy that its Rules "must be liberally construed . . . to promote and facilitate the administration
9 of justice" (EDCR 1.10), and the Nevada Supreme Court's long recognized and "basic
10 underlying policy to have each case decided upon its merits." *Hotel Last Frontier Corp. v.*
11 *Frontier Props., Inc.*, 79 Nev. 150, 155, 380 P.2d 293, 295 (1963).

12 **Motion to Vacate**

13 31. This Court may vacate an arbitration award pursuant to NRS 38.241(1)(d) where
14 the arbitrator exceeded her powers, or under the common law where: (a) the award is arbitrary,
15 capricious, or unsupported by the agreement; or (b) where the arbitrator manifestly disregarded
16 the law.

17 32. With regard to NuVeda's argument that the Arbitrator exceeded her powers and
18 manifestly disregarded the law by relying on Parker's expert witness testimony and the Parker
19 Report, this Court finds that the Arbitrator did not exceed her powers or manifestly disregard the
20 law.

21 33. Under both AAA's Commercial Arbitration Rules for Large, Complex Cases,
22 which governed Arbitration, and Nevada law, the Arbitrator has broad discretion to manage the
23 pre-hearing disclosure of documents and information, including the disclosure of expert reports.
24 This Court will not second-guess the Arbitrator's decision to allow Goldstein to disclose Parker
25 or the Arbitrator's decision to consider his testimony.

26 34. In addition, based upon its review of the Interim Award, the Final Award and the
27 arbitration record, this Court finds that NuVeda was not prejudiced in any way by the
28

1 Arbitrator's decision to consider the Parker Report and the testimony of Parker. NuVeda was
2 permitted to rely on an expert report rebutting the Parker Report, despite the fact that the rebuttal
3 expert report was not disclosed within the deadline imposed by the Arbitrator's Scheduling
4 Order, and all of NuVeda's experts testified at length and offered detailed criticism of the Parker
5 Report. NuVeda was also afforded opportunity to cross-examine Parker about all of his opinions.

6 35. Finally, this Court finds that the Arbitrator did not solely rely upon Parker's
7 valuation of Goldstein's interest in her Award, and arrived at her valuation of Goldstein's
8 interest based upon Terry's testimony at the hearing, Padgett's testimony at the preliminary
9 injunction hearing, as well as other testimony and documentary evidence. NuVeda itself admits
10 that the Award only relied on portions of Parker's opinions. Accordingly, even if this Court were
11 to find that the Arbitrator erred in allowing Goldstein to disclose the Parker Report or relying on
12 Mr. Parker's opinions, which it does not, such error would have constituted harmless error.

13 36. With regard to NuVeda's argument that the Arbitrator erred in interpreting the
14 Operating Agreement and in ruling that the Webster Report did not meet NuVeda's obligation
15 under the Operating Agreement to hire an appraiser to determine the fair market value of
16 Goldstein's interest in NuVeda, this Court finds that the Arbitrator did not exceed her powers or
17 manifestly disregard the law, and that the Interim Award and Final Award were not arbitrary,
18 capricious, or unsupported by the agreement.

19 37. The Court finds that the Arbitrator's interpretation of the Operating Agreement
20 evades judicial review by this Court. (*See Castaneda v. Palm Beach Resort Condominiums*, 127
21 Nev. 1124, 373 P.3d 901 (2011) ("Furthermore, to the extent the Castanedas argue that the
22 arbitrator misinterpreted the contract provision on financing, this argument evades judicial
23 review." (citing *Hill v. Norfolk and Western Ry. Co.*, 814 F.2d 1192, 1195 (7th Cir.1987) (The
24 question in reviewing an arbitration award "is not whether the arbitrator or arbitrators erred in
25 interpreting the contract; it is not whether they clearly erred in interpreting the contract; it is not
26 whether they grossly erred in interpreting the contract; it is whether they interpreted the contract.
27 If they did, their interpretation is conclusive."))).
28

1 38. The Court further finds that the Arbitrator's ruling that the Webster Report, which
2 purported to calculate Goldstein's interest using "book value" or "liquidation value," did not
3 comply with NuVeda's obligation under Section 6.2 of the Operating Agreement to hire an
4 appraiser to determine the fair market value of Goldstein's interest in NuVeda, is consistent with
5 Nevada law, as book value is not typically an accepted method to calculate fair market value.
6 (See *American Ethanol, Inc. v. Cordillera Fund, L.P.*, 127 Nev.147, 155, n. 7, 252 P.3d 663, 668,
7 n. 7 (2011) (noting that in determining the value of corporate stock, "[b]ook value is entitled to
8 little, if any, weight in determining the value of corporate stock, and many other factors must be
9 taken into consideration.")).

10 39. Finally, this Court finds that NRS 38.241(4) requires this Court to confirm the
11 Final Award upon denial of the Motion to Vacate.

12 40. If any conclusion of law is properly a finding of fact, it shall be treated as if
13 appropriately identified and designated.

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ORDER

THEREFORE, IT IS HEREBY ORDERED, ADJUDGED AND DECREED that the Motion to Continue is granted.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the Motion to Vacate is denied.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the Arbitrator's Final Award is confirmed.

IT IS SO ORDERED.

Dated this 6 day of September, 2019.


DISTRICT COURT JUDGE

Respectfully submitted by:

Approved by:

DICKINSON WRIGHT PLLC

WILEY PETERSEN


BRIAN R. IRVINE


JASON M. WILEY #9274

Nevada Bar No. 7758

RYAN S. PETERSEN

BROOKS T. WESTERGARD

1050 Indigo Drive, Suite 130

Nevada Bar No. 14300

Las Vegas, NV 89145

100 West Liberty Street

Suite 940

Attorneys for NuVeda, LLC

Reno, Nevada 89501

Tel.: (775) 343-7500

Fax: (844) 670-6009

Email: birvine@dickinsonwright.com

Email: bwestergard@dickinsonwright.com

Attorneys for Plaintiff Jennifer M. Goldstein



NEOJ

DICKINSON WRIGHT PLLC

BRIAN R. IRVINE

Nevada Bar No. 7758

BROOKS T. WESTERGARD

Nevada Bar No. 14300

100 West Liberty Street

Suite 940

Reno, Nevada 89501

Tel.: (775) 343-7500

Fax: (844) 670-6009

Email: birvine@dickinsonwright.com

Email: bwestergard@dickinsonwright.com

Attorneys for Plaintiff Jennifer M. Goldstein

DISTRICT COURT

CLARK COUNTY, NEVADA

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

Plaintiffs,

vs.

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

Defendants.

Case No.: A-15-728510-B

Dept. No.: XI

NOTICE OF ENTRY OF ORDER

Please take notice that on the 6th day of September, 2019, the Findings of Fact, Conclusions of Law and Order: (1) Granting Plaintiff Jennifer M. Goldstein's Motion to Continue Hearing on Nuveda, LLC's Motion to Vacate Arbitration Award and to Extend Briefing Deadlines; (2) Denying Defendant Nuveda, LLC's Motion to Vacate Arbitration

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1 Award; and (3) Confirming the Arbitration Award. A copy of this document is attached hereto
2 as **Exhibit 1**.

3 DATED this 9th day of September, 2019.

4
5 DICKINSON WRIGHT PLLC

6 /s/ Brian R. Irvine

7 BRIAN R. IRVINE

8 Nevada Bar No. 7758

9 BROOKS T. WESTERGARD

10 Nevada Bar No. 14300

11 100 West Liberty Street

12 Suite 940

13 Reno, Nevada 89501

14 Tel.: (775) 343-7500

15 Fax: (844) 670-6009

16 Email: birvine@dickinsonwright.com

17 Email: bwestergard@dickinsonwright.com

18 *Attorneys for Plaintiff Jennifer M. Goldstein*

- 1
- 2
- 3
- 4
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| Jason M. Wiley, Esq Ryan S. Petersen WILEY PETERSON 1050 Indigo Drive, Suite 130 Las Vegas, NV 89145 | Matthew T. Dushoff Scott D. Fleming KOLESAR & LEATHAM 400 South Rampart Boulevard Suite 400 Las Vegas, NV 89145 Shane Terry 222 Karen Avenue, Suite 3305 Las Vegas, NV 89109 |
|--|--|

DATED this 9th day of September, 2019.

/s/ Cindy S. Grinstead
An Employee of DICKINSON WRIGHT PLLC

EXHIBIT TABLE

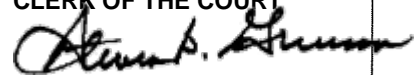
| Exhibit | Description | Page(s)¹ |
|----------------|--|----------------------------|
| 1 | Findings of Fact, Conclusions of Law and Order: (1) Granting Plaintiff Jennifer M. Goldstein's Motion to Continue Hearing on Nuveda, LLC's Motion to Vacate Arbitration Award and to Extend Briefing Deadlines; (2) Denying Defendant Nuveda, LLC's Motion to Vacate Arbitration Award; and (3) Confirming the Arbitration Award, September 6, 2019 | 10 |

RENO 88728-1 41960v1

¹ Exhibit slip sheet is exclusive of exhibit page count.

EXHIBIT 1

EXHIBIT 1



FFCO
DICKINSON WRIGHT PLLC
BRIAN R. IRVINE
Nevada Bar No. 7758
BROOKS T. WESTERGARD
Nevada Bar No. 14300
100 West Liberty Street
Suite 940
Reno, Nevada 89501
Tel.: (775) 343-7500
Fax: (844) 670-6009
Email: birvine@dickinsonwright.com
Email: bwestergard@dickinsonwright.com

Attorneys for Plaintiff Jennifer M. Goldstein

DISTRICT COURT
CLARK COUNTY, NEVADA

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

Plaintiffs,
vs.

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

Defendants.

Case No.: A-15-728510-B
Dept. No.: 11

[PROPOSED] FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER: (1) GRANTING PLAINTIFF JENNIFER M. GOLDSTEIN'S MOTION TO CONTINUE HEARING ON NUVEDA, LLC'S MOTION TO VACATE ARBITRATION AWARD AND TO EXTEND BRIEFING DEADLINES; (2) DENYING DEFENDANT NUVEDA, LLC'S MOTION TO VACATE ARBITRATION AWARD; AND (3) CONFIRMING THE ARBITRATION AWARD

Hearing Date: August 12, 2019

This matter having come on for hearing related to Plaintiff Jennifer M. Goldstein's Motion to Continue Hearing on NuVeda, LLC's Motion to Vacate Arbitration Award and to Extend Briefing Deadlines (the "Motion to Continue") and Defendant NuVeda, LLC's Motion to Vacate Arbitration Award (the "Motion to Vacate") before the Court on August 12, 2019. Plaintiff Goldstein appeared by and through her counsel of record Brian Irvine of the law firm of

1 Dickinson Wright PLLC; and Defendant NuVeda, LLC appeared by and through its counsel of
2 record Matthew Dushoff of the law firm of Kolesar & Leatham and Jason Wiley of the law firm
3 of Wiley Petersen; the Court having read and considered the pleadings filed by the parties; the
4 Court having considered the oral and written arguments of counsel, and with the intent of
5 deciding the issues before the Court related to the Motion to Continue and the Motion to Vacate.
6 The Court makes the following findings of fact and conclusions of law:

7
FINDINGS OF FACT

8 1. On July 9, 2014, the parties entered into an Operating Agreement for NuVeda,
9 LLC (“NuVeda”) to operate dispensaries, cultivation and processing facilities for medical
10 marijuana (“MME”) pursuant to licenses obtained from certain political subdivisions.

11 2. The Operating Agreement for NuVeda provided that Plaintiff Goldstein
12 (“Goldstein”) held a 7% ownership interest in NuVeda.

13 3. Certain disputes arose between the parties over the existence and vesting of
14 certain membership interests, management and control of NuVeda.

15 4. On December 3, 2015, Goldstein and another minority owner of NuVeda, Shane
16 Terry (“Terry”), filed a complaint in this Court against the majority owners of Nuveda, Pejman
17 Bady (“Bady”) and Pouya Mohajer (“Mohajer”), and contemporaneously therewith, filed a
18 Motion for Preliminary Injunction, requesting that this Court enjoin any transfer of NuVeda’s
19 membership interests.

20 5. Goldstein and Terry also commenced a private arbitration proceeding with the
21 American Arbitration Association against NuVeda, Bady and Mohajer, which was captioned and
22 referred to as *Terry, et al. v. NuVeda, LLC, et al.*, AAA Case No. 01-15-005-8574 (the
23 “Arbitration”).

24 6. On December 28, 2015 and January 6 – 8, 2016, this Court held an evidentiary
25 hearing on the Motion for Preliminary Injunction (the “Preliminary Injunction Hearing”).

26 7. On January 13, 2016, this Court issued its Findings of Fact and Conclusions of
27 Law Denying the Motion for Preliminary Injunction.
28

1 8. On March 10, 2016, a NuVeda Officer Meeting was conducted, and Terry was
2 expelled from NuVeda.

3 9. On August 8, 2017, during the pendency of this case and the Arbitration, the
4 members of NuVeda conducted a meeting during which a majority of members possessing
5 greater than 60% voting interest in NuVeda voted to expel Goldstein from Nuveda pursuant to
6 Section 6.2 of the Operating Agreement.

7 10. The vote to expel Goldstein triggered certain obligations of NuVeda. Specifically,
8 Goldstein was “entitled to receive from the Company, in exchange for all of the former
9 Member’s Ownership Interest, the fair market value of that Member’s Ownership Interest,
10 adjusted for profits and losses to the date of expulsion.” (*See* Operating Agreement at Section
11 6.2) If the fair market value of Goldstein’s interest could not be agreed upon, the NuVeda Voting
12 Members were required to “hire an appraiser to determine fair market value.” (*Id.*)

13 11. On August 19, 2017, after being retained by NuVeda, the Webster Business
14 Group provided a Certified Business Appraisal based upon the Asset Valuation Approach
15 (Liquidation) of NuVeda (the “Webster Valuation”), affixing NuVeda’s fair market value at
16 \$1,695,277.00.

17 12. During the pendency of the Arbitration, the parties disclosed numerous expert
18 reports offering competing opinions as to the fair market value of NuVeda.

19 13. On December 14, 2018, Goldstein disclosed the supplemental expert report of
20 Donald Parker (“the Parker Report”), in which Mr. Parker opined that the fair market value of
21 NuVeda was approximately \$165 million and that Goldstein’s interest in NuVeda had a fair
22 market value of \$5 million to \$8 million after applying a discount rate of 28%.

23 14. NuVeda filed a Motion to Strike the Parker Report in the Arbitration, arguing that
24 the report was not timely disclosed pursuant to the deadlines established by the Arbitrator.

25 15. On January 9, 2019, the arbitrator held a telephonic hearing on NuVeda’s Motion
26 to Strike, as well as several other motions that were pending prior to the Arbitration hearing. The
27 Arbitrator denied NuVeda’s Motion to Strike and also ruled that NuVeda’s expert report
28

1 rebutting Mr. Parker's December 14, 2018 supplemental report would not be stricken on the
2 basis that the rebuttal report had not been timely disclosed.

3 16. The parties conducted the three-day Arbitration hearing on January 15-17, 2019.
4 The parties agreed prior to the Arbitration hearing that the only issues that remained for the
5 Arbitrator to decide was the valuation of Goldstein's interest in NuVeda as of August 8, 2017,
6 the date on which Goldstein was expelled from NuVeda, and whether Goldstein was entitled to
7 an attorneys' fees award because she did not receive the fair market value of her interest in
8 NuVeda.

9 17. Following the Arbitration hearing, the Arbitrator issued her Interim Award of
10 Arbitrator Regarding Value ("Interim Award"), finding that NuVeda had failed to meet its
11 obligations under the Operating Agreement to hire an appraiser to establish the fair market value
12 of Goldstein's interest in NuVeda for several reasons; most importantly because the Webster
13 Valuation computed the "book value" or "liquidation value" of Goldstein's interest rather than
14 the fair market value of her interest.

15 18. The Arbitrator's Interim Award concluded that the fair market value of NuVeda
16 was approximately \$41.5 million as of August 8, 2017, based in part upon the testimony of Brian
17 Padgett, a member of CWNevada, LLC, during the preliminary injunction hearing before the
18 Court in January 2016, and after applying a discount rate of 30% for lack of marketability and
19 control, valued Goldstein's 7% interest in NuVeda at \$2,051,215.38 and ruled that NuVeda owed
20 Goldstein that amount.

21 19. On March 19, 2019, the Arbitrator issued her Final Award, which incorporated
22 the valuation of Goldstein's interest contained in the Interim Award and ruled that NuVeda owed
23 Goldstein \$2,051,215.38, plus prejudgment interest from August 8, 2017 to the date of the Final
24 Award in the amount of \$222,655.07, and also awarded Goldstein attorneys' fees and costs in the
25 amount of \$152,293.35 as the prevailing party under Section 12.10 of the Operating Agreement,
26 for a total award of \$2,426,163.80.

27 20. On June 17, 2019, NuVeda filed the Motion to Vacate, arguing that the Final
28 Award should be vacated for two reasons: (a) the Arbitrator exceeded her powers and manifestly

1 disregarded the law and her own scheduling orders in considering the opinions contained in the
2 Parker Report, which NuVeda characterized as a direct expert report rather than a supplemental
3 expert report, and which NuVeda argued was disclosed past the deadline established by the
4 Arbitrator for the disclosure of direct expert reports; and (b) the Arbitrator exceeded her powers
5 and manifestly disregarded the law in looking outside the plain language of the Operating
6 Agreement and the provisions relating to the valuation of an expelled member's interest.

7 21. On July 1, 2019, Goldstein filed the Motion to Continue seeking to (a) continue
8 the hearing on NuVeda's Motion to Vacate; and (b) extend the deadline within which to file an
9 opposition to NuVeda's Motion to Vacate. In so moving the Court, Goldstein cited EDCR 2.22
10 as the only point and authority in support of her legal positions set forth therein. In its July 12,
11 2019 Opposition to the Motion to Continue, NuVeda argued that the Motion to Continue should
12 be denied because the lone points and authorities in support of Goldstein's position was EDCR
13 2.22(d), which applied to the request to continue the hearing. NuVeda argued that Goldstein
14 failed to cite the applicable rules and standards – that being EDCR 2.25 and NRCP 6 – in support
15 of her petition to extend the briefing deadline. Moreover, NuVeda argued that Goldstein's
16 Motion to Continue should be disregarded since it was not timely filed.

17 22. Goldstein filed her Reply in support of the Motion to Continue on July 16, 2019
18 and filed her Opposition to the Motion to Vacate on July 25, 2019.

19 22. If any finding of fact is properly a conclusion of law, it shall be treated as if
20 appropriately identified and designated.

21 CONCLUSIONS OF LAW

22 Motion to Continue

23 23. The Motion to Continue was made pursuant to EDCR 2.22(d), which provides
24 that the Court may continue a hearing “upon a showing by motion supported by affidavit or oral
25 testimony that such continuance is in good faith, reasonably necessary and is not sought merely
26 for delay.”
27
28

1 24. Goldstein's basis for the Motion to Continue was that she had engaged new
2 counsel to oppose the Motion to Vacate, and that her counsel was in the process of obtaining the
3 file from Goldstein's prior counsel so they could review it in order to prepare Goldstein's
4 opposition, which necessitated additional time to brief the Motion to Vacate and a brief
5 continuance of the hearing on the Motion to Vacate.

6 25. In its Opposition to the Motion to Continue, NuVeda argued that the Motion to
7 Continue should be denied because the lone points and authorities relied upon in support of
8 Goldstein's position was EDCR 2.22(d), which applied to the request to continue the hearing.
9 NuVeda argued that Goldstein failed to cite the applicable rules and standards – that being
10 EDCR 2.25 and NRCR 6 – in support of her petition to extend the briefing deadline. Moreover,
11 NuVeda argued that Goldstein's Motion to Continue should be disregarded since it was not
12 timely filed, and that this Court should deny the Motion to Continue on that basis and, by
13 extension, grant the Motion to Vacate pursuant to EDCR 2.20(e).

14 26. In her Reply in support of the Motion to Continue and at the hearing, counsel for
15 Goldstein acknowledged that the Motion to Continue was not filed within the deadline set forth
16 in EDCR 2.20(e) because counsel was not aware that this Court had suspended EDCR 1.14(a)
17 through (c) in a March 12, 2019 Administrative Order, which had the effect of reducing
18 Goldstein's time to respond to the Motion to Vacate.

19 27. In her Reply in support of the Motion to Continue and at the hearing, Goldstein
20 also requested that this Court consider the Motion to Continue under EDCR 2.25(a), which
21 provides, in relevant part, that "a request for extension made after the expiration of the specified
22 period shall not be granted unless the moving party, attorney or other person demonstrates that
23 the failure to act was the result of excusable neglect."

24 28. The Court finds that Goldstein has demonstrated excusable neglect in failing to
25 file the Motion to Continue or the Opposition to the Motion to Vacate prior to the expiration of
26 the deadline established by EDCR 2.20(e), and this Court will therefore consider Goldstein's
27 Opposition to the Motion to Vacate and decide that Motion on the merits.
28

1 29. In addition, the Court finds that there was no prejudice to NuVeda due to the late
2 filing of the Motion to Continue, as NuVeda was able to file its Opposition to the Motion to
3 Continue, Goldstein filed her Opposition to the Motion to Vacate well in advance of the hearing,
4 NuVeda was able to file a Reply in support of the Motion to Vacate, and this Court reviewed and
5 considered all of those pleadings prior to the hearing.

6 30. Moreover, this Court's decision to allow Goldstein to file her Opposition to the
7 Motion to Vacate and to consider that Opposition is consistent with both this Court's stated
8 policy that its Rules "must be liberally construed . . . to promote and facilitate the administration
9 of justice" (EDCR 1.10), and the Nevada Supreme Court's long recognized and "basic
10 underlying policy to have each case decided upon its merits." *Hotel Last Frontier Corp. v.*
11 *Frontier Props., Inc.*, 79 Nev. 150, 155, 380 P.2d 293, 295 (1963).

12 **Motion to Vacate**

13 31. This Court may vacate an arbitration award pursuant to NRS 38.241(1)(d) where
14 the arbitrator exceeded her powers, or under the common law where: (a) the award is arbitrary,
15 capricious, or unsupported by the agreement; or (b) where the arbitrator manifestly disregarded
16 the law.

17 32. With regard to NuVeda's argument that the Arbitrator exceeded her powers and
18 manifestly disregarded the law by relying on Parker's expert witness testimony and the Parker
19 Report, this Court finds that the Arbitrator did not exceed her powers or manifestly disregard the
20 law.

21 33. Under both AAA's Commercial Arbitration Rules for Large, Complex Cases,
22 which governed Arbitration, and Nevada law, the Arbitrator has broad discretion to manage the
23 pre-hearing disclosure of documents and information, including the disclosure of expert reports.
24 This Court will not second-guess the Arbitrator's decision to allow Goldstein to disclose Parker
25 or the Arbitrator's decision to consider his testimony.

26 34. In addition, based upon its review of the Interim Award, the Final Award and the
27 arbitration record, this Court finds that NuVeda was not prejudiced in any way by the
28

1 Arbitrator's decision to consider the Parker Report and the testimony of Parker. NuVeda was
2 permitted to rely on an expert report rebutting the Parker Report, despite the fact that the rebuttal
3 expert report was not disclosed within the deadline imposed by the Arbitrator's Scheduling
4 Order, and all of NuVeda's experts testified at length and offered detailed criticism of the Parker
5 Report. NuVeda was also afforded opportunity to cross-examine Parker about all of his opinions.

6 35. Finally, this Court finds that the Arbitrator did not solely rely upon Parker's
7 valuation of Goldstein's interest in her Award, and arrived at her valuation of Goldstein's
8 interest based upon Terry's testimony at the hearing, Padgett's testimony at the preliminary
9 injunction hearing, as well as other testimony and documentary evidence. NuVeda itself admits
10 that the Award only relied on portions of Parker's opinions. Accordingly, even if this Court were
11 to find that the Arbitrator erred in allowing Goldstein to disclose the Parker Report or relying on
12 Mr. Parker's opinions, which it does not, such error would have constituted harmless error.

13 36. With regard to NuVeda's argument that the Arbitrator erred in interpreting the
14 Operating Agreement and in ruling that the Webster Report did not meet NuVeda's obligation
15 under the Operating Agreement to hire an appraiser to determine the fair market value of
16 Goldstein's interest in NuVeda, this Court finds that the Arbitrator did not exceed her powers or
17 manifestly disregard the law, and that the Interim Award and Final Award were not arbitrary,
18 capricious, or unsupported by the agreement.

19 37. The Court finds that the Arbitrator's interpretation of the Operating Agreement
20 evades judicial review by this Court. (*See Castaneda v. Palm Beach Resort Condominiums*, 127
21 Nev. 1124, 373 P.3d 901 (2011) ("Furthermore, to the extent the Castanedas argue that the
22 arbitrator misinterpreted the contract provision on financing, this argument evades judicial
23 review." (citing *Hill v. Norfolk and Western Ry. Co.*, 814 F.2d 1192, 1195 (7th Cir.1987) (The
24 question in reviewing an arbitration award "is not whether the arbitrator or arbitrators erred in
25 interpreting the contract; it is not whether they clearly erred in interpreting the contract; it is not
26 whether they grossly erred in interpreting the contract; it is whether they interpreted the contract.
27 If they did, their interpretation is conclusive."))).
28

1 38. The Court further finds that the Arbitrator's ruling that the Webster Report, which
2 purported to calculate Goldstein's interest using "book value" or "liquidation value," did not
3 comply with NuVeda's obligation under Section 6.2 of the Operating Agreement to hire an
4 appraiser to determine the fair market value of Goldstein's interest in NuVeda, is consistent with
5 Nevada law, as book value is not typically an accepted method to calculate fair market value.
6 (See *American Ethanol, Inc. v. Cordillera Fund, L.P.*, 127 Nev.147, 155, n. 7, 252 P.3d 663, 668,
7 n. 7 (2011) (noting that in determining the value of corporate stock, "[b]ook value is entitled to
8 little, if any, weight in determining the value of corporate stock, and many other factors must be
9 taken into consideration.")).

10 39. Finally, this Court finds that NRS 38.241(4) requires this Court to confirm the
11 Final Award upon denial of the Motion to Vacate.

12 40. If any conclusion of law is properly a finding of fact, it shall be treated as if
13 appropriately identified and designated.

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ORDER

THEREFORE, IT IS HEREBY ORDERED, ADJUDGED AND DECREED that the Motion to Continue is granted.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the Motion to Vacate is denied.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the Arbitrator's Final Award is confirmed.

IT IS SO ORDERED.

Dated this 6 day of September, 2019.

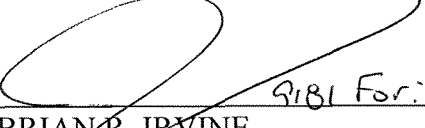

DISTRICT COURT JUDGE

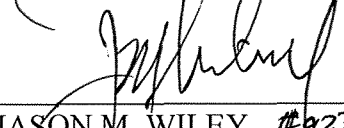
Respectfully submitted by:

Approved by:

DICKINSON WRIGHT PLLC

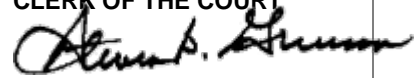
WILEY PETERSEN


9181 For:
BRIAN R. IRVINE
Nevada Bar No. 7758
BROOKS T. WESTERGARD
Nevada Bar No. 14300
100 West Liberty Street
Suite 940
Reno, Nevada 89501
Tel.: (775) 343-7500
Fax: (844) 670-6009
Email: birvine@dickinsonwright.com
Email: bwestergard@dickinsonwright.com


JASON M. WILEY #9274
RYAN S. PETERSEN
1050 Indigo Drive, Suite 130
Las Vegas, NV 89145

Attorneys for NuVeda, LLC

Attorneys for Plaintiff Jennifer M. Goldstein



MEJD
DICKINSON WRIGHT, PLLC
BRIAN R. IRVINE
Nevada Bar No. 7758
Email: birvine@dickinsonwright.com
BROOKS T. WESTERGARD
Nevada Bar No. 14300
Email: bwestergard@dickinsonwright.com
100 W. Liberty Street, Suite 940
Reno, Nevada 89501
Tel: (775) 343-7500
Fax: (844) 670-6009

Attorneys for Plaintiff Jennifer M. Goldstein

DISTRICT COURT
CLARK COUNTY, NEVADA

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

Plaintiffs,
vs.

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

Defendants.

**PLAINTIFF'S MOTION FOR ENTRY
OF JUDGMENT**

Case No.: A-15-728510-B
Dept. No.: 11

HEARING REQUESTED

Plaintiff Jennifer M. Goldstein ("Goldstein"), by and through her counsel, Dickinson
Wright PLLC, hereby requests that this Court enter Judgment in favor of Goldstein and against
Defendant NuVeda, LLC ("NuVeda").

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1 This Motion is supported by the attached memorandum of points and authorities, all
2 papers and pleadings on file herein, and any oral argument this Court may consider.

3 Dated this 19th day of September, 2019.

4 DICKINSON WRIGHT PLLC

6 /s/ Brian R. Irvine

BRIAN R. IRVINE

Nevada Bar No. 7758

BROOKS T. WESTERGARD

Nevada Bar No. 14300

100 West Liberty Street

Suite 940

Reno, Nevada 89501

Tel.: (775) 343-7500

Fax: (844) 670-6009

Email: birvine@dickinsonwright.com

Email: bwestergard@dickinsonwright.com

Attorneys for Plaintiff Jennifer M. Goldstein

14 **MEMORANDUM OF POINTS AND AUTHORITIES**

15 On March 19, 2019, in an arbitration proceeding captioned and referred to as *Terry, et al.*
16 *v. NuVeda, LLC, et al.*, AAA Case No 01-005-8574 (the “Arbitration”), the Arbitrator issued her
17 Final Award, and ruled that NuVeda owed Goldstein \$2,051,215.38, plus prejudgment interest
18 from August 8, 2017 to the date of the Final Award in the amount of \$222,655.07, and also
19 awarded Goldstein attorneys’ fees and costs in the amount of \$152,293.35, for a total award of
20 \$2,426,163.80. (Final Award at 5, on file herein).

21 The Final Award also provides that the awarded “sums shall accrue post-judgment
22 interest at the applicable statutory rate of interest commencing on March 20, 2019.” (*Id.*) NRS
23 17.130(2) provides that:

24 When no rate of interest is provided by contract or otherwise by law, or specified
25 in the judgment, the judgment draws interest from the time of service of the
26 summons and complaint until satisfied, except for any amount representing future
27 damages, which draws interest only from the time of the entry of the judgment
28 until satisfied, at a rate equal to the prime rate at the largest bank in Nevada as
ascertained by the Commissioner of Financial Institutions on January 1 or July 1,
as the case may be, immediately preceding the date of judgment, plus 2 percent.

1 The rate must be adjusted accordingly on each January 1 and July 1 thereafter
2 until the judgment is satisfied.

3 No interest rate is provided in the NuVeda Operating Agreement. (NuVeda, LLC's
4 Motion to Vacate Arbitration Award at Exhibit 1, on file herein). Therefore, the Final Arbitration
5 Award accrues interest at the prime rate, plus two percent. NRS 17.130(2). The prime interest
6 rate has been 5.5% during the entire time following the Final Arbitration Award. *See*
7 [http://fid.nv.gov/uploadedFiles/fidnvgov/content/Resources/Prime%20Interest%20Rate%20July](http://fid.nv.gov/uploadedFiles/fidnvgov/content/Resources/Prime%20Interest%20Rate%20July%201,%202019-PDF.pdf)
8 [%201,%202019-PDF.pdf](http://fid.nv.gov/uploadedFiles/fidnvgov/content/Resources/Prime%20Interest%20Rate%20July%201,%202019-PDF.pdf). Therefore, the Award accrues interest at the applicable statutory rate
9 of interest from March 20, 2019 through the date of the filing of this Motion, which was 7.5%
10 per annum.

11 On June 17, 2019, NuVeda filed its Motion to Vacate Arbitration Award ("Motion to
12 Vacate", on file herein). This Court held a hearing on the Motion to Vacate on August 12, 2019,
13 and subsequently entered an Order on September 6, 2019, denying NuVeda's Motion to Vacate
14 and confirming the Arbitrator's Final Award.

15 NRS 38.243(1) provides: "Upon granting an order confirming, vacating without directing
16 a rehearing, modifying or correcting an award, the court shall enter a judgment in conformity
17 therewith. The judgment may be recorded, docketed and enforced as any other judgment in a
18 civil action."

19 Pursuant to NRS 38.243(1), and because this Court, by its September 6, 2019 Order,
20 confirmed the Arbitrator's Final Award, Goldstein hereby requests that this Court enter a
21 judgment for Goldstein and against NuVeda in an amount to include: (1) \$2,426,163.80, which is
22 the amount of the Final Award; (2) plus \$91,230.41 in post-judgment interest accrued between
23 the date of the Final Award and the date of the filing of this Motion; (3) plus any attorneys' fees
24 and costs awarded by this Court pursuant to Goldstein's Motion for Attorneys' Fees and Costs

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1 filed concurrently with this Motion. A proposed Judgment is attached hereto as **Exhibit 1**.

2 Dated this 19th day of September, 2019.

3 DICKINSON WRIGHT PLLC

4 /s/ Brian R. Irvine

5 BRIAN R. IRVINE

6 Nevada Bar No. 7758

7 BROOKS T. WESTERGARD

8 Nevada Bar No. 14300

9 100 West Liberty Street

10 Suite 940

11 Reno, Nevada 89501

12 Tel.: (775) 343-7500

13 Fax: (844) 670-6009

14 Email: birvine@dickinsonwright.com

15 Email: bwestergard@dickinsonwright.com

16 *Attorneys for Plaintiff Jennifer M. Goldstein*

17 RENO 88728-1 48375v1

1 **CERTIFICATE OF SERVICE**

2 I certify that I am an employee of DICKINSON WRIGHT PLLC, and that on this date,
3 pursuant to NRCP 5(b), I am serving a true and correct copy of the **PLAINTIFF'S MOTION**
4 **FOR ENTRY OF JUDGMENT** on the parties as set forth below via the Court's Electronic
5 service system to the following counsel of record:

6 Jason M. Wiley, Esq
7 Ryan S. Petersen
8 WILEY PETERSON
9 1050 Indigo Drive, Suite 130
10 Las Vegas, NV 89145
11 jwiley@wileypetersen.com
12 rpetersen@wileypeterson.com

Matthew T. Dushoff
Scott D. Fleming
KOLESAR & LEATHAM
400 South Rampart Boulevard
Suite 400
Las Vegas, NV 89145
mdushoff@klnevada.com
sfleming@klnevada.com

Shane Terry
222 Karen Avenue, Suite 3305
Las Vegas, NV 89109
shane@ahcgroup.com

14 DATED this 19th day of September, 2019.

16 /s/ Mina Reel
17 An Employee of DICKINSON WRIGHT PLLC

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EXHIBIT TABLE

| Exhibit | Description | Pages¹ |
|----------------|--------------------|--------------------------|
| 1 | Proposed Judgment | 2 |

¹ Exhibit Page counts are exclusive of exhibit slip sheets.

EXHIBIT 1

EXHIBIT 1

JUDG
DICKINSON WRIGHT PLLC
BRIAN R. IRVINE
Nevada Bar No. 7758
BROOKS T. WESTERGARD
Nevada Bar No. 14300
100 West Liberty Street
Suite 940
Reno, Nevada 89501
Tel.: (775) 343-7500
Fax: (844) 670-6009
Email: birvine@dickinsonwright.com
Email: bwestergard@dickinsonwright.com
Attorneys for Plaintiff Jennifer M. Goldstein

DISTRICT COURT
CLARK COUNTY, NEVADA

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

Plaintiffs,
vs.

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

Case No.: A-15-728510-B
Dept. No.: 11

JUDGMENT

The Court determined that the arbitration award in favor of Plaintiff JENNIFER M. GOLDSTEIN (“Goldstein”), and against Defendant NUVEDA, LLC (“NuVeda”) in the amount of \$2,426,163.80 (“Award”) should be confirmed and entered its order confirming the Final Award on September 6, 2019.

Following confirmation of the Award, Goldstein filed a Motion for Entry of Judgment requesting that this Court enter a judgment for Goldstein and against NuVeda in an amount to include: (1) \$2,426,163.80, which is the amount of the Final Award; (2) plus \$91,230.41 in post-

1 judgment interest accrued between the date of the Final Award and the date of the filing of
2 Goldstein's Motion for Entry of Judgment; (3) plus any attorneys' fees and costs awarded by this
3 Court pursuant to Goldstein's Motion for Attorneys' Fees and Costs. The Court awarded
4 Goldstein \$_____ in attorneys' fees and costs.

5 The Court enters judgment for Plaintiff JENNIFER M. GOLDSTEIN, and against
6 Defendant NUVEDA, LLC in the amount of \$_____ ("Judgment"). The
7 Judgment shall accrue post-judgment interest at the applicable statutory rate of interest
8 commencing on September 19, 2019, until paid in full.

9 **JUDGMENT IS SO ENTERED.**

10
11 Dated this ____ day of _____, 2019.

12 _____
13 DISTRICT COURT JUDGE

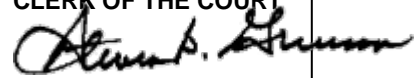
14 *Respectfully submitted by:*

15 DICKINSON WRIGHT PLLC

16
17 /s/ Brian R. Irvine
18 BRIAN R. IRVINE
19 Nevada Bar No. 7758
20 BROOKS T. WESTERGARD
21 Nevada Bar No. 14300
22 100 West Liberty Street
23 Suite 940
24 Reno, Nevada 89501
25 Tel.: (775) 343-7500
26 Fax: (844) 670-6009
27 Email: birvine@dickinsonwright.com
28 Email: bwestergard@dickinsonwright.com

Attorneys for Plaintiff Jennifer M. Goldstein

RENO 88728-1 48138v1



NOAS

JASON M. WILEY, ESQ.

Nevada Bar No. 9274

RYAN S. PETERSEN, ESQ.

Nevada Bar No. 10715

WILEY PETERSEN

1050 Indigo Drive

Suite 130

Las Vegas, Nevada 89145

Telephone: 702.910.3329

jwiley@wileypetersenlaw.com

rpetersen@wileypetersenlaw.com

MATTHEW T. DUSHOFF, ESQ.

Nevada Bar No. 4975

SCOTT D. FLEMING, ESQ.

Nevada Bar No. 5638

KOLESAR & LEATHAM

400 South Rampart Boulevard

Suite 400

Las Vegas, Nevada 89145

Telephone: 702.362.7800

mdushoff@klnevada.com

sfleming@klnevada.com

Attorneys for NuVeda, LLC

IN THE EIGHTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

IN AND FOR THE COUNTY OF CLARK

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

Plaintiffs,

v.

PEJMAN BADY, an individual; POUYA
MOHAJER, an individual; DOES I to X,
inclusive; and ROES I to X, inclusive,

Defendants.

Case No.: A-15-728510-B

Dept. No.: XI

NOTICE OF APPEAL

1 NOTICE IS HEREBY GIVEN that NUVEDA, LLC (“NuVeda”), a Nevada limited liability
2 company, and party in the above-named action, hereby appeals to the Supreme Court of Nevada the
3 *Findings of Fact, Conclusions of Law and Order: (1) Granting Plaintiff Jennifer M. Goldstein’s Motion*
4 *to Continue Hearing on NuVeda, LLC’s Motion to Vacate Arbitration Award and to Extend Briefing*
5 *Deadlines; (2) Denying Defendant NuVeda, LLC’s Motion to Vacate Arbitration Award; and (3)*
6 *Confirming Arbitration Award* entered in this action on the 9th day of September, 2019.

7 DATED this 9th day of October, 2019.

8
9 **KOLESAR & LEATHAM**

WILEY PETERSEN

10
11 /s/ Matthew T. Dushoff, Esq.

/s/ Jason M. Wiley, Esq.

12 MATTHEW T. DUSHOFF, ESQ.

JASON M. WILEY, ESQ.

13 Nevada Bar No. 4975

Nevada Bar No. 9274

14 SCOTT FLEMING, ESQ.

RYAN S. PETERSEN, ESQ.

15 Nevada Bar No. 5638

Nevada Bar No. 10715

16 400 South Rampart Boulevard

1050 Indigo Drive

17 Suite 400

Suite 130

18 Las Vegas, Nevada 89145

Las Vegas, Nevada 89145

19 Telephone: 702.362.7800

Telephone: 702.910.3329

20 mdushoff@klnevada.com

jwiley@wileypetersenlaw.com

21 sfleming@klnevada.com

rpetersen@wileypetersenlaw.com

22 *Attorneys for NuVeda, LLC*

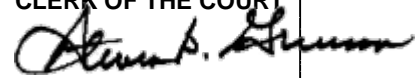
Attorneys for NuVeda, LLC

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28 ///

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- 21
- 22
- 23
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Shane Terry
222 Karen Avenue, Suite 3305
Las Vegas, Nevada 89109

Briar R. Irvine, Esq.
Brooks T. Westergard, Esq.
DICKINSON WRIGHT PLLC
100 West Liberty Street, Suite 940
Reno, Nevada 89501



NTC
JASON M. WILEY, ESQ.
Nevada Bar No. 9274
RYAN S. PETERSEN, ESQ.
Nevada Bar No. 10715
WILEY PETERSEN
1050 Indigo Drive
Suite 130
Las Vegas, Nevada 89145
Telephone: 702.910.3329
jwiley@wileypetersenlaw.com
rpetersen@wileypetersenlaw.com

MATTHEW T. DUSHOFF, ESQ.
Nevada Bar No. 4975
SCOTT D. FLEMING, ESQ.
Nevada Bar No. 5638
KOLESAR & LEATHAM
400 South Rampart Boulevard
Suite 400
Las Vegas, Nevada 89145
Telephone: 702.362.7800
mdushoff@klnevada.com
sfleming@klnevada.com

Attorneys for NuVeda, LLC

IN THE EIGHTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
IN AND FOR THE COUNTY OF CLARK

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

Plaintiffs,

v.

PEJMAN BADY, an individual; POUYA
MOHAJER, an individual; DOES I to X,
inclusive; and ROES I to X, inclusive,

Defendants.

Case No.: A-15-728510-B

Dept. No.: XI

NOTICE OF POSTING BOND

1 PLEASE TAKE NOTICE that NuVeda, LLC, by and through their counsel of record, Jason M.
2 Wiley, Esq. of the law firm Wiley Petersen, hereby files this Notice of Posting Bond in the amount of
3 \$500.00 in conjunction with the filing of Notice of Appeal pursuant to Rule 7 of the Nevada Rules of
4 Appellate Procedure.

5 A copy of the Official Receipt issued by the District Court Clerk is appended hereto and labeled
6 as **Exhibit 1**.

7 DATED this 9th day of October, 2019.
8
9

10 **WILEY PETERSEN**

11 /s/ Jason M. Wiley

12 JASON M. WILEY, ESQ.

13 Nevada Bar No. 9274

14 RYAN S. PETERSEN, ESQ.

15 Nevada Bar No. 10715

16 1050 Indigo Drive

17 Suite 130

18 Las Vegas, Nevada 89145

19 Telephone: 702.910.3329

20 jwiley@wileypetersenlaw.com

21 rpetersen@wileypetersenlaw.com

22 *Attorneys for NuVeda, LLC*
23
24
25
26
27
28

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Pursuant to Administrative Order 14-2, the above-referenced document was electronically filed on the date hereof and served through the Notice of Electronic Filing automatically generated by that Court's facilities to those parties listed on the Court's Master Service List and as follows:

Briar R. Irvine, Esq.
Brooks T. Westergard, Esq.
DICKINSON WRIGHT PLLC
100 West Liberty Street, Suite 940
Reno, Nevada 89501

/s/ Ivette Bautista
Employee of Wiley Petersen

EXHIBIT 1

OFFICIAL RECEIPT

District Court Clerk of the Court 200 Lewis Ave, 3rd Floor Las Vegas, NV 89101

Payor
Wiley Petersen Law Offices

Receipt No.
2019-61735-CCCLK

Transaction Date
10/9/2019

| Description | Amount Paid |
|-------------|-------------|
|-------------|-------------|

On Behalf Of Nuveda, LLC
A-15-728510-B
Nuveda, LLC , Plaintiff(s) vs. Pejman Bady, Defendant(s)
Appeal Bond

Appeal Bond
SUBTOTAL

500.00
500.00

PAYMENT TOTAL **500.00**

| | |
|------------------------------|---------------|
| Check (Ref #000424) Tendered | 500.00 |
| Total Tendered | 500.00 |
| Change | 0.00 |

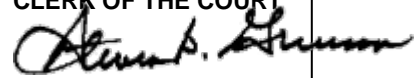
Notice of Appeal - filed on 10/9/19

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Audit
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OFFICIAL RECEIPT



ASTA

JASON M. WILEY, ESQ.

Nevada Bar No. 9274

RYAN S. PETERSEN, ESQ.

Nevada Bar No. 10715

WILEY PETERSEN

1050 Indigo Drive

Suite 130

Las Vegas, Nevada 89145

Telephone: 702.910.3329

jwiley@wileypetersenlaw.com

rpetersen@wileypetersenlaw.com

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Nevada Bar No. 5638

KOLESAR & LEATHAM

400 South Rampart Boulevard

Suite 400

Las Vegas, Nevada 89145

Telephone: 702.362.7800

mdushoff@klnevada.com

sfleming@klnevada.com

Attorneys for NuVeda, LLC

IN THE EIGHTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

IN AND FOR THE COUNTY OF CLARK

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

Plaintiffs,

v.

PEJMAN BADY, an individual; POUYA
MOHAJER, an individual; DOES I to X,
inclusive; and ROES I to X, inclusive,

Defendants.

Case No.: A-15-728510-B

Dept. No.: XI

CASE APPEAL STATEMENT

Appellant NUVEDA, LLC (“NuVeda”), a Nevada limited liability company, offers the following Case Appeal Statement in accordance with Nev. R. App. P. 3(f), which it submits substantially complies with Form 2 in the Appendix of Forms.

1. Name of Appellant filing this Case Appeal Statement: The sole Appellant is NUVEDA, LLC (“NuVeda”), a Nevada limited liability company. The sole Respondent is Jennifer M. Goldstein (“Goldstein”). It may be helpful to note that NuVeda and Ms. Goldstein both appear as plaintiffs in the caption above because Ms. Goldstein originally commenced a case in the District Court as a putative derivative action. The case was then stayed pending mandatory alternative dispute resolution proceedings before the American Arbitration Association (AAA), Case No. 01-15-005-8574 (the “Arbitration”). In the Arbitration, Ms. Goldstein and NuVeda were held to be adverse parties, with Ms. Goldstein ultimately identified as the Petitioner and NuVeda the Respondent. The caption in the Eighth Judicial District Court was never amended to correspond to that in the Arbitration.

2. Identity of the judge issuing the decision, the judgment, or order appealed from: The Honorable Elizabeth Gonzalez, Department 11 of the Eighth Judicial District Court in and for Clark County, Nevada.

3. Identity of each Appellant and the name and address of counsel for each Appellant:

NuVeda, LLC
Matthew T. Dushoff, Counsel
Kolesar & Leatham
400 S. Rampart Boulevard
Suite 400
Las Vegas, Nevada 89145
702.362.7800
mdushoff@klnevada.com

Jason M. Wiley, Counsel
Wiley Petersen
1050 Indigo Drive
Suite 130
Las Vegas, Nevada 89145
702.910.3329
jwiley@wileypetersenlaw.com

///

4. Identity of each Respondent and the name and address of counsel, if known for each Respondent:

Jennifer Goldstein
Brian R. Irvine, Esq.
Dickinson Wright PLLC
100 West Liberty Street
Suite 940
Reno, Nevada 89501
775.343.7500
birvine@dickinsonwright.com

5. Whether any attorney identified above in response to Question 3 or Question 4 is not licensed to practice law in Nevada and, if so, whether the district court granted that attorney to appear under SCR 42: Messrs. Dushoff, Wiley, and Irvine are licensed to practice law in Nevada.

6. Whether Appellant was represented by appointed or retained counsel in the district court: Appellant NuVeda was retained by Matthew Dushoff, Esq. of the law firm Kolesar & Leatham and Jason Wiley, Esq. of the law firm Wiley Petersen in the district court proceedings.

7. Whether Appellant is represented by appointed or retained counsel on appeal: Appellant NuVeda has retained Matthew Dushoff, Esq. of the law firm Kolesar & Leatham and Jason Wiley, Esq. of the law firm Wiley Petersen to represent it in the appeal proceedings.

8. Whether Appellant was granted leave to proceed *in forma pauperis*, and the date of entry of the district court order granting such leave: Not applicable.

9. Indicate the date the proceeding was commenced in district court: Ms. Goldstein and her co-Plaintiff, Shane Terry (“Terry”) (who has been dismissed from the action), commenced the district court proceeding titled *Goldstein et al. v. Bady et al.*, Case No. A-15-728510-B through the filing of their Complaint on December 3, 2015.

10. Brief description of the nature of the action and result in district court, including the type of judgment or order being appealed and the relief granted by the district court: NuVeda has appealed the *Findings of Fact, Conclusions of Law and Order: (1) Granting Plaintiff Jennifer M. Goldstein’s Motion to Continue Hearing on NuVeda, LC’s Motion to Vacate Arbitration Award and to Extend Briefing Deadlines; (2) Denying Defendant NuVeda, LLC’s Motion to Vacate Arbitration Award; and (3) Confirming the Arbitration Award* entered September 9, 2019 (the “Order”).

1 This matter involves an intra-company dispute by and between the members of NuVeda, a
2 limited liability company that was awarded and continues to possess and conduct operations related to
3 six marijuana licenses based in Clark County, Nevada. Ms. Goldstein initially commenced an action
4 in the District Court alleging, among other things, that she was improperly expelled as a member of
5 NuVeda. As the matter went forward, it was determined that Ms. Goldstein was properly removed as
6 a member of the company. The primary issue in the Arbitration thus focused on the fair market value
7 of Ms. Goldstein's interest in NuVeda at the time of her removal. On March 19, 2019, a *Final Award*
8 (the "Award") was entered in the Arbitration valuing Ms. Goldstein's interest at roughly \$2 million.

9 NuVeda moved in the District Court to vacate the Award in the Arbitration based primarily
10 upon irregularities concerning an expert witness. In the Arbitration, Ms. Goldstein relied upon the
11 expert testimony of Donald Parker ("Parker"). Mr. Parker was timely disclosed as an expert witness
12 by Ms. Goldstein's former Co-Petitioner Shane M. Terry ("Terry") and, as such, Mr. Parker's initial
13 report and later supplements thereto addressed Mr. Terry's interest and did not – in any way – refer to
14 Ms. Goldstein or the value of her interest in NuVeda. Ms. Goldstein failed to disclose an expert prior
15 to the deadline to do so per relevant scheduling orders issued by the Arbitrator. Less than one month
16 before the final hearing, Ms. Goldstein disclosed a "supplemental report" by Mr. Parker which – for
17 the first time – (a) indicated that Mr. Parker was serving as an expert witness for Ms. Goldstein; and
18 (b) provided a valuation of Mr. Goldstein's interest in NuVeda. NuVeda filed a motion to strike Mr.
19 Parker's report based on the untimely disclosure, which the Arbitrator denied. Mr. Parker thus testified
20 on Ms. Goldstein's behalf at the Arbitration's, without NuVeda having had an opportunity to examine
21 Mr. Parker on his report and opinions before the final hearing. NuVeda asserts that the District Court
22 erred in upholding the Final Award in the Arbitration given the untimely disclosure of Ms. Goldstein's
23 valuation expert and NuVeda's inability to conduct discovery related to Mr. Parker's opinion.

24 NuVeda further asserts that the District Court erred in denying its *Motion to Vacate Arbitration*
25 *Award* ("Motion to Vacate") and in granting Ms. Goldstein's *Motion to Continue Hearing on NuVeda,*
26 *LLC's Motion to Vacate Arbitration Award and to Extend Briefing Deadlines* ("Motion to Extend").
27 Briefly stated, NuVeda asserts that Ms. Goldstein failed to file a timely opposition to the Motion to
28 Vacate. After recognizing that failure, Ms. Goldstein filed her Motion to Extend, but failed to offer

any factual explanation (i.e. excusable neglect) for her failure to meet the initial deadline. NuVeda asserts that the District Court erred by accepting evidence offered in support of Ms. Goldstein's reply, rather than in support of her initial Motion to Extend.

11. Whether the case has previously been the subject of an appeal to or original writ proceeding in the Supreme Court: No.

12. Whether the appeal involves child custody or visitation: No.

13. Whether the appeals involves the possibility of settlement: Yes, settlement and settlement negotiations/settlement conference would assist the parties.

DATED this 9th day of October, 2019.

KOLESAR & LEATHAM

WILEY PETERSEN

/s/ Matthew T. Dushoff, Esq.

/s/ Jason M. Wiley, Esq.

MATTHEW T. DUSHOFF, ESQ.

JASON M. WILEY, ESQ.

Nevada Bar No. 4975

Nevada Bar No. 9274

SCOTT FLEMING, ESQ.

RYAN S. PETERSEN, ESQ.

Nevada Bar No. 5638

Nevada Bar No. 10715

400 South Rampart Boulevard

1050 Indigo Drive

Suite 400

Suite 130

Las Vegas, Nevada 89145

Las Vegas, Nevada 89145

Telephone: 702.362.7800

Telephone: 702.910.3329

mdushoff@klnevada.com

jwiley@wileypetersenlaw.com

sfleming@klnevada.com

rpetersen@wileypetersenlaw.com

Attorneys for NuVeda, LLC

Attorneys for NuVeda, LLC

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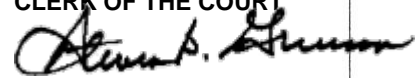
CERTIFICATE OF SERVICE

I certify that I am an employee of WILEY PETERSEN, and that on this 9th day of October, 2019, pursuant to NRCP 5(b), I am serving a true and correct copy of the **CASE APPEAL STATEMENT**

to the following individuals by Odyssey Electronic Service and U.S. Mail:

Shane Terry
222 Karen Avenue, Suite 3305
Las Vegas, Nevada 89109

Briar R. Irvine, Esq.
Brooks T. Westergard, Esq.
DICKINSON WRIGHT PLLC
100 West Liberty Street, Suite 940
Reno, Nevada 89501



ORIGINAL

JUDG
DICKINSON WRIGHT PLLC
BRIAN R. IRVINE
Nevada Bar No. 7758
BROOKS T. WESTERGARD
Nevada Bar No. 14300
100 West Liberty Street
Suite 940
Reno, Nevada 89501
Tel.: (775) 343-7500
Fax: (844) 670-6009
Email: birvine@dickinsonwright.com
Email: bwestergard@dickinsonwright.com
Attorneys for Plaintiff Jennifer M. Goldstein

DISTRICT COURT
CLARK COUNTY, NEVADA

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

Case No.: A-15-728510-B
Dept. No.: 11

ORDER AND JUDGMENT

Plaintiffs,
vs.

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

Defendants.

The Court determined that the arbitration award in favor of Plaintiff JENNIFER M. GOLDSTEIN ("Goldstein"), and against Defendant NUVEDA, LLC ("NuVeda") in the amount of \$2,426,163.80 ("Award") should be confirmed and entered its order confirming the Final Award on September 6, 2019.

Following confirmation of the Award, Goldstein filed a Motion for Attorneys' Fees and Costs, which the Court granted, in part, following a hearing on October 21, 2019. Goldstein also filed a Motion for Entry of Judgment requesting that this Court enter a judgment for Goldstein and against NuVeda. On October 31, 2019, the Court entered its Minute Order Granting in Part

1 Goldstein's Motion for Entry of Judgment. The Court therefore orders and enters judgment as
2 follows:

3 IT IS HEREBY ORDERED that Goldstein's Motion for Entry of Judgment is
4 GRANTED.

5 IT IS HEREBY FURTHER ORDERED that Goldstein is entitled to a judgment in an
6 amount to include: (1) \$2,426,163.80, which is the amount of the Final Award; (2) plus
7 \$112,168.53 in post-judgment interest accrued between the date of the Final Award and the date
8 of entry of the Minute Order Granting Goldstein's Motion for Entry of Judgment; (3) plus
9 \$26,944.08 in attorneys' fees and costs awarded by this Court pursuant to Goldstein's Motion for
10 Attorneys' Fees and Costs.

11 THE COURT THEREFORE ENTERS JUDGMENT for Plaintiff JENNIFER M.
12 GOLDSTEIN, and against Defendant NUVEDA, LLC in the amount of \$2,565,276.41
13 ("Judgment"). The Judgment shall accrue post-judgment interest at the applicable statutory rate
14 of interest commencing on October 31, 2019, until paid in full.

15 **JUDGMENT IS SO ENTERED.**

16 Dated this 13 day of November, 2019.

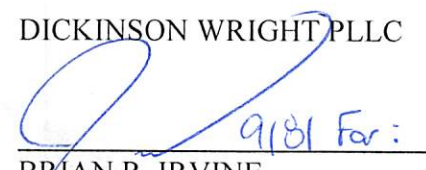
17 
18 DISTRICT COURT JUDGE

19 *Respectfully submitted by:*

Approved as to Form and Content

20 DICKINSON WRIGHT PLLC

KOLESAR & LEATHAM

21  9/18/19 For:
22 BRIAN R. IRVINE
23 Nevada Bar No. 7758
24 BROOKS T. WESTERGARD
25 Nevada Bar No. 14300
26 100 West Liberty Street
27 Suite 940
Reno, Nevada 89501
birvine@dickinsonwright.com
bwestergard@dickinsonwright.com


Matthew T. Dushoff, Esq.
Scott D. Fleming, Esq.
400 South Rampart Boulevard
Suite 400
Las Vegas, NV 89145
mdushoff@klnevada.com
sfleming@klnevada.com

Attorneys for Nuveda, LLC

28 *Attorneys for Plaintiff Jennifer M. Goldstein*

1 **CERTIFICATE OF SERVICE**

2 I certify that I am an employee of DICKINSON WRIGHT PLLC, and that on this date,
3 pursuant to NRCP 5(b), I am serving a true and correct copy of the **ORDER AND JUDGMENT**
4 on the parties as set forth below via the Court's Electronic service system to the following
5 counsel of record:

6 Jason M. Wiley, Esq
7 Ryan S. Petersen
8 WILEY PETERSON
9 1050 Indigo Drive, Suite 200B
10 Las Vegas, NV 89145
11 jwiley@wileypetersen.com
12 rpetersen@wileypetersen.com

Matthew T. Dushoff
Scott D. Fleming
KOLESAR & LEATHAM
400 South Rampart Boulevard
Suite 400
Las Vegas, NV 89145
mdushoff@klnevada.com
sfleming@klnevada.com

Shane Terry
222 Karen Avenue, Suite 3305
Las Vegas, NV 89109
shane@ahcgroup.com

13
14 DATED this 15th day of November, 2019.

15
16 
17 An Employee of DICKINSON WRIGHT PLLC

18
19 RENO 88728-1 48138v2



NEOJ

DICKINSON WRIGHT PLLC

BRIAN R. IRVINE

Nevada Bar No. 7758

BROOKS T. WESTERGARD

Nevada Bar No. 14300

100 West Liberty Street

Suite 940

Reno, Nevada 89501

Tel.: (775) 343-7500

Fax: (844) 670-6009

Email: birvine@dickinsonwright.com

Email: bwestergard@dickinsonwright.com

Attorneys for Plaintiff Jennifer M. Goldstein

DISTRICT COURT

CLARK COUNTY, NEVADA

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

Plaintiffs,

vs.

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

Defendants.

Case No.: A-15-728510-B

Dept. No.: XI

NOTICE OF ENTRY OF ORDER AND JUDGMENT

Please take notice that on the 15th day of November, 2019, an Order and Judgment was

1 entered in the above-captioned matter regarding the arbitration award in favor of Plaintiff
2 Jennifer M. Goldstein. A copy of the Order is attached hereto as **Exhibit 1**.

3 DATED this 15th day of November, 2019.

4
5 DICKINSON WRIGHT PLLC

6 /s/ Brian R. Irvine

7 BRIAN R. IRVINE

8 Nevada Bar No. 7758

9 BROOKS T. WESTERGARD

10 Nevada Bar No. 14300

11 100 West Liberty Street

12 Suite 940

13 Reno, Nevada 89501

14 Tel.: (775) 343-7500

15 Fax: (844) 670-6009

16 Email: birvine@dickinsonwright.com

17 Email: bwestergard@dickinsonwright.com

18 *Attorneys for Plaintiff Jennifer M. Goldstein*

1 **CERTIFICATE OF SERVICE**

2 I certify that I am an employee of DICKINSON WRIGHT PLLC, and that on this date,
3 pursuant to NRCP 5(b), I am serving a true and correct copy of the **NOTICE OF ENTRY OF**
4 **ORDER AND JUDGMENT** to the following individuals by United States Mail, postage fully
5 prepaid:

6 Jason M. Wiley, Esq
7 Ryan S. Petersen
8 WILEY PETERSON
9 1050 Indigo Drive, Suite 130
10 Las Vegas, NV 89145

Matthew T. Dushoff
Scott D. Fleming
KOLESAR & LEATHAM
400 South Rampart Boulevard
Suite 400
Las Vegas, NV 89145

11 Shane Terry
12 222 Karen Avenue, Suite 3305
13 Las Vegas, NV 89109

14 DATED this 14th day of November, 2019.

15 /s/ Cindy S. Grinstead
16 An Employee of DICKINSON WRIGHT PLLC
17
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EXHIBIT TABLE

| Exhibit | Description | Page(s)¹ |
|----------------|---------------------------------------|----------------------------|
| 1 | Order and Judgment, November 15, 2019 | 3 |

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¹ Exhibit slip sheet is exclusive of exhibit page count.

EXHIBIT 1

EXHIBIT 1

ORIGINAL

1 JUDGE
2 DICKINSON WRIGHT PLLC
3 BRIAN R. IRVINE
4 Nevada Bar No. 7758
5 BROOKS T. WESTERGARD
6 Nevada Bar No. 14300
7 100 West Liberty Street
8 Suite 940
9 Reno, Nevada 89501
10 Tel.: (775) 343-7500
11 Fax: (844) 670-6009
12 Email: birvine@dickinsonwright.com
13 Email: bwestergard@dickinsonwright.com
14 Attorneys for Plaintiff Jennifer M. Goldstein

DISTRICT COURT
CLARK COUNTY, NEVADA

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

16 Plaintiffs,

17 vs.

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

20 Defendants.

Case No.: A-15-728510-B
Dept. No.: 11

ORDER AND JUDGMENT

21 The Court determined that the arbitration award in favor of Plaintiff JENNIFER M.
22 GOLDSTEIN ("Goldstein"), and against Defendant NUVEDA, LLC ("NuVeda") in the amount
23 of \$2,426,163.80 ("Award") should be confirmed and entered its order confirming the Final
24 Award on September 6, 2019.

25 Following confirmation of the Award, Goldstein filed a Motion for Attorneys' Fees and
26 Costs, which the Court granted, in part, following a hearing on October 21, 2019. Goldstein also
27 filed a Motion for Entry of Judgment requesting that this Court enter a judgment for Goldstein
28 and against NuVeda. On October 31, 2019, the Court entered its Minute Order Granting in Part

1 Goldstein's Motion for Entry of Judgment. The Court therefore orders and enters judgment as
2 follows:

3 IT IS HEREBY ORDERED that Goldstein's Motion for Entry of Judgment is
4 GRANTED.

5 IT IS HEREBY FURTHER ORDERED that Goldstein is entitled to a judgment in an
6 amount to include: (1) \$2,426,163.80, which is the amount of the Final Award; (2) plus
7 \$112,168.53 in post-judgment interest accrued between the date of the Final Award and the date
8 of entry of the Minute Order Granting Goldstein's Motion for Entry of Judgment; (3) plus
9 \$26,944.08 in attorneys' fees and costs awarded by this Court pursuant to Goldstein's Motion for
10 Attorneys' Fees and Costs.

11 THE COURT THEREFORE ENTERS JUDGMENT for Plaintiff JENNIFER M.
12 GOLDSTEIN, and against Defendant NUVEDA, LLC in the amount of \$2,565,276.41
13 ("Judgment"). The Judgment shall accrue post-judgment interest at the applicable statutory rate
14 of interest commencing on October 31, 2019, until paid in full.

15 JUDGMENT IS SO ENTERED.

16 Dated this 13 day of November, 2019.

17 
18 DISTRICT COURT JUDGE

19 Respectfully submitted by:


Approved as to Form and Content

20 DICKINSON WRIGHT PLLC

KOLESAR & LEATHAM

21  9/18/19 For:

22 BRIAN R. IRVINE
23 Nevada Bar No. 7758
24 BROOKS T. WESTERGARD
25 Nevada Bar No. 14300
26 100 West Liberty Street
27 Suite 940
28 Reno, Nevada 89501
birvine@dickinsonwright.com
bwestergard@dickinsonwright.com


Matthew T. Dushoff, Esq.
Scott D. Fleming, Esq.
400 South Rampart Boulevard
Suite 400
Las Vegas, NV 89145
mdushoff@klnevada.com
sfleming@klnevada.com

Attorneys for Nuveda, LLC

Attorneys for Plaintiff Jennifer M. Goldstein

1 CERTIFICATE OF SERVICE


2 I certify that I am an employee of DICKINSON WRIGHT PLLC, and that on this date,
3 pursuant to NRCP 5(b), I am serving a true and correct copy of the **ORDER AND JUDGMENT**
4 on the parties as set forth below via the Court's Electronic service system to the following
5 counsel of record:

6 Jason M. Wiley, Esq
7 Ryan S. Petersen
8 WILEY PETERSON
9 1050 Indigo Drive, Suite 200B
10 Las Vegas, NV 89145
11 jwiley@wileypetersen.com
12 rpetersen@wileypetersen.com

Matthew T. Dushoff
Scott D. Fleming
KOLESAR & LEATHAM
400 South Rampart Boulevard
Suite 400
Las Vegas, NV 89145
mdushoff@klnvada.com
sfleming@klnvada.com

Shane Terry
222 Karen Avenue, Suite 3305
Las Vegas, NV 89109
shane@ahcgroup.com

13
14 DATED this 15th day of November, 2019.

15
16 
17 An Employee of DICKINSON WRIGHT PLLC

18
19 RENO 88728-1 48138v2