

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

Electronically Filed
Apr 14 2021 10:53 a.m.
Elizabeth A. Brown
Clerk of Supreme Court

NUVEDA, LLC,

Petitioner,

vs

EIGHTH JUDICIAL DISTRICT
COURT OF THE STATE OF
NEVADA, IN AND FOR THE
COUNTY OF CLARK, THE
HONORABLE ELIZABETH
GONZALEZ, DISTRICT JUDGE,

Respondent,

SHANE TERRY,

Real Party in Interest.

Supreme Court Case No. TBD

Case: A-20-817363-B

Lead Case: A-17-755479-B

Other Consolidated Cases with Lead
Case:

A-19-791405-C and A-19-796300-B

**APPENDIX FOR PETITION FOR WRIT OF PROHIBITION OR, IN THE
ALTERNATIVE, PETITION FOR WRIT OF MANDAMUS (Volume VI)**

LAW OFFICE OF MITCHELL STIPP
MITCHELL STIPP, ESQ. (Nevada Bar No. 7531)
1180 N. Town Center Drive, Suite 100, Las Vegas, Nevada 89144
Telephone: 702.602.1242/ Email: mstipp@stipplaw.com
Counsel for Petitioner¹

¹ A. William Maupin, of Clark Hill LLP, 3800 Howard Hughes Parkway, Suite 500, Las Vegas, Nevada 89169, serves as co-counsel to Petitioner in this matter.

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DATED this 14th day of April, 2021.

LAW OFFICE OF MITCHELL STIPP



MITCHELL STIPP, ESQ.

Nevada Bar No. 7531

1180 N. Town Center Drive

Suite 100

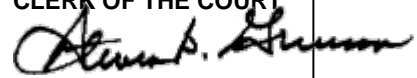
Las Vegas, Nevada 89144

Telephone: (702) 602-1242

mstipp@stippilaw.com

Counsel for Petitioner

VOLUME VI TO APPENDIX



MITCHELL D. STIPP, ESQ.
Nevada Bar No. 7531
LAW OFFICE OF MITCHELL STIPP
1180 N. Town Center Drive, Suite 100
Las Vegas, Nevada 89144
Telephone: 702.602.1242
mstipp@stipplaw.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; and CWNEVADA LLC, a Nevada
Limited Liability Company,

Plaintiffs,

v.

4FRONT ADVISORS LLC, foreign limited
liability company, DOES I through X and ROE
ENTITIES, II through XX, inclusive,

Defendants.

AND RELATED MATTERS.

Case: A-17-755479-B

Consolidated Cases:
A-19-791405-C, A-19-796300-B, and A-20-
817363-B

Dept. No.: XI

**MOTION FOR STAY ON ORDER
SHORTENING TIME**

Date of Hearing: February 22, 2021

Time of Hearing: 9:00a.m.

NuVeda, LLC, a Nevada limited liability company ("NuVeda"), by and through counsel of record, Mitchell Stipp, Esq., of the Law Office of Mitchell Stipp, hereby files the above-referenced motion on order shortening time.

This filing is based on the papers and pleadings before the court, the memorandum of points and authorities that follows, and the exhibits attached hereto or filed separately and incorporated herein by this reference.

///

///

///

1 DATED this 11th day of February, 2021.

2
3 **LAW OFFICE OF MITCHELL STIPP**

4
5 /s/ Mitchell Stipp, Esq.

6 MITCHELL STIPP, ESQ.

7 Nevada Bar No. 7531

8 LAW OFFICE OF MITCHELL STIPP

9 1180 N. Town Center Drive, Suite 100

10 Las Vegas, Nevada 89144

11 Telephone: 702.602.1242

12 mstipp@stipplaw.com

13 *Attorneys for NuVeda, LLC*

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[NOTICE OF HEARING FOLLOWS]

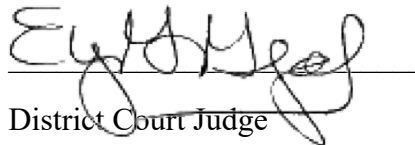
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NOTICE OF TELEPHONIC HEARING

TO: ALL INTERESTED PARTIES AND THEIR COUNSEL OF RECORD

PLEASE TAKE NOTICE that the **MOTION FOR STAY ON ORDER SHORTENING**
TIME shall be heard via telephonic conference on February 22, 2021 at 9:00a.m..

DATED this 12th day of February 2021.


District Court Judge

DATED this 11th day of February, 2021.

LAW OFFICE OF MITCHELL STIPP

/s/ Mitchell Stipp, Esq.
MITCHELL STIPP, ESQ.
Nevada Bar No. 7531
LAW OFFICE OF MITCHELL STIPP
1180 N. Town Center Drive, Suite 100
Las Vegas, Nevada 89144
Telephone: 702.602.1242
mstipp@stipplaw.com
Attorneys for NuVeda, LLC

DECLARATION OF MITCHELL STIPP

The undersigned, Mitchell Stipp, certifies to the court as follows:

1. I am counsel for NuVeda, LLC, a Nevada limited liability company (“NuVeda”), in the above referenced case.

2. On NuVeda’s motion to dismiss or for summary judgment filed on July 29, 2020, this court held a hearing on August 31, 2020. At the hearing, the court ruled that NuVeda’s motion would be “stayed for ninety (90) days from the date of the hearing” so that Mr. Terry could request any relief from the American Arbitration Association (“AAA”).

3. At a hearing on October 19, 2020, the court elected not to hear NuVeda’s formal request for an update on Mr. Terry’s efforts to obtain relief from AAA. The court stated as follows:

21 THE COURT: The motion to amend is granted except as
22 to Mr. Terry.

23 MR. COPPEDGE: So we have not changed anything with
24 Mr. Terry, Your Honor. So how does that work, I guess?

25 THE COURT: So I'm not going to sit here and listen

JD Reporting, Inc.

13

A-17-755479-B | Nuveda v. 4Front | 2020-10-19 | Motion & Opp

1 to an update about what's going on with AAA because I only get
2 my courtroom until 10:00 o'clock. So I don't have time to do
3 that, but I assume that you're doing something about Mr. Terry,
4 or I'm going to hear this summary judgment and grant it. I'm
5 not there today.

6 To the extent you are seeking any amendments that
7 include Mr. Terry, it's denied.

8 With respect to Mr. Ivey and the receiver, it's
9 granted.

10 MR. STIPP: Thank you, Your Honor.

See Pages 13-14 of Transcript electronically filed on October 27, 2020.

4. The time period during which Mr. Terry could seek relief from AAA expired on

1 November 29, 2020. Apparently, Mr. Terry requested *ex parte* relief on November 30, 2020 from
2 AAA (despite an obligation to provide notice to the parties (including NuVeda) under the AAA's
3 commercial rules). Even more disappointing, Mr. Coppedge specifically agreed with NuVeda's
4 counsel to provide notice. See **Exhibit A**.

5 5. BCP 7 Holdings, LLC, a Nevada limited liability company, and manager of CWNevada,
6 LLC, a Nevada limited liability company ("BCP 7"), has not be properly sued by Mr. Terry and served
7 with legal process. BCP 7 is the actual party which purchased Mr. Terry's claims and interest and paid
8 almost \$800k therefor through CWNevada.

9 6. Unaware that Mr. Terry asked AAA for relief, NuVeda filed a motion to have the matter
10 finally decided by the court. The court denied the motion to hear the matter on shortened time and
11 instead requested "additional briefing." As a result, NuVeda prepared and filed a renewed motion to
12 dismiss/summary judgment on or about December 18, 2020. It was ultimately heard by the court on
13 January 25, 2021. At the hearing, the court ordered Mr. Coppedge to file a copy of the *ex parte* motion
14 submitted to AAA and continued the matter to its chambers calendar on January 29, 2021. NuVeda
15 was not permitted an opportunity to address the filing.

16 7. The court issued a minute order attached hereto as **Exhibit B** and requested the parties
17 to prepare and submit a joint status report on discovery and a hearing on the issue of rescission.

18 8. NuVeda respectfully requested via email with a copy to Mr. Coppedge and John Savage,
19 Esq., on or about February 9, 2021, a telephone conference with the court and counsel for Mr. Terry to
20 clarify the court's minute order. While the court scheduled a telephone conference at 9:30 a.m. on
21 February 11, 2021, the court informed NuVeda's counsel that it was not appropriate to raise substantive
22 matters at issue via email and to file a motion (which the court would hear on order shortening time).¹

23 9. NuVeda files its motion for a stay of the evidentiary hearing and resolution of Mr.
24 Terry's claims pending a writ petition to be filed before the Nevada Supreme Court. NuVeda has
25 engaged appellate counsel to handle the matter.

26 10. A stay is appropriate because the facts are not in dispute and Nevada law is clear.
27 Further, NuVeda also would like to avoid the cost, expense and time to prepare for an evidentiary
28

¹ The undersigned apologizes to the court for the error. The decision to request a telephone conference was an attempt to clarify the court's minutes on setting an evidentiary hearing on rescission before filing a writ petition to the Nevada Supreme Court. Previously, the court has permitted telephone conferences to discuss such matters in this case and others. The court also regularly considers and grants requests to hear matters on shortened time via applications submitted via email with no prior notice to any other parties. Following the lead of Mr. Coppedge, the court accepted his email motion on February 9, 2021 on the receiver's objection to an in-person deposition. See **Exhibit C**. The court ruled that at 11:45 pm that same morning that depositions on the hearing for contempt would be via Zoom and rescheduled the evidentiary hearing from March 1, 2021 to April 5, 2021.

1 hearing.

2 I submit the above-titled declaration in support of NuVeda's motion. I have personal knowledge
3 of the facts contained therein unless otherwise qualified by information and belief or such knowledge is
4 based on the record in this case, and I am competent to testify thereto, and such facts are true and accurate
5 to the best of my knowledge and belief.

6 DATED this 11th day of February, 2021.

7
8 LAW OFFICE OF MITCHELL STIPP

9 /s/ *Mitchell Stipp*
10

11 _____
12 MITCHELL STIPP, ESQ.

13 Nevada Bar No. 7531

14 LAW OFFICE OF MITCHELL STIPP

15 1180 N. Town Center Drive, Suite 100

16 Las Vegas, Nevada 89144

17 Telephone: 702.602.1242

18 mstipp@stiplaw.com

19 Attorneys for NuVeda, LLC
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1
2 **MEMORANDUM OF POINTS AND AUTHORITIES**

3 As NuVeda understands it, the court is "considering" setting an evidentiary hearing on the issue
4 of rescission. Based on the minute order, the court would like Mr. Coppedge (who represents Shane
5 Terry), Brian Padgett/BCP 7 Holdings LLC, and the undersigned (who represents NuVeda) to devise
6 a discovery and evidentiary hearing schedule. Per the minute order, the court would like a joint status
7 report on the matter submitted to chambers by Friday, February 12, 2021.

8 The undersigned has discussed with Mr. Coppedge the controlling authority of Helfstein v.
9 Eighth Judicial Dist. Court (362 P.3d 91 (2015)), a copy of which is attached to this motion as **Exhibit**
10 **D.** The Nevada Supreme Court determined on almost identical circumstances that an evidentiary
11 hearing was in error. On the issue of rescission, the court is aware that "[a] party must rescind a contract
12 within a reasonable time, but what constitutes a reasonable time depends upon the facts of a particular
13 case and must be determined by *the trier of fact.*" Mackintosh v. California Federal Savings & Loan
14 Ass'n, 113 Nev. 393, 403 (Nev. 1997) (citing Wall v. Foster Petroleum Corp., 791 P.2d 1148, 1151
15 (Colo.Ct.App. 1989) (emphasis added). Under these circumstances, an evidentiary hearing cannot
16 resolve the issue of rescission. It is an issue for a jury.

17 Lastly, NuVeda was not served a copy of the motion referenced in the minute order as Exhibit
18 4 to Mr. Coppedge's declaration. The undersigned did review it after AAA denied the relief based on
19 a lack of jurisdiction (case was closed) when Mr. Coppedge filed it after the hearing. If AAA
20 determined there was not jurisdiction to decide the matter, it is perplexing how this court can consider
21 the matter. It does appear based on the minutes that the motion is expected to be the actual subject of
22 the proposed evidentiary hearing. Mr. Terry's motion was based on NRCP 60(b)(4) concerning void
23 judgments. Under NRCP 60(b)(4), "[f]or a judgment to be void, there must be a defect in the court's
24 authority to enter judgment through either lack of personal jurisdiction or jurisdiction over subject
25 matter in the suit." Gassett v. Snappy Car Rental, 111 Nev. 1416, 1419, 906 P.2d 258, 261 (1995),
26 superseded by rule on other grounds, NRCP 12(b), as stated in Fritz Hansen A/S v. Eighth Judicial
27 Dist. Court, 116 Nev. 650, 654-56, 6 P.3d 982, 984-85 (2000); see Landreth v. Malik, 127 Nev. 175,
28 179, 251 P.3d 163, 166 (2011) ("[I]f the district court lacks subject matter jurisdiction, the judgment is

1 rendered void."). Mr. Terry does not dispute that AAA had jurisdiction to enter the order dismissing
2 Mr. Terry's claims. AAA also had jurisdiction to deny the motion filed on an ex parte basis. There is
3 no jurisdiction by this court to reconsider the motion denied by AAA.
4

5 DATED this 11th day of February, 2021.

6 **LAW OFFICE OF MITCHELL STIPP**
7

8 /s/ Mitchell Stipp, Esq.

9 MITCHELL STIPP, ESQ.

10 Nevada Bar No. 7531

11 LAW OFFICE OF MITCHELL STIPP

12 1180 N. Town Center Drive, Suite 100

13 Las Vegas, Nevada 89144

14 Telephone: 702.602.1242

15 mstipp@stipplaw.com

16 *Attorneys for NuVeda, LLC*
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February 22, 2021

EXHIBIT A

NUVEDA'S APPENDIX 0393



Mitchell Stipp <mstipp@stipplaw.com>

Re: NuVeda/Shane Terry

1 message

Mitchell Stipp <mstipp@stipplaw.com>

Wed, Sep 2, 2020 at 6:11 PM

To: Joe Coppedge <jcoppedge@mccnvlaw.com>

I hope you feel better.

I just wanted you to know that AAA rules do not allow the matter to be re-opened and the decision to dismiss BCP 7 is final. If you want citation to the rules, please let me know. I expect AAA to advise you of the same.

There may be a solution here to allow Shane Terry to pursue his claims under my client's indemnification agreement. At least with that, he may have some chance at recovery.

Feel better and reach out when you are able.

On Mon, Aug 31, 2020 at 1:05 PM Joe Coppedge <jcoppedge@mccnvlaw.com> wrote:

I'll let you know as soon as I decide the next step. I was in a minor car accident last week, so it may a couple of days before I'm back full time.

Joe

From: Mitchell Stipp <mstipp@stipplaw.com>

Sent: Monday, August 31, 2020 1:01 PM

To: Joe Coppedge <jcoppedge@mccnvlaw.com>

Subject: NuVeda/Shane Terry

Please advise how you intend to move forward and set aside the judgment entered by Nikki Baker which dismissed the claims of Shane Terry in NuVeda. Any communications with Ms. Baker should include all parties.--



Mitchell Stipp

Law Office of Mitchell Stipp

(O) 702.602.1242 |

(M) 702.378.1907 |

mstipp@stiplaw.com

Address: 1180 N. Town Center Drive, Suite 100

Las Vegas, Nevada 89144

Website:

www.stiplaw.com



Mitchell Stipp

Law Office of Mitchell Stipp

(O) 702.602.1242 | (M) 702.378.1907 | mstipp@stiplaw.com

Address: 1180 N. Town Center Drive, Suite 100
Las Vegas, Nevada 89144

Website: www.stiplaw.com

EXHIBIT B

NUVEBA'S APPENDIX 0398

A-17-755479-B

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Other Business Court Matters

COURT MINUTES

January 29, 2021

A-17-755479-B Nuveda LLC, Plaintiff(s)
vs.
4Front Advisors LLC, Defendant(s)

**January 29, 2021 3:00 AM Plaintiff's Motion to Enter Order on Shane Terry's
Claims and Related Relief**

HEARD BY: Gonzalez, Elizabeth

COURTROOM: Chambers

COURT CLERK: Dulce Romea

PARTIES None. Minute order only – no hearing held.
PRESENT:

JOURNAL ENTRIES

- The Court, having reviewed Motion related to Shane Terry's claims and the related briefing and being fully informed, DENIES the motion WITHOUT PREJUDICE. The determination by AAA not to act with respect to Terry's request places this Court in the position of making a determination on the motion attached as Exhibit 4 to the supplemental declaration. Based upon the allegations that have been made the Court is considering setting an evidentiary hearing in the rescission issue raised in that motion. Counsel to consult and determine what discovery is necessary prior to commencement of such a hearing and the length anticipated for such hearing. Counsel for Terry is directed to submit a proposed order approved by opposing counsel consistent with the foregoing within ten (10) days and distribute a filed copy to all parties involved in this matter. Such order should set forth a synopsis of the supporting reasons proffered to the Court in briefing and argument. This Decision sets forth the Court's intended disposition on the subject but anticipates further order of the Court to make such disposition effective as an order

COURT FURTHER ORDERED, status check SET in 2 weeks for a joint status report from the parties on the evidentiary hearing.

CLERK'S NOTE: A copy of this minute order was distributed via Odyssey File and Serve. / dr 2-1-21

PRINT DATE: 02/01/2021

Page 1 of 1

Minutes Date: January 29, 2021

EXHIBIT C

NUVEDA'S APPENDIX 0400



Mitchell Stipp <mstipp@stiplaw.com>

Re: Case No. A-17-755479-B - Renewed Motion for Order to Show Cause

1 message

Mitchell Stipp <mstipp@stiplaw.com>

Mon, Feb 8, 2021 at 10:45 AM

To: "Kutinac, Daniel" <KutinacD@clarkcountycourts.us>

Cc: Joe Coppedge <jcoppedge@mccnvlaw.com>, "jsavage@nevadafirm.com" <jsavage@nevadafirm.com>, "Harris, Chricy LC" <dept11lc@clarkcountycourts.us>, "Romea, Dulce" <RomeaD@clarkcountycourts.us>, "Hawkins, Jill" <HawkinsJ@clarkcountycourts.us>

Good morning Dan--

I sent a response to Mr. Coppedge's email request. I can be available at 11:45pm today.

**Mitchell Stipp**

Law Office of Mitchell Stipp

(O) 702.602.1242 | (M) 702.378.1907 | mstipp@stiplaw.com

Address: 1180 N. Town Center Drive, Suite 100
Las Vegas, Nevada 89144**Website:** www.stiplaw.com

On Mon, Feb 8, 2021 at 10:37 AM Kutinac, Daniel <KutinacD@clarkcountycourts.us> wrote:

Will counsel be available for a Conference Call at 11:45a.m. today?

Thank You, Stay Safe & Healthy.

Dan Kutinac, JEA, Dept XI



From: Joe Coppedge [mailto:jcoppedge@mccnvlaw.com]
Sent: Monday, February 8, 2021 10:16 AM
To: Harris, Chricy LC; Kutinac, Daniel
Cc: Mitchell Stipp
Subject: Case No. A-17-755479-B - Renewed Motion for Order to Show Cause

[NOTICE: This message originated outside of Eighth Judicial District Court -- DO NOT CLICK on links or open attachments unless you are sure the content is safe.]

On February 4, counsel for Dr. Bady unilaterally noticed the deposition of the Receiver to take place on Tuesday, February 9 at 10:00 a.m. in person. Multiple parties, including the Receiver and the undersigned counsel have significant health concerns about appearing for a deposition in person and have requested that the 2 hour deposition take place via video. Dr. Bady has declined. Given the urgency of this matter, the undersigned respectfully requests a brief conference call with the court to resolve the manner and timing of the Receiver's deposition, as well as the date of the evidentiary hearing. Thank you in advance.

Joe

L. Joe Coppedge

Mushkin & Coppedge

6070 S. Eastern Ave., Suite 270

Las Vegas, Nevada 89119

Tel. No. (702) 454-3333

Dir. No. (702) 386-3942

Fax No. (702) 454-3333

CONFIDENTIALITY NOTICE: The information contained in this message may be protected by the attorney-client privilege. If you believe that it has been sent to you in error, do not read it. Please immediately reply to the sender that you have received the message in error. Then delete it. Thank you.

EXHIBIT D

NUVEBA'S APPENDIX 0403

Helfstein v. Eighth Judicial Dist. Court of State

362 P.3d 91 (Nev. 2015) · 131 Nev. Adv. Op. 91
Decided Dec 3, 2015

No. 65409.

12-03-2015

Lewis HELFSTEIN; Madalyn Helfstein; Summit Laser Products, Inc.; and Summit Technologies, LLC, Petitioners, v. The EIGHTH JUDICIAL DISTRICT COURT OF the State of Nevada, In and for the County of Clark; The Honorable Elissa F. Cadish, District Judge; and the Honorable Elizabeth Goff Gonzalez, District Judge, Respondents, and Ira and Edythe Seaver Family Trust; Ira Seaver; and Circle Consulting Corporation, Real Parties in Interest.

Foley & Oakes, PC, and J. Michael Oakes, Las Vegas, for Petitioners. Holley, Driggs, Walch, Fine, Wray, Puzey & Thompson and Jeffrey R. Albregts, Las Vegas, for Real Parties in Interest.

By the Court, CHERRY, J.

92 *92

Foley & Oakes, PC, and J. Michael Oakes, Las Vegas, for Petitioners.

Holley, Driggs, Walch, Fine, Wray, Puzey & Thompson and Jeffrey R. Albregts, Las Vegas, for Real Parties in Interest.

OPINION

By the Court, CHERRY, J.:

To resolve this original writ petition, petitioner asks us to consider whether NRCP 60(b) can be used to set aside a voluntary dismissal or a settlement agreement. While NRCP 60(b) imposes

a 6-month time limit, real parties in interest filed their NRCP 60(b) motion 40 months after filing the voluntary dismissal. Without reaching whether NRCP 60(b) may be used to set aside a voluntary dismissal or a settlement order, we hold that NRCP 60(b)'s 6-month limitation begins running 93 when the order, judgment, or *93 proceeding at issue is filed. Thus, even if NRCP 60(b) applies, the motion is time-barred. We therefore grant the petition.

FACTS AND PROCEDURAL HISTORY

Real parties in interest Ira Seaver, the Ira Seaver and Edythe Seaver Family Trust, and Circle Consulting Corporation (collectively, Seaver) filed a complaint in the district court against petitioners Lewis and Madalyn Helfstein; Summit Laser Products, Inc.; and Summit Technologies, LLC (collectively, the Helfsteins) and against Uninet Imaging, Inc., and Nestor Saporiti (collectively, Uninet). Seaver alleged contract and tort-based causes of action arising out of agreements between the Helfsteins and Seaver following Uninet's purchase of the Helfsteins' Summit companies. When Uninet purchased Summit, Uninet refused to be liable for the consulting agreement between the Helfsteins and Seaver. Seaver objected to the purchase agreement, but the Helfsteins proceeded with the sale.

Prior to answering the complaint, the Helfsteins settled with Seaver, and Seaver voluntarily dismissed their claims against the Helfsteins.¹ Fourteen months after voluntarily dismissing the Helfsteins from the suit, Seaver filed a notice of rescission. In the notice, Seaver alleged that the

Helfsteins fraudulently induced them to settle and that the Helfsteins failed to inform them of material facts or produce relevant documents, which the Helfsteins were obligated to produce pursuant to their fiduciary duties and discovery obligations.

¹ The voluntary dismissal stated that the action was dismissed pursuant to NRCP 41(a)(1)(ii). However, the dismissal is not a stipulation and should have stated that the action was dismissed pursuant to NRCP 41(a)(1)(i).

Without the Helfsteins as a party to the litigation,² Seaver and Uninet tried the claims between them at a bench trial, and the district court issued findings of fact and conclusions of law that resolved those claims. One year after the bench trial and 26 months after filing the notice of rescission, Seaver filed an NRCP 60(b) motion to set aside the settlement agreement, and, implicitly, the voluntary dismissal and sought to proceed on their claims against the Helfsteins. The Helfsteins opposed the motion claiming, *inter alia*, that the motion was procedurally improper. At the hearing on Seaver's motion, the district court ordered an evidentiary hearing and permitted discovery. The Helfsteins subsequently filed a motion to dismiss, arguing that the district court lacked jurisdiction over them and that the NRCP 60(b) motion was procedurally improper. The district court denied the motion. Finally, the Helfsteins moved to have Judge Gonzalez disqualified from the case, which the district court chief judge heard and denied. The Helfsteins then filed the instant petition. The district court stayed the evidentiary hearing pending this court's resolution of this writ petition.

² After the Helfsteins settled with Seaver, Uninet answered the complaint, filed a counterclaim, and filed a cross-claim against the Helfsteins. The Helfsteins moved to, *inter alia*, compel arbitration. That motion was ultimately granted, completely dismissing the Helfsteins from the underlying action. *Helfstein v. UI*

Supplies, Docket No. 56383, 2011 WL 1344239 (Order of Reversal and Remand, April 7, 2011) (reversing the district court's order denying the motion to compel arbitration and remanding the matter to the district court to enter an order compelling arbitration and dismissing Uninet's causes of action against the Helfsteins).

DISCUSSION

The Helfsteins' petition seeks the following relief: (1) that this court order the district court to deny as untimely Seaver's motion to set aside the settlement agreement and proceed on the original complaint; (2) that this court order the district court to grant their motion to dismiss Seaver's original complaint against them because the lower court does not have personal jurisdiction over them; and (3) if this court denies their requests for the preceding relief, that this court order the district court to grant their motion to disqualify Judge Gonzalez. The Helfsteins additionally argue that NRCP 60(b) cannot be used to set aside a voluntary dismissal or a settlement agreement.

Writ relief

“A writ of mandamus is available to compel the performance of an act that the *94 law requires ... or to control an arbitrary or capricious exercise of discretion.” *Int'l Game Tech., Inc. v. Second Judicial Dist. Court*, 124 Nev. 193, 197, 179 P.3d 556, 558 (2008); *see also* NRS 34.160; *Humphries v. Eighth Judicial Dist. Court*, — Nev. —, —, 312 P.3d 484, 486 (2013). A writ of prohibition may be warranted when a district court acts without or in excess of its jurisdiction. NRS 34.320; *Club Vista Fin. Servs. v. Eighth Judicial Dist. Court*, — Nev. —, —, 276 P.3d 246, 249 (2012); *see also* *Smith v. Eighth Judicial Dist. Court*, 107 Nev. 674, 677, 679, 818 P.2d 849, 851, 853 (1991).

Where there is no “plain, speedy, and adequate remedy in the ordinary course of law,” extraordinary relief may be available. NRS 34.170; NRS 34.330; *see Oxbow Constr., LLC v.*

Eighth Judicial Dist. Court, —Nev. —, —, 335 P.3d 1234, 1238 (2014). A petitioner bears the burden of demonstrating that the extraordinary remedy of mandamus or prohibition is warranted. *Pan v. Eighth Judicial Dist. Court*, 120 Nev. 222, 88 P.3d 840, 844 (2004). Determining whether to consider a petition for extraordinary relief is solely within this court's discretion. *Smith*, 107 Nev. at 677, 818 P.2d at 851.

This court has consistently held that an appeal is generally an adequate remedy precluding writ relief. *Pan*, 120 Nev. at 224, 88 P.3d at 841; see also *Bradford v. Eighth Judicial Dist. Court*, —Nev. —, —, 308 P.3d 122, 123 (2013). Because an appeal is ordinarily an adequate remedy, this court generally declines to consider writ petitions challenging interlocutory district court orders. *Oxbow Constr.*, —Nev. at —, 335 P.3d at 1238. But we may consider writ petitions when an important issue of law needs clarification and considerations of sound judicial economy are served. *Renown Reg'l Med. Ctr. v. Second Judicial Dist. Court*, —Nev. —, —, 335 P.3d 199, 202 (2014). We elect to consider this writ petition because consideration of the writ petition will serve judicial economy.

Standard of review

In the context of writ petitions, we review district court orders for an arbitrary or capricious abuse of discretion. *Int'l Game Tech.*, 124 Nev. at 197, 179 P.3d at 558. However, we review questions of law, such as the interpretation of and interplay between NRCP 41(a)(1) and 60(b), de novo, even in the context of writ petitions. *Moseley v. Eighth Judicial Dist. Court*, 124 Nev. 654, 662, 188 P.3d 1136, 1142 (2008).

NRCP 41(a)(1) and NRCP 60(b)

Seaver settled with the Helfsteins and filed a voluntary dismissal pursuant to NRCP 41(a)(1)(i). Nevertheless, more than three years after filing the voluntary dismissal, Seaver filed a motion to set aside the settlement agreement and voluntary

dismissal pursuant to NRCP 60(b). The district court did not grant the motion, but it ordered an evidentiary hearing to determine whether the Helfsteins fraudulently induced Seaver to settle.

NRCP 60(b) permits a court to set aside a final judgment, order, or proceeding in certain circumstances:

On motion and upon such terms as are just, the court may relieve a party or a party's legal representative from a final judgment, order, or proceeding for the following reason[]: ... (3) fraud (whether heretofore denominated intrinsic or extrinsic), misrepresentation or other misconduct of an adverse party.... *The motion shall be made within a reasonable time, ... not more than 6 months after the proceeding was taken or the date that written notice of entry of the judgment or order was served.*

(Emphasis added.) The primary “purpose of Rule 60(b) is to redress any injustices that may have resulted because of excusable neglect or the wrongs of an opposing party.” *Nev. Indus. Dev., Inc. v. Benedetti*, 103 Nev. 360, 364, 741 P.2d 802, 805 (1987). We have not previously considered whether a settlement agreement or an NRCP 41(a)(1) voluntary dismissal qualifies as a “final judgment, order, or proceeding” that may be set aside under NRCP 60(b). However, we need not reach this issue here.

- 95 *95 An NRCP 60(b) motion must be made “not more than 6 months after the proceeding was taken or the date that written notice of entry of the judgment or order was served.” This 6-month period begins to run from the date of the challenged proceeding or upon service of “written notice of entry” of the challenged judgment or order; nothing in NRCP 60(b) bases the 6-month time frame on a subsequent judgment, order or proceeding. See *Union Petrochemical Corp. of Nev. v. Scott*, 96 Nev. 337, 338–39, 609 P.2d 323, 323–24 (1980). We have also previously held that an NRCP 60(b) “motion must be made within a

reasonable time and that the six-month period represents the extreme limit of reasonableness.” *Stoecklein v. Johnson Elec., Inc.*, 109 Nev. 268, 272, 849 P.2d 305, 308 (1993). Accordingly, assuming that an NRCP 60(b) challenge may also be made to a settlement agreement, such a challenge is also time-barred here because it was made well after 6 months had elapsed.

In this matter, Seaver voluntarily dismissed the Helfsteins on November 23, 2009, and filed his NRCP 60(b) motion 40 months later, far beyond the 6-month time limit. Thus, if a voluntary dismissal is a final judgment, order, or proceeding from which a party may receive relief through NRCP 60(b), then the filing of the voluntary dismissal starts the 6-month clock. Because Seaver filed the motion more than three years after he voluntarily dismissed the Helfsteins from the

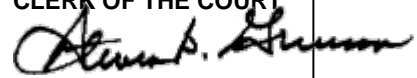
suit, we conclude that Seaver's NRCP 60(b) motion is time-barred and that the district court erred in scheduling an evidentiary hearing.

CONCLUSION

Accordingly, we grant the Helfsteins' writ petition.³ The clerk of this court shall issue a writ of prohibition instructing the district court to vacate its previous order regarding Seaver's NRCP 60(b) motion and enter a new order denying the motion.

³ In light of our decision, we decline to reach the remaining issues in the Helfsteins' petition.

We concur: PARRAGUIRRE, and DOUGLAS JJ.



MITCHELL D. STIPP, ESQ.
Nevada Bar No. 7531
LAW OFFICE OF MITCHELL STIPP
1180 N. Town Center Drive, Suite 100
Las Vegas, Nevada 89144
Telephone: 702.602.1242
mstipp@stipplaw.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; and CWNEVADA LLC, a Nevada
Limited Liability Company,

Plaintiffs,

v.

4FRONT ADVISORS LLC, foreign limited
liability company, DOES I through X and ROE
ENTITIES, II through XX, inclusive,

Defendants.

AND RELATED MATTERS.

Case: A-17-755479-B

Consolidated Cases:
A-19-791405-C, A-19-796300-B, and A-20-
817363-B

Dept. No.: 11

**REPLY TO OPPOSITION TO MOTION
FOR STAY ON ORDER SHORTENING
TIME**

Date of Hearing: February 22, 2021
Time of Hearing: 9:00 a.m.

NuVeda, LLC, a Nevada limited liability company ("NuVeda"), by and through counsel of
record, Mitchell Stipp, Esq., of the Law Office of Mitchell Stipp, hereby files the above-referenced
reply.

This filing is based on the papers and pleadings before the court, the memorandum of points
and authorities that follows, and the exhibits attached hereto or filed separately and incorporated herein
by this reference.¹

///

///

¹ Exhibits to this filing are Exhibits E-G (which follow the exhibits attached to NuVeda's motion).
NUVEDA'S APPENDIX 0409

1
2 DATED this 18th day of February, 2021.

3
4 **LAW OFFICE OF MITCHELL STIPP**

5
6 /s/ Mitchell Stipp, Esq.

7 MITCHELL STIPP, ESQ.

8 Nevada Bar No. 7531

9 LAW OFFICE OF MITCHELL STIPP

10 1180 N. Town Center Drive, Suite 100

11 Las Vegas, Nevada 89144

12 Telephone: 702.602.1242

13 mstipp@stipplaw.com

14 Attorneys for NuVeda, LLC

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28
MEMORANDUM OF POINTS AND AUTHORITIES

1. NuVeda has standing to challenge Mr. Terry's claims (including requests for rescission).²

Shane Terry's opposition argues that NuVeda does not have the right to challenge the merits of Mr. Terry's claim to rescind the transaction with BCP 7 Holdings, LLC, a Nevada limited liability company ("BCP 7"), and Brian Padgett. See Opposition filed on February 18, 2021, pg. 3 (lines 24-26). Mr. Terry seeks as part of his case a determination that he is the sole and only owner of the claims against and interest in NuVeda. See Complaint filed on June 30, 2020 in Case No. A-20-817363-B, paragraph 158 (specifically---item (ix) as part of paragraph 158). Despite Mr. Terry's arguments to the contrary, Mr. Terry cannot assert claims for unjust enrichment, an accounting, and violation of NRS 225.084, when he does not own the claims against or any interest in NuVeda. The claims are barred by Nevada's claims preclusion doctrine. See Five Star Capital Corp. v. Ruby, 124 Nev. 1048, 194 P.3d

² Mr. Terry filed a separate case (Case No. A-20-817363-B) and moved to consolidate it before Department 11 in the receivership action (Case No. A-17-755479-B). Now, Mr. Terry is complaining that interested parties (including parties named in his complaint) should not object to his causes of action and remedies. Mr. Terry fully expected that he could file his complaint, consolidate the matter, and this court would simply rubber stamp the requested relief.

709 (2008) (modified by Weddell v. Sharp, 350 P.3d 80 (Nev. 2015)). Further, the receiver for CWNevada, LLC (“Receiver” and “CWNevada,” respectfully) cannot rely on allegations by Mr. Terry to support CWNevada’s causes of action.³

2. The Court can grant dismissal/summary judgment on claims asserted by Mr. Terry against NuVeda and its affiliates in the complaint regardless if Mr. Terry no longer wants an evidentiary hearing on rescission.

Mr. Terry concedes in his opposition that he does not want an evidentiary hearing on the issue of rescission. See Opposition, filed on February 18, 2021 (page 7, lines 14-26). Mr. Terry further concedes there are issues of fact which cannot be resolved at an evidentiary hearing. Id. As pointed out by Mr. Terry in his filings, there are two (2) separate issues: (1) rescission of the deal with BCP 7 Holdings and Mr. Padgett; and (2) setting aside the order by the American Arbitration Association (“AAA”) dismissing all claims by Mr. Terry. To re-confirm, NuVeda agrees with this assessment. However, even if Mr. Terry gets rescission after a trial, the order dismissing his claims cannot be set aside under NRCP 60(b)(4) (void judgments).⁴ If the court granted NuVeda’s request for dismissal/summary judgment, Mr. Terry could still proceed with his claims against BCP 7 Holdings and Mr. Padgett. However, Mr. Terry’s claims against NuVeda and its affiliates are res judicata, and the facts/allegations in support of those claims which the Receiver adopts in support of CWNevada’s claims are also barred. Mr. Terry should not get to have his cake and eat it too. Despite the gift of a potential evidentiary hearing, Mr. Terry rejects it and requests that he be permitted to move forward regardless if his claims have merit. The reality is Mr. Terry does not want discovery (including over the money he received from CWNevada).

Mr. Terry briefs the law on rescission in his opposition. See Opposition, filed on February 18, 2021, pgs. 9-10. However, he ignores a critical point: “A party must rescind a contract within

³ Mr. Terry’s argument about NuVeda’s standing to oppose rescission is beyond the pale. This court denied NuVeda’s request for summary judgment/dismissal of claims by Phil Ivey solely on the basis of Mr. Terry’s declaration. See Order attached hereto as **Exhibit E** and Declaration of Mr. Terry included in Opposition filed on July 31, 2020 as **Exhibit 1** (reattached hereto as **Exhibit F**). Mr. Ivey did not submit a declaration or affidavit, and the court relied entirely on Mr. Terry’s statement of Mr. Ivey’s personal knowledge, which violates NRCP 56(c)(4).

⁴ A final judgment is void when a “defect [exists] in the court’s authority to enter judgment through either lack of personal jurisdiction or jurisdiction over the subject matter in the suit.” See Gassett v. Snappy Car Rental, 111 Nev. 1416, 1419, 906 P.2d 258, 261 (1995), superseded by rule on other grounds as stated in Fritz Hansen A/S v. Eighth Judicial Dist. Court, 116 Nev. 650, 656, 6 P.3d 982, 985 (2000). A transaction agreement which is rescinded is not a “void judgment.”

a reasonable time[.]" Mackintosh v. California Federal Savings & Loan Ass'n, 113 Nev. 393, 403 (Nev. 1997) (citing Wall v. Foster Petroleum Corp., 791 P.2d 1148, 1151 (Colo.Ct.App. 1989). A jury could conceivably determine that Mr. Terry's timing was not reasonable.⁵ In fact, it was likely opportunistic. There is no assurance that Mr. Terry will have almost \$800k to return to BCP 7 Holdings (or Mr. Padget or CWNevada) if the deal is rescinded. In any event, NuVeda does not care as long as the court decides the order dismissing Mr. Terry's claims cannot be set aside (even if the deal is rescinded). If the court is unwilling to make that decision in accordance with Nevada law, NuVeda requests a stay of the proceedings related to Mr. Terry's claims so it can file a petition for a writ. NuVeda should not have to wait for Mr. Terry to "attempt to litigate" rescission (because the issues are separate and distinct). Mr. Terry and the Receiver are working on a joint venture which is expected to include a request for control over the licenses subject to the joint venture with NuVeda and CWNevada. For them, it is easier to file motions rather than litigate the merits.⁶

Setting aside the legal arguments, this court provided Mr. Terry a stay for 90 days to seek relief from the AAA. As a matter of fairness, NuVeda hopes that the court will provide the same courtesy to NuVeda.

3. BCP 7 Holdings needs to be in the case and served with sufficient time to answer/respond and participate in any evidentiary hearing.

NuVeda raised the issue that BCP 7 Holdings has not been properly sued by Mr. Terry. The case filed by Mr. Terry asserts causes of action against BCP 7, LLC, a Nevada limited liability company ("BCP 7"). See Complaint filed on June 30, 2020 (Case No. A-20-817363-B). Mr. Terry now admits that the party actually sued may not be correct. Attached is Mr. Padgett's letter to Erika Turner, who represented Mr. Terry, confirming the party to the transaction is in fact BCP 7 Holdings (not BCP 7, LLC). See Exhibit G. Mr. Terry would need to seek leave of court to amend his complaint and re-

⁵ Between May 2, 2018 and May 15, 2019, Mr. Terry collected \$757,757.00 through CWNevada before he sought to rescind the transaction on June 30, 2020—more than two (2) years after the transaction was consummated and one (1) year after there was an uncured default. Effectively, Mr. Terry bled Mr. Padgett dry over 12 months and waited an additional 12 months to seek rescission.

⁶ None of the defendants in Case No. A-20-817363-B have answered the complaint (which would include the assertion of counterclaims and third-party claims). The Receiver asked for permission to amend the complaint, which was granted except with respect to Mr. Terry. The Receiver has not amended the complaint and has provided NuVeda and its affiliates an open extension of time.

1 serve all parties (including Mr. Padgett).

2
3 **4. NRAP 8(a)(1) Requires NuVeda to seek a stay before this Court before asking the**
4 **Nevada Supreme Court for the same relief.**

5 NRAP 8(a)(1)(A) provides as follows: A party must ordinarily move first in the district court for the
6 following relief:

7 (A) a stay of the judgment or order of, or proceedings in, a district court
8 pending appeal or resolution of a petition to the Supreme Court or Court of Appeals
9 for an extraordinary writ[.]

10 NuVeda has asked for a stay so that the court's decision denying its request for dismissal/summary
11 judgment can be considered by the Nevada Supreme Court. Even if the evidentiary hearing is not
12 scheduled, NuVeda intends to pursue a writ petition (because the motion should have been granted).

13 **5. 5-Year Rule would require the dismissal of Shane Terry's claims with prejudice even**
14 **if the rescission could occur and the order dismissing the claims by BCP 7 Holdings,**
15 **LLC could be set aside.**

16 Mr. Terry filed a lawsuit more than five (5) years ago in Case A-15-728510-B. The parties
17 demanded the case be submitted to binding arbitration before AAA. Department 11 still presides over
18 that case. Mr. Terry may not like the result. However, he does not get to restart the clock on his claims
19 for purposes of NRCP 41(e)(2)(B) by filing a new complaint. So, even if the deal is rescinded and the
20 court sets aside the order, dismissal is still mandatory.⁷

21 ///

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28 ⁷ It is still unclear why Mr. Terry was permitted to file a separate action and consolidate it with the receivership action
when his claims were litigated in Case A-15-728510-B.

1
2 DATED this 18th day of February, 2021.

3 **LAW OFFICE OF MITCHELL STIPP**

4
5 /s/ Mitchell Stipp, Esq.

6 MITCHELL STIPP, ESQ.

7 Nevada Bar No. 7531

8 LAW OFFICE OF MITCHELL STIPP

9 1180 N. Town Center Drive, Suite 100

10 Las Vegas, Nevada 89144

11 Telephone: 702.602.1242

12 mstipp@stipplaw.com

13 *Attorneys for NuVeda, LLC*

EXHIBIT E

NUVEDA'S APPENDIX 0415

1 Michael R. Mushkin, Esq.
2 Nevada Bar No. 2421
3 L. Joe Coppedge
4 Nevada Bar No. 4954
5 MUSHKIN & COPPEDGE
6 6070 S. Eastern Avenue, Suite 270
7 Las Vegas, Nevada 89128
8 Telephone: (702) 454-3333
9 Fax: (702) 386-4979
10 michael@mushlaw.com
11 jcoppedge@mccnvlaw.com
12 *Attorneys for Plaintiffs*

13 **DISTRICT COURT**

14 **CLARK COUNTY, NEVADA**

15 NUVEDA, LLC, a Nevada Limited Liability
16 Company; and CWNEVADA LLC, a Nevada
17 Limited Liability Company,

18 Plaintiffs,

19 v.

20 4FRONT ADVISORS LLC, foreign limited
21 liability company, DOES I through X and
22 ROE ENTITIES, II through XX, inclusive,

23 Defendants.

24 AND RELATED MATTERS

Case No.: A-17-755479-B

Consolidated With: A-19-791405-C,
A-19-796300-B, and A-20-817363-B

Dept. No.: 11

25 **ORDER DENYING MOTION TO DISMISS OR FOR SUMMARY JUDGMENT ON**
26 **CAUSES OF ACTION ASSERTED BY PHIL IVEY**

27 The matter arising from motion to dismiss or for summary judgment filed by NuVeda,
28 LLC, a Nevada limited liability company ("NuVeda"), on causes of action asserted by Phil Ivey,
came before the Honorable Elizabeth Gonzalez on August 10, 2020. Pursuant to Administrative
Order 20-01, the Court decided this matter without the necessity of oral argument. The Court,
having reviewed and considered the record, the points and authorities on file, makes its factual
findings, legal conclusions, and enters its Order as follows:

1 **I. Findings of Fact**

2 1. Phil Ivey (“Mr. Ivey”) claims a three percent (3%) interest in NuVeda and that this
3 interest was transferred to Nye Natural Medical Solutions, LLC (“Nye Natural”) and Clark
4 Natural Medicinal Solutions, LLC (“Clark Natural”) on or about June 1, 2015.

5 2. Mr. Ivey claims that he learned that he was not an owner of Nye Natural or Clark
6 Natural after January 2019.

7 3. NuVeda disputes whether Mr. Ivey had an interest in NuVeda, Nye Natural and
8 Clark Natural and whether it is reasonable that Mr. Ivey was unaware that he was not an owner
9 of Nye Natural or Clark Natural until after January 2019.

10 **II. Conclusions of Law**

11 Based on the foregoing Findings of Fact, the Court concludes as follows:

12 1. “The appropriate standard for a motion to dismiss based on a failure to state a
13 claim is ‘beyond a doubt’ and not ‘beyond a reasonable doubt.’” *Buzz Stew, LLC v. City of N. Las*
14 *Vegas*, 124 Nev. 224, 228 n.6, 181 P.3d 670, 672 n.6 (2008).

15 2. The date on which a statute of limitations accrues is normally a question of fact.
16 *Winn v. Sunrise Hosp. & Med. Ctr.*, 128 Nev. 246, 251-54, 277 P.3d at 458, 462-63 (Nev. 2012).

17 3. For statute of limitations purposes, the general rule is that a cause of action accrues
18 when the wrong occurs and a party sustains injuries for which relief could be sought. *Peterson v.*
19 *Bruen*, 106 Nev. 271, 274, 792 P.2d 18, 20 (1990). However, the Nevada Supreme Court has
20 provided an exception to the general rule, referred to as the discovery rule, under which “the
21 statutory period of limitations is tolled until the injured party discovers or reasonably should have
22 discovered facts supporting a cause of action.” *Id.*

23 4. Whether it is reasonable that Mr. Ivey did not discover he was not an owner of
24 Nye Natural or Clark Natural until after January 2019 is not suitable for determination at this
25 stage on a motion to dismiss or summary judgment since discovery has not commenced.

26 **III. Order**

27 The Court having made its Findings of Fact and Conclusions of Law and good cause
28 appearing,

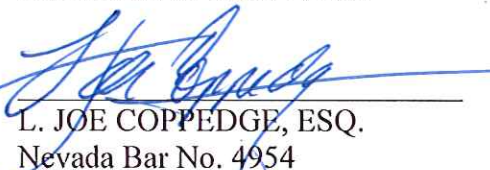
1 IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the above-referenced
2 motions are denied without prejudice.
3

4 DATED this 25th day of August, 2020.

5
6 
DISTRICT COURT JUDGE

8 Respectfully Submitted:
9 MUSHKIN & COPPEDGE

Approved as to Form and Content:
LAW OFFICE OF MITCHELL STIPP

10 
11 L. JOE COPPEDGE, ESQ.
12 Nevada Bar No. 4954
13 6070 South Eastern Ave Ste 270
Las Vegas, NV 89119

/s/Mitchell D. Stipp
MITCHELL D. STIPP, ESQ.
Nevada Bar No. 7531
1180 N. Town Center Drive, Suite 100
Las Vegas, Nevada 89144

14 *Attorneys for Dotan Y. Melech, Receiver,*
15 *Shane Terry, and Phillip D. Ivey*

Attorneys for NuVeda, LLC

EXHIBIT F

NUVEDA'S APPENDIX 0419

1 Michael R. Mushkin, Esq.
2 Nevada Bar No. 2421
3 L. Joe Coppedge
4 Nevada Bar No. 4954
5 MUSHKIN & COPPEDGE
6 6070 S. Eastern Avenue, Suite 270
7 Las Vegas, Nevada 89128
8 Telephone: (702) 454-3333
9 Fax: (702) 386-4979
10 michael@mushlaw.com
11 jcoppedge@mccnvlaw.com
12 *Attorneys for Plaintiffs*

13 **DISTRICT COURT**
14 **CLARK COUNTY, NEVADA**

15 NUVEDA, LLC, a Nevada Limited Liability
16 Company; and CWNEVADA LLC, a Nevada
17 Limited Liability Company,

18 Plaintiffs,

19 v.

20 4FRONT ADVISORS LLC, foreign limited
21 liability company, DOES I through X and ROE
22 ENTITIES, II through XX, inclusive,

23 Defendants.

24 **AND RELATED MATTERS**

Case No.: A-17-755479-B

Consolidated With: A-19-791405-C,
A-19-796300-B, and A-20-817363-B

Dept. No.: 11

25 **DECLARATION OF SHANE M. TERRY IN SUPPORT OF OPPOSITION TO**
26 **MOTION TO DISMISS CAUSES OF ACTION ASSERTED BY PHIL IVEY**

27 SHANE M. TERRY, under penalty of perjury, states as follows:

28 1. I have personal knowledge of the facts stated herein, except for those facts stated
to be based upon information and belief. If called to do so, I would truthfully and competently
testify to the facts stated herein, except those facts stated to be based upon information and belief.

2. I make this Declaration in support of Plaintiffs' Opposition to Motion to Dismiss
Causes of Action Asserted by Phil Ivey (the "Opposition").

3. On or about July 9, 2014, I entered into an Operating Agreement for NuVeda, LLC

1 (the "NuVeda Operating Agreement") with Pejman Bady ("Bady"), Pouya Mohajer ("Mohajer")
2 and Jennifer Goldstein ("Goldstein") to apply for and operate marijuana dispensaries, cultivation
3 and processing facilities for marijuana pursuant to licenses obtained from certain governmental
4 divisions.

5 4. The NuVeda Operating Agreement was also signed by Joseph Kennedy, John
6 Penders and Ryan Winmill.

7 5. I understand and believe that since July 2014, NuVeda has been governed by the
8 NuVeda Operating Agreement.

9 6. The NuVeda Operating Agreement is governed by, construed and interpreted in
10 accordance with Nevada law.

11 7. Since NuVeda's formation, I have been a Manager, Voting Member and at times,
12 NuVeda's Chief Executive Officer and Chief Operations Officer.

13 8. On or about August 17, 2014, Phillip Ivey entered into a letter agreement (the
14 "Ivey Letter Agreement") and accompanying Letter of Commitment whereby, in exchange for
15 providing necessary financial statements to strengthen NuVeda's application and extending
16 NuVeda a \$1.9 million line of credit (the "Ivey Credit Line"), Ivey was immediately granted a
17 three percent (3%) wholly vested share of NuVeda. A true and correct copy of the Ivey Letter
18 Agreement and Letter of Commitment is attached to the Opposition as Exhibit 2.

19 9. The Letter of Commitment is dated August 17, 2014.

20 10. Ivey's significant business experience and financial resources not only provided
21 a solution in support of NuVeda's business strategy, but also provided critical proof of financial
22 viability in support of NuVeda's competitive application, including the amount of taxes paid.

23 11. The points won by NuVeda in the tax section alone were awarded with Ivey
24 individually contributing nearly 30% of the total score.

25 12. Ivey was listed and approved as an owner by the State of Nevada on all six (6) of
26 NuVeda's licenses.

27 13. In addition, Mr. Ivey was listed as having a three percent (3%) ownership interest
28 in the 2014 Schedule K-1 provided to him by NuVeda. A true and correct copy of Mr. Ivey's

1 redacted Schedule K-1 is attached to the Opposition as Exhibit 3.

2 14. On or about June 1, 2015, Mr. Ivey's three percent (3%) interest in NuVeda was
3 transferred to two of its subsidiaries, Nye Natural and Clark Natural. A true and correct copy of
4 the letter to the Dept. of Public and Behavioral Health – Medical Marijuana Program (the
5 "Department") is attached hereto as Exhibit 4.

6 15. The reason for the transfer is that the City of Las Vegas did not allow any changes
7 to the ownership structure that differ from the owners listed in the application filed with the City
8 of Las Vegas.

9 16. To accommodate the City of Las Vegas' directives, NuVeda transferred Mr. Ivey's
10 ownership interest in NuVeda, the parent company, to its two (2) subsidiaries that are outside the
11 City of Las Vegas, Nye Natural and Clark Natural.

12 17. Mr. Ivey approved and signed the Transfers of Interest. Executed copies are not
13 presently available, but should be available from the Department. See Exhibit 4.

14 18. The transfer of Mr. Ivey's ownership interest in NuVeda to Nye Natural and Clark
15 Natural is further confirmed in written electronic correspondence between myself, Bady and
16 Mohajer dated August 10-11, 2015, a true and correct copy of which is attached to the Opposition
17 as Exhibit 5.

18 19. As a result of the transfer, Ivey owns a three percent (3%) ownership interest in
19 Nye Natural and Clark Natural.

20 20. Ivey has not sold, conveyed or otherwise transferred his ownership interest in Nye
21 Natural or Clark Natural.

22 21. During the month of December 2015, NuVeda's annual license renewal paperwork
23 was due to the State of Nevada.

24 22. During this time, I was the designated and registered point of contact with the State
25 of Nevada for all regulatory correspondence.

26 23. After I submitted the renewal application representing NuVeda's then current
27 ownership structure, Bady falsely submitted documentation to the State of Nevada that removed
28 Ivey's license interest and redistributed it to himself and Mohajer.

24. During this time, NuVeda also removed me as the State of Nevada's designated point of contact and refused to provide me with access to any records.

25. Until Senate Bill 32 was passed in late 2018, which allowed the State to publicly disclose ownership information, there was no public access to view ownership records.

26. Further, the State of Nevada would not communicate with anyone other than Mr. Bady as I had been removed as the designated point of contact.

27. Although I may have had earlier suspicions of the removal of Mr. Ivey as an owner of Nye Natural and Clark Natural, I could not officially confirm from State records Mr. Ivey's removal as an owner of Nye Natural and Clark Natural until in or about January of 2019.

28. I informed Mr. Ivey of the State's public records release and confirmed his removal as an owner of Nye Natural and Clark Natural after January 2019.

29. NuVeda, Bady and Mohajer have claimed Ivey is no longer a member, although Ivey did not consent or execute any of the required transfer of ownership paperwork to release his license interest.

I declare under penalty of perjury under that the foregoing is true and correct.

DATED this 31 day of July, 2020

Shane Terry
SHANE M. TERRY

EXHIBIT G

May 17, 2018

Erika Turner, Esq.
Garman Turner Gordon
650 White Dr #100,
Las Vegas, NV 89119

Via Electronic Mail eturner@gtg.legal

RE: ***Purchase and Sale Agreement for Shane Terry's Ownership Interest in NuVeda and NuVeda-Managed Licenses ("PSA")***

Dear Ms. Turner,

This confirms that the PSA as entered into and between Shane Terry and BCP 7, LLC on or about April 30, 2018, was intended to be entered into on behalf of BCP Holding 7, LLC (instead of simply "BCP 7, LLC"). It was an inadvertent error to the PSA and I apologize for any confusion. The PSA and Assignment pursuant thereto are hereby ratified on behalf of BCP Holding 7, LLC.

Please contact me with any questions or any further clarification you may need.

Respectfully,

/s/ Brian C. Padgett
BCP Holding 7, LLC

A-17-755479-B Nuveda LLC, Plaintiff(s)
vs.
4Front Advisors LLC, Defendant(s)

February 22, 2021 09:00 AM All Pending Motions

HEARD BY: Gonzalez, Elizabeth COURTROOM: RJC Courtroom 03E

COURT CLERK: Romea, Dulce

RECORDER: Hawkins, Jill

REPORTER:

PARTIES PRESENT:

Charlene Renwick

Attorney for Intervenor

John J. Savage

Attorney for Receiver

Mitchell D. Stipp

Attorney for Plaintiff, Third Party Plaintiff

William R. Urga

Attorney for Intervenor

JOURNAL ENTRIES

APPEARANCES CONTINUED: Attorney Theodore Parker for Nevada Wellness Center; Attorney Diane Welch for Jorge Pupo in A-19-787004-B; Attorney Joe Coppedge for Phillip Ivey and Shane Terry.

All parties appeared by telephone.

NEVADA WELLNESS CENTER, LLC'S MOTION TO SPECIALLY APPEAR AND TO LIFT STAY TO ALLOW DEPOSITION OF DOTAN Y. MELECH REGARDING VALUE OF RECREATIONAL MARIJUANA DISPENSARY LICENSE: Following arguments by Mr. Parker and Ms. Welch, COURT ORDERED, motion GRANTED on the conditions set forth by the Receiver on page 3 of the limited opposition at lines 10 to 20; if Ms. Welch needs to supplement expert rebuttal report the Court will not be averse to that. Mr. Parker to prepare the order.

RECEIVER'S FIRST MOTION TO APPROVE DISTRIBUTION OF LIQUIDATION PROCEEDS ON ORDER SHORTENING TIME...JOINDER IN RECEIVER'S FIRST MOTION TO APPROVE DISTRIBUTION OF LIQUIDATION PROCEEDS ON ORDER SHORTENING TIME: Arguments by Ms. Renwick and Mr. Savage regarding taxes. COURT ORDERED, motion GRANTED.

MOTION FOR STAY ON ORDER SHORTENING TIME: Arguments by Mr. Stipp and Mr. Coppedge. COURT ORDERED, motion DENIED WITHOUT PREJUDICE because there are factual issues; portion of minute order dated January 29, 2021 which indicates the Court will consider a hearing will be deleted; the Court will NOT be setting an evidentiary hearing.

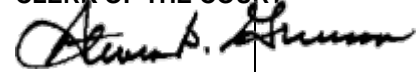
STATUS CHECK: JOINT STATUS REPORT ON EVIDENTIARY HEARING: Mr. Savage advised the Receiver's deposition did go forward; there has been an agreement to continue Dr. Bady's deposition until after his procedure. COURT DIRECTED the parties to PROVIDE a report this Friday (February 26, 2021) as to when they would like to do the hearing currently

penciled for April 5, 2021.

EX PARTE APPLICATION FOR TEMPORARY RESTRAINING ORDER, MOTION FOR PRELIMINARY INJUNCTION, AND REQUEST FOR ORDER SHORTENING TIME ON HEARING FOR PRELIMINARY INJUNCTION [RESCHEDULED FROM SUB CASE]: OFF CALENDAR as MOOT.

3-1-21 9:00 AM SUCCESSFUL BIDDER FORTRESS EQUITIES, LLC'S
MOTION TO ALLOW ASSIGNMENT OF PURCHASE AND SALE AGREEMENT ON ORDER
SHORTENING TIME

4-5-21 1:00 PM SHOW CAUSE HEARING



SCHTO

**DISTRICT COURT
CLARK COUNTY, NEVADA**

NUVEDA, LLC, ET AL,

Plaintiff,

vs

4FRONT ADVISORS, LLC, ET AL,

Defendant(s),

AND ALL CONSOLIDATED MATTERS.

Case No. 17 A 755479 B

Consolidated With:

19 A 791405 C

19 A 796300 B

20 A 817363 B

Dept. No. XI

Date of Hearing: 04/05/21

Time of Hearing: 9:00a.m.

BUSINESS COURT SCHEDULING ORDER
and ORDER SETTING CIVIL JURY TRIAL,
CALENDAR CALL and PRE-TRIAL CONFERENCE for Case A-20-817363-B

This **BUSINESS COURT SCHEDULING ORDER AND TRIAL SETTING ORDER** applies to Case Number A-20-817363-B Only and is entered following the Mandatory Rule 16 Conference conducted on 10/26/20. Pursuant to NRCP 16.1(f) this case has been deemed complex and all discovery disputes will be resolved by this Court. The filing of the JCCR has been waived. This Order may be amended or modified by the Court upon good cause shown.

IT IS HEREBY ORDERED that the parties will comply with the following deadlines:

Motions to Amend Pleadings or Add Parties to be filed by **08/06/21**

Initial Experts Disclosures **09/17/21**

Rebuttal Experts Disclosures **10/22/21**

Discovery Cut Off **12/03/21**

Dispositive Motions and Motions in Limine are to be filed by **01/07/22**
Omnibus Motions in Limine are not allowed

IT IS HEREBY FURTHER ORDERED THAT:

A. The above entitled case is set to be tried to a jury on a **Five week stack** to begin,

March 14, 2022 at 1:30p.m.

1 B. A calendar call will be held on **March 8, 2022 at 9:30a.m.** Parties must bring
2 to Calendar Call the following:

- 3 (1) Typed exhibit lists;
4 (2) List of depositions;
5 (3) List of equipment needed for trial, including audiovisual equipment;¹ and
6 (4) Courtesy copies of any legal briefs on trial issues.
7

8 The Final Pretrial Conference will be set at the time of the Calendar Call.

9 C. A Pre-Trial Conference with the designated attorney and/or parties in proper person
10 will be held on **February 17, 2022 at 9:15a.m.**
11

12 D. Parties are to appear on **December 6, 2021 at 9:00a.m.,** for a Status Check on
13 the matter.

14 E. The Pre-Trial Memorandum must be filed no later than **February 11, 2022,** with
15 a courtesy copy delivered to Department XI. All parties, (Attorneys and parties in proper person)
16 **MUST** comply with **All REQUIREMENTS** of E.D.C.R. 2.67, 2.68 and 2.69. Counsel should include
17 the Memorandum an identification of orders on all motions in limine or motions for partial summary
18 judgment previously made, a summary of any anticipated legal issues remaining, a brief summary of
19 the opinions to be offered by any witness to be called to offer opinion testimony as well as any
20 objections to the opinion testimony.
21

22 F. All motions in limine, **Omnibus Motions in Limine are not allowed,**
23 must be in writing and filed no later than **January 7, 2022. Orders shortening time will**
24 **not be signed except in extreme emergencies.**
25

26 G. No documents may be submitted to the Court under seal based solely upon the
27 existence of a protective order.
28

¹ If counsel anticipate the need for audio visual equipment during the trial, a request must be submitted to the District Courts AV department following the calendar call. You can reach the AV Dept at 671-3300 or via E-Mail at CourtHelpDesk@clarkcountycourts.us

1 Any sealing or redaction of information must be done by motion.

2 All motions to seal and/or redact and the potentially protected information must be filed at the
3 clerk's office front counter during regular business hours 9 am to 4 pm.

4 In accordance with, Administrative Order 19-03, the motion to seal must contain the language
5 "Hearing Requested" on the front page of the motion under the Department number.

6 Pursuant to SRCR Rule 3(5)(b), redaction is preferred and sealing will be permitted only under
7 the most unusual of circumstances.

8 If a motion to seal and/or redact is filed with the potentially protected information, the proposed
9 redacted version of the document with a slip-sheet for any exhibit entitled "Exhibit ** Confidential
10 Filed Under Seal" must be attached as an Exhibit.

11 The potentially protected information in unredacted and unsealed form must be filed at the
12 same time and a hearing on the motion to seal set. While the motion to seal is pending, the potentially
13 protected information will not be accessible to the public.

14 If the motion to seal is noncompliant, the motion to seal may be stricken and the potentially
15 protected information unsealed.

16 H. All original depositions anticipated to be used in any manner during the trial must be
17 delivered to the clerk prior to the final Pre-Trial Conference. If deposition testimony is anticipated to
18 be used in lieu of live testimony, a designation (by page/line citation) of the portions of the testimony to
19 be offered must be filed and served by facsimile or hand, two (2) judicial days prior to the final Pre-
20 Trial Conference. Any objections or counterdesignations (by page/line citation) of testimony must be
21 filed and served by facsimile or hand, one (1) judicial day prior to the final Pre-Trial Conference
22 commencement. Counsel shall advise the clerk prior to publication.

24 I. In accordance with EDCR 2.67, counsel shall meet, review, and discuss exhibits. All
25 exhibits must comply with EDCR 2.27. Two (2) sets must be three hole punched placed in three ring
26 binders along with the exhibit list. The sets must be delivered to the clerk prior to the final Pre-Trial
27 Conference. Any demonstrative exhibits including exemplars anticipated to be used must be disclosed
28 prior to the calendar call. Pursuant to EDCR 2.68, at the final Pre-Trial Conference, counsel shall be
prepared to stipulate or make specific objections to individual proposed exhibits. Unless otherwise

1 agreed to by the parties, demonstrative exhibits are marked for identification but not admitted into
2 evidence.

3 J. In accordance with EDCR 2.67, counsel shall meet, review, and discuss items to be
4 included in the Jury Notebook. Pursuant to EDCR 2.68, at the final Pre-Trial Conference, counsel shall
5 be prepared to stipulate or make specific objections to items to be included in the Jury Notebook.

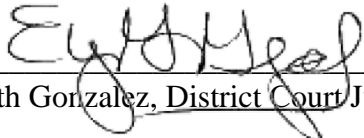
6 K. In accordance with EDCR 2.67, counsel shall meet and discuss pre-instructions to the
7 jury, jury instructions, special interrogatories, if requested, and verdict forms. Each side shall provide
8 the Court, at the final Pre-Trial Conference, an agreed set of jury instructions and proposed form of
9 verdict along with any additional proposed jury instructions with an electronic copy in Word format.

10 L. In accordance with EDCR 7.70, counsel shall file and serve by facsimile or hand, two
11 (2) judicial days prior to the final Pre-Trial Conference voir dire proposed to be conducted pursuant to
12 conducted pursuant to EDCR 2.68.

13
14 **Failure of the designated trial attorney or any party appearing in proper person to appear**
15 **for any court appearances or to comply with this Order shall result in any of the following: (1)**
16 **dismissal of the action (2) default judgment; (3) monetary sanctions; (4) vacation of trial date;**
17 **and/or any other appropriate remedy or sanction.**

18
19 Counsel is required to advise the Court immediately when the case settles or is otherwise
20 resolved prior to trial. A stipulation which terminates a case by dismissal shall also indicate whether a
21 Scheduling Order has been filed and, if a trial date has been set, the date of that trial. A copy should be
22 given to Chambers.

23 DATED this 7th day of April, 2021.

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27 Elizabeth Gonzalez, District Court Judge
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/s/ Dan Kutinac
Dan Kutinac, JEA