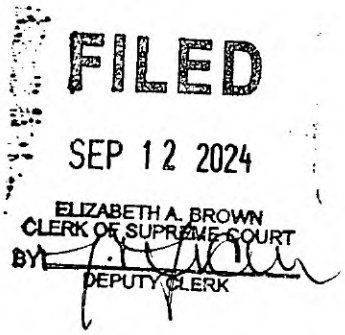
IN THE SUPREME COURT OF THE STATE OF NEVADA

NEVADA BEVERAGE CO., INC.,
Petitioner,
vs.
THE EIGHTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA, IN AND FOR THE COUNTY OF CLARK; AND THE HONORABLE JOANNA KISHNER, DISTRICT JUDGE,
Respondents,
and
BELL'S BREWERY, INC., A MICHIGAN CORPORATION; AND NEW BELGIUM BREWING COMPANY, INC., A COLORADO CORPORATION,
Real Parties in Interest.

No. 87691



ORDER DENYING PETITION

This original petition for a writ of mandamus or, alternatively, prohibition challenges a district court order compelling arbitration. Petitioner Nevada Beverage Co., Inc. (Nevada Beverage) filed a complaint against real parties in interest Bell's Brewery, Inc. and New Belgium Brewing, Inc., (collectively, the Brewers). The Brewers moved to compel arbitration under the distributor agreement with Nevada Beverage. The district court granted the motion, and Nevada Beverage now seeks a writ compelling the district court to vacate its order.

Original writs of mandamus and prohibition are extraordinary remedies. *See State ex rel. Dep't of Transp. v. Thompson*, 99 Nev. 358, 360 & n.2, 662 P.2d 1338, 1339 & n.2 (1983). Whether to entertain a petition

seeking either remedy lies entirely within this court's discretion. *Id.* We construe Nevada Beverage's petition as one seeking mandamus as that is the appropriate method for challenging an order granting a motion to compel arbitration. *See Kindred v. Second Jud. Dist. Ct.*, 116 Nev. 405, 409, 996 P.2d 903, 906 (2000); *cf.* NRS 38.247(1)(a) (providing for the appeal of "[a]n order *denying* a motion to compel arbitration" (emphasis added)). *But see Tallman v. Eighth Jud. Dist. Ct.*, 131 Nev. 713, 719 n.1, 359 P.3d 113, 117 n.1 (2015) ("While the unavailability of an immediate appeal from an order compelling arbitration *may* present a situation in which an eventual appeal from the order confirming the award or other final judgment in the case will not be plain, speedy, or adequate, it is an overstatement to say this holds true in all cases where arbitration has been compelled."). A writ of mandamus is available to compel the performance of an act which the law requires as a duty resulting from an office, or where discretion has been manifestly abused or exercised arbitrarily or capriciously. NRS 34.160; *Scarbo v. Eighth Jud. Dist. Ct.*, 125 Nev. 118, 121, 206 P.3d 975, 977 (2009).

In this case, we elect to entertain the petition and consider whether the district court's decision to compel arbitration was "founded on prejudice or preference rather than on reason, or contrary to the evidence or established rules of law." *State v. Eighth Jud. Dist. Ct. (Armstrong)*, 127 Nev. 927, 931-32, 267 P.3d 777, 780 (2011) (internal citations and quotation marks omitted). We conclude that Nevada Beverage has not met its burden of demonstrating that extraordinary relief is warranted.

Nevada Beverage argues that the district court manifestly abused its discretion in granting the Brewers' motion to compel arbitration. We disagree. A contract must be read as a whole without negating any

provision. *See Rd. & Highway Builders, LLC v. N. Nev. Rebar, Inc.*, 128 Nev. 384, 390, 284 P.3d 377, 380 (2012). If "a contract is clear, unambiguous, and complete, its terms must be given their plain meaning and the contract must be enforced as written; the court may not admit any other evidence of the parties' intent because the contract expresses their intent." *Ringle v. Bruton*, 120 Nev. 82, 93, 86 P.3d 1032, 1039 (2004) (explaining that contracts must be read as a whole without negating any term).

Considering the agreement as a whole, we conclude that the district court did not override or misapply the law in finding that the parties have an enforceable agreement to arbitrate. Such a result is consistent with Nevada's strong preference for arbitration and the freedom to contract. *See, e.g., Masto v. Second Jud. Dist. Ct.*, 125 Nev. 37, 43-44, 199 P.3d 828, 832 (2009) ("As a matter of public policy, Nevada courts encourage arbitration and liberally construe arbitration clauses in favor of granting arbitration."); *Holcomb Condo. Homeowners' Ass'n, Inc., v. Stewart Venture, LLC*, 129 Nev. 181, 187, 300 P.3d 124, 128 (2013) (recognizing Nevada's interest in protecting persons' freedom to contract). Therefore, Nevada Beverage has not demonstrated that the district court manifestly abused its discretion.

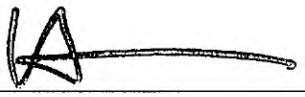
Next, Nevada Beverage argues that the arbitration provision is unconscionable and thus unenforceable. We agree with the district court's conclusion that the arbitration provision is not procedurally unconscionable as both parties initialed the specific provision. *Cf. D.R. Horton, Inc. v. Green*, 120 Nev. 549, 554, 96 P.3d 1159, 1162 (2004) ("A clause is procedurally unconscionable when a party lacks a meaningful opportunity to agree to the clause terms either because of unequal bargaining power, as

in an adhesion contract, or because the clause and its effects are not readily ascertainable upon a review of the contract."), *overruled on other grounds by U.S. Home Corp. v. Michael Ballesteros Tr.*, 134 Nev. 180, 192, 415 P.3d 32, 42 (2018). And Nevada Beverage's bare assertion that the parties had unequal bargaining power does not demonstrate that the district court manifestly abused its discretion. Because Nevada Beverage failed to establish procedural unconscionability, we need not address whether the arbitration provision was substantively unconscionable. *See Burch v. Second Jud. Dist. Ct.*, 118 Nev. 438, 443, 49 P.3d 647, 650 (2002) (explaining that the party alleging unconscionability must demonstrate both procedural and substantive unconscionability).

Lastly, Nevada Beverage asserts that the district court should have retained and resolved statutory claims under NRS Chapter 597 that arose outside the agreement. "[A]rbitration is a matter of contract and a party cannot be required to submit to arbitration any dispute which he has not agreed so to submit." *Truck Ins. Exch. v. Palmer J. Swanson, Inc.*, 124 Nev. 629, 634, 189 P.3d 656, 660 (2008) (internal quotation marks omitted). Here, the agreement memorialized the statutory franchise relationship between Nevada Beverage and the Brewers. *See* NRS 597.130 (defining "franchise" as "*a contract or agreement* either expressed or implied, whether written or oral, between a supplier and wholesaler" (emphasis added)). And the parties agreed to submit disputes regarding the franchise relationship to arbitration. Thus, Nevada Beverage has not demonstrated that the court manifestly abused its discretion in concluding that all claims were subject to the arbitration provision.

Based on the foregoing, we conclude that extraordinary writ relief is unwarranted. Accordingly, we

ORDER the petition DENIED.



_____, J.
Herndon

_____, J.
Lee

_____, J.
Bell

cc: Hon. Joanna Kishner, District Judge
Lewis Roca Rothgerber Christie LLP/Las Vegas
Lewis Roca Rothgerber Christie LLP/Reno
Saltzman Mugan Dushoff
Eighth District Court Clerk