

IN THE SUPREME COURT OF THE STATE OF NEVADA

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, PHIL IVEY, AND
DOTAN Y. MELECH, receiver for
CWNEVADA, LLC, a Nevada limited
liability company,

Real Parties in Interest.

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Elizabeth A. Brown
Clerk of Supreme Court

Supreme Court No. 82767
District Court Case No. 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

**OPPOSITION TO EMERGENCY MOTION TO STAY CASE BY SHANE
TERRY IN THE DISTRICT COURT UNDER NRAP 8(a) AND 27(e)**

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MEMORANDUM OF POINTS AND AUTHORITIES

I. Introduction

Defendant, NuVeda, LLC (“NuVeda”) and its unnamed affiliates, seek the overbroad and far-reaching relief of staying the entire case involving claims asserted by Plaintiff, Shane Terry (“Terry”) in the case below pending a resolution of NuVeda’s writ regarding Terry’s claims. Apparently, this emergency motion was prompted by the filing of Plaintiffs Motion to Amend Complaint. NuVeda, as is often the case, omits relevant facts. First, the Business Court Scheduling Order entered in the case below imposed a deadline to file motions to amend and/or add parties.¹ That deadline was August 6, 2021, the day that Plaintiffs filed their motion to amend. Plaintiffs were required to file their motion to amend by that date or risk being prevented from amending their complaint. Further, NuVeda ignores the fact that several of the claims asserted by Terry do not involve NuVeda, or its unnamed affiliates at all. There is no valid reason to delay these proceedings and impose a stay regarding Terry’s claims.

II. Statement of Case

On June 13, 2019, Dotan Y. Melech (the “Receiver”) was appointed receiver over CWNevada, LLC (“CWNevada”) in case number A-18-773230-B, *Cima Group LLC v. CWNevada* (the “Cima Case”) pursuant to the Order Appointing Temporary Receiver and Temporary Restraining Order entered in the Cima Case (the “Temporary Receiver Order”) to preserve and if possible, maximize the value of CWNevada’s assets (the “Receivership Estate”) for the benefit of and distribution

¹ Respondent’s Appendix Volume II (“RA Vol. II”) 307-311, filed concurrently

to CWNevada's creditors.² Mr. Melech was also appointed as receiver over CWNevada in case number A-17-755479-B (the "Receivership Action") by stipulation in open court on June 14, 2019 and by subsequent orders of the district court presiding over the Receivership Action ("Receivership Court") entered on June 26, 2019 ("Interim Receivership Order") and July 10, 2019 ("Current Receivership Order").³

Terry, together with the Receiver and Phillip D. Ivey ("Ivey", collectively, the Receiver, Terry and Ivey are referred to as "Plaintiffs") retained the undersigned counsel and firm to pursue claims each possesses against NuVeda, LLC ("NuVeda"), its subsidiaries, licensees, members and/or related entities and Brian C. Padgett ("Padgett").

Plaintiffs filed their initial complaint on June 30, 2020 as Case No. A-20-817363-B (Dept. 13).⁴ The Complaint includes nine (9) claims for relief asserted by Terry, including the following:

- The First Claim for Relief (all Plaintiffs) against all Defendants for Declaratory Relief that (i) the Terry Purchase Agreement is null and void resulting from a fraud in the inducement and for a complete failure of consideration, (ii) the Terry Interest was never transferred to BCP 7 or any other entity, (iii) Plaintiff Terry is the sole and only owner of the Terry Interest;⁵

² Respondent's Appendix Volume I ("RA Vol. I") 001-016, filed concurrently

³ RA Vol. I 017-045

⁴ RA Vol I 046-081

⁵ RA Vol. I 066-067

- The Fourth Claim for Relief (Terry only) for Rescission of the Terry Purchase Agreement for Fraud in the Inducement and/or Failure of Consideration against Defendants BCP 7 and Padgett only;⁶
- The Fifth Claim for Relief (Terry only) in the alternative for Breach of Contract against Defendants BCP 7 and Padgett only;⁷
- The Sixth Claim for Relief (Terry only) in the alternative for Breach of the Covenant of Good Faith and Fair Dealing against Defendants BCP 7 and Padgett only;⁸
- The Ninth Claim for Relief (all Plaintiffs) for Unjust Enrichment against Defendants NuVeda, Bady, Mohajer and Kennedy;⁹
- The Tenth Claim for Relief (all Plaintiffs) for an accounting against Defendants NuVeda, Bady, Mohajer and Kennedy;¹⁰
- The Eleventh Claim for Relief (all Plaintiffs) for Violation of NRS 225.084 against Defendants NuVeda, Bady, Mohajer and Kennedy;¹¹
- The Thirteenth Claim for Relief (all Plaintiffs) for Injunctive Relief against all Defendants;¹² and
- The Fourteenth Claim for Relief (all Plaintiffs) for the Appointment of a Receiver against all Defendants.¹³

⁶ RA Vol. I 069-070

⁷ RA Vol. I 070

⁸ RA Vol. I 071

⁹ RA Vol. I 073

¹⁰ RA Vol. I 073-074

¹¹ RA Vol. I 074-075

¹² RA Vol. I 078

¹³ RA Vol. I 078-079

After NuVeda filed multiple motions to dismiss, Plaintiffs filed a motion to consolidate several related actions with the Receivership Action. The district court granted the motion to consolidate following a hearing on July 23, 2020.¹⁴ NuVeda's motion to dismiss concerning the Receiver's and Terry's claims came before the Receivership Court for a hearing on August 31, 2020. With respect to Terry's claims, the Court stayed the motion "for a period of ninety (90) days from the date of the hearing for Mr. Terry to request any relief from the arbitrator, Ms. Nikki Baker, of the American Arbitration Association."¹⁵ Terry submitted a Motion to Set Aside Dismissal on Monday, November 30, 2020 in the matter proceeding before the American Arbitration Association ("AAA"). However, AAA responded that the matter was "closed on March 20, 2019 and the Association no longer has jurisdiction regarding this matter." See electronic mail correspondence with AAA.¹⁶

NuVeda filed a Motion to Enter Order on Shane Terry's Claims and Related Relief on December 9, 2020.¹⁷ In NuVeda's Reply to Opposition to Motion to Enter Order on Shane Terry's Claims and Related Relief, NuVeda clarified the relief it was requesting as follows, "[t]he original motion filed on July 29, 2020 was clear about the relief requested: NuVeda sought dismissal and/or summary judgment on all claims asserted by Mr. Terry in the complaint against NuVeda and its affiliates... NuVeda has not asked the court to dismiss or grant summary judgment on claims asserted by Mr. Terry against Padgett or BCP7." See NuVeda's Reply Brief filed

¹⁴ RA Vol. I 082-083

¹⁵ RA Vol. I 084-092

¹⁶ RA Vol. I 243-245

¹⁷ RA Vol. I 93-168

January 4, 2021 at pp. 2-3.¹⁸ Notwithstanding the fact that it is not part of NuVeda’s requested relief, NuVeda seems intent on continually arguing the merits of Terry’s rescission claim against Padgett and BCP7.

Because AAA declined to hear the Terry claims, the district court denied NuVeda’s motion to dismiss and indicated to the parties that it desired to schedule an evidentiary hearing on the issue of rescission since AAA no longer had jurisdiction.¹⁹ After having its motion for an order to enter judgment on Terry’s claims denied, NuVeda filed a motion to stay the proceedings so it could pursue another writ petition. The district court denied the stay but decided not to conduct an evidentiary hearing on the issue of rescission.²⁰ Based on the briefing and argument by counsel, in which NuVeda acknowledged the existence of factual issues, “the Court reconsidered its prior decision to set an evidentiary hearing on the issue of rescission (because there are factual issues to be resolved at trial.)”²¹ NuVeda then filed a writ petition with the Nevada Supreme Courts regarding Terry’s claims for relief.

III. Statement of Facts

1. On or about July 9, 2014, Terry entered into an Operating Agreement for NuVeda, LLC (the “NuVeda Operating Agreement”) with Pejman Bady (“Bady”), Pouya Mohajer (“Mohajer”) and Jennifer Goldstein (“Goldstein”) to apply for and operate marijuana dispensaries, cultivation, and processing facilities

¹⁸ RA Vol. II 247-248

¹⁹ RA Vol. II 312-318

²⁰ RA Vol. II 325-434

²¹ RA Vol. II 319

for medical marijuana pursuant to licenses obtained from certain governmental divisions. Terry Declaration, ¶ 3;²² NuVeda Operating Agreement.²³

2. The NuVeda Operating Agreement was also signed by Joseph Kennedy, John Penders and Ryan Winmill. Terry Declaration, ¶ 4.²⁴

3. Since NuVeda's formation, Terry has been a manager, voting member and at times, NuVeda's Chief Executive Officer and Chief Operations Officer. Terry Declaration, ¶ 7.²⁵

4. Initially, Terry owned 21.5% of NuVeda and its subsidiaries, Clark NMSD, Clark Natural, and Nye Natural. Terry's ownership interest was later increased to 22.88%. Terry Declaration, ¶ 8.²⁶

The 2015 District Court Action

5. Bady, Mohajer and Kennedy, individually and at times through NuVeda or other entities, engaged in fraudulent acts of self-dealing and other acts of misconduct that constituted a breach of their legal duties. Terry Declaration, ¶ 12.²⁷

6. Over concerns that any attempted and unauthorized transfer of interest could jeopardize NuVeda's licenses, on December 3, 2015, Goldstein and Terry filed a complaint, as individuals and on behalf of NuVeda in the District Court for Clark County, Nevada against Bady and Mohajer as Case Number A-15-728510-B

²² RA Vol. I 187-188

²³ RA Vol. I 205-228

²⁴ RA Vol. I 188

²⁵ RA Vol. I 188

²⁶ RA Vol. I 188

²⁷ RA Vol. I 188

(the “District Court Action”) and contemporaneously filed a Motion for a Preliminary Injunction requesting that the Court enjoin any transfer of NuVeda’s membership interests. Terry Declaration, ¶ 42.²⁸

7. The District Court Action sought, among other things, the issuance of a preliminary and permanent injunction maintaining the status quo pending a final resolution of the parties’ disputes in an arbitral proceeding. Terry Declaration, ¶ 43.²⁹

8. Although the District Court did not issue a preliminary injunction in the District Court Action, on January 13, 2016, the Court ordered (the “January 13, 2016 Order”), among other things, “IT IS FURTHER ORDERED, ADJUDGED AND DECREED that pending the completion of the contemplated arbitration, the parties are to take no further action to expulse each other on the factual bases presented to the Court during the evidentiary hearing.” Terry Declaration, ¶ 44.³⁰

9. Goldstein and Terry commenced a private arbitration proceeding with the American Arbitration Association against NuVeda, Bady and Mohajer captioned as *Terry, et al. v. NuVeda LLC, et al.*, AAA Case No. 01-15-005-8574 (the “Arbitration”). Terry Declaration, ¶ 45.³¹

Purchase and Sale Agreement for Terry’s Ownership Interest in NuVeda and NuVeda-Managed Licenses

10. During the pendency of the District Court Action and Arbitration, on

²⁸ RA Vol. I 191

²⁹ RA Vol. I 191

³⁰ RA Vol. I 191

³¹ RA Vol. I 191-192

or about April 30, 2018, Terry entered into a “Purchase and Sale Agreement for Terry’s Ownership Interest in NuVeda and NuVeda-Managed Licenses” (the “Terry Purchase Agreement”) with BCP 7 as the Buyer. Terry Declaration, ¶ 50;³² Terry Purchase Agreement.³³

11. Padgett personally guaranteed all payments and other performance obligations due under the Terry Purchase Agreement. Terry Declaration, ¶ 51.³⁴

12. The Terry Purchase Agreement provides, among other things, that Terry agreed to sell the Terry Interest and BCP 7 agreed to purchase the Terry Interest for specified consideration and on specific terms. Terry Declaration, ¶ 52.³⁵

13. The total purchase price for BCP 7 to acquire the Terry Interest was \$1.75 million (the “Purchase Price”), which was “substantially reduced” from fair market value. Terry Declaration, ¶ 53.³⁶

14. Terry was induced to sign the Purchase Agreement in reliance upon Padgett’s representations that the Purchase Price would be paid. Terry Declaration, ¶ 54.³⁷

15. The Purchase Price was payable as follows: (i) an initial payment of \$500,000.00 in good and payable U.S. funds to be paid to Terry on or before June 15, 2018 (the “Initial Payment”), and (ii) monthly payments of the \$1.25 million balance due on or before June 15, 2028 with payments due monthly until paid in

³² RA Vol. I 192

³³ RA Vol. I 229-235

³⁴ RA Vol. I 192

³⁵ RA Vol. I 192

³⁶ RA Vol. I 192

³⁷ RA Vol. I 192

full (the “Monthly Payments”). Terry Declaration, ¶ 55.³⁸

16. The Monthly Payments were to commence May 1, 2018, and the first payment was to have been made no later than May 2, 2018. Terry Declaration, ¶ 57.³⁹

17. The Terry Purchase Agreement further provided that there shall be acceleration of the outstanding balance and any unpaid accrued interest thereon upon (1) the sale or transfer of the Terry Interest to a vehicle not owned by BCP 7, or any beneficial rights thereunder, from BCP 7 to a third party (other than CWNV, LLC); or (2) a default of a payment obligations, which shall result from any failure to timely pay the Initial Down Payment or any Monthly Payments on the Balance following notice of failure to Padgett and no cure within 10 business days thereof. Terry Declaration, ¶ 58.⁴⁰

18. Upon execution of the Terry Purchase Agreement and upon receipt of the first Monthly Payment, Terry agreed, among other things, to assign any and all claims and right in the Arbitration and District Court Action to BCP 7. Terry Declaration, ¶ 59.⁴¹

19. BCP 7 made a partial payment toward the Initial Payment in the sum of \$250,000.00 on or about August 1, 2018. Terry Declaration, ¶ 60.⁴²

20. In addition to the partial Initial Payment, BCP 7 made partial interest

³⁸ RA Vol. I 192-193

³⁹ RA Vol. I 193

⁴⁰ RA Vol. I 193

⁴¹ RA Vol. I 193

⁴² RA Vol. I 193

and extension payments. Terry Declaration, ¶ 61.⁴³

21. However, BCP 7 failed to pay the Initial Payment or Monthly Payments in full. Terry Declaration, ¶ 62.⁴⁴

22. As a result of BCP 7's failure to pay the Initial Payment or any of the Monthly Payments in full, Terry provided notice of and right to cure this failure to BCP 7 and Padgett. Terry Declaration, ¶ 63.⁴⁵

23. BCP 7 and Padgett failed to cure the outstanding balance owed following notice of such failure and a right to cure within 10 business days. Terry Declaration, ¶ 64.⁴⁶

24. As a result of BCP 7's and Padgett's failure to pay the Initial Payment and Monthly Payments in full, including the first Monthly Payment, there has not been a valid transfer of the Terry Interest to BCP 7. Terry Declaration, ¶ 65.⁴⁷

25. Notwithstanding the fact that the Terry Interest was never properly transferred to BCP 7, in an email dated June 5, 2018 from Padgett to the Arbitrator in the Arbitration, Padgett purported to dismiss "all claims of myself, CWNevada, BCP Holdings 7, LLC and Shane Terry (all right, title, and interest against Bady, Mohajer, and NuVeda and its subsidiaries (Clark NMSD, Clark Natural Medicinal Solutions, and Nye Natural Medicinal Solutions) with prejudice." Terry Declaration, ¶ 66;⁴⁸ Electronic mail from Padgett to Nikki Baker.⁴⁹

⁴³ RA Vol. I 193

⁴⁴ RA Vol. I 193

⁴⁵ RA Vol. I 193

⁴⁶ RA Vol. I 193

⁴⁷ RA Vol. I 193

⁴⁸ RA Vol. I 193-194

⁴⁹ RA Vol. I 236-237

26. Ms. Baker then proceeded to dismiss the arbitration as to BCP Holding 7, LLC. See electronic mail dated October 9, 2018, Ex. 6.⁵⁰ AAA then confirmed that BCP 7, LLC was dismissed as a party. See letter from AAA dated October 9, 2018.⁵¹

27. Not only did CWNevada never make or assert any claims related to the Arbitration, but the Padgett email also clearly evidences a conspiracy between Padgett, NuVeda, Bady and Mohajer to defraud Terry by having BCP 7 purportedly purchase the Terry Interest, and then immediately attempt to dismiss the claims in the Arbitration without BCP 7 and Padgett paying the agreed consideration. Terry Declaration, ¶ 67.⁵²

IV. Argument

After a responsive pleading is filed, “a party may amend its pleading only with the opposing party’s written consent or the court’s leave. The court should freely give leave when justice so requires.” NRCP 15(a)(2); see also *Kantor v. Kantor*, 116 Nev. 886, 891, 8 P.3d 825, 828 (2000). The decision to grant leave is within the District Court’s sound discretion. *Connell v. Carl’s Air Conditioning*, 97 Nev. 436, 439, 634 P.2d 673, 675 (1981).

Following the filing of the initial Complaint, Plaintiffs continued to investigate the facts of the matter and as set forth above. The proposed Amended Complaint clarifies some factual allegations, joins CWNV LLC and CWNV1 LLC, the entities improperly formed by NuVeda and Bady to block the revival of CWNV,

⁵⁰ RA Vol. I 238-239

⁵¹ RA Vol. I 240-241

⁵² RA Vol. I 194

LLC and CWNV1, LLC, along with NuVeda, LLC's successors, NuVeda LLC and UL NuVeda Holdings LLC. It also includes three new claims for relief on behalf of Terry for conversion, unjust enrichment, and civil conspiracy. See new proposed claims for relief 20, 21 and 22.⁵³ The factual basis and new claims for relief are set forth in the proposed amended complaint, a redline of which is attached thereto as Exhibit 1⁵⁴ and a clean copy attached hereto as Exhibit 2⁵⁵ to the Motion to Amend.⁵⁶

The proposed new claims asserted by Terry are damage claims against NuVeda, its subsidiaries, Clark NMSD, Clark Natural, Nye Natural, and their members, including Bady and Mohajer and their successors, including UL NuVeda, NuVeda Delaware, New CWNV and New CWNV1 as well as Padgett. The claims are not dependent upon a return of the Terry Interest to Terry in order to pursue such claims. For purposes of the pending motion and the multiple writs before this Court, the facts are accepted as true that Terry did not discover the wrongful transfer of the Terry Interest until after the dismissal of the Arbitration. Further, to the extent that Defendants' wrongful conversion of the Terry Interest caused BCP 7 and Padgett not to pay for the Terry Interest, then Terry has a valid claim for damages for that conversion. See the proposed Twentieth Claim for Relief. In Nevada, conversion is defined as "a distinct act of dominion wrongfully exerted over personal property in denial of, or inconsistent with, title or rights therein or in

⁵³ RA Vol. II 325-434, 379-382

⁵⁴ RA Vol. II 335-387

⁵⁵ RA Vol. II 388-434

⁵⁶ RA Vol. II 325-434

derogation, exclusion or defiance of such rights. *Dynamic Transit Co. v. Trans Pac. Ventures*, 128 Nev. 755, 761, 291 P.3d 114, 118 (Nev. 2012), citing *Edward Indus. V. DTE/BTE, Inc.* 112 Nev. 1025, 1031, 923 P.2d 569, 573 (1996). It's certainly foreseeable that the wrongful taking of property might cause a buyer of that property not to pay the seller as agreed.

Similarly, NuVeda, Clark NMSD, Clark Natural, Nye Natural, and their members, including Bady and Mohajer and their successors, including UL NuVeda, NuVeda Delaware, New CWNV and New CWNV1 have benefitted jointly and separately from the wrongful transfer of the Terry Interest to Bady and Mohajer, which caused Padgett not to pay Terry for the Terry Interest. In *Asphalt Prods. Corp. v. All Star Ready Mix*, 111 Nev. 799, 802, 898 P.2d 699, 701 (1995) the district court properly held that the defendant therein, by using a tractor for ten weeks without making a payment, was unjustly enriched. Unjust enrichment is "the unjust retention . . . of money or property of another against the fundamental principles of justice or equity and good conscience. "Id., citing, *Topaz Mutual Co. v. Marsh*, 108 Nev. 845, 856, 839 P.2d 606, 613 (1992) (quoting *Nevada Industrial Dev. v. Benedetti*, 103 Nev. 360, 363 n.2, 741 P.2d 802, 804 n.2 (1987)). Defendants took and retained Terry's property without his knowledge or consent. That then caused BCP 7 and Padgett not to pay Terry. Therefore, Terry has a damage claim against the Defendants for their unjust enrichment, which does not require a return of the Terry Interest to him.

Finally, and perhaps most telling is the Twenty-Second Claim for Relief for Civil Conspiracy against Defendants NuVeda, UL NuVeda, NuVeda Delaware,

Clark NMSD, Nye Natural, Clark Natural, Bady, Mohajer and their business partner, Padgett. An action for civil conspiracy accrues when a plaintiff discovers or should have discovered all of the necessary facts constituting a conspiracy claim. *Siragusa v. Brown*, 114 Nev. 1384, 1393, 971 P.2d 801, ___ (1998). Thus, the claim for civil conspiracy did not accrue until Terry discovered the wrongful taking of the Terry Interest by Bady and Mohajer.

An actionable civil conspiracy is a combination of two or more persons who, by some concerted action, intend to accomplish some unlawful objective for the purpose of harming another which result in damage. *Collins v. Union Fed. S&L Ass'n*, 99 Nev. 284, 303, 662 P.2d 610, 622 (1983). The alleged facts are clear and evidence a conspiracy. The claim is one for damages resulting from the Defendants' wrongful conduct, including punitive damages, and does not require that the Terry Interest be returned to Terry in order to pursue the proposed claim.

In clandestine fashion, NuVeda, and its subsidiaries, Clark NMSD, Clark Natural and Nye Natural, acting in concert with Bady and Mohajer, transferred the Terry Interest to Bady and Mohajer without Terry's knowledge or consent. Without knowledge that NuVeda, Clark NMSD, Clark Natural, Nye Natural, Bady and Mohajer had improperly transferred the Terry Interest to Bady and Mohajer, Terry entered into the Terry Purchase Agreement whereby Terry agreed to sell the Terry Interest to BCP 7, guaranteed by Padgett, for specified consideration and on specific terms.⁵⁷

Then, in an email dated June 5, 2018 from Padgett to the arbitrator in the

⁵⁷ RA Vol. II 381-382, 430-431

Arbitration, prior to Padgett paying any sums under the Terry Purchase Agreement, Padgett purported to dismiss “all claims of myself, CWNevada, BCP Holdings 7, LLC and Shane Terry (all right, title, and interest against Bady, Mohajer, and NuVeda and its subsidiaries (Clark NMSD, Clark Natural Medicinal Solutions, and Nye Natural Medicinal Solutions) with prejudice.”⁵⁸ The Padgett email clearly evidences a conspiracy between he and his business partners, NuVeda, Clark NMSD, Clark Natural, Nye Natural, Bady and Mohajer to defraud Terry by having BCP 7 purportedly purchase the Terry Interest, which had already been transferred to Bady and Mohajer without Terry’s knowledge or consent, and then immediately attempt to dismiss the claims in the Arbitration without BCP 7 and Padgett paying the agreed consideration.⁵⁹

Clearly, there is no reason to stay Terry’s pursuit of his damage claims. Similarly, there is no reason to stay any of the already pending claims. The Fourth, Fifth and Sixth claims by Terry against BCP 7 and Padgett only are for rescission or in the alternative, breach of contract and breach of the covenant of good faith and fair dealing. There can be no reason to stay those claims. The Ninth claim for relief for unjust enrichment is clarified by proposed Twentieth claim for relief, and as outlined above, does not require a stay. The tenth, eleventh, thirteenth and fourteenth claims for relief for an accounting, violation of NRS 225.084, injunctive relief and for the appointment of a receiver are asserted by all plaintiffs. There is no just reason to delay those claims.

⁵⁸ RA Vol. I 237

⁵⁹ RA Vol. II 381-382, 430-431

The only claim that requires some analysis is the first claim for relief, which among other things, requests a declaratory judgment that (i) the Terry Purchase Agreement is null and void resulting from a fraud in the inducement and for a complete failure of consideration, (ii) the Terry Interest was never transferred to BCP 7 or any other entity, and (iii) Plaintiff Terry is the sole and only owner of the Terry Interest. Obviously, the first two items do not pertain to NuVeda or its unnamed affiliates. The third requested item potentially involves NuVeda and its unnamed affiliates, but the district court is more than capable of addressing that precise item without the need for an all-encompassing stay of Terry's claims.

The authority for the district court to address all pending matters comes directly from the NuVeda Operating Agreement. Paragraph 11.3 of the NuVeda Operating Agreement expressly provides in part:

Any action or proceeding subsequent to any award rendered by the arbitrator in the Member Dispute, including but not limited to, any action to confirm, vacate, modify, challenge or enforce the arbitrator's decision or award shall be filed in a court of competent jurisdiction in the same county where the arbitration of the Member dispute was conducted, and Nevada law shall apply in any such subsequent action or proceeding. (Emphasis added).

See NuVeda Operating Agreement, pp. 18-20.⁶⁰

As set forth above, AAA no longer has jurisdiction over the Arbitration and that matter has been closed. The NuVeda Operating Agreement specifically provides that any post Arbitration proceedings be filed with the district court. That is precisely what Terry, along with the other Plaintiffs, did. Thus, the district court

⁶⁰ RA Vol I 222-224

is the proper place to bring Terry's claim, including the new proposed claims, and those for rescission, setting aside the dismissal if necessary, and for declaratory relief regarding the Terry Interest.

V. Conclusion

Based on the foregoing, Plaintiffs respectfully requests that NuVeda's all-encompassing and overreaching motion for a stay of all of Terry's claims be denied.

DATED this 26th day of August, 2021.

MUSHKIN & COPPEDGE

/s/L. Joe Coppedge

L. JOE COPPEDGE, ESQ.

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6070 S. Eastern Avenue, Suite 270

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CERTIFICATE OF COMPLIANCE

1. I hereby certify that this brief complies with the formatting requirements of NRAP 32(a)(4), the typeface requirements of NRAP 32(a)(5) and the type-style requirements of NRAP 32(a)(6) because:

2. ☒ This brief has been prepared in a proportionally spaced typeface using Microsoft Word 2016 in Times New Roman 14-point font; or

3. ☐ This brief has been prepared in a monospaced typeface using *[state name and version of word-processing program]* with *[state number of characters per inch and name of type style]*.

4. I further certify that this brief complies with the page- or type-volume limitations of NRAP 32(a)(7) because, excluding the parts of the brief exempted by NRAP 32(a)(7)(C), it is either:

☒ Proportionately spaced, has a typeface of 14 points or more, and contains 4,261 words; or

☐ Monospaced, has 10.5 or fewer characters per inch, and contains _____ words or _____ lines of text; or

☐ Does not exceed _____ pages.

5. Finally, I hereby certify that I have read this appellate brief, and to the best of my knowledge, information, and belief, it is not frivolous or interposed for any improper purpose. I further certify that this brief complies with all applicable Nevada Rules of Appellate Procedure, in particular NRAP 28(e)(1), which requires every assertion in the brief regarding matters in the record to be supported by a reference to the page and volume number, if any, of the transcript or appendix

where the matter relied on is to be found. I understand that I may be subject to sanctions in the event that the accompanying brief is not in conformity with the requirements of the Nevada Rules of Appellate Procedure.

DATED this 26th day of August, 2021.

MUSHKIN & COPPEDGE

/s/L. Joe Coppedge

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CERTIFICATE OF SERVICE

Pursuant to NRAP 25(d), I certify that on this 26th day of August, 2021, I served a true and correct copy of the foregoing **Opposition to Emergency Motion to Stay Case by Shane Terry in the District Court Under NRAP 8(a) and 27(e)** as follows:

- ☐ by placing same to be deposited for mailing in the United States Mail, in a sealed envelope upon which first class postage was prepaid in Las Vegas, Nevada;
- ☒ via electronic means by operation of the Court's electronic filing system, upon each party in this case who is registered as an electronic case filing user with the Clerk;
- ☐ via hand-delivery to the addressee listed below;
- ☐ via facsimile;
- ☐ by transmitting via email to the email address set forth below.

/s/Karen L. Foley
An Employee of
Mushkin & Coppedge