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IN THE UNITED STATES DISTRICT COURT

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FOR THE DISTRICT OF ARIZONA

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ARIANN J-HANNA, )

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Plaintiff, )

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No. CIV 10-504-TUC-CKJ

vs. )

11

**ORDER**

TUCSON DODGE INC., et al., )

12

Defendants. )

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Pending before the Court are the Motion to Vacate the AAA Award (Doc. 189) filed by Ariann J-Hanna ("J-Hanna").

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*Background and Arbitration Award*

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On December 9, 2011, this Court granted the Motion to Stay Case and Compel Arbitration filed by Tucson Dodge Incorporated ("Tucson Dodge") and stayed this matter.

20

On June 7, 2013, J-Hanna filed a Notice of American Arbitration Association's Tribunal Award Favoring Tucson Dodge (Doc. 184). Tucson Dodge filed a response to J-Hanna's Notice (Doc. 187) and a Notice of Filing Arbitration Award and Proposed Judgment (Doc. 188). The May 30, 2013, Award of Arbitration ("the Award") states that a preliminary hearing had been held, pre-hearing memoranda were submitted by the parties, documentary evidence and oral testimony was proffered at an April 23, 2013, arbitration hearing, and post-hearing memoranda were submitted by the parties. The Award also states that Tucson Dodge and J-Hanna both made additional submissions following the submission of the post-hearing memoranda. The Award states:

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1 Based on all of the evidence, the Arbitrator finds that Claimant has not sufficiently  
2 established her claim to damages; therefore, the Arbitrator AWARDS no damages to  
Claimant.

3 Doc. 184-1, Ex. A.

4 On July 9, 2013, J-Hanna filed a Motion to Vacate the AAA Award (Doc. 189). A  
5 response (Doc. 192) and a reply (Doc. 202) have been filed. J-Hanna has also filed a  
6 Response to Tucson Dodge's Closing Brief (Doc. 208).

7 Additionally, J-Hanna has submitted recordings of phone conversations between  
8 herself, counsel for Tucson Dodge, and the arbitrator. The Court has reviewed the recordings  
9 which consist of two telephonic pre-arbitration hearings. J-Hanna, defense counsel, the  
10 arbitrator, and an AAA representative were on the line for each proceeding. During the  
11 March 20, 2013, hearing, the participants discussed *inter alia* procedural matters (e.g., form  
12 of order, use of court reporter), scheduling, and issues to be resolved by the arbitrator.  
13 During the April 12, 2013, hearing, the participants discussed *inter alia* dismissal and expert  
14 testimony issues.

15 J-Hanna has also filed a Notice to Submit Technical Corrections of the 1st Affidavit  
16 of Sergio Lujan's and Submit an Addendum Regarding the Disabled (sic) Airbag (Doc. 247).  
17 J-Hanna asserts the submitted affidavit clarifies Lujan's testimony at the arbitration hearing.

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19 *Response to Tucson Dodge's Closing Brief* (Doc. 208)

20 J-Hanna has filed a Motion to Vacate the AAA Award (Doc. 189), Tucson Dodge has  
21 filed a response (Doc. 192) and J-Hanna has filed a reply (Doc. 202). Tucson Dodge's  
22 response included its Closing Brief from the arbitration proceedings as an attachment. J-  
23 Hanna does not state any reason why she could not have fully responded to Tucson Dodge's  
24 response (including the Closing Brief) in her reply. *See* LRCiv. 7.2 (providing for a motion,  
25 a response, and a reply). The Court will strike the Response to Tucson Dodge's Closing  
26 Brief.

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1 *Standard to Vacate an Arbitration Award*

2 A court must confirm an arbitration award unless it is vacated, modified, or corrected  
3 as prescribed by the FAA. *Schoenduve Corp. v. Lucent Technologies, Inc.*, 442 F.3d 727,  
4 731 (9th Cir. 2006); *see also Kyocera Corp. V. Prudential-Bache Trade Services, Inc.*, 341  
5 F.3d 987 (9th Cir. 2003), *citation omitted* ("Under the statute, 'confirmation is required even  
6 in the face of erroneous findings of fact or misinterpretations of the law.'").

7 The Federal Arbitration Act ("FAA") reflects a strong federal policy favoring  
8 arbitration. *A.G. Edwards & Sons, Inc. v. McCollough*, 967 F.2d 1401, 1404 n. 2 (9th  
9 Cir.1992). Courts will generally defer to an arbitrator's decisions when the parties have  
10 agreed to resolve their dispute through arbitration. *See Todd Shipyards Corp. v. Cunard*  
11 *Lines*, 943 F.2d 1056, 1060 (9th Cir.1991) ("It is generally held that an arbitration award will  
12 not be set aside unless it evidences a 'manifest disregard for the law.'"); *Catz Am. Co. v.*  
13 *Pearl Grange Fruit Exch., Inc.*, 292 F.Supp. 549,551 (S .D.N.Y.1968) ("Since one of the  
14 fundamental purposes of resorting to arbitration is to reduce the cost and delay of litigation,  
15 the role of the court must be limited in reviewing an arbitration award."). The FAA allows  
16 courts to vacate an arbitration award upon a finding of: (1) corruption, fraud or undue  
17 means; 2) evident partiality or corruption of the arbitrators; (3) misconduct which prejudices  
18 one party; or (4) where the arbitrators exceeded their authority, or so imperfectly executed  
19 their powers that a "mutual, final and definite award" on the subject matter was not made.  
20 9 U.S.C. §10(a); *Collins v. D.R. Horton, Inc.*, 505 F.3d 874 (9th Cir. 2007).

21 J-Hanna does not specifically delineate under which theories her arguments fall  
22 within. The Court will discuss each theory in the context of J-Hanna' arguments.

23  
24 *Corruption, Fraud or Undue Means*

25 The Court accepts J-Hanna's argument that Tucson Dodge conspired with the  
26 arbitrator to present a motion to dismiss as an assertion the Award should be vacated based  
27 on corruption, fraud or undue means. A party seeking vacation of an arbitration award on  
28 that basis must show the corruption, fraud or undue means was (1) not discoverable upon the

1 exercise of due diligence prior to the arbitration, (2) materially related to an issue in the  
2 arbitration, and (3) established by clear and convincing evidence." *A.G. Edwards & Sons,*  
3 *Inc. v. McCollough*, 967 F.2d 1401, 1403-04 (9th Cir. 1992) (stating standard applies to  
4 claims of fraud or undue means; undue means connotes immoral, if not illegal, behavior);  
5 *PaineWebber Group, Inc. v. Zinsmeyer Trusts P'ship*, 187 F.3d 988, 991 (8th Cir. 1999)  
6 (noting that undue means must be read in conjunction with the words fraud and corruption  
7 preceding it in the statute; further noting that courts have uniformly construed the term undue  
8 means as requiring proof of intentional misconduct).

9         Some examples of the type of corruption, fraud, or undue means warranting a vacation  
10 of an arbitration award include perjury by a witness or an *ex parte* communication discussing  
11 what documents should be part of the record for future review. *See* 141 A.L.R. Fed. 1. For  
12 example, in *Pacific & Arctic Ry. & Navigation Co. v United Transp. Union*, 952 F2d 1144  
13 (9th Cir. 1991), the arbitrator and a party engaged in *ex parte* communications and  
14 recommended a party only offer part of a document so that the full document would not be  
15 part of the record.

16         Here, J-Hanna asserts Tucson Dodge conspired with the arbitrator to file a motion to  
17 dismiss. The recordings provided to the Court indicate a discussion occurred, with both  
18 parties present, regarding the filing of briefs that could include what each party believed the  
19 evidence would show and any supporting legal points. The arbitrator informed the parties  
20 that, if evidence was presented, he would look to see if claims were proven or if it was  
21 appropriate to take into consideration any defense. The arbitrator's statement in the award  
22 that, based on all of the evidence, he found that J-Hanna had not sufficiently established her  
23 claim to damages, Doc. 184-1, Ex. A., indicates the arbitrator considered the evidence as  
24 opposed to dismissing the claims based on a legal theory.<sup>1</sup>

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26         <sup>1</sup>The recordings show that, during the pre-arbitration hearing, the arbitrator advised  
27 the parties the form of the award would state which party(ies) won, the amount of any  
28 damages, and the amount of any attorneys' fees, but would not provide any detailed  
reasoning. Neither party stated an objection to this form of the award.

1 Contrary to J-Hanna's argument, the Court does not find any basis to conclude there  
2 was any improper conduct by Tucson Dodge in discussing possible legal theories and how  
3 the arbitrator wished those arguments to be presented to him. All of these conversations took  
4 place with J-Hanna present – no evidence of any *ex parte* communications has been  
5 presented to the Court. The Court finds there is no evidence of corruption, fraud, or undue  
6 means warranting the vacation of the Award.

7  
8 *Evident Partiality or Corruption of the Arbitrator*

9 J-Hanna alleges that the arbitrator's ruling prejudiced J-Hanna by being partial to  
10 Tucson Dodge, the arbitrator willfully ignored evidence supporting J-Hanna's claim, the  
11 arbitrator conspired with Tucson Dodge to rule against J-Hanna before the final hearing was  
12 held, the arbitrator was biased because future employment would result from a ruling in favor  
13 of Tucson Dodge, the arbitrator was biased against J-Hanna's gender, and the arbitrator was  
14 biased against J-Hanna's *pro se* status. The Court accepts these allegations as arguments of  
15 evident partiality or corruption of the arbitrator.

16 A court may vacate an award on grounds of "evident partiality or corruption" of the  
17 arbitrator. FAA §10(a)(2). In order for a party to succeed on an evident partiality claim, the  
18 party must show that specific facts create a reasonable impression of bias. *Lagstein v.*  
19 *Certain Underwriters at Lloyd's*, 607 F.3d 634, 642 (9th Cir. 2010); *see also Employers Ins.*  
20 *of Wausau v. Nat'l Union Fire Ins. Co. of Pittsburgh*, 933 F.2d 1481, 1489 (9th Cir. 1991)  
21 (a party “must demonstrate more than a mere appearance of bias to disqualify an arbitrator”).  
22 Examples of “evident partiality” include an arbitrator's financial interest in the outcome of  
23 the arbitration, *Sheet Metal Workers Int'l Ass'n Local 420 v. Kinney Air Conditioning Co.*,  
24 756 F.2d 742, 746 (9th Cir. 1985), an arbitrator's failure to disclose prior consulting work for  
25 a party, *Commonwealth Coatings Corp. v. Continental Casualty Co.*, 393 U.S. 145, 146  
26 (1968), a family relationship that made the arbitrator's impartiality suspect, *Morelite Constr.*  
27 *Corp. v. New York City Dist. Council Carpenters Benefit Funds*, 748 F.2d 79, 85 (2nd Cir.  
28 1984), an arbitrator's former employment by one of the parties, *Merit Ins. Co. v. Leatherby*,

1 714 F.2d 673, 680 (7th Cir.), *cert. denied*, 464 U.S. 1009 (1983) and an arbitrator's  
2 employment by an entity represented by one of the parties' law firms, *Ormsbee Dev. Co. v.*  
3 *Grace*, 668 F.2d 1140, 1149 (10th Cir.1982). While not exhaustive, these examples provide  
4 the level of partiality that is required by the statute. The Court finds no evidence of a  
5 reasonable interpretation of bias has been shown.

6 To demonstrate actual bias, a party challenging the award must establish “specific  
7 facts which indicate improper motives,” and the reviewing court must find actual bias as  
8 opposed to an impression of partiality. *Woods v. Saturn Distribution Corp.*, 78 F.3d 424,  
9 427 (9th Cir. 1996), *citations omitted*. J-Hanna alleges the arbitrator was partial to Tucson  
10 Dodge, willfully ignored evidence supporting J-Hanna's claim, conspired with Tucson Dodge  
11 to rule against J-Hanna before the final hearing was held, was biased because of future  
12 opportunities that may result from a ruling in favor of Tucson Dodge.

13 However, the record before the Court fails to show that the arbitrator conspired with  
14 Tucson Dodge – rather, the information before the Court reflects a conversation how best  
15 procedurally for Tucson Dodge to present issues to the arbitrator; J-Hanna, defense counsel,  
16 and the arbitrator were all present during this discussion. Similarly, the Court does not agree  
17 that the arbitrator willfully ignored evidence supporting J-Hanna's claim – it was the  
18 arbitrator's role to decide what weight to afford evidence presented to him. This does not  
19 establish a bias. Further, it is simply speculation that the arbitrator was motivated by future  
20 opportunities to decide in Tucson Dodge's favor, the gender of J-Hanna, or J-Hanna's *pro se*  
21 status. The Court finds the record does not show the arbitrator was partial or biased in favor  
22 of Tucson Dodge.

23  
24 *Misconduct Which Prejudices One Party*

25 J-Hanna argues that the Award/arbitrator contradicts a prior ruling by this Court that  
26 J-Hanna had established she had a claim, the arbitrator willfully ignored evidence or legal  
27 theories supporting J-Hanna's claim, and the arbitrator failed to read all of the documents of  
28 both parties. These are arguments of misconduct which prejudices a party.

1 Misconduct warranting a vacatur of an arbitration award must deprive a party of a fair  
2 hearing or prejudice the rights of a party. *See Ardalan v. Macy's Inc.*, No. 5:09-cv-04894  
3 JW, 2012 WL 2503972 (N.D.Cal. 2012); *In re Wal-mart Wage and Hour Employment*  
4 *Practices Litigation*, Nos. MDL 135, 2:06-CV-00225-PMP-PAL, 2011 WL 4809046  
5 (D.Nev. 2011). Circumstances constituting misconduct include the arbitrary denial of a  
6 continuance or reopening of a hearing or a refusal to hear material evidence. 25 Causes of  
7 Action 473(II)(A)(2) (Dec. 2013).

8 Here, the Court disagrees with J-Hanna that the arbitrator contradicted a prior ruling  
9 of this Court. Rather, because the Court determined an arbitration agreement existed  
10 between the parties, it did not decide whether any legal arguments (e.g., statute of  
11 limitations) would bar J-Hanna from seeking relief. Further, whether a party has sufficiently  
12 stated a claim to proceed in a lawsuit does not affect whether there is ultimately sufficient  
13 evidence to establish that claim sufficiently to warrant a verdict or arbitration award in that  
14 party's favor. Furthermore, J-Hanna asserts she had to repeat evidence to the arbitrator (e.g.,  
15 regarding the sale of the vehicle "as is"). However, this does not constitute a failure to  
16 consider the evidence; rather, the arbitrator was entitled to determine what weight to afford  
17 such evidence. Additionally, J-Hanna's speculation that the arbitrator did not consider her  
18 claims of fraud are belied by the record – the parties presented evidence and arguments  
19 regarding fraud and there is no showing the arbitrator dismissed the claim of fraud or did not  
20 consider it (including the element of materiality) in issuing the Award. In fact, the arbitrator  
21 specifically stated that he resolved all of the claims submitted to arbitration. Lastly, J-Hanna  
22 asserts the arbitrator could not have read all of the documents of the parties prior to the  
23 arbitration hearing, as stated by the arbitrator, because he should have known by the time of  
24 the hearing if J-Hanna could not establish her claim. The Court disagrees with J-Hanna's  
25 speculation. Rather, it appears the arbitrator was seeking to afford the parties every  
26 opportunity, through documents, testimony, and argument, to present their cases. The Court  
27 finds misconduct which prejudiced a party has not been shown.

28

1 *Arbitrator Exceeding Authority or Imperfectly Executed his Powers*

2 Although none of J-Hanna's arguments appear to fall within this theory to vacate an  
3 arbitration award, the Court will discuss why J-Hanna's arguments do not constitute such a  
4 basis for vacating the Award.

5 Arbitrators have “exceeded their powers” only when their award is “completely  
6 irrational, or exhibits a manifest disregard for the law.” *Schoenduve*, 442 F.3d at 731; *Bosack*  
7 *v. Soward*, 586 F.3d 1096 (9th Cir. 2009). This basis for vacating an arbitration award is,  
8 however, “severely limited and for the most part, the court defers to the arbitrators’  
9 determination of the award.” *See Michigan Mutual Ins. Co. v. Unigard Security Ins. Co.*, 44  
10 F.3d 826, 832 (9th Cir. 1995).

11 The Ninth Circuit has stated:

12 An award is completely irrational “only ‘where the arbitration decision fails to draw  
13 its essence from the agreement.’” [*Citation omitted.*] An arbitration award “draws its  
14 essence from the agreement if the award is derived from the agreement, viewed in  
light of the agreement’s language and context, as well as other indications of the  
parties’ intentions.” [*Citation omitted.*]

15 *Lagstein*, 607 F.3d at 642. Further, “the question is whether the award is ‘irrational’ with  
16 respect to the contract, not whether the panel’s findings of fact are correct.” *Id.*, *citation*  
17 *omitted.*

18 The arbitration agreement in this case states:

19 9. Seller and Purchaser hereby agree that . . . either party may submit the dispute to  
20 binding arbitration by a sole arbitrator from the American Arbitration Association  
21 (“AAA”) in accordance with the AAA’s Commercial Arbitration Rules . . . . Such  
22 arbitration shall be conducted in Maricopa County, Arizona. Except as otherwise  
23 specifically provided for herein, each party shall bear its own costs and attorney’s  
24 fees. The procedures specified herein shall be the sole and exclusive procedures for  
the resolution of disputes between the parties arising out of or relating to this  
Agreement . . . All applicable statutes of limitation shall be tolled while procedures  
specified in the section are pending. The parties will take such action, if any, required  
to effectuate such tolling.

25 Doc. 32-1, *modified to remove bold emphasis.* There is no basis before the Court that the  
26 Award is irrational with respect to the parties' arbitration agreement.

27 To rise to the level of manifest disregard, “the governing law alleged to have been  
28 ignored by the arbitrators must *be well defined, explicit, and clearly applicable.*” *Collins v.*



1 *D.R. Horton. Inc.*, 505 F.3d 874, 879-880 (9th Cir.2007), *citation omitted, emphasis in*  
2 *original*. Additionally, the record must be clear that the “arbitrators recognized the  
3 applicable law and then ignored it.” *Michigan Mutual*, 44 F.3d at 832; *see also Lagstein*, 607  
4 F.3 d at 641, *citation omitted; see also Bosack*, 586 F.3d at 1104 (the record must contain  
5 some evidence, other than the result, that the arbitrator was aware of the law and intentionally  
6 disregarded it). However, a court should confirm an award, “even in the face of erroneous  
7 findings of fact or misinterpretations of the law[,]” unless the party challenging the decision  
8 meets one of the narrow statutory exceptions. *Kyocera Corp. v. Prudential-Bache Trade*  
9 *Svcs., Inc.*, 341 F.3d 987, 997 (9th Cir.2003). Indeed, “[a]rbitrators are not required to set  
10 forth their reasoning supporting an award.” *Bosack*, 586 F.3d at 1104, *citation omitted*. An  
11 arbitrator’s “award may be made without explanation of their reasons and without a complete  
12 record of their proceedings[.]” *Id.* An award is to be confirmed even in the face of erroneous  
13 misinterpretations of law. *G.C. & K .B. Invs., Inc. v. Wilson*, 326 F.3d 1096, 1105 (9th  
14 Cir.2003). “It is not even enough that the [arbitrator] may have failed to understand or apply  
15 the law. An arbitrator's decision must be upheld unless it is completely irrational or it  
16 constitutes manifest disregard of the law.” *Id.*

17 J-Hanna is not asserting the arbitrator recognized the applicable law and then ignored  
18 it. Rather, J-Hanna is arguing that the evidence she presented warranted a different decision.  
19 The Court finds the arbitrator did not exceed his authority.

#### 20 21 *Evidence Supporting the Award*

22 J-Hanna argues the arbitrator's statement that she had not sufficiently established her  
23 claim to damages is belied by the repair costs of the vehicle. J-Hanna appears to have  
24 interpreted the arbitrator's statement as meaning J-Hanna did not establish the value of the  
25 damages. Rather, the arbitrator found J-Hanna had not established the claim itself. To any  
26 extent J-Hanna seeks a review by this Court of the sufficiency of the evidence to support the  
27 Award, such a review is beyond the scope of this Court's authority. *Bosack v. Soward*, 586  
28 F.3d 1096, 1105 (9th Cir. 2009). Indeed, it is not appropriate for this Court to re-weigh the

1 evidence. *Coutee v. Barington Capital Group, L.P.*, 336 F.3d 1128, 1134 (9th Cir. 2003).

2  
3 *Agreement to Arbitrate*

4 J-Hanna disputes that she agreed to present her claims to arbitration. The Court  
5 considered whether the arbitration agreement between the parties was enforceable; the Court  
6 found it was appropriate to stay this matter to allow the parties to proceed to arbitration in  
7 its October 5, 2011, Order. *See* Doc. 66; *see also* Doc. 79. It is not appropriate to reconsider  
8 that determination at this time and to any extent J-Hanna is seeking reconsideration of that  
9 ruling, such request is denied.

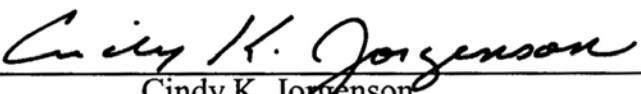
10  
11 *Attorneys' Fees*

12 Tucson Dodge requests an award of attorneys' fees. Tucson Dodge may file a motion  
13 seeking such an award pursuant to Fed.R.Civ.P. 54 and LRCiv. 54.2.

14  
15 Accordingly, IT IS ORDERED:

- 16 1. The Response to Tucson Dodge's Closing Brief (Doc. 208) is STRICKEN.  
17 2. The Motion to Vacate the AAA Award (Doc. 189) is DENIED.  
18 3. The May 30, 2013, Award of Arbitrator (Docs. 184-1, 188-1, 192-2) is  
19 CONFIRMED.  
20 4. J-Hanna is awarded no damages on any claim against Tucson Dodge.  
21 5. The Clerk of Court shall enter judgment and shall then close its file in this  
22 matter.

23 DATED this 7th day of February, 2014.

24  
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26   
27 Cindy K. Jorgenson  
28 United States District Judge