

**Contents [Corp. Code § 1501(a), (b)]**

(c) (1) The annual report shall contain a balance sheet as of the end of the fiscal year and an income statement and statement of changes in financial position for the fiscal year, accompanied by any report of independent accountants or, if there is no report, the certificate of an authorized officer of the corporation that the statements were prepared without audit from the books and records of the corporation.

(2) In addition, if the corporation is either not subject to the reporting requirements of Section 13 of the Securities Exchange Act of 1934, or is exempted from the reporting requirements by Section 12(g)(2) of that Act, the annual report shall also describe briefly both of the following:

(i) Any transaction (excluding compensation of officers and directors) during the previous fiscal year involving an amount in excess of \$40,000 (other than contracts let at competitive bid or services rendered at prices regulated by law) to which the corporation [or its parent or subsidiary] was a party and in which any director or officer of the corporation [or of a subsidiary] or [(if known to the corporation or its parent or subsidiary)] any holder of more than 10 percent of the outstanding voting shares of the corporation had a direct or indirect material interest, naming the person and stating the person's relationship to the corporation, the nature of the person's interest in the transaction and, if practicable, the amount of the interest; provided, that in the case of a transaction with a partnership of which the person is a partner, only the interest of the partnership need be stated; and provided further that no report need be made in the case of transactions approved by the shareholders, as that term is defined in California Corporations Code Section 153 (see Paragraph 2.23 of these Bylaws).

(ii) The amount and circumstances of any indemnification or advances aggregating more than ten thousand dollars paid during the fiscal year to any officer or director of the corporation pursuant to California Corporations Code Section 317 (see Paragraphs 2.25-2.31 of these Bylaws); provided, that no report need be made in the case of indemnification approved by the shareholders, as that term is defined in California Corporations Code Section 153, under California Code Section 317(c)(3) (see Paragraph 2.28 of these Bylaws).

**Special Financial Statements to Shareholders [Corp. Code § 1501 (c), (d)]**

9.08. (a) Any shareholder or shareholders holding at least 5 percent of the outstanding shares of any class of this corporation may make a written request to the corporation for an income statement of the corporation for the 3-month, 6-month, or 9-month period of the current fiscal year ended more than 30 days before the date of the request and a balance sheet of the corporation as of the end of that period and, in addition, if no annual report for the last fiscal year has been sent to shareholders, the statements referred to in clause (1) of subparagraph (c) of Paragraph 9.07 of this Article IX for the last fiscal year. The statement must be delivered or mailed to the person making the request within 30 days after the request. A copy of the statements must be kept on file in the principal office of the corporation for 12 months and they must be exhibited at all reasonable times to any shareholder demanding an examination of them or a copy must be mailed to that shareholder.

(b) The quarterly income statements and balance sheets referred to in this Paragraph 9.08 must be accompanied by the report, if any, of any independent accountants engaged by the corporation or the certificate of an authorized officer of the corporation that those financial statements were prepared without audit from the books and records of the corporation.

#### **Fiscal Year**

9.09 The fiscal year of the corporation shall begin on the first day of April and end on the last day of March in each year.

#### **Corporate Seal [Corp. Code §207(a)]**

9.10. The Board shall adopt a corporate seal. The Secretary of the corporation shall have custody of the seal and affix it in appropriate cases to all corporate documents. Failure to affix the seal does not, however, affect the validity of any instrument.

### **ARTICLE X**

#### **CERTIFICATION, INSPECTION, AND AMENDMENT OF BYLAWS**

##### **Inspection and Certification of Bylaws [Corp. Code §§ 213, 314]**

10.01. The corporation shall keep at its principal executive office in California the original or a copy of its Bylaws as amended to date, which shall be open to inspection by the shareholders at all reasonable times during office hours. The original or a copy of the Bylaws certified to be a true copy by a person purporting to be the Secretary or an Assistant Secretary of the corporation is prima facie evidence of the adoption of the bylaws and of the matters state in them.

##### **Adoption, Amendment, Repeal of Bylaws by Shareholders [Corp. Code §§ 207(b), 211, 212]**

10.02. These Bylaws may, from time to time and at any time, be amended or repealed, and new or additional bylaws adopted, by approval of the outstanding shares of the corporation, as that term is defined in Section 152 of the California Corporations Code, provided, however, that the bylaws may not contain any provisions in conflict with law or with the Articles of Incorporation of the corporation and, provided further, that a bylaw reducing the number of directors to a number less than 5 (see Paragraph 2.03 of Article II of these Bylaws) cannot be adopted if the votes cast against its adoption at a meeting of shareholders or the share not consenting in the case of action by written consent are equal to more than 16⅔ percent of the outstanding shares entitled to vote.

##### **Adoption, Amendment, Repeal of Bylaws by Directors [Corp. Code §§ 211, 212]**

10.03. Subject to the right of the outstanding share to adopt, amend, or repeal bylaws (see Paragraph 10.02 of these Bylaws) and to any restrictions imposed by the Articles on the power of the Board to adopt, amend, or repeal bylaws, these Bylaws may, from time to time and at any time, be amended or repealed, and new or additional bylaws adopted, by approval of the Board of Directors, provided, however, that the bylaws may not contain any provision in conflict with law or with the Articles and, provided further, that after

shares are issued any bylaw changing the number of directors or changing from a fixed to a variable Board may be adopted only by approval of the outstanding shares.

## ARTICLE XI CONSTRUCTION OF BYLAWS

11.01 Unless otherwise stated in these Bylaws or unless the context otherwise requires, the definitions contained in the General Corporation Law shall govern the construction of these Bylaws. Without limiting the generality of the foregoing, the masculine gender includes the feminine and neuter, the singular number includes the plural and the plural number includes the singular, and the word "person" includes a corporation or other entity as well as a natural person.

### CERTIFICATION OF SECRETARY [Corp. Code § 314]

I, the undersigned, do hereby certify:

1. That I am the Secretary of Ad Art, Inc., a California corporation; and
2. That the foregoing Bylaws, consisting of 43 pages, constitute the Bylaws of said corporation as duly approved by unanimous vote of the persons named in the Articles of Incorporation to act as the first directors of this corporation, at a meeting of the Board of Directors duly held on April 1, 2003.

IN WITNESS WHEREOF, I have signed my name and affixed the seal of the corporation on 4/1/03.

  
By: \_\_\_\_\_  
Secretary

### AMENDMENT NO. 1 TO BYLAWS OF AD ART, INC.

At the March 31, 2009 Shareholder Meeting of Ad Art, Inc., the Shareholders unanimously agreed to amend the Bylaws of the Company to allow for five (5) directors.

Accordingly, Section 2.03 of the Bylaws is hereby amended in full to read as follows:

"The number of the directors of the corporation shall be five (5)."

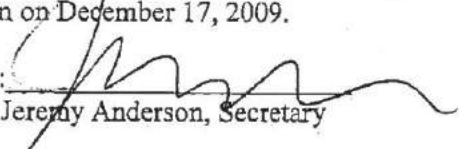
### CERTIFICATION OF SECRETARY

I, Jeremy Anderson, do hereby certify:

1. That I am the Secretary of Ad Art, Inc., a California corporation; and
2. That the foregoing Amendment No. 1 to Bylaws of Ad Art, Inc., consisting of 1 page, constitutes a complete amendment to the Bylaws of Ad Art, Inc. as duly approved by a unanimous vote of all shareholders in the corporation, at a meeting of the shareholders duly held on March 31, 2009.

IN WITNESS WHEREOF, I have signed my name and affixed the seal of the corporation on December 17, 2009.

By:

  
Jeremy Anderson, Secretary

AD000198



# EXHIBIT "D"

**AD ART, INC.**

Business Entity Information			
Status:	Active	File Date:	1/6/2004
Type:	Foreign Corporation	Entity Number:	C169-2004
Qualifying State:	CA	List of Officers Due:	1/31/2016
Managed By:		Expiration Date:	
NV Business ID:	NV20041346875	Business License Exp:	1/31/2016

Additional Information	
Central Index Key:	

Registered Agent Information			
Name:	JEFF BOTTARINI	Address 1:	1441 PATRICK AVE
Address 2:		City:	RENO
State:	NV	Zip Code:	89509
Phone:		Fax:	
Mailing Address 1:		Mailing Address 2:	
Mailing City:		Mailing State:	
Mailing Zip Code:			
Agent Type:	Noncommercial Registered Agent		

Financial Information			
No Par Share Count:	100,000.00	Capital Amount:	\$ 0
No stock records found for this company			

<div> <div>—</div> <div>Officers</div> <div><input type="checkbox"/> Include Inactive Officers</div> </div>			
<b>Secretary - JEREMY IAN ANDERSON</b>			
Address 1:	351 SCOTT ST #1	Address 2:	
City:	SAN FRANCISCO	State:	CA
Zip Code:	94117	Country:	USA
Status:	Active	Email:	
<b>Treasurer - JEREMY IAN ANDERSON</b>			
Address 1:	351 SCOTT ST #1	Address 2:	
City:	SAN FRANCISCO	State:	CA
Zip Code:	94117	Country:	USA
Status:	Active	Email:	
<b>Director - DUANE CONTENTO</b>			
Address 1:	2321 ROSECRANS AVE, SUITE 1250	Address 2:	
City:	EL SEGUNDO	State:	CA

AD000199

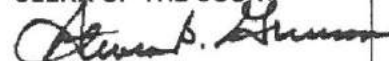
Zip Code:	90245	Country:	USA
Status:	Active	Email:	
<b>Director - DOUG HEAD</b>			
Address 1:	700 PARKER SQUARE SUITE 205	Address 2:	
City:	FLOWER MOUND	State:	TX
Zip Code:	75028	Country:	USA
Status:	Active	Email:	
<b>President - ROBERT STANLEY KIHEREJCZYK</b>			
Address 1:	1525 W ESCALON	Address 2:	
City:	FRESNO	State:	CA
Zip Code:	93711	Country:	USA
Status:	Active	Email:	
<b>Director - TERRY LONG</b>			
Address 1:	6024 SHELTER BAY	Address 2:	
City:	MILL VALLEY	State:	CA
Zip Code:	94941	Country:	USA
Status:	Active	Email:	

<b>- Actions\Amendments</b>			
Action Type:	Foreign Qualification		
Document Number:	C169-2004-001	# of Pages:	2
File Date:	1/6/2004	Effective Date:	
(No notes for this action)			
Action Type:	Annual List		
Document Number:	C169-2004-002	# of Pages:	1
File Date:	1/4/2005	Effective Date:	
<b>List of Officers for 2005 to 2006</b>			
Action Type:	Annual List		
Document Number:	20060003042-07	# of Pages:	1
File Date:	1/4/2006	Effective Date:	
(No notes for this action)			
Action Type:	Annual List		
Document Number:	20070044665-14	# of Pages:	1
File Date:	1/22/2007	Effective Date:	
(No notes for this action)			
Action Type:	Registered Agent Change		
Document Number:	20070297757-76	# of Pages:	1
File Date:	4/26/2007	Effective Date:	
(No notes for this action)			
Action Type:	Annual List		
Document Number:	20070810422-36	# of Pages:	1

AD000200

File Date:	11/29/2007	Effective Date:	
(No notes for this action)			
Action Type:	Annual List		
Document Number:	20080820550-10	# of Pages:	1
File Date:	12/18/2008	Effective Date:	
(No notes for this action)			
Action Type:	Annual List		
Document Number:	20090843796-78	# of Pages:	2
File Date:	12/8/2009	Effective Date:	
(No notes for this action)			
Action Type:	Annual List		
Document Number:	20100893883-12	# of Pages:	2
File Date:	11/30/2010	Effective Date:	
(No notes for this action)			
Action Type:	Annual List		
Document Number:	20120200364-00	# of Pages:	2
File Date:	3/22/2012	Effective Date:	
(No notes for this action)			
Action Type:	Annual List		
Document Number:	20130055296-03	# of Pages:	2
File Date:	1/28/2013	Effective Date:	
(No notes for this action)			
Action Type:	Annual List		
Document Number:	20140040420-37	# of Pages:	2
File Date:	1/20/2014	Effective Date:	
(No notes for this action)			
Action Type:	Annual List		
Document Number:	20140821046-58	# of Pages:	2
File Date:	12/23/2014	Effective Date:	
(No notes for this action)			

AD000201



1 WILLIAM R. BRENSKE, ESQ.  
Nevada Bar No. 1806  
2 JENNIFER R. ANDREEVSKI, ESQ.  
Nevada Bar No. 9095  
3 RYAN D. KRAMETBAUER, ESQ.  
Nevada Bar No. 12800  
4 BRENSKE & ANDREEVSKI  
3800 Howard Hughes Parkway, Suite 500  
5 Las Vegas, NV 89169  
Telephone: (702) 385-3300  
6 Facsimile: (702) 385-3823  
Email: wbrenske@hotmail.com  
7 *Attorneys for Plaintiff,*  
8 *Charles Schueler*

9 DISTRICT COURT

10 CLARK COUNTY, NEVADA

11 CHARLES SCHUELER,

12 Plaintiff,

13 v.

14 MGM GRAND HOTEL, LLC, a Domestic Limited  
Liability Company d/b/a MGM GRAND; MGM  
15 RESORTS INTERNATIONAL, A Foreign  
Corporation d/b/a MGM GRAND; AD ART, INC., A  
16 Foreign Corporation; 3A COMPOSITES USA INC.,  
a Foreign Corporation a/k/a ALUCOBOND  
17 TECHNOLOGIES CORPORATION; DOES 1 – 25;  
18 ROE CORPORATIONS 1 - 25; inclusive,

19 Defendants.

Case No.: A-15-722391-C

Dept. No.: XVII

**PLAINTIFF CHARLES  
SCHUELER'S OPPOSITION TO  
DEFENDANT AD ART, INC.'S  
MOTION FOR  
RECONSIDERATION OF ITS  
MOTION FOR SUMMARY  
JUDGMENT**

Date of Hearing: 01/24/18

Time of Hearing: In Chambers

20 Plaintiff, Charles Schueler, by and through his attorneys of record, Brenske & Andreevski,  
21 hereby opposes Defendant Ad Art, Inc.'s Motion for Reconsideration of this Court's Denial of its  
22 Motion for Summary Judgment.  
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1 This opposition is based on the pleadings and papers on file herein, the attached  
2 Memorandum of Points and Authorities, and any oral argument this Court may wish to entertain.

3 DATED this \_\_\_\_ day of January, 2018.

4 **BRENSKE & ANDREEVSKI**

5  
6  
7 WILLIAM R. BRENSKE, ESQ.  
Nevada Bar No. 1806  
8 JENNIFER R. ANDREEVSKI, ESQ.  
Nevada Bar No. 9095  
9 RYAN D. KRAMETBAUER, ESQ.  
Nevada Bar No. 12800  
10 3800 Howard Hughes Parkway, Suite 500  
Las Vegas, NV 89169  
11 *Attorneys for Plaintiff,*  
12 *Charles Schueler*

13  
14 **MEMORANDUM OF POINTS AND AUTHORITIES**

15 **I. INTRODUCTION**

16 Defendant has no legal grounds for filing its Motion for Reconsideration. There is no new  
17 information in Defendant's motion, nor is there any new authority cited. This Court already heard  
18 oral argument, entertained the arguments and authority cited by Defendant, and took the matter  
19 under consideration before rendering its decision. Defendant argues this Court's ruling was clearly  
20 erroneous because the Order did not cite specific authority Defendant referenced in its briefs. This  
21 does not render the Court's ruling clearly erroneous. The Court need not address every single  
22 authority cited by the parties when rendering a decision. This Court already carefully considered  
23 this matter and issued the appropriate ruling. As such, Defendant's motion should be denied as the  
24 motion is inappropriate and constitutes a waste of judicial resources.  
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## II. FACTUAL BACKGROUND

As this Court is well-aware, on July 31, 2013, Plaintiff, Charles Schueler fell through a triangular panel of Alucobond on the MGM pylon sign as he was replacing the LED displays on the face of the sign. Mr. Schueler survived, but suffered debilitating injuries.

Plaintiff disputes Defendant's self-serving rendition of "undisputed facts." Despite Defendant's repeated arguments that there can be no question it did not build the sign - there can. Plaintiff disputed Ad Art's statement of "undisputed" facts during the hearing on Ad Art's initial motion, and again disputes Ad Art's statement of "undisputed" facts now. Regardless of Ad Art's self-serving affidavit from its own employee and the contracts Ad Art chose to produce, it is undisputed that the building permit lists Ad Art as the contractor on the sign:

Clark County Building Department			
PERMIT			
401 South Fourth Street • Las Vegas, Nevada 89101 (702) 455-3000			
IMPORTANT: Always use the permit number below when requesting inspections or information concerning this permit.			
PERMIT NUMBER 93-15931 SBB	PROJECT NAME MGM GRAND/SIGN		ISSUE DATE 10/05/93
SUBDIVISION			
PARCEL NO: 162-21-401-006-001	RANGE-TOWNSHIP-SECTION		61-21-21
SITE ADDRESS: 3799 S LAS VEGAS BLVD			
TENANT NAME: MGM GRAND HOTEL/SIGN		TENANT NO: HOTEL	
PROPERTY OWNER: M G M GRAND HOTEL INC			
CONTRACTOR: AD ART INC			
PERMIT: SIGN-BILLBOARD		VALUATION: 6720	
SIGN-BILLBOARD			
FOUNDATION ONLY THIS PERMIT DOES NOT			
INCLUDE SUPERSTRUCTURE			
FOUNDATION ONLY AND 36" DIA PIPE ONLY/DB			
THIS DOES NOT INCLUDE SUPERSTRUCTURE/DEF			
NO. UNITS: 0	80 FOOTAGE: 0	NO. STORIES: 0	QAA: N
OCCUPANCY:	TYPE OF CONST:	SPRINKLER REQ:	
FEE SUMMARY			
PERMIT FEE	CHARGED 81.00	PAID PREV .00	PAID 81.00
ZONING BILLBOARD FEE	500.00	.00	500.00
TOTAL PAID		581.00	

1 It is up to the jury to consider this document, along with any other evidence produced by the  
2 parties, to answer the genuine question of material fact: Was Defendant involved in the design,  
3 construction, creation, or maintenance of the sign?

### 4 **III. LEGAL ARGUMENT**

5 Defendant Ad Art, Inc. again asks this Court to ignore the building permit in favor of its  
6 history of transfers and mergers and sales of Ad Art, Inc. and other corporations. These arguments  
7 were already considered and rejected by this Court when it considered Defendant's Motion for  
8 Summary Judgment. In fact, in this Court's Order, this Court specifically made reference to  
9 Defendant's arguments by noting the evidence contained on the building permit "runs counter to  
10 the statements made by Terry Long, the sale agreement between NASCO and Ad Art, Inc., and  
11 printout from the Nevada Secretary of State's website." Regardless, the building permit creates a  
12 genuine issue of material fact for the jury to consider. Given a genuine issue of material fact  
13 exists, summary judgment was appropriately denied.  
14

15 Motions for reconsideration are only appropriate if new evidence or new law comes to  
16 light, or if the Court's decision was clearly erroneous. EDCR 2.24. None of these circumstances  
17 exist here. Defendant's legal arguments in its Motion for Reconsideration are the same as their  
18 legal arguments in the Motion for Summary Judgment. The facts Defendant relies upon are the  
19 same. The case law is the same. This Court carefully considered all the arguments, legal  
20 authority, and evidence and found for Plaintiff. There was nothing erroneous about this decision.  
21

22 Defendant urges this Court to make a statement regarding successor liability in its Order.  
23 Such a statement is unnecessary. As the Court already noted, a genuine issue of material fact  
24 exists as to whether Defendant (not some other entity) was involved with the sign. This issue  
25 arises via the language contained on the building permit. It was therefore appropriate to deny  
26  
27  
28

1 Defendant's Motion for Summary Judgment without Defendant's cases on successor liability in the  
2 Order.

3 Defendant also repeats its strict product liability arguments without citing any new  
4 authority or new evidence and asserts this Court's decision was clearly erroneous. Again, this issue  
5 has been briefed, argued, and considered by the Court. In those pleadings, Plaintiff pointed out  
6 that Ad Art, on its website, lists pylon displays as a "product" it sells.  
7 (<https://www.adart.com/traditional-signage/>). While pylon signs may not be delivered to their  
8 customers in blister packaging, pylon signs are everywhere. Just as the same make and model car  
9 may come in different colors and come with different options on the interior and exterior of the  
10 vehicle, pylon signs may be different heights, colors, or come with different adornments on the  
11 exterior. Regardless, just as the Ad Art website says, it is a product sold by Defendant.

12  
13 Finally, Defendant reiterates its identical arguments on the statute of repose and argues the  
14 Court erred by not mentioning the statute of repose in its Order. Defendant's argument on the  
15 statute of repose are misguided. As the Defendant itself notes, the statute of repose relates to  
16 claims based on construction defect. Plaintiff is not suing Ad Art, Inc. for a construction defect.  
17 He is suing Ad Art for a defective product. As such, this Court did not err when it did not bar  
18 Plaintiff's product liability claims based on the construction defect statute of repose.  
19  
20

#### 21 **IV. CONCLUSION**

22 Defendant's Motion for Reconsideration is inappropriate. No new law exists. No new facts  
23 have come to light. No new arguments were made. The Court's initial decision was not clearly  
24 erroneous. Genuine issues of material fact exist as to whether Ad Art, Inc. was responsible for the  
25 sign in question. In addition, even Ad Art calls its pylon signs "products", thus negating  
26 Defendant's argument to the contrary. Finally, Plaintiff's product liability claims should not be  
27 dismissed based on a construction defect statute of repose. Based on the foregoing, this Court's  
28

1 initial ruling denying Defendant's Motion for Summary Judgment should be upheld and  
2 Defendant's Motion for Reconsideration should be denied.

3 DATED this 9th day of January, 2018.

4 **BRENSKE & ANDREEVSKI**

5 

7 WILLIAM R. BRENSKE, ESQ.

Nevada Bar No. 1806

8 JENNIFER R. ANDREEVSKI, ESQ.

Nevada Bar No. 9095

9 RYAN D. KRAMETBAUER, ESQ.

Nevada Bar No. 12800

10 3800 Howard Hughes Parkway, Suite 500

11 Las Vegas, NV 89169

*Attorneys for Plaintiff,*

12 *Charles Schueler*

CERTIFICATE OF SERVICE

I am employed with Brenske & Andreevski. I am over the age of 18 and not a party to the within action; my business address is 3800 Howard Hughes Parkway, Suite 500, Las Vegas, NV 89169. I am "readily familiar" with the firm's practice of collection and processing correspondence for mailing. Under its practice mail is to be deposited with the U. S. Postal Service on that same day as stated below, with postage thereon fully prepaid.

I served the foregoing document described as "PLAINTIFF CHARLES SCHUELER'S  
OPPOSITION TO DEFENDANT AD ART, INC.'S MOTION FOR RECONSIDERATION  
OF ITS MOTION FOR SUMMARY JUDGMENT" on this \_\_\_\_ day of January, 2018, to all

interested parties as follows:

☐ BY MAIL: Pursuant to NRCP 5(b), I placed a true copy thereof enclosed in a sealed envelope addressed as follows:

☐ BY FACSIMILE: Pursuant to EDCR 7.26, I transmitted a copy of the foregoing document this date via telecopier to the facsimile number shown below:

☐ BY ELECTRONIC SERVICE: by electronically filing and serving the foregoing document with the Eighth Judicial District Court's WizNet system:

Riley A. Clayton  
HALL JAFFE & CLAYTON, LLP  
7425 Peak Drive  
Las Vegas, Nevada 89128  
*Attorneys for Defendants,*  
*MGM Grand Hotel, LLC,*  
**Facsimile No.: 702-316-4114**

LeAnn Sanders  
Edward Silverman  
ALVERSON, TAYLOR, MORTENSEN & SANDERS  
7401 West Charleston Blvd.  
Las Vegas, Nevada 89117  
*Attorneys for Defendant,*  
*3A Composites USA Inc.,*  
**Facsimile No.: 702-385-7000**

Timothy F. Hunter  
RAY LEGO & ASSOCIATES  
7450 Arroya Crossing Party, Suite 250  
Las Vegas, Nevada 89113  
*Attorney For Defendant,*  
*Ad Art, Inc.*  
**Facsimile No.: 702-270-4602**

\_\_\_\_\_  
An employee of Brenske & Andreevski



1 **ROPP**  
2 TIMOTHY F. HUNTER, ESQ.  
3 Nevada Bar No. 010622  
4 RAY LEGO & ASSOCIATES  
5 7450 Arroyo Crossing Parkway, Suite 250  
6 Las Vegas, NV 89113  
7 Tel: (702) 479-4350  
8 Fax: (702) 270-4602  
9 tfhunter@travelers.com

10 Attorney for Defendant,  
11 **AD ART, INC.**

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

14 CHARLES SCHUELER,

15 Plaintiff,

CASE NO.: A-15-722391-C

DEPT. NO.: XVII

16 vs.

17 MGM GRAND HOTEL, LLC, a Domestic  
18 Limited Liability Company d/b/a MGM  
19 GRAND; MGM RESORTS  
20 INTERNATIONAL, a Foreign Corporation  
21 d/b/a MGM GRAND; AD ART, INC., a  
22 Foreign Corporation; 3A COMPOSITES USA  
23 INC., a Foreign Corporation a/k/a  
24 ALUCOBOND TECHNOLOGIES  
25 CORPORATION; DOES 1 - 25; ROE  
26 CORPORATIONS 1 - 25; inclusive,

27 Defendants.

28 **AD ART, INC.'S REPLY IN SUPPORT OF MOTION FOR RECONSIDERATION ON**  
**MOTION FOR SUMMARY JUDGMENT**

Defendant, Ad Art, Inc., by and through its attorney of record, Timothy F. Hunter, Esq.  
of the law firm of Ray Lego & Associates, hereby submits this Reply in Support of Motion for  
Reconsideration on its Motion for Summary Judgment.

**I. LEGAL ARGUMENT**

**A. It is Undisputed that Defendant Ad Art, Inc. did not Exist at the Time of the  
Construction of the MGM Pylon.**

No evidence has been produced that Defendant Ad Art, Inc. existed at the time of the

Ray Lego & Associates  
7450 Arroyo Crossing Parkway, Suite 250  
Las Vegas, Nevada 89113  
Telephone No. (702) 479-4350  
Facsimile No. (702) 270-4602



1 building of the MGM Pylon. Defendant Ad Art has put forth uncontroverted evidence by  
2 affidavit, deposition testimony, contracts, articles of incorporation, and entity details. That  
3 evidence clearly shows when and how Defendant Ad Art became a corporation in 2003.  
4 Plaintiff has not put forth ANY evidence to controvert those facts. Despite that Plaintiff wants  
5 to hold Defendant Ad Art responsible for actions of a company that was dissolved or liquidated  
6 back in 2001 which is contrary to Nevada law.  
7

8 Plaintiff only relies on a building department record, of which the court was only given a  
9 portion of, and the Defendant Ad Art website. When looking at the entire building permit, the  
10 permit is signed "Ad Art/Sign Inc." See, Exhibit "E." Therefore, the actual company that  
11 signed for the permit was "Ad Art/Sign Inc." not Ad Art, Inc. As it pertains to the website,  
12 Defendant Ad Art is clear about it's history, with the website stating, "[i]n the 1990's, Ad Art  
13 was purchased and taken public on the NASDAQ exchange, traded under the name Display  
14 Technologies (DTEK). In the market crash of 2001, Display Technologies was forced to close  
15 or liquidate many of their holdings in order to stave off bankruptcy. Ad Art, a highly profitable  
16 business was closed as a casualty of the parent company losses."  
17 (<https://www.adart.com/about-us>). There is no attempt by Defendant Ad Art to state that they  
18 are the same company.  
19

20 Defendant Ad Art does not dispute that the dissolved or liquidated company was  
21 involved in the construction of the MGM Pylon. All the evidence put forth point to the  
22 company that did the original work on the MGM Pylon being dissolved or liquidated. All the  
23 facts point to the fact that Defendant Ad Art, did not come into existence until 2003. No  
24 evidence has been produced by Plaintiff to dispute either one of those contentions.  
25

26 ///

27 ///

1           **B. Defendant Ad Art Cannot be Held Liable for Any Claims Relating to Work**  
2           **Completed by a Liquidated or Dissolved Corporation.**

3           The Nevada Supreme Court has been very clear about that “the general rule that when  
4 one corporation sells all of its assets to another corporation the purchaser is not liable for the  
5 debts of the seller. *Lamb v. Leroy Corp.*, 85 Nev. 276 (1969); *Village Builders 96, L.P. v. U.S.*  
6 *Laboratories, Inc.*, 112 Nev. 261, 112 P.3d 1082 (2005). There is no evidence that Defendant  
7 Ad Art purchased any assets from the now dissolved or liquidated company. *Plaintiff has*  
8 *never addressed this point in either the Opposition to the Motion for Summary Judgment or*  
9 *Opposition to the Motion for Reconsideration.* The reason it has never been addressed, is  
10 because there was no transfer of assets to Defendant Ad Art from the now dissolved or  
11 liquidated company.

12           Moreover, none of the requirements for liability of a successor corporation as addressed  
13 in *Village Builders 96, L.P. v. U.S. Laboratories, Inc.*, 112 Nev. 261, 112 P.3d 1082 (2005) are  
14 met or even addressed. Plaintiff has produced no evidence that any of the exceptions apply to  
15 this litigation. Defendant Ad Art did not expressly or implied agrees to assume such debts; this  
16 was not a consolidation or a merger; this was not the continuation of the selling corporation; and  
17 the transaction was not fraudulently made in order to escape liability for such debts. *Id.* It is  
18 unquestionable that by following the holding in *Lamb* and *Village Builders* no liability can be  
19 bestowed on Defendant Ad Art for the work of a company that was liquidated and dissolved,  
20 and for which Defendant Ad Art did not purchase any assets.

21           **C. The MGM Pylon Sign is NOT a “Product” and the Doctrine of Strict**  
22           **Products Liability has no Application in this Case.**

23           When looking at the holding and the factors addressed by the Nevada Supreme Court in  
24 *Calloway v. City of Reno*, 116 Nev, 250, 993 F.2d 1259 (2000) (overruled on other grounds), as  
25 well as other jurisdictions from across the country, there is nothing to show that anything like  
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28

1 the MGM pylon has been considered a product for a strict products liability claim. Since the  
2 Nevada Supreme Court held that a single family tract home was not a product, they would most  
3 certainly hold that the MGM pylon was not a product for the purposes of strict products  
4 liability. The factors addressed by the court in *Calloway*, were never addressed by Plaintiff.  
5 Plaintiff simply argues without citation or analysis that it is a product. There are times when a  
6 sign could be considered a product, but this is no ordinary sign. This sign was at the time the  
7 largest sign in Las Vegas. Moreover, the construction of the sign involved collaborations for  
8 the design, different contractors involved, different suppliers of materials, required material and  
9 method changes, and the sign has a longer life expectancy than a product. As a matter of law,  
10 the MGM pylon is certainly not a product using the factors addressed by the Court in *Calloway*.

11  
12 **D. Plaintiff's Claims are Barred by the Statute of Repose.**

13 This is exactly the type of litigation that the statute of repose was put in place to prevent.  
14 The Nevada Legislature enacted the statutes of repose to protect persons engaged in the  
15 planning, design, and construction of improvements to real property who otherwise would  
16 endure unending liability, even after they had lost control over the use and maintenance of the  
17 improvement. *Alsenz v. Twin Lakes Vill., Inc.*, 108 Nev. 1117, 1120, 843 P.2d 834, 836 (1992)  
18 (citing *Nevada Lakeshore Co. v. Diamond Elec., Inc.*, 89 Nev. 293, 295-96, 511 P.2d 113, 114  
19 (1973)(emphasis added)). The MGM pylon was an improvement on real property. It was  
20 designed and constructed outside of the MGM Grand Resort and Casino. It was originally  
21 placed there in 1993 or 1994. Despite that Plaintiff wants to hold Defendant Ad Art responsible  
22 for the construction of the MGM pylon from a dissolved or liquidated company from 20 years  
23 prior to this incident occurring. This is exactly the type of litigation that the statute of repose  
24 was put in place to prevent.  
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27 ///

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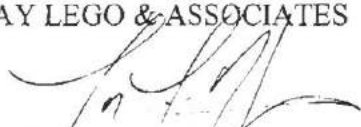
III. CONCLUSION

For the reasons set forth above, Defendant Ad Art requests that this Court reconsider its findings and grant summary judgment in favor of Defendant Ad Art.

DATED this 7 day of January, 2018.

Respectfully submitted,

RAY LEGO & ASSOCIATES

  
TIMOTHY F. HUNTER, ESQ.  
Nevada Bar No. 010622  
7450 Arroyo Crossing Parkway, Suite 250  
Las Vegas, NV 89113

Attorney for Defendant, **AD ART, INC.**

**CERTIFICATE OF SERVICE**

Pursuant to NRCP 5(b), I hereby certify that I am an employee of RAY LEGO & ASSOCIATES and that on the 17<sup>th</sup> day of January, 2018 I caused the foregoing **AD ART, INC.'S REPLY IN SUPPORT OF MOTION FOR RECONSIDERATION ON MOTION FOR SUMMARY JUDGMENT** to be served as follows:

  X   pursuant to N.E.F.C.R. 9 by serving it via electronic service.

To the attorneys listed below:

William R. Brenske, #001806  
BRENSKE & ANDREEVSKI  
3800 Howard Hughes Parkway, #500  
Las Vegas, NV 89169  
[wbrenske@hotmail.com](mailto:wbrenske@hotmail.com)

P: 702/385-3300  
F: 702/385-3823  
Attorneys for Plaintiff, **CHARLES SCHUELER**

  
An employee of RAY LEGO & ASSOCIATES

Ray Lego & Associates  
7450 Arroyo Crossing Parkway, Suite 250  
Las Vegas, Nevada 89113  
Telephone No. (702) 479-4350  
Facsimile No. (702) 270-4602

# EXHIBIT "E"



# Clark County Building Department

## PERMIT

401 South Fourth Street • Las Vegas, Nevada 89101  
(702) 455-3000

IMPORTANT: Always use the permit number below when requesting inspections or information concerning this permit.

### PERMIT NUMBER

93-16931 SBB

### ISSUE DATE

10/05/93

### PROJECT NAME

MGM GRAND/SIGN

### SUBDIVISION

PARCEL NO: 162-21-401-006-001

RANGE-TOWNSHIP-SECTION

61-21-21

SITE ADDRESS: 3799 S LAS VEGAS BLVD

TENANT NAME: MGM GRAND HOTEL/SIGN

TENANT NO: HOTEL

PROPERTY OWNER: M G M GRAND HOTEL INC

CONTRACTOR: AD ART INC

PERMIT: SIGN-BILLBOARD

SIGN-BILLBOARD

VALUATION:

6720

FOUNDATION ONLY THIS PERMIT DOES NOT

INCLUDE SUPERSTRUCTURE

FOUNDATION ONLY AND 36" DIA PIPE ONLY/DB

THIS DOES NOT INCLUDE SUPERSTRUCTURE/DEF

NO. UNITS:

0

80 FOOTAGE:

0

NO. STORIES:

0

QAQ: N

OCCUPANCY:

TYPE OF CONST:

SPRINKLER REQ:

### FEE SUMMARY

PERMIT FEE

CHARGED

PAID PREV

PAID

ZONING BILLBOARD FEE

81.00

.00

81.00

500.00

.00

500.00

TOTAL PAID

581.00

### CONDITIONS OF PERMIT

I agree to build according to declared description, approved plans, specifications and the Clark County Code. I also agree to call 455-3000 for required inspections as each construction phase is completed.

### LICENSED CONTRACTORS DECLARATION

I hereby affirm that I am licensed under the provisions of NRS 624.330

*Ad Art Sign Inc.*  
Contractor Signature

### OWNER-BUILDER DECLARATION

I, as owner of the property upon which I am requesting to build or improve a structure and the structure to be built or improved is a residential structure which I intend to occupy. I do not intend to sell said structure or transfer ownership of said structure of less than one year under NRS 624.330. I intend to act as my own contractor and I understand that I am liable to criminal prosecution under 624.330 if I engage in business as a contractor without a license and will not be exempt from license requirement as outlined in NRS 624.330.

Applicant Signature

Date

10/5/93

Seal

1238

THIS PERMIT BECOMES NULL AND VOID if work on construction is not commenced within 180 days from date of issuance, or work is suspended or abandoned for a period of 180 days any time after work is commenced.

BUILDING DEPT. COPY

**DISTRICT COURT  
CLARK COUNTY, NEVADA**

Negligence - Other Negligence

COURT MINUTES

January 24, 2018

A-15-722391-C      Charles Schueler, Plaintiff(s)  
vs.  
MGM Grand Hotel, LLC, Defendant(s)

January 24, 2018      3:00 AM      Defendant Ad Art, Inc.'s Motion For  
Reconsideration on Motion for Summary  
Judgment

HEARD BY: Villani, Michael

COURTROOM: Chambers

COURT CLERK: Olivia Black

**JOURNAL ENTRIES**

Defendant Ad Art, Inc.'s Motion for Reconsideration on Motion for Summary Judgment came before this Court on the January 24, 2018 Chamber Calendar. This Court, having reviewed the pleadings and papers on file herein, finds as follows:

A district court may reconsider a previously decided issue if substantially different evidence is subsequently introduced or if the prior decision was clearly erroneous. Masonry & Tile Contractors Ass'n of Southern Nevada v. Jolley, Urga & Wirth, Ltd., 113 Nev. 737 (1976); Moore v. City of Las Vegas, 92 Nev. 402, 404 (1976).

Defendant Ad Art's Motion for Reconsideration centers on the question as to whether or not MGM's pylon business sign should be considered a "product" for purposes of Plaintiff's Second Cause of Action claim – "Products Liability." The Second Cause of Action alleges that Defendant Ad Art designed, manufactured, constructed, assembled, sold and/or distributed the MGM pylon sign. See Pl. Compl., 6:9-11.

Plaintiff's First Cause of Action alleged that the sign in question was a "premise" for purposes of its premises liability claim. The Court dismissed this Cause of Action by determining that an advertising sign would not be covered under a legal theory of premises liability.

Both parties agree that the aforementioned question is answered by an analysis of Calloway v. City of Reno, 116 Nev. 250, 992 P.2d 1259 (2000). In Calloway, it was alleged that the construction of townhomes included defective framing. The Court held that the economic loss rule applied to construction defect cases. Further, it held that townhomes were "not products for purposes of strict products liability." Id. at 268. The Court acknowledged that some jurisdictions have found that a building can constitute a product under strict

PRINT DATE: 03/01/2018

Page 1 of 2

Minutes Date: January 24, 2018

liability while others have found the opposite. Previously, the Court found that a leaky gas line fitting in a residence fell under the doctrine of strict liability. See Worrell v. Barnes, 87 Nev. 204, 484 P.2d 573 (1971). The Calloway court specifically overruled the Worrell court with respect to its application of strict products liability. *Id.* at 271.

In Martens v. MCL Construction Corp., 347 Ill. App. 3d 303, 807 N.E. 2d 480 (2004), the Illinois Court of Appeals dealt with a case similar to matter at hand. In Marten, the Illinois court dealt with a claim involving a fall from a steel beam at a construction site. In affirming the Circuit Court's granting of summary judgment, the Court of Appeals held that "buildings and indivisible component parts of the building structure itself, such as bricks, supporting beams and railings, are not deemed products for purposes of strict liability in tort." *Id.* at 320. Here, the MGM sign is a one of a kind object and not mass produced. Under such circumstances the MGM sign is not a product for strict liability purposes. See Dayberry v. City of E. Helena, 318 Mont. 301, 80 P.3d 1218 (2003).

Since the Court has determined that the MGM sign is not a product for strict liability purposes, it need not address the successor in liability issue. Additionally, the Court notes Plaintiff's Complaint does not allege a negligence claim or claim for failure to warn workers who perform maintenance work on the sign.

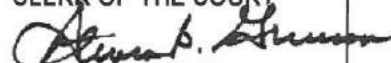
Therefore, the Court has reconsidered its previous decision and GRANTS Defendant Ad Art's Motion for Summary Judgment.

Therefore, COURT ORDERED Defendant Ad Art, Inc.'s Motion for Reconsideration on Motion for Summary Judgment GRANTED. Counsel for Defendant Ad Art, Inc. is directed to submit a proposed order consistent with the foregoing within ten (10) days after counsel is notified of the ruling and distribute a filed copy to all parties involved pursuant to EDCR 7.21. Such Order should set forth a synopsis of the supporting reasons proffered to the Court in briefing and be approved as to form and content by all parties.

CLERK'S NOTE: A copy of the foregoing minute order has been electronically distributed to all registered parties and placed in the attorney folder of LeAnn Sanders, Esq. // ob/03/01/18.

Ray Lego & Associates  
7450 Arroyo Crossing Parkway, Suite 250  
Las Vegas, Nevada 89113  
Telephone No. (702) 479-4350  
Facsimile No. (702) 270-4602

Electronically Filed  
3/23/2018 1:32 PM  
Steven D. Grierson  
CLERK OF THE COURT



1 **NEO**  
2 TIMOTHY F. HUNTER, ESQ.  
3 Nevada Bar No. 010622  
4 RAY LEGO & ASSOCIATES  
5 7450 Arroyo Crossing Parkway, Suite 250  
6 Las Vegas, NV 89113  
7 Tel: (702) 479-4350  
8 Fax: (702) 270-4602  
9 [tfhunter@travelers.com](mailto:tfhunter@travelers.com)

10 Attorney for Defendant,  
11 **AD ART, INC.**

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

14 CHARLES SCHUELER,

15 Plaintiff,

16 vs.

17 MGM GRAND HOTEL, LLC, a Domestic  
18 Limited Liability Company d/b/a MGM  
19 GRAND; MGM RESORTS  
20 INTERNATIONAL, a Foreign Corporation  
21 d/b/a MGM GRAND; AD ART, INC., a  
22 Foreign Corporation; 3A COMPOSITES USA  
23 INC., a Foreign Corporation a/k/a  
24 ALUCOBOND TECHNOLOGIES  
25 COROPORATION; DOES 1 - 25; ROE  
26 CORPORATIONS 1 - 25; inclusive,

27 Defendants.

CASE NO.: A-15-722391-C

DEPT. NO.: XVII

28 **NOTICE OF ENTRY OF ORDER GRANTING AD ART, INC.'S MOTION FOR  
RECONSIDERATION ON MOTION FOR SUMMARY JUDGMENT**

TO: ALL PARTIES AND THEIR ATTORNEYS OF RECORD

**PLEASE TAKE NOTICE** that an Order in the above-captioned matter was entered on

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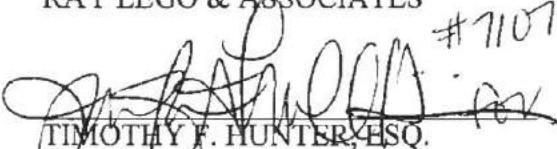
Ray Lego & Associates  
7450 Arroyo Crossing Parkway, Suite 250  
Las Vegas, Nevada 89113  
Telephone No. (702) 479-4350  
Facsimile No. (702) 270-4602

the 23rd day of March, 2018. A copy of said Order is attached hereto.

DATED this 23rd day of March, 2018.

Respectfully submitted,

RAY LEGO & ASSOCIATES

 #7107  
TIMOTHY F. HUNTER, ESQ.

Nevada Bar No. 010622

7450 Arroyo Crossing Parkway, Suite 250  
Las Vegas, NV 89113

Attorney for Defendant, **AD ART, INC.**

**CERTIFICATE OF SERVICE**

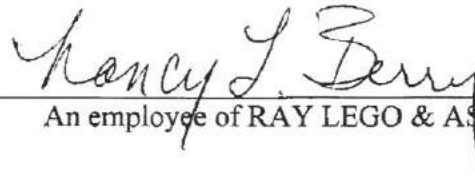
Pursuant to NRCP 5(b), I hereby certify that I am an employee of RAY LEGO & ASSOCIATES and that on the 23<sup>RD</sup> day of March, 2018 I caused the foregoing **NOTICE OF ENTRY OF ORDER GRANTING AD ART, INC.'S MOTION FOR RECONSIDERATION ON MOTION FOR SUMMARY JUDGMENT** to be served as follows:

  X   pursuant to N.E.F.C.R. 9 by serving it via electronic service.

To the attorneys listed below:

William R. Brenske, #001806  
BRENSKE & ANDREEVSKI  
3800 Howard Hughes Parkway, #500  
Las Vegas, NV 89169  
[wbrenske@hotmail.com](mailto:wbrenske@hotmail.com)

P: 702/385-3300  
F: 702/385-3823  
Attorneys for Plaintiff, **CHARLES SCHUELER**



An employee of RAY LEGO & ASSOCIATES



ORIGINAL

Electronically Filed  
3/23/2018 10:41 AM  
Steven D. Grierson  
CLERK OF THE COURT

*Steven D. Grierson*

1 **ORD**

2 TIMOTHY F. HUNTER, ESQ.  
3 Nevada Bar No. 010622  
4 RAY LEGO & ASSOCIATES  
5 7450 Arroyo Crossing Parkway, Suite 250  
6 Las Vegas, NV 89113  
7 Tel: (702) 479-4350  
8 Fax: (702) 270-4602  
9 [tfhunter@travelers.com](mailto:tfhunter@travelers.com)

10 Attorney for Defendant,  
11 AD ART, INC.

12 **DISTRICT COURT**

13 **CLARK COUNTY, NEVADA**

14 CHARLES SCHUELER,

15 Plaintiff,

16 vs.

17 MGM GRAND HOTEL, LLC, a Domestic  
18 Limited Liability Company d/b/a MGM  
19 GRAND; MGM RESORTS  
20 INTERNATIONAL, a Foreign Corporation  
21 d/b/a MGM GRAND; AD ART, INC., a  
22 Foreign Corporation; 3A COMPOSITES USA  
23 INC., a Foreign Corporation a/k/a  
24 ALUCOBOND TECHNOLOGIES  
25 COROPORATION; DOES 1 - 25; ROE  
26 CORPORATIONS 1 - 25; inclusive,

27 Defendants.

CASE NO.: A-15-722391-C

DEPT. NO.: XVII

28 **ORDER GRANTING AD ART, INC.'S MOTION FOR RECONSIDERATION ON**  
**MOTION FOR SUMMARY JUDGMENT**

On December 21, 2017, Defendant, Ad Art, Inc. ("Ad Art"), filed its Motion for Reconsideration on Motion for Summary Judgment. On January 10, 2018, Plaintiff filed his Opposition. On January 17, 2018 Ad Art filed its Reply in Support of Motion for Reconsideration.

In lieu of oral arguments, this Honorable Court, Judge Michael Villani presiding, set the motion for resolution on its Chambers Calendar. After considering the moving, opposing, and reply briefs, and the case authority cited therein and finding good cause, the Court issued a

Ray Lego & Associates  
7450 Arroyo Crossing Parkway, Suite 250  
Las Vegas, Nevada 89113  
Telephone No. (702) 479-4350  
Facsimile No. (702) 270-4602

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DEPT 17 ON  
MAR 15 2018

1 minute order on March 1, 2018 with its ruling on the pending motion for reconsideration, and  
2 now hereby submits its Findings of Facts, Conclusions of Law, and Order.

3 **I. FINDINGS OF FACT**

4 1. The MGM Pylon is a sign located in front of MGM Grand Las Vegas at 3799 S.  
5 Las Vegas Boulevard, Las Vegas, Nevada 89101. The MGM Pylon was originally constructed  
6 in approximately 1993 or 1994 and stands well over 150 feet tall.

7  
8 2. The MGM Pylon is one of a kind object that was not mass produced. The MGM  
9 Pylon was designed under the direct supervision of MGM, who was involved in every aspect of  
10 the design. The MGM Pylon had many different companies involved in its production,  
11 including those involved in the foundation, supply of materials, as well as others. The MGM  
12 Pylon was built for the sole use of MGM, and was not intended to be placed in the stream of  
13 commerce.

14  
15 3. On July 31, 2013, Plaintiff, Charles Schueler, was an employee of Young  
16 Electric Sign Co. When attempting to perform his repair work on the MGM Pylon, Plaintiff lost  
17 his balance and fell approximately 150 feet to the ground below. As a result of the fall, Plaintiff  
18 sustained injuries.

19 4. Plaintiff alleges, generally, that Ad Art was responsible for the fall under a  
20 theory of Premises Liability and Strict Products Liability only. Plaintiff's Premises Liability  
21 Claims were dismissed against Ad Art pursuant to the Court's October 20, 2017 order.

22 **II. CONCLUSIONS OF LAW**

23 1. Under EDCR 2.24, "a district court may reconsider a previously decided issue if  
24 substantially different evidence is introduced or the decision is clearly erroneous." *Masonry &*  
25 *Tile Contractors v. Jolley, Urga & Wirth*, 113 Nev. 7373, 741, 941 P.2d 486, 489 (1997). A  
26 court has the inherent authority to reconsider its prior orders. *Trail v. Faretto*, 91 Nev. 401, 536  
27  
28

1 P.2d 1026 (1975). Moreover, under NRCP 54(b), "the district court may at any time before the  
2 entry of a final judgment, revise orders..." *Barry v. Lindner*, 119 Nev. 661, 670, 81 P.3d 537,  
3 543 (2003).

4         2.       The question of whether the MGM Pylon is a product for the purposes of a Strict  
5 Products Liability analysis centers around the Nevada Supreme Court decision in *Calloway v.*  
6 *City of Reno*, 116 Nev. 250, 992 P.2d 1259 (2000). In *Calloway*, it was alleged that the  
7 construction of townhomes included defective framing. The Court held that townhomes "were  
8 not products for purposes of strict products liability." *Id.* at 268. The Court acknowledged that  
9 some jurisdictions have found that a building can constitute a product under strict product  
10 liability while other have found the opposite. Previously, the court found that a leaky gas line  
11 fitting in a residence fell under the doctrine of strict products liability. *See, Worrell v. Barnes*,  
12 87 Nev. 204, 484 P.2d 573 (1971). The *Calloway* court specifically overruled the *Worrell* court  
13 with respect to its application of strict products liability. *Id.* at 271.

14         3.       In *Martens v. MCL Construction Corp.*, 347 Ill. App. 3d 303, 807 N.E. 2d 480  
15 (2004), the Illinois Court of Appeals dealt with a case similar to the matter at hand. In *Marten*,  
16 the Illinois court dealt with a claim involving a fall from a steel beam at a construction site. In  
17 affirming the Circuit court's granting of summary judgment, the Court of Appeals held that a  
18 "buildings and indivisible component parts of the building structure itself, such as bricks,  
19 supporting beams and railings, are not deemed products for purposes of strict liability in tort."  
20 *Id.* at 320.

21         4.       Here, the MGM Pylon is one of a kind object and not mass produced. Under  
22 such circumstances the MGM Pylon is not a product for strict liability purposes. *See, Dayberry*  
23 *v. City of E. Helena*, 318 Mont. 301, 80 P.3d 1218 (2003).

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Ray Lego & Associates  
7450 Arroyo Crossing Parkway, Suite 250  
Las Vegas, Nevada 89113  
Telephone No. (702) 479-4350  
Facsimile No. (702) 270-4602

1 **III. ORDER**

2 IT IS THEREFORE, ORDERED, ADJUDGED AND DECREED THAT:

- 3 1. The MGM Pylon is not a product for strict products liability purposes.  
4 2. Ad Art, Inc.'s Motion for Reconsideration is GRANTED.  
5 3. Ad Art, Inc.'s Motion for Summary Judgment is GRANTED in its entirety.  
6 4. Having found that the MGM sign is not a product for strict liability purposes, and  
7 GRANTING Ad Art, Inc.'s Motion for Summary Judgment it need not address  
8 the successor liability issue.  
9

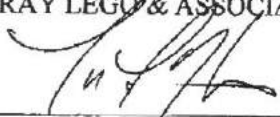
10 DATED this 21 day of March, 2018.

11 

12 DISTRICT COURT JUDGE *flc*

13 Respectfully submitted,

14 RAY LEGO & ASSOCIATES

15   
16 TIMOTHY F. HUNTER, ESQ.  
17 Nevada Bar No. 010622  
18 7450 Arroyo Crossing Parkway, Suite 250  
19 Las Vegas, NV 89113  
20 Attorney for Defendant, AD ART, INC.

21 Approved as to form and content:

22 BRENSKE & ANDREEVSKI

23 *REFUSED SIGN*

24 WILLIAM R. BRENSKE, ESQ., #1806  
25 RYAN D. KRAMETBAUER, ESQ., #12800  
26 3800 Howard Hughes Parkway, Suite 500  
27 Las Vegas, NV 89169  
28 Attorneys for Plaintiff, CHARLES SCHUELER

Brenske & Andreevski  
3800 Howard Hughes Parkway, Suite 500  
Las Vegas, Nevada 89169  
(702) 385-3300 · Fax (702) 385-3823

1 WILLIAM R. BRENSKE, ESQ.  
Nevada Bar No. 1806  
2 JENNIFER R. ANDREEVSKI, ESQ.  
Nevada Bar No. 9095  
3 RYAN D. KRAMETBAUER, ESQ.  
Nevada Bar No. 12800  
4 BRENSKE & ANDREEVSKI  
3800 Howard Hughes Parkway, Suite 500  
5 Las Vegas, Nevada 89169  
Telephone: (702) 385-3300  
6 Facsimile: (702) 385-3823  
Email: [wbrenske@hotmail.com](mailto:wbrenske@hotmail.com)  
7 *Attorneys for Plaintiff,*  
8 *Charles Schueler*

9 DISTRICT COURT  
10 CLARK COUNTY, NEVADA

11 CHARLES SCHUELER,  
12 Plaintiff,  
13 v.

Case No.: A-15-722391-C  
Dept. No.: XVII

14 MGM GRAND HOTEL, LLC, a Domestic Limited  
15 Liability Company d/b/a MGM GRAND; AD ART,  
INC., A Foreign Corporation; 3A COMPOSITES  
16 USA INC., a Foreign Corporation a/k/a  
ALUCOBOND TECHNOLOGIES  
17 CORPORATION; DOES 1 – 25; ROE  
18 CORPORATIONS 1 - 25; inclusive,

19 Defendants.

NOTICE OF APPEAL

20 ///

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22 ///

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1 Notice is hereby given that Plaintiff Charles Schueler hereby appeals to the Supreme Court  
2 of Nevada from the Order Granting Defendant Ad Art, Inc.'s Motion for Reconsideration on  
3 Motion for Judgment entered March 23, 2018.

4 DATED this 20<sup>th</sup> day of April, 2018.

6 **BRENSKE & ANDREEVSKI**

7 

8 WILLIAM R. BRENSKE, ESQ.

9 Nevada Bar No. 1806

JENNIFER R. ANDREEVSKI, ESQ.

10 Nevada Bar No. 9095

RYAN D. KRAMETBAUER, ESQ.

11 Nevada Bar No. 12800

3800 Howard Hughes Parkway

12 Las Vegas, Nevada 89169

13 *Attorneys for Plaintiff,*

14 *Charles Schueler*

CERTIFICATE OF SERVICE

I am employed with the law office of Brenske & Andreevski. I am over the age of 18 and not a party to the within action; my business address is 3800 Howard Hughes Parkway, Suite 500, Las Vegas, Nevada 89169. I am "readily familiar" with the firm's practice of collection and processing correspondence for mailing. Under its practice mail is to be deposited with the U. S. Postal Service on that same day as stated below, with postage thereon fully prepaid.

I served the foregoing document described as "NOTICE OF APPEAL" on this, 20<sup>th</sup> day of April, 2018, to all interested parties as follows:

☐ BY MAIL: Pursuant to NRCP 5(b), I placed a true copy thereof enclosed in a sealed envelope addressed as follows:

☐ BY FACSIMILE: Pursuant to EDCR 7.26, I transmitted a copy of the foregoing document this date via telecopier to the facsimile number shown below:

☒ BY ELECTRONIC SERVICE: by electronically filing and serving the foregoing document with the Eighth Judicial District Court's WizNet system:

Timothy F. Hunter  
RAY LEGO & ASSOCIATES  
7450 Arroya Crossing Party, Suite 250  
Las Vegas, Nevada 89113  
*Attorney For Defendant,*  
*Ad Art, Inc.*  
*Facsimile No.: 702-270-4602*



An employee of the law office of  
Brenske & Andreevski



1 WILLIAM R. BRENSKE, ESQ.  
2 Nevada Bar No. 1806  
3 JENNIFER R. ANDREEVSKI, ESQ.  
4 Nevada Bar No. 9095  
5 RYAN D. KRAMETBAUER, ESQ.  
6 Nevada Bar No. 12800  
7 BRENSKE & ANDREEVSKI  
8 3800 Howard Hughes Parkway, Suite 500  
9 Las Vegas, Nevada 89169  
10 Telephone: (702) 385-3300  
11 Facsimile: (702) 385-3823  
12 Email: [wbrenske@hotmail.com](mailto:wbrenske@hotmail.com)  
13 *Attorneys for Appellants*

Electronically Filed  
May 01 2018 08:33 a.m.  
Elizabeth A. Brown  
Clerk of Supreme Court

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

12 CHARLES SCHUELER,

13  
14 Appellant,  
15 v.

16 AD ART, INC.,

17 Respondent.

Supreme Court No.: 75688  
Dist. Ct. Case No.: A-15-722391-C

CASE APPEAL STATEMENT

- 18
- 19 1. Name of appellant filing this case appeal statement: Charles Schueler.
- 20 2. Identify the judge issuing the decision, judgment, or order appealed
- 21 from: Hon. Michael Villani, District Court Judge, Eighth Judicial District Court for
- 22 Clark County, Nevada.
- 23
- 24 3. Identify each appellant and the name and address of counsel for each
- 25 appellant: Charles Schueler, Charles Schueler is represented by William R. Brenske,
- 26 Jennifer R. Andreevski, and Ryan D. Krametbauer of Brenske & Andreevski, 3800
- 27 Howard Hughes Parkway, Suite 500, Las Vegas, Nevada, 89169.
- 28

1           4.     Identify each respondent and the name and address of appellate counsel,  
2 if known, for each respondent (if the name of a respondent's appellate counsel is  
3 unknown, indicate as much and provide the name and address of that respondent's  
4 trial counsel): Ad Art, Inc., a foreign corporation, was represented by Timothy F.  
5 Hunter of Ray Lego & Associates during the proceedings before the Eighth Judicial  
6 District Court for Clark County, Nevada. It is unknown if the above-named counsel  
7 will continue to represent Respondent during the appellate process.  
8

9           5.     Indicate whether any attorney identified above in response to question 3  
10 or 4 is not licensed to practice law in Nevada and, if so, whether the district court  
11 granted that attorney permissions to appear under SCR 42 (attach a copy of any  
12 district court order granting such permission): All attorneys listed in questions 3 and  
13 4 above are licensed to practice law in Nevada.  
14

15           6.     Indicate whether appellant was represented by appointed or retained  
16 counsel in the district court: Appellants were represented by retained counsel in the  
17 district court.  
18

19           7.     Indicate whether appellant is represented by appointed or retained  
20 counsel on appeal: Appellants are represented by retained counsel on appeal.  
21

22           8.     Indicate whether appellant was granted leave to proceed in forma  
23 pauperis, and the date of entry of the district court order granting such leave:  
24 Appellants neither applied for, nor were granted, leave to proceed in forma pauperis.  
25  
26  
27  
28

1           9.     Indicate the date the proceedings commenced in the district court (e.g.,  
2     date complaint, indictment, information, or petition was filed): The Complaint was  
3  
4     filed in the Eighth Judicial District Court for Clark County, Nevada on July 30, 2015.

5           10.    Provide a brief description of the nature of the action and result in the  
6     district court, including the type of judgment or order being appealed and the relief  
7  
8     granted by the district court: Charles Schueler was working inside the MGM Grand  
9     marquee sign when he fell through a floor board to the ground 150 feet below. Mr.  
10    Schueler sued Ad Art, Inc. for product liability. Ad Art subsequently filed a Motion  
11    for Summary Judgment claiming the MGM pylon was not a product under the theory  
12    of strict products liability. The District Court initially denied Ad Art's Motion for  
13    Summary Judgment , but later granted it based on Ad Art's Motion for  
14    Reconsideration - which was filed without any new information that was not  
15  
16    available to the Court at the time of the initial motion.

17  
18           11.    Indicate whether the case has previously been the subject of an appeal to  
19     or original writ proceeding in the Supreme Court and, if so, the caption and Supreme  
20     Court docket number of the prior proceeding: This case was not previously the  
21     subject of an appeal or an original writ proceeding.

22  
23           12.    Indicate whether this appeal involves child custody or visitation: This  
24     appeal does not involve child custody or visitation.  
25  
26  
27  
28

1 13. If this is a civil case, indicate whether this appeal involves the possibility  
2 of settlement: Given the extent of Mr. Schueler's damages, it is Appellant's belief that  
3 it is unlikely this appeal may settle.  
4

5 DATED this 30<sup>th</sup> day of April, 2018.

6  
7   
8 WILLIAM R. BRENSKE, ESQ.

Nevada Bar No. 1806

JENNIFER R. ANDREEVSKI, ESQ.

Nevada Bar No. 9095

10 RYAN D. KRAMETBAUER, ESQ.

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BRENSKE & ANDREEVSKI

12 3800 Howard Hughes Parkway, Suite 500

13 Las Vegas, Nevada 89169

14 Telephone: (702) 385-3300

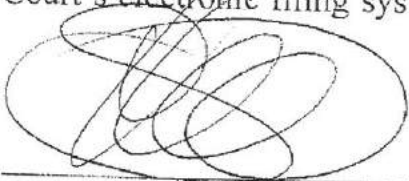
15 Facsimile: (702) 385-3823

16 Email: wbrenske@hotmail.com

*Attorneys for Appellant*

17 **CERTIFICATE OF SERVICE**

18 I certify that on the 30<sup>th</sup> day of April, 2018, I served a copy of the CASE  
19 APPEAL STATEMENT through the Court's electronic filing system consistent with  
20 N.E.F.C.R. 8.  
21

22   
23 An employee of Brenske & Andreevski  
24  
25  
26  
27  
28

rely on information, opinions, reports, or statements, including financial statements and other financial data, in each case prepared or presented by:

- (1) One or more officers or employees of the corporation whom the director believes to be reliable and competent in the matters presented.
- (2) Counsel, independent accountants, or other persons as to matters that the director believes to be within the person's professional or expert competence.
- (3) A committee of the Board on which the director does not serve, as to matters within its designated authority, which committee the director believes to merit confidence.

2.21. (c) A person who performs the duties of director in accordance with subparagraphs (a) and (b) of this Paragraph 2.21 shall have no liability based on any alleged failure to discharge the person's obligation as a director.

#### **Compensation [Corp. Code § 212(b)(4)]**

2.22. Directors shall receive the compensation for their services and reimbursement for their expenses as shall be determined from time to time by resolution of the Board. Any director may serve the corporation in any other capacity as an officer, agent, employee, or otherwise and receive compensation for that service.

#### **Transactions With Corporation [Corp. Code § 310]**

2.23. (a) No Contract or other transaction between the corporation and one or more of its directors, or between the corporation and any corporation, firm or association in which one or more of the directors of this corporation has a material financial interest, is either void or voidable because the director or directors or the other corporation, firm or association are parties or because the director or directors are present at the meeting of the Board or Board committee that authorizes, approves, or ratifies the contract or transaction, if:

- (1) The material facts regarding the transaction and regarding the director's interest are fully disclosed or known to the shareholders and the contract or transaction is approved by the shareholders, as that term is defined in Section 153 of the California Corporations Code, in good faith, and the shares owned by the interested director or directors are prohibited from voting on the contract or transaction; or
- (2) The material facts regarding the transaction and regarding the director's interest are fully disclosed or known to the Board or Board committee, and the Board or Board committee authorizes, approves, or ratifies the contract or transaction in good faith by a vote sufficient without counting the vote of the interested director or directors and the contract or transaction is just and reasonable as to the corporation at the time it is authorized, approved, or ratified; or
- (3) Regarding contracts or transactions not approved as provided in clauses (1) and (2), above, of this subparagraph (a), the person asserting the validity of the contract or transaction sustains the burden of proving that the contract or transaction was just and reasonable with regard to the corporation at the time it was authorized, approved or ratified.



A mere common directorship does not constitute a material financial interest within the meaning of the above provisions. A director is not interested within the meaning of the above provisions in a resolution fixing the compensation of another director as a director, officer, or employee of the corporation, notwithstanding the fact that the first director is also receiving compensation from the corporation.

(b) No contract or other transaction between the corporation and any corporation or association of which one or more of the directors of this corporation are directors is either void or voidable because the director or directors are present at the Board or Board committee meeting that authorizes, approves, or ratifies the contract or transaction, if:

- (1) The material facts regarding the transaction and regarding the director's other directorship are fully disclosed or known to the Board or Board committee, and the Board or Board committee authorizes, approves, or ratifies the contract or transaction in good faith by a vote sufficient without counting the vote of the common director or directors; or
- (2) As to contracts or transactions not approved as provided in clause (1) of this subparagraph (b), the contract or transaction is just and authorized, approved, or ratified.

This provision does not apply to contracts or transactions covered by subparagraph (a) of this Paragraph 2.23.

(c) Interested or common directors may be counted in determining the presence of a quorum at a meeting of the Board or Board committee that authorizes, approves, or ratifies a contract or transaction.

#### **Liability of Directors [Corp. Code § 316(a), (b), (e)]**

2.21. (a) Subject to the provisions of Paragraph 2.21 of these Bylaws, directors who approve any of the following corporate actions will be jointly and severally liable to the corporation for the benefit of all of the creditors or shareholders entitled to institute and action under Section 316(c) of the California Corporations Code:

- (1) The making of any distribution to its shareholders, as that term is defined in Section 166 of the California Corporations Code, to the extent that it is contrary to the provisions of California Corporations Code Sections 500 to 503, inclusive.
- (2) The distribution of assets to shareholders after institution of dissolution proceedings of the corporation, if any, without paying or adequately providing for all known liabilities of the corporation, excluding any claims not filed by creditors within the time limit set in the notice given to creditors under the provisions of California Corporations Code Sections 1800 to 2011, inclusive.
- (3) The making of any loan or guaranty contrary to Section 315 of the California Corporations Code.

(b) A director who is present at a meeting of the Board, or any Board committee, at which action specified in subparagraph (a) of this Paragraph 2.24 is taken and who abstains from voting will be considered to have approved the action.

(c) Directors liable under this Paragraph of these Bylaws shall be entitled to be subrogated to the rights of the corporation:

- (1) With regard to clause (1) of subparagraph (a) of this Paragraph 2.24, against shareholders who received the distribution.

- (2) With regard to clause (2) of subparagraph (a) of this Paragraph 2.24, against shareholders who received the distribution of assets.
- (3) With regard to clause (3) of subparagraph (a) of this Paragraph 2.24, against the person who receive the loan or guaranty.

#### **Indemnification [Corp. Code § 317]**

##### **Definitions [Corp. Code § 317(a)]**

- 2.25. (a) For the purposes of Paragraphs 2.26-2.32 of these Bylaws, "agent" means any person who is or was a director, officer, employee or other agent of the corporation, or is or was serving at the request of the corporation as a director, officer, employee, or agent of another foreign or domestic corporation, partnership, joint venture, trust, or other enterprise [, or was a director, officer, employee, or agent of a foreign or domestic corporation that was a predecessor corporation or of another enterprise at the request of the predecessor corporation].
- (b) For the purposes of Paragraphs 2.26-2.32 of these Bylaws, "proceeding" means any threatened, pending, or completed action or proceeding, whether civil, criminal, administrative, or investigative; and "expenses" include without limitation attorneys' fees and any expense of establishing a right to indemnification under Paragraph 2.27 or subparagraph (d) of Paragraph 2.28.

##### **Power to Indemnify [Corp. Code § 317(b), (c)]**

- 2.26. (a) The corporation shall have power to indemnify any person who was or is a party or is threatened to be made a party to any proceeding (other than an action by or in the right of the corporation to procure a judgment in its favor) by reason of the fact that that person is or was an agent of the corporation, against expenses, judgments, fines, settlements, and other amounts actually and reasonable incurred in connection with that proceeding if the person acted in good faith and in a manner the person reasonable believed to be in the best interests of the corporation and, in the case of a criminal proceeding, had no reasonable cause to believe the conduct of that person was unlawful. The termination of any proceeding by judgment, order, settlement, conviction, or on a pleas of nolo contendere or its equivalent shall not, of itself, create a presumption that the person did not act in good faith and in a manner that the person reasonably believed to be in the best interests of the corporation or that the person had reasonable cause to believe was unlawful.
- (b) The corporation shall have power to indemnify any person who was or is a party or is threatened to be made a party to any threatened, pending, or completed action by or in the right of the corporation to procure a judgment in its favor by reason of the fact that the person is or was an agent of the corporation, against expenses actually and reasonably incurred by the person in connection with the defense or settlement of that action if that person acted in good faith, in a manner the person believed to be in the best interests of the corporation and its shareholders. No indemnification shall be made for any of the following:
- (1) Any claim, issue, or matter for which any person has been adjudged liable to the corporation in the performance of that person's duty to the corporation and its shareholders, unless and only to the extent that the court where the

- proceeding was or is pending determines on application that, in view of all the circumstances of the case, the person is fairly and reasonably entitled to indemnity for expenses, and then only to the extent that the court determines;
- (2) Amounts paid in settling or otherwise disposing of a threatened or pending action without court approval; or
  - (3) Expenses incurred in defending a threatened or pending action that is settled or otherwise disposed of without court approval.

#### **Expenses of Successful Agent [Corp. Code § 317(d)]**

2.27. To the extent that an agent of this corporation has been successful on the merits in the defense of any proceeding referred to in Paragraph 2.26 or in the defense of any claim, issue, or matter specified in that paragraph, the agent shall be indemnified against expenses actually and reasonably incurred by the agent in connection with the matter.

#### **Determination That Indemnification Is Proper [Corp. Code § 317(e)]**

2.28. Except as provided in Paragraph 2.27, any indemnification under Paragraphs 2.26-2.31 of these Bylaws will be made by the corporation only if authorized in the specific case, on a determination that indemnification of the agent is proper in the circumstances because the agent has met the applicable standard of conduct set forth in Paragraph 2.26 by any of the following:

- (a) A majority vote of a quorum consisting of directors who are not parties to that proceeding;
- (b) If a quorum of directors is not obtainable, by independent legal counsel in a written opinion;
- (c) Approval of the shareholders, as that term is defined in Section 153 of the California Corporations Code, and the shares owned by the person to be indemnified are not entitled to vote on the matter; or
- (d) The court where the proceeding is or was pending on application made by the corporation or the agent or the attorney or other person rendering services in connection with the defense, whether or not the application by the agent, attorney, or other person is opposed by the corporation.

#### **Advance of Expenses [Corp. Code § 317(f)]**

2.29. Expenses incurred in defending any proceeding may be advanced by the corporation before the final disposition of that proceeding on receipt of an undertaking by or on behalf of the agent to repay that amount if it is determined ultimately that the agent is not entitled to be indemnified as authorized in Paragraphs 2.26-2.31 of these Bylaws. An advancement of expenses under this Paragraph does not violate the prohibition against corporate loans to officers of Corporations Code Section 315(a) or result in any liability to any director approving the advancement under Paragraph 2.24.

#### **Nonexclusive Provisions [Corp. Code § 317(g)]**

2.30. The indemnification authorized by Paragraphs 2.26-2.31 of these Bylaws shall not be deemed exclusive of any additional rights to indemnification for breach of duty to the corporation and its shareholders while acting in the capacity of a director or officer of the corporation to the extent the additional rights to indemnification are authorized in an



article provision adopted pursuant to California Corporations Code Section 204(a)(11). The indemnification provided by Paragraphs 2.26-2.31 of these Bylaws for acts, omissions, or transactions while acting in the capacity of, or while serving as, a director or officer of the corporation but not involving breach of duty to the corporation and its shareholders shall not be deemed exclusive of any other rights to which those seeking indemnification may be entitled under any bylaw, agreement, vote of shareholders or disinterested directors, or otherwise, to the extent the additional rights to indemnification are authorized in the Articles.

An Article provision authorizing indemnification "in excess of that otherwise permitted by Corporations Code Section 317" or "to the fullest extent permissible under California Law" or the substantial equivalent of this provision shall be construed to be both a provision for additional indemnification for breach of duty to the corporation and its shareholders as referred to in, and with the limitations required by, California Corporations Code Section 204(a)(11), and a provision for additional indemnification.

The rights to indemnity shall continue for a person who has ceased to be a director, officer, employee, or agent and shall inure to the benefit of the heirs, executors, and administrators of the person. Nothing contained in the Paragraph shall affect any right to indemnification to which persons other than the directors and officers may be entitled by contract or otherwise.

#### **Limitation on Indemnification [Corp. Code § 317(h)]**

2.31. No indemnification or advance shall be made under Paragraphs 2.26-2.29 of these Bylaws, except as provided in Paragraph 2.27 or subparagraph (d) of Paragraph 2.28, in any circumstance in which it appears:

- (a) That it would be inconsistent with a provision of the Articles, these Bylaws, a resolution of the shareholders, or an agreement in effect at the time of the accrual of the alleged cause of action asserted in the proceeding in which the expenses were incurred or other amounts were paid, that prohibits or otherwise limits indemnification; or
- (b) That it would be inconsistent with any condition expressly imposed by a court in approving a settlement.

#### **Insurance [Corp. Code §317(i)]**

2.32. The corporation shall have power to purchase and maintain insurance on behalf of any agent against any liability asserted against or incurred by the agent in that capacity or arising out of the agent's status as an agent, whether or not the corporation would have power to indemnify the agent against that liability under the provisions of Paragraphs 2.25-2.31 of these Bylaws.

The fact that the corporation owns all or a portion of the shares of the company issuing a policy of insurance shall not affect the corporation's power to purchase and maintain that insurance in the following circumstances: (1) if authorized in the corporation's articles, any policy issued is limited to the extent provided in Corporations Code Section 204(d); or (2) the company issuing the policy is organized, licensed, and operated in a manner that complies with the insurance laws and regulations applicable to its jurisdiction of organization; that company provides procedures for processing claims that do not permit it to be subject to the direct control of the corporation that purchased

the policy; and the policy provides for some manner of risk sharing between the issuer and purchaser of the policy, and some unaffiliated person or persons. Risk sharing may be undertaken by providing for more than one unaffiliated owner of the company issuing the policy, or providing that a portion of the coverage furnished will be obtained from some unaffiliated insurer or reinsurer.

### **Board Committees**

#### **Authority to Appoint [Corp. Code § 311]**

2.33. (a) The Board, by resolution adopted by a majority of the authorized number of directors, may designate one or more committees, each consisting of two or more directors, to serve at the pleasure of the Board. The Board may designate one or more directors as alternate members of any committee, who may replace any absent member at any meeting of the committee. The appointment of members or alternate members of a committee shall require the vote of a majority of the authorized number of directors.

(b) Any committee referred to in subparagraph (a) of this Paragraph 2.33, to the extent provided in the Board resolution or in these Bylaws, shall have all the authority of the Board, except with regard to the following:

- (1) The approval of any action for which the General Corporation Law also requires shareholders' approval, as that term is defined in Section 153 of California Corporations Code, or approval of the outstanding shares, as that term is defined in Section 152 of the California Corporations Code.
- (2) The filling of vacancies on the Board or in any committee.
- (3) The fixing of compensation of the Directors for serving on the Board or on any committee.
- (4) The amendment or repeal of these Bylaws or the adoption of new bylaws.
- (5) The amendment or repeal of any resolution of the Board that, by its express terms, is not so amendable or repealable.
- (6) A distribution to the shareholders of the corporation, as defined in Section 166 of the California Corporations Code, except at a rate or in a periodic amount or within a price range determined by the Board.
- (7) The appointment of other committees of the Board or the members of the Board.

#### **Applicability of Other Paragraphs [Corp. Code § 307(c)]**

(c) The provisions of Paragraphs 2.08-2.17, inclusive, and of Paragraphs 2.19 and 2.20 of this Article II apply to the committees.

### **ARTICLE III DETERMINING SHAREHOLDERS OF RECORD**

#### **Record Date Fixed by Board [Corp. Code §§ 212(b)(7), 701(a)]**

3.01. (a) In order that the corporation may determine the shareholders entitled to notice of any meeting or vote, or entitled to receive payment of any dividend or other distribution or allotment of any rights, or entitled to exercise any rights regarding any other lawful action, the Board may fix, in advance, a record date, which shall not be more than 60 nor

less than 10 days before the date of the meeting nor more than 60 days before any of the other aforementioned actions.

**Record Date Not Fixed [Corp. Code § 701(b)]**

(b) If no record date is fixed,

- (1) The record date for determining shareholders entitled to notice or to vote at a meeting of shareholders shall be the close of business on the business day next preceding the day on which notice is given or, if notice is waived, at the close of business on the business day next preceding the day on which the meeting is held.
- (2) The record date for determining shareholders entitled to give consent to corporate action in writing without a meeting (see Paragraph 4.16), when no prior action by the Board has been taken, shall be the day on which the first written consent is given.
- (3) The record date for determining shareholders for any other purpose shall be the close of business on the day on which the Board adopts the resolution relating to the record date, or the 60<sup>th</sup> day before the date of the other action, whichever is later.

**Record Date for Adjourned Meeting [Corp. Code § 701(c)]**

- (c) A determination of shareholders of record entitled to notice of or to vote at a meeting of shareholders shall apply to any adjournment of the meeting unless the Board fixed a new record date for the adjourned meeting. The Board must fix a new record date, however, if the meeting is adjourned for more than 45 days from the date set for the original meeting.

**Rights of Shareholders of Record [Corp. Code § 701(d)]**

- (d) Shareholders at the close of business on the record date are entitled to notice and to vote or to receive the dividend, distribution, or allotment of rights, or to exercise rights, as the case may be, notwithstanding any transfer of any shares on the books of the corporation after the record date, except as otherwise provided in the Articles or by agreement or in the General Corporation Law.

**ARTICLE IV  
SHAREHOLDERS' MEETINGS**

**Place of Meetings [Corp. Code §§ 212(b)(2), 600(a)]**

4.01. Meetings of shareholders shall be held at any place within or without the State of California designated in the notice of the meeting or by resolution of the Board of Directors. In the absence of any designation or resolution, shareholders' meetings shall be held at the principal executive office of the corporation.

## **Annual Meeting**

### **Time of Meeting; Business Transacted [Corp. Code §§ 212(b)(2), (4), 600(b), 601(a)]**

4.02. (a) The annual meeting of shareholders shall be held on the first of April of each year at 10:00 a.m., however, that if the day falls on a legal holiday, the meeting shall be held at the same time on the next day that is not a legal holiday. At the meetings directors shall be elected, reports on the affairs of the corporation shall be considered, and any other proper matter may be presented and business transacted that is within the power of the shareholders.

### **Failure to Hold [Corp. Code §§ 177, 600(c)]**

(b) If there is a failure to hold the annual meeting for a period of 60 days after the date designated for the meeting as provided in subparagraph (a) of this Paragraph 4.02, any shareholder may apply to the superior court of the county in which the corporation's principal executive office is located for an order compelling the corporation to hold the meeting. The shares represented at the meeting so held, wither in person or by proxy, and entitled to vote at the meeting shall constitute a quorum for the purpose of the meeting, despite any provision of the Articles, these Bylaws, or the General Corporation Law to the contrary.

### **Notice of Meetings [Corp. Code §§ 212(b)(2), 601(a)]**

4.03. (a) Whenever shareholders are required or permitted to take any action at a meeting, a written notice of the meeting shall be given to each shareholder entitled to vote at the meeting, subject to the provisions of subparagraph (f) of this Paragraph 4.03.

### **Method of Giving Notice of Meeting [Corp. Code §§ 2112(b)(2), 601(b)]**

(b) Notice of shareholders' meeting shall be given either personally or by mail, postage prepaid, or other means of written communication, addressed to the shareholder at the address of the shareholder appearing on the books of the corporation or given by the shareholder to the corporation for the purpose of notice; or if no address appears or is given, at the place where the principal executive office of the corporation is located or by publication at least once in a newspaper of general circulation in the county in which the principal office is located. The notice shall be deemed to have been given at the time when delivered personally or deposited in the mail or sent by other means of written communication.

If any notice addressed to the shareholder at the address of the shareholder appearing on the books of the corporation is returned to the corporation by the United States Postal Service marked to indicate that the United States Postal Service is unable to deliver it to the shareholder at the address, all future notices shall be deemed to have been duly given without further mailing if the notices are available to the shareholder on written demand of the shareholder at the principal executive office of the corporation for a period of one year from the date of the giving of the notice to all other shareholders.

**Time of Notice [Corp. Code §§ 212(b)(2), 601(a)]**

(c) Notice of any meeting of the shareholders will be sent by first class mail to each shareholder entitled to the notice not less than 10 nor more than 60 days before the date of the meeting; provided, however, that at any time that this corporation has outstanding shares held of record by 500 or more persons (determined as provided in Section 605 of the California Corporations Code) on the record date for the shareholders' meeting, notice may be sent by third class mail if sent not less than 30 days before the date of the meetings.

**Contents of Notice [Corp. Code § 601(a), (f)]**

(d) The notice of any meeting of the shareholders shall state the place, date, and hour of the meeting and: (1) in the case of a special meeting, the general nature of the business to be transacted, and that no other business may be transacted; or (2) in the case of the annual meeting, those matters that the Board, at the time of the mailing of the notice, intends to present for action by the shareholders, but any proper matter may be presented at the meeting for the action, provided, however, that any shareholder approval at a meeting, other than unanimous approval by those entitled to vote, pursuant to Corporations Code Section 310 (relating to contracts and transactions between the corporation and any director or legal entity in which a director has a material financial interest (see Paragraph 2.23 of these Bylaws)), Section 902 (relating to amendment of the articles), Section 1152 (relating to corporate conversions), Section 1201 (relating to reorganizations), Section 1900 (relating to voluntary dissolution), or Section 2007 (relating to distribution plans on dissolution), shall be valid only if the general nature of the proposal so approved was stated in the notice of meeting or in any written waiver of notice. The notice of any meeting at which directors are to be elected must include the names of nominees intended at the time of the notice to be presented by management for election.

**Notice of Adjourned Meeting [Corp. Code § 601(d)]**

(e) When a shareholders' meeting is adjourned to another time or place, notice need not be given of the adjourned meeting if the time and place of the adjourned meeting are announced at the meeting at which the adjournment is taken, provided, however, that if the adjournment is for more than 45 days or if after the adjournment a new record date is fixed for the adjourned meeting, a notice of the adjourned meeting must be given to each shareholder of record entitled to vote at the meeting. At the adjourned meeting the corporation may transact any business that might have been transacted at the original meeting.

**Waiver of Notice and Other Defects [Corp. Code § 601(e), (f)]**

(f) The transactions of any meetings of shareholders, however called and noticed and wherever held, are as valid as though made at a meeting duly held after regular call and notice, if a quorum (see Paragraph 4.05 of these Bylaws) is present either in person or by proxy and if, either before or after the meeting, each of the persons entitled to vote, not present in person or by proxy, signs a written waiver of notice, or a consent to the holding of the meeting, or an approval of the minutes of the meeting. All waivers, consents, and approvals must be filed with the corporate records or made a part of the minutes of the



meeting. Except as provided in subparagraph (d) of this Paragraph 4.03 and unless otherwise provided in the Articles, neither the business to be transacted nor the purpose of any regular or special meeting of shareholders need be specified in any written waiver of notice, consent to the holding of the meeting, or approval of the minutes of the meeting.

Attendance by a person at any meeting also constitutes a waiver of notice to that person if he or she fails to object at the beginning of the meeting to the transaction of business because the meeting was not lawfully called or convened, but attendance does not constitute a waiver of the right to object to the consideration of matters required to be included in the notice but not included if the objection is expressly made at the meeting.

**Calling of Special Meetings [Corp. Code §§ 177, 212(b)(2), 601(c)]**

4.04. (a) On request in writing to the Board Chairperson, or the President, or Vice-President, or the Secretary of the corporation by any person (other than the Board) entitled to call a special meeting of shareholders (see subparagraph (b) of this Paragraph 4.04), the officer immediately shall cause notice to be given to the shareholders entitled to vote that a meeting will be held at a time requested by the person or persons calling the meeting, not less than 35 nor more than 60 days after receipt of the request. If the notice is not given within 20 days after the receipt of the request, the persons entitled to call the meeting may give the notice or they may apply to the superior court of the county in which the principal executive office of the corporation is located or an order, after notice to the corporation giving it an opportunity to be heard, summarily ordering the giving of the notice.

**Persons Entitled to Call Special Meetings [Corp. Code §§ 212(b)(2), 600(d)]**

(b) Special meetings of the shareholders may be called by the Board of Directors, the Board Chairperson, the President, or the holders of share entitled to cast not less than 10 percent of the votes at the meeting.

**Quorum of Shareholders [Corp. Code §§ 112, 602(a)]**

4.05. (a) A majority of the shares entitled to vote, represented in person or by proxy, shall constitute a quorum at a meeting of shareholders, provided, however, that whenever shares are disqualified by the General Corporation Law from voting on any matter, they shall not be considered outstanding for the determination of a quorum at any meeting to act on that matter under any other provision of the General Corporation Law or the Articles or these Bylaws.

**Loss of Quorum [Corp. Code § 602(b)]**

(b) The shareholders present at a duly called or held meeting at which a quorum is present may continue to transact business until adjournment despite the withdrawal of enough shareholders to leave less than a quorum, if any action taken (other than adjournment) is approved by at least a majority of the shares required to constitute a quorum, or the vote of any greater number or voting classes as required by law or the articles of incorporation.

**Adjournment for Lack of Quorum [Corp. Code § 602(c)]**

(c) In the absence of a quorum, any meeting of shareholders may be adjourned from time to time by the vote of a majority of the shares represented either in person or by proxy, but no other business may be transacted, except as provided in subparagraph (b) of this Paragraph 4.05.

**Effect of Vote [Corp. Code §§ 112, 602(a)]**

4.06. If a quorum is present, the affirmative vote of the majority of the shares represented at the meeting and entitled to vote on any matter shall be the act of the shareholders, unless the vote of a greater number or voting by classes is required by the General Corporation Law or the Articles, and except as provided in subparagraph (a) of Paragraph 4.05 of these Bylaws, provided, however, that whenever shares are disqualified by the General Corporation Law from voting on any matter, they shall not be considered outstanding for the determination of the required vote to approve action on that matter under any provision of the General Corporation Law or the Articles or these Bylaws.

**Election of Directors [Corp. Code § 708(c), (e)]**

4.07. Elections for directors need not be by ballot unless a shareholder demands election by ballot at the meeting and before the voting begins. In any election of directors, the candidates receiving the highest number of affirmative votes of the shares entitled to be voted for them up to the number of directors to be elected by the shares are elected. Votes against the director and votes withheld shall have no legal effect.

**Votes Per Share-Voting of Fractional Shares [Corp. Code §§ 112, 407, 700(a)]**

4.08. Except as provided in Paragraph 4.09 and except as may otherwise be provided in the Articles, each outstanding share, regardless of class, shall be entitled to one vote on each matter submitted to a vote of shareholders. A certificate for a fractional share shall, but scrip or warrants shall not unless otherwise provided in the scrip or warrant, entitle the holder to exercise voting rights.

**Voting Multiple Shares [Corp. Code § 700(b)]**

4.09. Any holder of shares entitled to vote on any matter may vote part of the shares in favor of the proposal and refrain from voting the remaining shares or vote them against the proposal, other than elections to office, but, if the shareholder fails to specify the number of shares being voted affirmatively, it will be conclusively presumed that the shareholder's approving vote is with respect to all shares the shareholder is entitled to vote.

**Cumulative Voting [Corp. Code § 708(a)-(c)]**

4.10. Every shareholder entitled to vote at any election of directors may cumulate votes and give one candidate a number of votes equal to the number of directors to be elected multiplied by the number of votes to which the shareholder's shares are entitled, or distribute them on the same principle among as many candidates as the shareholder thinks fit. No shareholder shall be entitled to cumulate votes (i.e., cast for any one or more candidates a number of votes greater than the number of the shareholder's shares) unless the candidate's or candidates' names have been placed in nomination before the



voting of the shareholder's intention to cumulate votes. If any one shareholder has given notice, all shareholders may cumulate their votes for candidates in nomination.

**Voting of Shares by Fiduciaries, Minors, or Entities [Corp. Code §§ 702-704]**

4.11. (a) The rights of the persons and entities specified in this section to vote shares are governed by the provisions of this Paragraph of the Bylaws.

**Personal Representative [Corp. Code § 702(a)]**

(b) Except as provided in subparagraph (i) of this Paragraph 4.11, shares held by an administrator, executor, guardian, conservator, or custodian may be voted by the holder either in person or by proxy, without a transfer of the shares into the holder's name.

**Trustee [Corp. Code § 702(a)]**

(c) Shares standing in the name of a trustee may be voted by the trustee, either in person or by proxy, but no trustee shall be entitled to vote shares so held without a transfer of them into the trustee's name.

**Receiver [Corp. Code § 702(b)]**

(d) Share standing in the name of a receiver may be voted by the receiver. Share held by or under the control of a receiver may be voted by the receiver without the shares being transferred into the receiver's name if authority to vote them is contained in the court order appointing the receiver.

**Pledgee [Corp. Code § 702(c)]**

(e) Subject to the provisions of Paragraph 4.12 of these Bylaws and except when otherwise agreed in writing between the parties, a shareholder whose shares are pledged shall be entitled to vote the shares until they have been transferred into the name of the pledgee, thereafter the pledgee shall be entitled to vote the shares so transferred.

**Minor [Corp. Code § 702(d)]**

(f) Share standing in the name of a minor may be voted and the corporation may treat all rights incident to the shares as exercisable by the minor, in person or by proxy, whether or not the corporation has notice, actual or constructive, of the minority, unless a guardian of the minor's property has been appointed and written notice of the appointment given to the corporation.

**Corporation [Corp. Code § 703(a)]**

(g) Shares standing in the name of another corporation, domestic or foreign, may be voted by the officer, agent or proxyholder as the bylaws of the other corporation may prescribe or, in the absence of a provision, as the board of directors of the other corporation may determine or, in the absence of a determination, by the board chairperson, president, or any vice-president of the other corporation, or by any other person authorized to do so by the board chairperson, president, or any vice-president of the other corporation. Shares that are purported to be executed in the name of a corporation (whether or not any title of the person signing is indicated) shall be foregoing provisions, unless the contrary is shown.

**Subsidiary [Corp. Code § 703(b)]**

(h) Share of the corporation owned by any subsidiary of the corporation shall not be entitled to vote on any matter.

**Corporate Fiduciary [Corp. Code § 703(c)]**

(i) Shares held by the corporation in a fiduciary capacity, and shares of the corporation held in a fiduciary capacity by its subsidiary, if any, shall not be entitled to vote on any matter, except to the extent that the settlor or beneficial owner possesses and exercises a right to vote or to give the corporation binding instructions as to how to vote the shares.

**Share in Names of Two or More Persons [Corp. Code § 704]**

(j) If share stand of record in the names of two or more persons, whether fiduciaries, members of a partnership, joint tenants, tenants in common, husband and wife as community property, tenants by the entirety, voting trustees, [persons entitled to vote under a shareholder voting agreement,] or otherwise, or if two or more persons (including proxyholders) have the same fiduciary relationship respecting the same shares, unless the Secretary of the corporation is given written notice to the contrary and is furnished with a copy of the instrument or order appointing them or creating the relationship where it is so provided, their acts with respect to voting shall have the following effect:

- (1) If only one votes, the act binds all.
- (2) If more than one vote, the act of the majority so voting binds all.
- (3) If more than one vote, but the vote is evenly split on any particular matter, each fraction may vote the securities in question proportionately.

If the instrument so filed or the registration of the shares shows that any tenancy is held in unequal interests, a majority or even split for the purpose of the above shall be a majority or even split in interest.

**Proxies [Corp. Code § 705]**

4.12. (a) Every person entitled to vote share may authorize another person or persons to act by proxy with respect to the shares. Except as otherwise provided by written agreement between the parties, the record-holder of shares that a person holds as pledgee or otherwise as security or that belong to another must issue to the pledgor or to the owner of the shares, on demand and payment of necessary expenses, a proxy to vote or take other action on the shares.

**Presumptive Validity [Corp. Code § 705(a)]**

(b) Any proxy purporting to be executed in accordance with this Paragraph 4.12 shall be presumptively valid.

**Duration of Proxy [Corp. Code § 705(b)]**

(c) Nor proxy shall be valid after the expiration of 11 months from the date of the proxy unless otherwise provided in the proxy. Every proxy continues in full force and effect until revoked by the person executing it before the vote for which the proxy was issued, except as provided in subparagraphs (f) and (g) of this Paragraph 4.12. The dates contained on the forms of proxy presumptively determine the order of execution, regardless of the postmark dates on the envelopes in which they are mailed.

**Death or Incapacity of Maker [Corp. Code § 705(e)]**

(d) a proxy is not revoked by the death or incapacity of the maker, unless (except as provided in subparagraph (f) of this Paragraph 4.12), before the vote is counted, written notice of the death or incapacity is received by the corporation.

**Revocation of Proxy [Corp. Code §§ 2112(b)(3), 705(b)]**

(e) Revocation of a proxy is effected by a writing delivered to the corporation stating that the proxy is revoked or by a subsequent proxy executed by, or as to any meeting by attendance at the meeting and voting in person by, the person executing the proxy.

**Proxy Providing for Irrevocability [Corp. Code § 705(e)]**

(f) A proxy that states that it is irrevocable is irrevocable for the period specified in the proxy (notwithstanding subparagraph (d) of this Paragraph 4.12) when it is held by any of the following or a nominee of any of the following:

- (1) A pledgee.
- (2) A person who has purchased or agreed to purchase or holds an option to purchase the shares or a person who has sold a portion of the person's shares in the corporation to the maker of the proxy.
- (3) A creditor or creditors of the corporation or the shareholder who extended or continued credit to the corporation or the shareholder in consideration of the proxy if the proxy states that it was given in consideration of the extension or continuation of credit and the name of the person extending or continuing credit.
- (4) A person who has contracted to perform services as an employee of the corporation, if a proxy is required by the contract of employment and if the proxy states that it was given in consideration of the contract of employment, the name of the employee, and the period of employment contracted for.
- (5) A beneficiary of a trust with regard to shares held by the trust.

In addition, a proxy may be made irrevocable (notwithstanding subparagraph (d) of this Paragraph 4.12) if it is given to secure the performance of a duty or to protect a title, either legal or equitable, until the happening of events that, by its terms, discharge the obligations secured by it.

**When Irrevocable Proxy is Revocable [Corp. Code § 705(e), (f)]**

(g) Notwithstanding the period of irrevocability specified in the proxy as provided in subparagraph (f) of this Paragraph 4.12, the proxy becomes revocable when the pledge is redeemed, the option or agreement to purchase is terminated, or the seller no longer owns any shares of the corporation or dies, the debt of the corporation or the shareholder is paid, the period of employment provided for in the contract of employment has terminated or the person ceases to be a beneficiary of the trust.

A proxy may be revoked, notwithstanding a provision making it irrevocable, by a transferee of shares without knowledge of the existence of the provision unless the existence of the proxy and its irrevocability appears on the certificate representing the shares.

#### **Form of Proxy or Written Consent [Corp. Code § 604]**

(h) Any form of proxy or written consent (see Paragraph 4.16 of these Bylaws) distributed to 10 or more shareholders must, if the outstanding shares are held by 100 or more persons as determined under Section 605 of the California Corporations Code, afford an opportunity on the proxy or form of written consent to specify a choice between approval and disapproval of each matter or group of related matters intended to be acted on at the meeting for which the proxy is solicited or by the written consent, other than elections to office, and must provide, subject to reasonable specified conditions, that where the person solicited specifies a choice with regard to any matter the shares will be voted in accordance with the specification.

In any election of directors, any form of proxy in which the directors to be voted on are named in the proxy as candidates and that is marked by a shareholder "withhold" or otherwise marked in a manner indicating that the authority to vote for the election of directors is withheld shall not be voted either for or against the election of a director.

Failure to comply with this subparagraph (h) does not invalidate any corporate action taken, but may be the basis for challenging any proxy at a meeting and any shareholder may sue in the superior court to compel compliance with the proxy instructions.

#### **Directors' Determination of Execution and Use of Proxies**

##### **[Corp. Code § 212(b)(3)]**

(i) The Board of Directors may, in advance of any annual or special meeting of the shareholders, prescribe additional regulations concerning the manner of execution and filing of proxies and the validation of the same, which are intended to be voted at any meeting.

#### **Voting Trust [Corp. Code § 706]**

##### **Voting Trust [Corp. Code § 706(b)]**

14.13. (a) Share may be transferred by written agreement to trustees in order to confer on them the right to vote and otherwise represent the share for the period of time, not exceeding 10 years, as may be specified in the agreement. At any time within two years before the time of expiration of any voting trust agreement as originally fixed or as last extended as provided in this paragraph, one or more beneficiaries under the voting trust agreement may, by written agreement and with the written consent of the voting trustee or trustees, extend the duration of the voting trust agreement with regard to their shares for an additional period not exceeding 10 years from the expiration date of the trust as originally fixed or as last extended as provided in this paragraph. A duplicate of the voting trust agreement and any extension of the agreement must be filed with the Secretary for the corporation and must be open to inspection by a shareholder, a holder of a voting trust certificate, or the agent of either, on the same terms as the record of shareholders of the corporation is open to inspection.

**Effect of Paragraph [Corp. Code § 706(d)]**

(b) This section of the Bylaws is not intended to invalidate any voting or other agreement among shareholders or any irrevocable proxy meeting the requirements of subparagraph (f) of Paragraph 4.12 of these Bylaws.

**Inspectors of Election [Corp. Code § 707]**

**Appointment [Corp. Code § 707(a)]**

4.14. (a) In advance of any meeting of shareholders the Board may appoint inspectors of election to act at the meeting and any adjournment of the meeting. If inspectors of election are not so appointed, or if any persons so appointed fail to appear or refuse to act, the chairperson of any meeting of shareholders may, and on the request of any shareholder or a shareholder's proxy must, appoint inspectors of election (or persons to replace those who so fail or refuse) at the meeting.

**Number [Corp. Code § 707(a)]**

(b) The number of inspectors shall be either one or three. If the inspector or inspectors are appointed at the meeting on the request of one or more shareholders' or proxies, the majority of shares represented in person or by proxy will determine whether one or three inspectors are to be appointed.

**Duties [Corp. Code § 707(b), (c)]**

(c) The inspector of election shall

- (1) Determine the number of share outstanding and the voting power of each, the share represented at the meeting, the existence of a quorum, and the authenticity, validity, and effect of proxies.
- (2) Receive votes, ballots, or consents.
- (3) Hear and determine all challenges and questions in any way arising in connection with the right to vote.
- (4) Count and tabulate all votes or consents.
- (5) Determine when the polls shall close.
- (6) Determine the result of the election.
- (7) Do such acts as may be proper to conduct the election or vote with fairness to all shareholders.
- (8) Perform his, her, or their duties impartially, in good faith, to the best of his, her, or their ability and as expeditiously as is practical.

**Decision, Act, or Certificate [Corp. Code § 707(c)]**

(d) If there are three inspectors of the election, the decision, act, or certificate of a majority is effective in all respects as the decision, act, or certificate of all. Any report or certificate made by the inspectors of election is prima facie evidence of the facts stated therein.

**Conduct of Meetings [Corp. Code § 212(b)(2)]**

4.15. At every meeting of the shareholders, the President of the corporation, or in the Presidents' absence the Vice-President designated by the President, or in the absence of a



designation a chairperson (who shall be one of the Vice-Presidents, if any is present) chosen by a majority in interest of the shareholders of the corporation present in person or by proxy and entitled to vote, shall act as chairperson. The Secretary of the corporation, or in the Secretary's absence an Assistant Secretary, if any, shall act as Secretary of all meetings of the shareholders. The chairperson may appoint another person to act as secretary for any shareholders' meeting only in the absence of the Secretary and all Assistant Secretaries.

#### **Action Without a Meeting [Corp. Code § 603]**

##### **When Authorized [Corp. Code § 603(a), (d)]**

4.16. (a) Unless otherwise provided in the Articles, any action that may be taken at any annual or special meeting of shareholders may be taken without a meeting and without prior notice, if a consent in writing, setting forth the action taken, is signed by the holders of outstanding shares having not less than the minimum number of votes that would be necessary to authorize or take the action at a meeting where all shares entitled to vote on the matter were present and voted, provided, however, that directors may not be elected by written consent except by the unanimous written consent of all shares entitled to vote for the election of directors.

##### **Notice of Shareholder Approval [Corp. Code § 603 (b)]**

(b) Unless the consents of all shareholders entitled to vote have been solicited in writing, notice to those shareholders entitled to vote who have not consented in writing must be given as follows:

- (1) Notice of any shareholder approval pursuant to California Corporations Code Section 310 (relating to contract or transaction between corporation and its director or legal entity in which one or more of its directors has a material financial interest (see Paragraph 2.23 of these Bylaws)), Section 317 (relating to indemnification by corporation of its director, officer, employee, or agent arising out of court, administrative, or investigative proceeding (see Paragraphs 2.25-2.32 of these Bylaws)), Section 1152 (relating to corporate conversions), Section 1201 (relating to reorganizations), or Section 2007 (relating to plan of distribution on dissolution), without a meeting by less than unanimous written consent must be given at least 10 days before the consummation of the action authorized by the approval; and
- (2) Prompt notice must be given of the taking of any other corporate action approved by shareholders without a meeting by less than unanimous written consent.

Subparagraph (b) of Paragraph 4.03 of these Bylaws, relating to the method of giving notice, applies to the notice provided by this section.

##### **Revocation of Consent [Corp. Code § 603(c)]**

(c) Any shareholder giving a written consent, or the shareholder's proxyholders, or a transferee of the shares, or a personal representative of the shareholder, or their respective proxyholders, may revoke the consent by a writing received by the corporation before the time that written consents of the number of shares required to authorize the proposed

action have been filed with the Secretary of the corporation, but may not do so after the consents have been filed. The revocation is effective on its receipt by the Secretary of the corporation.

## **ARTICLE V OFFICERS**

### **Number and Titles [Corp. Code §§ 212(b)(6), 312(a)]**

5.01. The officers of the corporation shall be a Board Chairperson and a President, one or more Vice-Presidents, a Secretary, and a Chief Financial Officer who may also be called Treasurer. The corporation may also have, at the discretion of the Board, any other officers that may be appointed in accordance with the provisions of Paragraph 5.03 of this Article. One person may hold two or more offices. In its discretion, the Board of Directors may leave unfilled, for any period it may fix, any office except the offices of Board Chairperson, President, Secretary, and Chief Financial Officer.

### **Appointment [Corp. Code §§ 212(b)(6), 312(b)]**

5.02. The officers of the corporation, except those officers appointed in accordance with the provisions of Paragraphs 5.03 or 5.05 of this Article, shall be chosen at the meeting of the Board after the annual meeting of Shareholders by the Board. Each officer shall serve at the pleasure of the Board, subject to any rights that he or she has under any employment contract with the corporation, and shall hold office until the appointment of his or her successor, or until his or her resignation, removal from office pursuant to Paragraph 5.04, or other disqualification.

### **Other Officers [Corp. Code §§ 212(b)(6), 312(a)]**

5.03. The Board may appoint any officers necessary to enable the corporation to sign instruments and share certificates. Each officer shall hold office for the period, have the authority, and perform duties that the Board may, by resolution, from time to time determine.

### **Removal and Resignation [Corp. Code §§ 212(b)(6), 312(b)]**

5.04. Any officer may be removed, either with or without cause, subject to any rights of the officer under any employment contract with the corporation, by the vote of the Board at any regular or special meeting of the Board, or by the unanimous written consent of the directors then in office without a meeting. Any officer may resign at any time without prejudice to any rights of the corporation under any contract to which the officer is a party by giving written notice to the Board Chairperson, if there is an officer, or to the President, or to the Secretary of the corporation. Any resignation shall take effect on the date the notice is received unless a later effective date is specified, in which case the resignation is effective on the specified date. Unless otherwise specified in the notice, acceptance of the resignation by the Board shall not be necessary to make it effective.

### **Vacancies [Corp. Code §§ 212(b)(6), 312(a)]**

5.05. If the office of Board Chairperson, President, Secretary or Chief Financial Officer becomes vacant by reason of death, resignation, removal, or otherwise, the Board shall



fill it by appointing a successor officer who shall hold the office for the unexpired term. If any office becomes vacant, the Board may, in its discretion, leave it unfilled for any period that it may fix or it may appoint a successor officer to fill the vacancy.

**Board Chairperson [Corp. Code §§ 212(b)(6), 312(a), 416(a)]**

5.06. The Board Chairperson, if there is an officer, shall, if present, preside at all meetings of the Board and exercise and perform any other powers and duties that are assigned to him or her by the Board or prescribed by law or by these Bylaws. When so directed by the Board, the Chairperson shall, with the Secretary or an Assistant Secretary, if any, or the Chief Financial Officer or Assistant Treasurer, if any, sign share certificates. Signatures on the certificates may be facsimile.

**President [Corp. Code §§ 212(b)(6), 312(a)]**

5.07. Subject to the supervisory powers, if any, that may be given by the Board to the Board Chairperson, if there is an officer, the President shall be the chief executive officer of the corporation and, except as otherwise provided in these Bylaws, shall have: (1) general supervision, direction, and control of the business and officers of the corporation; (2) the general powers and duties of management usually vested in the office of President of a corporation; and (3) any other powers and duties prescribed by the Board or by these Bylaws. Within this authority and in the course of his or her duties, the President shall:

**Meetings**

(a) Preside at all meetings of the shareholders, preside at Board meetings in the absence of the Board Chairperson, or if there is none, at all meetings of the Board, and be ex officio member of all Board committees.

**Share Certificates [Corp. Code § 416(a)]**

(b) Except when otherwise directed by the Board, sign, with the Secretary or an Assistant Secretary, if any, or the Chief Financial Officer or Assistant Treasurer, if any, all share certificates of the corporation. Signatures on the certificates may be facsimile.

**Instruments**

(c) Sign corporate instruments on behalf of the corporation as provided in Paragraph 6.02 of Article VI of these Bylaws.

**Hire and Fire Employees**

(d) Subject to direction from the Board, appoint and remove, employ and discharge, and prescribe duties and fix the compensation of all agents and employees of the corporation other than the officers. These functions may, however, be delegated by the President, or the Board, to specified persons in the various levels of management.

**Voting Shares of Other Corporations [Corp. Code § 703(a)]**

(e) Unless otherwise directed by the Board and subject to its control, attend in person and, unless prohibited by law, act and vote, on behalf of this corporation, at all meetings of the shareholders of any corporation in which this corporation holds shares.

**Vice-President [Corp. Code §§ 212(b)(6), 312(a)]**

5.08. In the absence of disability of the President, the Vice-President, or the Vice-Presidents if there are more than one in order of their rank as fixed by the Board, or if not ranked the Vice-President designated by the Board, shall perform all the duties of the President and shall for this purpose act within the President's scope of authority. The Vice-President or the Vice-Presidents shall have any other powers and perform any other duties prescribed for them respectively by the Board or by these Bylaws.

**Secretary [Corp. Code §§ 212(b)(6), 312(a)]**

5.09. The Secretary shall

**Seal [Corp. Code § 207(a)]**

(a) Have custody of the corporate seal and shall affix it in appropriate cases to all corporate instruments.

**Records, Reports, and Statements**

(b) Have custody of the records of the corporation and ensure that the books, reports, statements, certificates, and all other documents and records required by law are properly kept and filed.

**Notices**

(c) Ensure that all notices are given in accordance with the provisions of these Bylaws or as required by law. In case of the Secretary's absence, disability, or neglect or refusal to act, notice may be given and served or caused to be served by an Assistant Secretary, if any, by the President or a Vice-President of the corporation, or by the Board of Directors.

**Minutes**

(d) Act as Secretary at all meetings of shareholders and of the Board and record, or cause to be recorded, in the minute book all actions taken at those meetings. In case of the Secretary's absence, disability, neglect of duties, or refusal to act, this duty may be performed by an Assistant Secretary, if any, or any other person appointed by the person presiding at the meeting.

**Minute Book [Corp. Code § 1500]**

(e) Keep a written book of minutes, at the corporation's principal executive office or other place designated by the Board, of all proceedings of the corporation's shareholders, Board and Board committees, including: the time and place of meeting; whether the meeting was regular or special; the authorization for any special meeting; the type of notice given, the names of the persons attending Board and committee meetings; the number of shares present or represented at shareholder meetings; and the proceedings of the meeting.

**Articles of Incorporation [Corp. Code § 209]**

(f) Keep the original or a copy of the Articles of Incorporation, certified by the Secretary of State, with all amendments in the minute book.

**Bylaws [Corp. Code § 213]**

(g) Keep at the corporation's principal executive office the original or a copy of these Bylaws to date, that shall be open to inspection by the shareholders at all reasonable times during office hours.

**Record of Shareholders [Corp. Code § 1500]**

(h) Keep at the corporation's principal executive office or at the office of its transfer agent or registrar in California a record of the corporation's shareholders, showing the names and addresses of all shareholders and the number and class of shares held by each.

**Certify Records [Corp. Code § 314]**

(i) When requested to do so by the Board, any director individually, a Board Committee, or the President or other officer of this corporation, or when so required by law, certify as a true copy a copy of the Bylaws of the corporation, or of the minutes of any meeting of the incorporators, shareholders, directors, Board committee, or other, or of any resolution adopted by the Board, a Board committee, or the shareholders. This duty may be performed by any Assistant Secretary of the corporation.

**Share Certificates [Corp. Code § 416(a)]**

(j) Sign, with the Board Chairperson or the Vice Chairperson, if any, or the President or Vice-President, all share certificates of the corporation. In lieu of signing by the Secretary, the certificates may be signed by an Assistant Secretary, if any, or by the Chief Financial Officer or Assistant Treasurer, if any, of the corporation. Signatures on the certificates may be facsimile.

**Exhibit Record of Shareholders [Corp. Code § 1600(a), (c), (d)]**

(k) Make the record of shareholders available during usual business hours for inspection and copying:

- (1) To any shareholder or shareholders who hold at least 5 percent in the aggregate of the outstanding voting shares of a corporation, on five business days' prior written demand on the corporation; and
- (2) To any shareholder or holder of a voting trust certificate on written demand on the corporation for a purpose reasonably related to that holder's interests as a shareholder or holder of a voting trust certificate.

Any inspection and copying under this paragraph may be made in person or by agent or attorney.

**Exhibit Minutes to Shareholder [Corp. Code § 1601]**

(l) On the written demand on the corporation of any shareholder or holder of a voting trust certificate, make available for inspection at any reasonable time during usual business hours to that shareholder or holder of the voting trust certificate for a purpose reasonably related to that holder's interests as a shareholder or as the holder of that voting trust certificate, or to his or her agent or attorney, the minutes of any proceedings of the shareholders, the Board, or Board committee, or any accounting books and records in the Secretary's custody. This right of inspection includes the right to copy and make extracts.

#### **Exhibit Records to Director [Corp. Code § 1602]**

(m) Make available at any reasonable time to any director who requests, or to his or her agent or attorney, for inspection all books, records, and documents of every kind of the corporation that the Secretary is charged by these Bylaws with maintaining or keeping or that are in the Secretary's custody. This right of inspection includes the right to copy and make extracts.

#### **Other Duties**

(n) Perform any and all other functions and duties that may be specified in other sections of these Bylaws and any other duties that may from time to time be assigned by the Board.

#### **Absence of Secretary**

(o) In case of the Secretary's absence, disability, neglect of duties, or refusal to act, the Assistant Secretary, or if there is none, the Chief Financial Officer acting as Assistant Secretary may perform all of the functions and duties of the Secretary. In case of the absence, disability, neglect of duties, or refusal to act, of the Assistant Secretary or Chief Financial Officer, as the case may be, as well as of the Secretary, then any person authorized by the President, Vice-President, or Board of Directors shall perform the functions and duties of the Secretary.

#### **Assistant Secretary [Corp. Code §§ 202(b)(6), 312(a)]**

5.10. If the Board appoints one or more Assistant Secretaries, then, at the request of the Secretary or in case of the Secretary's absence or disability, the Assistant Secretary, or, if there is more than one, the Assistant Secretary designated by the Secretary, shall perform all the duties of the Secretary, and shall for this purpose act within the Secretary's scope of authority. The Assistant Secretary or Assistant Secretaries shall also perform any other duties that from time to time may be assigned to them by the Board or by the Secretary.

#### **Chief Financial Officer [Corp. Code §§ 212(b)(6), 312(a)]**

5.11. The Chief Financial Officer shall:

##### **Funds-Custody and Deposit**

(a) Have charge and custody of, and be responsible for, all funds and securities of the corporation, and deposit all funds in the name of the corporation in the banks, trust companies, or other depositories selected by the Board.

##### **Funds-Receipt**

(b) Receive, and give receipt for, moneys due and payable to the corporation from any source whatever.

##### **Funds-Disbursement**

(c) Disburse or cause to be disbursed, the funds of the corporation as may be directed by the Board, taking proper vouchers for those disbursements.

**Maintain Accounts [Corp. Code § 1500]**

- (d) Keep and maintain adequate and correct books and records of account either in written form or in any other form capable of being converted into written form.

**Reports to President and Directors**

- (e) Render to the President and directors, whenever they request it, an account of all transactions as Chief Financial Officer and of the financial condition of the corporation.

**Financial Reports to Shareholders [Corp. Code §§ 114, 1501(a), (c), (d)]**

- (f) Take the following actions with respect to financial reports:
- (1) Prepare, or cause to be prepared, the balance sheet, income statement, and statement for changes in the corporation's financial position for the fiscal year to be included in the annual report to shareholders, and either ensure that the statements are accompanied by a report on them of independent accounts or, if there is no accountant's report, certify that the statements were prepared without audit from the books and records of the corporation.
  - (2) On the written request of any shareholder or shareholders holding at least 5 percent of the outstanding shares of any class, prepare, or cause to be prepared, and deliver or mail to the person making the request within 30 days after the request an income statement of the corporation for the three-month, six-month, or nine-month period of the current fiscal year ended more than 30 days before the date of the request and a balance sheet of the corporation as of the end of that period and, if no annual report for the last fiscal year was sent to shareholders, the statements required by clause (1) of this paragraph.
  - (3) Keep on file in the corporation's principal office for a period of 12 months a copy of the statements referred to in clause (2) of this paragraph and exhibit them at all reasonable times to any shareholder demanding an examination of them or mail a copy of them to that shareholder.
  - (4) Either cause the quarterly income statements and balance sheets referred to in clause (2) of this paragraph to be accompanied by the report on the statements prepared by independent accountants engaged by the corporation or, if there is no report, certify that the statements were prepared without audit from the books and records of the corporation.
  - (5) Prepare the financial statements, balance sheets, income statements, and statements of changes in financial position referred to in this paragraph (or have them prepared) by reasonably setting forth the assets and liabilities and the income and expense of the corporation, and disclosing the accounting basis used in their preparation.

**Exhibit Accounts to Shareholders [Corp. Code § 1601]**

- (g) On the written demand on the corporation of any shareholder or holder of the voting trust certificate, exhibit for inspection at any reasonable time during usual business hours to that shareholder or holder of the voting trust certificate for a purpose reasonably related to that holder's interests as a shareholder or as the holder of the voting trust certificate, or to his or her agent or attorney any or all of the accounting books and



records of the corporation. This right of inspection includes the right to copy and make extracts.

**Exhibit Account to Directors [Corp. Code § 416(a)]**

(h) Exhibit at any reasonable time to any director of the corporation who so requests, or to his or her agent or attorney, for inspection any and all books, records, and documents of every kind that the Chief Financial Officer is charged by these Bylaws with maintaining and/or keeping or that are in the Chief Financial Officer's custody. This right of inspection includes the right to copy and make extracts.

**Share Certificates [Corp. Code § 406(a)]**

(i) Sign, with the Board Chairperson or Vice Chairperson, if any, or the President or a Vice-President, all share certificates of the corporation. In lieu of signing by the Chief Financial Officer, those certificates may be signed by an Assistant Treasurer, if any, or by the Secretary or by an Assistant Secretary, if any of the corporation. Signatures on the certificates may be facsimile.

**Bond**

(j) If required by the Board of the President, give to the corporation a bond, with one or more sureties or a surety company, in a sum satisfactory to the Board, for the faithful performance of the duties as Chief Financial Officer and for the restoration to the corporation, in the event of the Chief Financial Officer's death, resignation, retirement, or removal from office, of all books, papers, vouchers, money, and other property of whatever kind in his or her possession or under his or her control belonging to the corporation.

**Other Duties**

(k) Perform any and all other functions and duties required of the Chief Financial Officer that may be specified in other sections of these Bylaws and, in general, perform all the duties incident to the office of Chief Financial Officer and the other duties as from time to time may be assigned by the Board.

**Absence of Chief Financial Officer**

(l) In case of the Chief Financial Officer's absence, disability, refusal to act, or neglect of duties, the Assistant Treasurer, or if there is none, the Secretary acting as Assistant Treasurer may perform all of the functions and duties of the Chief Financial Officer. In case of the absence, disability, refusal to act, or neglect of duties, of the Assistant Treasurer or Secretary, as the case may be, as well as of the Chief Financial Officer, then any person authorized by the President or Vice-President or by the Board shall perform the functions and duties of the Chief Financial Officer.

**Assistant Treasurer [Corp. Code §§ 212(b)(6), 312(a)]**

5.12. If the Board appoints one or more Assistant Treasurers they shall, if so required by the Board, each give a bond for the faithful discharge of his or her respective duties in the sum, and with the sureties, as the Board shall require. At the request of the Chief Financial Officer or in the case of the Chief Financial Officer's absence or disability, the

Assistant Treasurer shall perform all the duties of the Chief Financial Officer and for these purposes shall act within the Chief Financial Officer's scope of authority. If there is more than one Assistant Treasurer, the Assistant Treasurer designated by the Chief Financial Officer, or, if there has been no designation, the Assistant Treasurer designated by the Board, shall perform these duties. The Assistant Treasurer or Assistant Treasurers shall also perform any other duties that may from time to time be assigned to them by the Board of Directors or by the Chief Financial Officer.

**Compensation [Corp. Code § 212(b)(6)]**

5.13. The officers of the corporation shall receive the salaries and other compensation that are fixed from time to time by the Board, and no officer shall be prevented from receiving that salary and compensation by reason of the fact that he or she is also a director of the corporation.

**ARTICLE VI  
EXECUTION OF INSTRUMENTS AND DEPOSIT OF FUNDS**

**Limitations [see Corp. Code § 313; *Snukal v. Flightways Manufacturing, Inc.* (2000) 23 Cal. 4<sup>th</sup> 754, 786-787, 98 Cal. Rptr. 2d 1,3 P.3d 286]**

6.01. Except as otherwise provided in these Bylaws, the Board may, by duly adopted resolution, authorize any officer or agent of the corporation to enter into any contract, or to execute and deliver any instrument, in the name of and on behalf of this corporation. Authorization may be general or may be confined to specified instances. Unless expressly authorized, no officer, agent, or employee shall have any power or authority to bind the corporation by any contract or engagement, or to pledge its credit, or to render it liable pecuniarily for any purpose or in any amount.

**Execution of Instruments and Papers [see Corp. Code §§ 313, 416(a); *Snukal v. Flightways Manufacturing, Inc.* (2000) 23 Cal. 4<sup>th</sup> 754, 786-787, 98 Cal. Rptr. 2d 1, P.3d 286]**

6.02. Unless otherwise expressly required by the Board or by law, deeds and other conveyances, promissory notes, deeds of trust, mortgages, and other evidences of indebtedness of the corporation, and share certificates shall be executed, signed, or endorsed by the Board Chairperson, if any, or by the President or a Vice-President of the corporation, and by the Chief Financial Officer or any Assistant Treasurer or the Secretary or any Assistant Secretary of the corporation. Signatures on share certificates only may be facsimile.

**Signing of Checks**

6.03. All checks, drafts, or other orders for the payment of money issued in the name of the corporation shall be signed by the person or persons and in the manner determined from time to time by resolution of the Board.

### **Deposit and Withdrawal of Funds**

6.04. (a) All funds of the corporation, including all checks, drafts, or other orders for the payment of money payable to the corporation, shall be deposited by the Chief Financial Officer from time to time to the credit of the corporation with any banks, trust companies, or other depositories that the Board may select or that may be selected by any Board committee, officer, or agent of the corporation to whom that power may be delegated from time to time by the Board. All checks, drafts, or other orders for the payment of money requiring endorsement by the corporation before deposit shall be endorsed "for deposit only" by hand stamped impression in the name of the corporation.

(b) The withdrawal of funds from any accounts may be made only by check signed as provided in Paragraph 6.03 of this Article.

## **ARTICLE VII ISSUANCE OF SHARES AND SHARE CERTIFICATES**

### **Authority to Issue [Corp. Code §§ 207(d), 400(a)]**

7.01. (a) The corporation may issue one or more classes or series of shares or both, with full, limited, or no voting rights and with any other rights, preferences, privileges, and restrictions that are stated or authorized in its Articles of Incorporation. No denial or limitation of voting rights shall, however, be effective unless at the time one or more classes or series of outstanding shares or debt securities, singly or in the aggregate, are entitled to full voting rights. No denial or limitation of dividend or liquidation rights shall be effective unless at the time one or more classes or series of outstanding shares, singly or in the aggregate, are entitled to unlimited dividend and liquidation rights.

### **Equality of Rights [Corp. Code § 400(b)]**

(b) All shares of any one class shall have the same voting, conversion, and redemption rights and other rights, preferences, privileges, and restrictions, unless the class is divided into series. If a class is divided into series, all the shares of any one series shall have the same voting, conversion, and redemption rights and other rights, preferences, privileges, and restrictions.

### **Consideration [Corp. Code § 409(a)(1), (b), (c)]**

(c) Shares may be issued for any consideration that is determined from time to time by the Board, consisting of any or all of the following:

- (1) Money paid;
- (2) Labor done;
- (3) Services actually rendered to the corporation or for its benefit or in its formation or reorganization;
- (4) Debts or securities canceled;
- (5) Tangible or intangible property actually received either by this corporation or by any wholly owned subsidiary of this corporation.
- (6) Any other consideration allowed by law.

Neither promissory notes of the purchasers (unless adequately secured by collateral other than the shares acquired or unless permitted by Paragraph 7.06 of this



Article) not future services shall constitute payment or part payment of shares of the corporation.

When shares are issued for any consideration other than money, the Board must state by resolution its determination of the fair value of the consideration to the corporation in monetary terms.

In the absence of fraud in the transaction, the judgment of the directors as to the value of the consideration for shares shall be conclusive.

**Share Dividend; Reclassification of Shares [Corp. Code § 409(a)(2)]**

(d) Shares may also be issued as a share dividend or on a stock split, reverse stock split, reclassification of outstanding shares into shares of another class, conversion of outstanding shares into shares of another class, exchange of outstanding shares for shares of another class, or other change affecting outstanding shares.

**Compliance With Corporate Securities Law**

(e) The corporation shall not offer to sell or sell any security issued by it, whether or not through underwriters, until the offer or sale has been qualified by the California Commissioner of Corporations as required by the Corporate Securities Law and the rules and regulations of the Commissioner, unless the security or transaction is exempted from the qualification and the applicable statutes and rules and regulations have been complied with.

**Payment for Share [Corp. Code § 410]**

(f) Every subscriber to shares and every person to whom shares are originally issued is liable to the corporation for the full consideration agreed to be paid for the shares. The full agreed consideration shall be paid prior to or concurrently with the issuance of the shares, unless the shares are issued as partly paid pursuant to Paragraph 7.03 of this Article, in which case the consideration shall be paid in accordance with the agreement of subscription or purchase.

**Shares as Deemed Fully Paid [Corp. Code § 409(b)]**

(g) Except as provided in Paragraph 7.03 of this Article, shares issued as provided in subparagraphs (c) and (d) of this Paragraph or Paragraph 7.06 of this Article shall be declared and taken to be fully paid stock and not liable to any further call, nor shall the holder of the shares be liable for any payments under the provisions of the General Corporation Law.

**Fractional Shares [Corp. Code § 407]**

**Authority to Issue**

7.02. (a) The corporation may, if the Board so determines, issue fractions of a share originally or on transfer.

**Failure to Issue**

(b) If the corporation does not issue fractions of a share, it shall, in connection with any original issuance of shares,

- (1) Arrange for the disposition of fractional interests by those entitled to them;
- (2) Pay in cash the fair value of fractions of a share as of the time when those entitled to receive the fractions are determined (provided, however, that the corporation may not pay cash for fractional shares if that action would result in the cancellation of more than 10 percent of the outstanding shares of any class);
- (3) Issue scrip or warrants in registered form, as certified or uncertified securities, or in bearer form as certificated securities, that shall entitle the holder to receive certificate for a full share on the surrender of the scrip or warrants aggregating a full share. Scrip or warrants shall not, however, unless they provide otherwise, entitle the holder to exercise any voting rights, to receive dividends on them, or participate in any of the assets of the corporation in the event of liquidation.

#### **Partly Paid Shares [Corp. Code §§ 409(d), 410, 413]**

7.03. The Corporation may, if the Board so determines, issue the whole or any part of its shares as partly paid and subject to call for the remainder of the consideration to be paid for them. If shares are so issued, the corporation shall, on the declaration of any dividend on fully paid shares, declare a dividend on partly paid share of the same class, but only on the basis of the percentage of the consideration actually paid on them.

A subscriber to partly paid shares is liable to the corporation as provided in Paragraph 7.01(f) of this Article, but a person holding shares as a pledgee, executor, administrator, guardian, conservator, trustee, receiver, or in any representative or fiduciary capacity is not personally liable for any unpaid balance, although the estate and funds in the hands of the fiduciary or representative are liable for any unpaid balance of the subscription price and the shares are subject to sale for the unpaid balance.

#### **Options [Corp. Code § 404]**

7.04. Either in connection with the issue, subscription, or sale of any of its shares, bonds, debentures, notes or other securities, or independently of the foregoing, the corporation may, if so determined by the Board, grant options to purchase or subscribe for shares of any class or series on any terms and conditions that the Board may deem expedient. Option rights may be transferable or nontransferable and separable or inseparable from other securities of the corporation, as determined by the Board.

#### **Employee Plans**

##### **Authority to Adopt [Corp. Code §§ 207(f), 408(a)]**

7.06. (a) The corporation may, as determined by the Board, and subject to the approval of the shareholders, as that term is defined in California Corporations Code Section 153, adopt and carry out a stock purchase plan or agreement, or stock option plan or agreement providing for the issue and sale for any consideration that may be fixed of its unissued shares or of issued shares acquired or to be acquired, to one or more of the employees or directors of the corporation or of any subsidiary or parent of the corporation or to a trustee on their behalf and for the payment of those shares in installments or at one

time, and may provide for aiding those persons in paying for those shares by compensation for services rendered, promissory notes, or otherwise.

#### **Includable Features [Corp. Code § 408(b)]**

(b) The plan or agreement may include, among other features, as determined by the Board, the fixing of eligibility for participating in it; the class and price of shares to be issued or sold under the plan or agreement; the number of shares that may be subscribed for; the method of payment for the shares; the reservation of title until full payment has been made; the effect of the termination of employment; an option or obligation on the part of the corporation to repurchase the shares on termination of employment, subject to California Corporations Code Sections 500-511; restrictions on transfer of the shares; and the time limits of and termination of the plan.

#### **Certificates of Determination**

##### **Execution of Officer's Certificate [Corp. Code §§ 173, 401(a)]**

7.07. (a) Before the corporation issues any share of any class or series of which the rights, preferences, privileges, and restrictions, or any of them, or the number of shares constituting any series or the designation of the series, are not set forth in the Articles but are fixed in a resolution adopted by the Board pursuant to authority given in its articles, an officers' certificate, as that term is defined in California Corporations Code Section 173, setting forth a copy of the resolution and the number of shares of the class or series, and stating that none of the shares of the class or series has been issued, shall be executed and filed in the office of the California Secretary of State.

##### **Change in Rights [Corp. Code § 401(b), (d), (e)]**

(b) After any certificate of determination as provided in Subparagraph (a) of this section has been filed in the office of the California Secretary of State, but before the corporation has issued any shares of the class or series covered by it, the Board may alter or revoke any right, preference, privilege, or restriction fixed or determined by the resolution set forth in the certificate by the adoption of another resolution appropriate for that purpose and the execution and filing of an officers' certificate setting forth a copy of the resolution and stating that none of the shares of the class or the series affected has been issued.

After shares of a class or series have been issued, the provisions of the resolution set forth in a certificate of determination may be amended only by the adoption and approval of an amendment in accordance with California Corporations Code Sections 902, 903, or 904, and the filing of a certificate of amendment in accordance with California Corporations Code Sections 905 and 908. However, a certificate to increase or decrease the number of shares of a series also may be filed as permitted by California Corporations Code Section 401(c), as set forth in subparagraph (c) of this section.

When the Board effects a change in rights, the provision of the original certificate of determination being amended must be identified in the amendment in accordance with California Corporations Code Section 907(a).

**Changing Number of Share of Series [Corp. Code § 401(c), (e), (f)]**

(c) After any certificate of determination has been filed in the office of the California Secretary of State, the Board may increase or decrease the number of shares constituting any series by the adoption of another resolution appropriate for that purpose and the execution and filing in the office of the California Secretary of State of an officers' certificate, as that term is defined in California Corporations Code Section 173, setting forth a copy of the resolution, the number of shares of the series then outstanding, and the increase or decrease in the number of shares constituting that series.

**Shareholder's Right to Share Certificate [Corp. Code § 416(a)]**

7.08. (a) Every holder of shares in the corporation shall be entitled to have a certificate signed in the name of the corporation by the Board Chairperson [or Vice Chairperson], if any, or the President or a Vice-President and by the Chief Financial Officer or an Assistant Treasurer, or the Secretary or any Assistant Secretary of the corporation, certifying the number of shares and the class or series of shares owned by the shareholder. Any or all of the signatures on the certificate may be facsimile. In case any officer, transfer agent, or registrar who has signed or whose facsimile signature has been placed on a certificate shall have ceased to be an officer, transfer agent, or registrar before that certificate is issued, the certificate may be issued by the corporation with the same effect as if that person were an officer, transfer agent, or registrar at the date of issue.

**Fractional Shares [Corp. Code § 407]**

(b) If the corporation issues fractions of a share originally or on transfer, it shall issue certificates for those shares as provided in subparagraph (a) of this section. A certificate for a fractional share shall entitle the holder to exercise voting rights, to receive dividends on the shares, and to participate in any of the assets of the corporation in the event of liquidation.

**Partly Paid Shares [Corp. Code § 409(d)]**

(c) If the corporation issues partly paid shares, it shall issue certificates for those shares as provided in subparagraph (a) of this section.

**Contents of Certificate [Corp. Code §§ 409(d), 418(a), (c), (d)]**

7.09. (a) The certificates shall contain the matter specified in Paragraph 7.08.(a) of this Article. In addition, if the shares of the corporation are classified or if any class of shares has two or more series, there shall appear on the certificate one of the following:

- (1) A statement of the rights, preferences, privileges, and restrictions granted to or imposed on each class or series of shares authorized to be issued and on the holders of the shares.
- (2) A summary of the rights, preferences, privileges, and restrictions with reference to the provisions of the Articles of Incorporation and any certificates of determination establishing those rights and restrictions.
- (3) A statement setting forth the office or agency of the corporation from which shareholders may obtain, on request and without charge, a copy of the statement referred to in clause (1) of this paragraph.

(b) There shall also appear on the certificate (unless stated or summarized under clause (1) or clause (2) of subparagraph (a) of this section the statements required by all of the following clauses to the extent applicable:

- (1) The fact that the shares are subject to restrictions on transfer.
- (2) If the shares are assessable or are not fully paid, a statement that they are assessable or a statement of the total amount of consideration to be paid and the amount paid, as required by Corporations Code Section 409(d).
- (3) The fact that the shares are subject to a voting agreement under California Corporations Code Section 706(a) or an irrevocable proxy under California Corporations Code Section 705(e) or restrictions on voting rights contractually imposed by the corporation.
- (4) The fact that the shares are redeemable.
- (5) The fact that the shares are convertible and the period for conversion.

### **Exchange of Certificates**

#### **On Amendment of Articles or Otherwise [Corp. Code § 422(a)]**

7.10. (a) If the Articles are amended in any way affecting the statements contained in the certificates for outstanding shares, or it becomes desirable for any reason, in the discretion of the Board of Directors, to cancel any outstanding certificate for shares and issue a new certificate for the shares conforming to the rights of the holder, the Board may order any holders of outstanding certificates for shares to surrender and exchange them for new certificates within a reasonable time to be fixed by the Board.

#### **Contents of Order [Corp. Code § 422(b)]**

(b) The order may provide that a holder of any certificates so ordered to be surrendered is not entitled to vote or to receive dividends or exercise any of the other rights of shareholders until the holder has complied with the order, but the order operates to suspend those rights only after notice and until compliance. The duty of surrender of any outstanding certificates may also be enforced by the corporation by civil action.

#### **Lost, Stolen, or Destroyed Certificate;**

##### **Issuance of New Certificate [Corp. Code § 419(a)]**

7.11. (a) The corporation may issue a new share certificate or a new certificate for any other security in the place of any certificate previously issued by it, that is alleged to have been lost, stolen, or destroyed. The corporation may require the owner of the lost, stolen, or destroyed certificate, or the owner's legal representative, to give the corporation a bond (or other adequate security) sufficient to indemnify it against any claim that may be made against it (including any expense or liability) on account of the alleged loss, theft, or destruction of any certificate or the issuance of a new certificate.

##### **Purchase by Protected Purchaser [Com. Code 8405(b)]**

(b) If after a new security has been issued for a lost, destroyed, or stolen security, a protected purchaser of the original security presents it for registration or transfer, the corporation must register the transfer unless registration would result in overissue, in



which event the corporation's liability is that set forth in the last paragraph of Paragraph 8.03 of Article VIII of these Bylaws. In addition to any rights on the indemnity bond, the corporation may recover the new security from the person to whom it was issued or any person taking under him or her except a protected purchaser.

**Alternative System in Lieu of Certificates [Corp. Code § 416(b)]**

7.12. Notwithstanding the provisions of subparagraph (a), Paragraph 7.08, of this Article VII, the corporation may adopt a system of issuance, recordation, and transfer of its shares by electronic or other means not involving any issuance of certificates, including provisions for notice to purchasers in substitution for the required statements on the certificates under subparagraphs (a) and (b) of Paragraph 7.09 of this Article VII, which system has been approved by the United States Securities and Exchange Commission, or that is authorized in any statute of the United States, or is in accordance with Division 8 of the California Commercial Code.

**ARTICLE VIII  
TRANSFER OF SHARES**

**Duty of Corporation [Com Code § 8401]**

8.01. When a security in registered form is presented to the corporation with a request to register transfer, the corporation is under a duty to register the transfer as required if:

- (a) Under the terms of the security, the person seeking registration of transfer is eligible to have the security registered in its name;
- (b) The security is endorsed by the appropriate person, or by an agent who has actual authority to act for the appropriate person;
- (c) Reasonable assurance is given that those endorsements are genuine and effective;
- (d) Any applicable law relating to the collection of taxes has been complied with;
- (e) The transfer does not violate any restriction on transfer imposed by the corporation;
- (f) A demand that the corporation not register the transfer is not in effect, or the corporation has discharged its notification obligations under Commercial Code Section 8403(b) and no legal process or indemnity bond is obtained by the person demanding that the transfer not be registered; and
- (g) The transfer is in fact rightful, or is to a protected purchaser.

**Nonliability of Corporation**

**Registration of Transfer [Com. Code § 8404(2)]**

8.02. (a) Except as otherwise provided in any law relating to the collection of taxes, the corporation is not liable to the owner or any other person suffering loss as a result of the registration of a transfer of a security if:

- (1) Registration was made pursuant to an effective endorsement;
- (2) The corporation received no demand that the corporation not register the transfer, such a demand was received but did not take effect, or the corporation complied with its notification obligations under Commercial Code Section 8403(b);



- (3) The corporation registered the transfer before receipt of, and reasonable opportunity to act on, legal process enjoining the corporation from registering the transfer; and
- (4) The corporation was not acting in collusion with the wrongdoer.

**Failure to Notify Corporation of Lost,  
Destroyed, or Stolen Security [Com. Code § 8406]**

(b) If a security has been lost, apparently destroyed, or wrongfully taken and the owner fails to notify the corporation of that fact within a reasonable time after he or she has notice of it and the corporation registers a transfer of the security before receiving the notification, the owner is precluded from asserting against the corporation any claim for registering the transfer or any claim to a new security.

**Liability of Corporation [Com. Code §§ 8104, 8210, 8405]**

8.03. If the corporation has registered a transfer of a security to a person not entitled to it, the corporation on demand must deliver a like security to the true owner unless:

- (a) The registration was pursuant to subparagraph (a) of Paragraph 8.02 of this Article VIII;
- (b) The owner is precluded from asserting any claim for registering the transfer as provided in subparagraph (c) of Paragraph 8.02 of this Article VII; or
- (c) The delivery would result in overissue.

In this case, if an identical security that does not constitute an overissue is reasonably available for purchase, the person entitled to the issue may compel the corporation to purchase and deliver it to him or her against surrender of the security, if any, that he or she holds; or if the security is not reasonably available for purchase, the person entitled to the issue may recover from the corporation the purchase price the person or the last purchaser for value paid for it with interest from the date of demand.

**Liability on Transfer of Partly Paid Shares**

**Good Faith Purchase [Corp. Code § 411]**

8.04. (a) A transferee of shares for which the full agreed consideration has not been paid to the corporation, who acquired them in good faith, without knowledge that they were not paid in full or to the extent stated on the certificate representing them, is liable only for the amount shown by the certificate to be unpaid on the shares represented by the certificate, until the transferee transfers the shares to one who becomes liable for the amount. The liability of any holder of the shares who derives title through a transferee and who is not a party to any fraud affecting the issue of the shares is the same as that of the transferee through whom title was derived.

**Purchase With Knowledge [Corp. Code § 412]**

(b) Every transferee of partly paid shares who acquired them under a certificate showing the fact of part payment, and every transferee of the shares (other than a transferee who derives title through a holder in good faith without knowledge and who is not a party to any fraud affecting the issue of the shares) who acquired them with actual knowledge that the full agreed consideration had not been paid to the extent stated on the certificate for the shares, is personally liable to the corporation for installments of the amount unpaid becoming due until the shares are transferred to one who becomes liable for the unpaid amount.

**Transferor [Corp. Code §§ 411, 412]**

(c) Either case mentioned in subparagraph (a) or (b) of this Paragraph 8.04, the transferor shall remain personally liable for the unpaid consideration if so provided in the certificate or agreed on in writing.

**ARTICLE IX  
CORPORATE RECORDS, REPORTS, AND SEAL**

**Minutes of Meetings [Corp. Code § 1500]**

9.01. The corporation shall keep minutes in written form of the proceedings of its shareholders, Board, and Board committees.

**Books and Records of Account [Corp. Code § 1500]**

9.02. The corporation shall keep adequate and correct books and records of account wither in written form or in any other form capable of being converted into written form.

**Record of Shareholders [Corp. Code § 1500]**

9.03. The corporation shall keep at its principal executive office, or at the office of its transfer agent or registrar, a record of its shareholders, giving the names and addresses of all shareholders and the number and class of shares held by each. The record must be kept either in written form or in any other form capable of being converted into written form.

**Shareholders' Right to Inspect Record of Shareholders by Written Demand of  
Holders of Specified Percentage of Shares [Corp. Code § 1600(a)]**

9.04. (a) A shareholder or shareholders holding at least 5 percent in the aggregate of the outstanding voting shares of the corporation shall have an absolute right to:

- (1) Inspect and copy the record of shareholders' names and addresses and shareholdings during usual business hours on 5 business days' prior written demand on the corporation; and
- (2) Obtain from the corporation's transfer agent, on written demand and on the tender of its usual charges for a list (the amount of which charges must be stated to the shareholder by the transfer agent on request), a list of shareholders' names and addresses, who are entitled to vote for the election of directors, and their shareholdings, as of the most recent record date for which it has been compiled or as of a date specified by the shareholder after the date

of the demand. The list must be made available on or before the later of 5 business days after the demand is received or the date specified in the demand as the date when the list is to be compiled. The corporation shall have the responsibility to cause its transfer agent to comply with this requirement.

**By Written Demand of Any Shareholder [Corp. Code § 1600(c)]**

(b) The record of shareholders shall also be open to inspection and copying by any shareholder [or holder of a voting trust certificate] at any time during the usual business hours on written demand on the corporation for a purpose reasonably related to the holder's interests as a shareholder [or holder of a voting trust certificate].

**Inspection by Agent or Attorney [Corp. Code § 1600(d)]**

(c) Any inspection and copying under this Paragraph 9.04 may be made in person or by agent or attorney.

**Shareholders' Right to Inspect Books of Account and Minutes [Corp. Code § 1601]**

9.05. The accounting books and records and minutes of proceedings of the shareholders, Board, and Board committees of this corporation shall be open to inspection on the written demand on the corporation of any shareholder [or holder of a voting trust certificate] at any reasonable time during usual business hours, for a purpose reasonably related to the holder's interests as a shareholder [or holder of the voting trust certificate]. The inspection may be made in person or by agent or attorney, and the right of inspection includes the right to copy and make extracts.

**Inspection by Directors [Corp. Code § 1602]**

9.06. Every director of this corporation shall have the absolute right at any reasonable time to inspect and copy all books, records, and documents of every kind and to inspect the physical properties of this corporation. The inspection may be made in person or by agent or attorney and the right of inspection includes the right to copy and make extracts.

**Annual Report**

**When Waived [Corp. Code § 1501(a)]**

9.07. (a) No annual report shall be prepared or sent to shareholders as long as this corporation has less than 100 holders of record of its shares determined as provided in California Corporations Code Section 605.

**When Required [Corp. Code §§ 113, 601(a), 1501(a)]**

(b) If the corporation has 100 or more holders of record of its shares determined as provided in California Corporations Code Section 605, the Board of Directors shall cause an annual report to be sent by first-class mail, postage prepaid, to the shareholders not later than 120 days after the close of the fiscal year and at least 15 days before the annual meeting of shareholders to be held during the next fiscal year; provided, however, that the annual report may be sent by third-class mail if it is sent to shareholders at least 35 days before the annual meeting.

1 WILLIAM R. BRENSKE, ESQ.  
2 Nevada Bar No. 1806  
3 JENNIFER R. ANDREEVSKI, ESQ.  
4 Nevada Bar No. 9095  
5 RYAN D. KRAMETBAUER, ESQ.  
6 Nevada Bar No. 12800  
7 BRENSKE ANDREEVSKI & KRAMETBAUER  
8 3800 Howard Hughes Parkway, Suite 500  
9 Las Vegas, NV 89169  
10 Telephone: (702) 385-3300  
11 Facsimile: (702) 385-3823  
12 Email: [wbrenske@hotmail.com](mailto:wbrenske@hotmail.com)  
13 *Attorneys for Appellant,*  
14 *Charles Schueler*

Electronically Filed  
Oct 03 2018 10:43 a.m.  
Elizabeth A. Brown  
Clerk of Supreme Court

**IN THE COURT OF APPEALS OF THE STATE OF NEVADA**

CHARLES SCHUELER,

Appellant,

v.

AD ART, INC.,

Respondent.

Supreme Court No.: 75688  
Dist. Ct. Case No.: A-15-722391-C

**APPELLANT AND  
RESPONDENT'S JOINT  
APPENDIX**

**VOLUME IV**

Exhibit No.		Bates Nos.
16.	September 6, 2017 Court Minutes on Defendant AD ART INC.'s Motion for Summary Judgment (Decision Deferred)	366
17.	October 9, 2017 Minute Order on Defendant AD ART	367 - 368

	INC.'s Motion for Summary Judgment	
18.	Notice of Entry of Order on Defendant AD ART, INC.'s Motion for Summary Judgment	369 - 374
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DISTRICT COURT  
CLARK COUNTY, NEVADA

Negligence - Other Negligence

COURT MINUTES

September 06, 2017

---

A-15-722391-C      Charles Schueler, Plaintiff(s)  
vs.  
MGM Grand Hotel, LLC, Defendant(s)

---

**September 06, 2017      08:30 AM      Defendant AD Art Inc's Motion for Summary Judgment**

**HEARD BY:** Villani, Michael

**COURTROOM:** RJC Courtroom 11A

**COURT CLERK:** Black, Olivia

**RECORDER:** Georgilas, Cynthia

**REPORTER:**

**PARTIES PRESENT:**

Timothy F. Hunter

Attorney for Defendant

Ryan D. Krametbauer

Attorney for Plaintiff

**JOURNAL ENTRIES**

Dana Long, Esq. appearing telephonically on behalf of Defendant

Arguments by counsel regarding the merits of the motion. COURT ORDERED, Decision DEFERRED.  
The Court will prepare a written decision.



**DISTRICT COURT  
CLARK COUNTY, NEVADA**

Negligence - Other Negligence

COURT MINUTES

October 09, 2017

A-15-722391-C      Charles Schueler, Plaintiff(s)  
vs.  
MGM Grand Hotel, LLC, Defendant(s)

October 09, 2017      4:00 PM      Minute Order

HEARD BY: Villani, Michael      COURTROOM: Chambers

COURT CLERK: Olivia Black

**JOURNAL ENTRIES**

Defendant Ad Art, Inc.'s Motion for Summary Judgment came before this Court on the September 6, 2017 oral calendar. The Court having further reviewed the pleadings, files, and argument finds as follows:

Summary judgment is appropriate when the pleadings and other evidence on file demonstrate "no genuine issue as to any material fact [remains] and the moving party is entitled to judgment as a matter of law." See NRCP 56(c); Wood v. Safeway, Inc., 121 Nev. 724, 731, 121 P.3d 1026, 1031 (2005). In ruling upon a motion for summary judgment, the Court must view all evidence and inferences in the light most favorable to the non-moving party. See Torrealba v. Kesmetis, 124 Nev. 95, 178 P.3d 716 (2008). To rebut a motion for summary judgment, the nonmoving party must present some specific facts to demonstrate that a genuine issue of material fact exists. Forouzan, Inc. v. Bank of George, 128 Nev. 896, 381 P.3d 612 (2012).

Defendant Ad Art, Inc. seeks summary judgment based on claims that (1) "old" Ad Art completed the work on the MGM pylon sign at issue; (2) the current Ad Art was not in existence at the time of its construction; (3) Ad Art is not a successor corporation of "old" Ad Art; (4) the MGM pylon sign at issue was not a product to which products liability can apply; (5) the Statue of Repose applies; and (6) Plaintiff's premise liability claim fails because Ad Art was not the owner, occupier, designer, manufacturer, constructor, or maintainer of the MGM pylon sign.

"Old" Ad Art vs. current Ad Art

The Court finds ownership of Ad Art to be a question of fact for the jury. The Clark County Building Department Permit dated 10/5/93 (provided on page 4 of Plaintiff's Opposition) lists Ad Art, Inc. as the contractor. Although this runs counter to the statements made by Terry Long, the sale agreement between

PRINT DATE: 10/09/2017

Page 1 of 2

Minutes Date: October 09, 2017

NASCO and Ad Art, Inc., and printout from the Nevada Secretary of State's website, it creates a question of fact as to which Ad Art was involved in the design, manufacture, creation, or maintenance of the sign. Therefore, the Motion is DENIED as to this issue.

Strict products liability vs. premise liability

Under Calloway v. City of Reno, "one is strictly liable from a dangerously defective product only if one is a seller 'engaged in the business of selling such a product.'" 116 Nev. 250 (2000). The Court finds Ad Art is a manufacturer of signs. The fact that the MGM sign is one of a kind does not preclude such a claim against its manufacturer, Ad Art. Further, it follows that if the MGM pylon sign is a product, then it cannot be a premise to which premises liability can attach. Therefore, the Motion is GRANTED as to the premises liability claim against Defendant Ad Art, Inc.

Statute of Repose

Under NRS 11.190, NRS 11.220, and Fisher v. Prof'l Compounding Ctrs of Am., Inc., the statute of limitations for product liability cases is 4 years. 311 F. Supp. 2d 1008, 1017-18 (Nev. 2012). That period does not run from the date of injury, rather, it starts when the "injured party discovers or reasonably should have discovered facts supporting a cause of action." Fisher. The Court finds Plaintiff's Complaint stems from the personal injuries he suffered as a result of the defective product. Under NRS 11.190(4), the statute of limitations is 2 years. Plaintiff fell on 7/31/13; his Complaint was filed on 7/30/15. Therefore, the Complaint was filed within the requisite time frame. Therefore, the Motion is DENIED as to this issue.

Therefore, COURT ORDERED Defendant Ad Art, Inc.'s Motion for Summary Judgment DENIED IN PART and GRANTED IN PART. Counsel for Plaintiff is directed to submit a proposed order consistent with the foregoing within ten (10) days after counsel is notified of the ruling and distribute a filed copy to all parties involved pursuant to EDCR 7.21. Such Order should set forth a synopsis of the supporting reasons proffered to the Court in briefing and be approved as to form and content by all parties.

CLERK'S NOTE: A copy of the foregoing minute order has been electronically distributed to all registered parties.//ob/10/9/17



1 WILLIAM R. BRENSKE, ESQ.  
Nevada Bar No. 1806  
2 RYAN D. KRAMETBAUER, ESQ.  
Nevada Bar No. 12800  
3 BRENSKE & ANDREEVSKI  
3800 Howard Hughes Parkway, Suite 500  
4 Las Vegas, Nevada 89169  
Telephone: (702) 385-3300  
5 Facsimile: (702) 385-3823  
Email: [wbrenske@hotmail.com](mailto:wbrenske@hotmail.com)  
6 *Attorneys for Plaintiff*

7  
8 **DISTRICT COURT  
CLARK COUNTY, NEVADA**

9 CHARLES SCHUELER,

10 Plaintiff,

11 v.

12 MGM GRAND HOTEL, LLC, a Domestic Limited  
Liability Company d/b/a MGM GRAND; AD ART,  
13 INC., A Foreign Corporation; 3A COMPOSITES  
USA INC., a Foreign Corporation a/k/a  
14 ALUCOBOND TECHNOLOGIES  
CORPORATION; DOES 1 - 25; ROE  
15 CORPORATIONS 1 - 25; inclusive,

16 Defendants.  
17

Case No.: A-15-722391-C

Dept. No.: XVII

**NOTICE OF ENTRY OF ORDER  
RE DEFENDANT AD ART, INC.'S  
MOTION FOR SUMMARY  
JUDGMENT**

18 YOU WILL PLEASE TAKE NOTICE that an Order was entered on the 23<sup>rd</sup> day of October  
19 2017.

20 A true and correct copy of the Order is attached hereto.

21 DATED this 24<sup>th</sup> day of October 2017.

22 **BRENSKE & ANDREEVSKI**



23 WILLIAM R. BRENSKE, ESQ.  
Nevada Bar No. 1806  
24 RYAN D. KRAMETBAUER, ESQ.  
Nevada Bar No. 12800  
25 3800 Howard Hughes Parkway, Suite 500  
26 Las Vegas, Nevada 89169  
27 *Attorneys for Plaintiff*  
28

**CERTIFICATE OF SERVICE**

I am employed with the law office of Brenske & Andreevski. I am over the age of 18 and not a party to the within action; my business address is 3800 Howard Hughes Parkway, Suite 500, Las Vegas, Nevada 89169. I am "readily familiar" with the firm's practice of collection and processing correspondence for mailing. Under its practice mail is to be deposited with the U. S. Postal Service on that same day as stated below, with postage thereon fully prepaid.


I served the foregoing document described as "**NOTICE OF ENTRY OF ORDER RE DEFENDANT AD ART, INC.'S MOTION FOR SUMMARY JUDGMENT**" on this 24<sup>th</sup> day of October 2017, to all interested parties as follows:

- ☐ BY MAIL: Pursuant to NRCP 5(b), I placed a true copy thereof enclosed in a sealed envelope addressed as follows:
- ☐ BY FACSIMILE: Pursuant to EDCR 7.26, I transmitted a copy of the foregoing document this date via telecopier to the facsimile number shown below:
- ☒ BY ELECTRONIC SERVICE: by electronically filing and serving the foregoing document with the Eighth Judicial District Court's WizNet system:

Timothy F. Hunter  
RAY LEGO & ASSOCIATES  
7450 Arroya Crossing Party, Suite 250  
Las Vegas, Nevada 89113  
*Attorney For Defendant,*  
*Ad Art, Inc.*  
**Facsimile No.: 702-270-4602**

LeAnn Sanders  
Edward Silverman  
ALVERSON, TAYLOR,  
MORTENSEN & SANDERS  
7401 West Charleston Blvd.  
Las Vegas, Nevada 89117  
*Attorneys for Defendant,*  
*3A Composites USA Inc., a/k/a*  
*Alucobond Technologies Corporation*  
**Facsimile No.: 702-385-7000**

Riley A. Clayton  
HALL JAFFE & CLAYTON, LLP  
7425 Peak Drive  
Las Vegas, Nevada 89128  
*Attorneys for Defendant,*  
*MGM Grand Hotel, LLC,*  
*d/b/a MGM Grand*  
**Facsimile No.: 702-316-4114**

  
An employee of the law office of  
Brenske & Andreevski

*Steven D. Grierson*

1 WILLIAM R. BRENSKE, ESQ.  
Nevada Bar No. 1806  
2 RYAN D. KRAMETBAUER, ESQ.  
Nevada Bar No. 12800  
3 BRENSKE & ANDREEVSKI  
3800 Howard Hughes Parkway, Suite 500  
4 Las Vegas, NV 89169  
Telephone: (702) 385-3300  
5 Facsimile: (702) 385-3823  
6 Email: [wbrenske@hotmail.com](mailto:wbremske@hotmail.com)  
Attorneys for Plaintiff,  
7 Charles Schueler

DISTRICT COURT

CLARK COUNTY, NEVADA

CHARLES SCHUELER,

Plaintiff,

v.

MGM GRAND HOTEL, LLC, a Domestic Limited  
Liability Company d/b/a MGM GRAND; MGM  
RESORTS INTERNATIONAL, A Foreign  
Corporation d/b/a MGM GRAND; AD ART, INC., A  
Foreign Corporation; 3A COMPOSITES USA INC.,  
a Foreign Corporation a/k/a ALUCOBOND  
TECHNOLOGIES CORPORATION; DOES 1 - 25;  
ROE CORPORATIONS 1 - 25; inclusive,

Defendants.

Case No.: A-15-722391-C

Dept. No.: XVII

ORDER RE: DEFENDANT AD  
ART, INC.'S MOTION FOR  
SUMMARY JUDGMENT

On September 6, 2017, Defendant Ad Art, Inc.'s Motion for Summary Judgment  
in the above-captioned matter came before this Court. Timothy Hunter, Esq. of Ray Lego &  
Associates appeared on behalf of Ad Art, Inc. Ryan D. Krametbauer, Esq. of Brenske &  
Andreevski appeared on behalf of Plaintiff, Charles Schuler.

Defendant Ad Art, Inc. sought summary judgment based on claims that 1) "Old" Ad Art,  
Inc. completed the work on the MGM pylon sign at issue; 2) the current Ad Art, Inc. was not in  
existence at the time of the MGM pylon's construction; 3) Ad Art, Inc. is not a successor  
corporation of "old" Ad Art, Inc.; 4) the MGM pylon sign at issue was not a product to which

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1 products liability can apply; 5) the Statute of Repose applies; and 6) Plaintiff's premises liability  
2 claim fails because Ad Art, Inc. was not the owner, occupier, designer, manufacturer, constructor,  
3 or maintainer of the MGM pylon sign. This Court having reviewed the parties' pleadings, files  
4 and oral argument DOES NOW FIND AND ORDER AS FOLLOWS:

5  
6 **I. FINDINGS OF FACT**

7 A. The Clark County Building Department Permit dated October 5, 1993 (provided on  
8 page 4 of Plaintiff's Opposition) lists Ad Art, Inc. as the contractor.

9 B. Ad Art, Inc. is a manufacturer of signs and engaged in the business of selling such  
10 products.

11 **II. CONCLUSIONS OF LAW**

12 Summary Judgment is appropriate when the pleadings and other evidence on file  
13 demonstrate "no genuine issue as to any material fact [remains] and the moving party is entitled to  
14 judgment as a matter of law." See NRCP 56(c); Wood v. Safeway, Inc., 121 Nev. 724, 731, 121  
15 P.3d 1026, 1031 (2005). In ruling upon a motion for summary judgment, the Court must view all  
16 evidence and inferences in the light most favorable to the non-moving party. See Torrealba v.  
17 Kesmetis, 124 Nev. 95, 178 P.3d 716 (2008). To rebut a motion for summary judgment, the  
18 nonmoving party must present some specific facts to demonstrate that a genuine issue of material  
19 fact exists. Forouzan, Inc. v. Bank of George, 128 Nev. 896, 381 P.3d 612 (2012).  
20

21  
22 **A. "Old" Ad Art, Inc. v. Current Ad Art, Inc.**

23 This Court finds ownership of Ad Art, Inc. to be a question of fact for the jury to  
24 determine. The Clark County Building Department permit dated October 5, 1993 (provided on  
25 page 4 of Plaintiff's Opposition) lists Ad Art, Inc. as the contractor. Although this runs counter to  
26 the statements made by Terry Long, the sale agreement between NASCO and Ad Art, Inc., and  
27 printout from the Nevada Secretary of State's website, it creates a question of fact as to which Ad  
28



1 Art was involved in the design, manufacture, creation, or maintenance of the sign. **THE COURT**  
2 **THEREFORE ORDERS** Ad Art, Inc.'s Motion for Summary Judgment based upon the issue of  
3 ownership of Ad Art, Inc. is **DENIED**.

4 **B. Strict Products Liability v. Premises Liability**

5 Under Calloway v. City of Reno, "one is strictly liable for a dangerously defective product  
6 is one is a seller 'engaged in the business of selling such a product.'" 116 Nev. 250 (2000). The  
7 Court finds Ad Art, Inc. is a manufacturer of signs. The fact that the MGM sign is one of a kind  
8 does not preclude such a claim against its manufacturer, Ad Art, Inc. Further, it follows that if the  
9 MGM sign is a product, then it cannot be a premise to which premises liability can attach. **THE**  
10 **COURT THEREFORE FURTHER ORDERS** Ad Art, Inc.'s Motion for Summary Judgment as  
11 to premises liability is **GRANTED**.

12 **C. Statute of Repose**

13 Under NRS 11.190, NRS 11.220, and Fisher v. Prof'l Compounding Ctrs of Am., Inc. the  
14 statute of limitations for product liability cases is 4 years. 311 F.Supp 2d. 1008, 1017-18 (Nev.  
15 2012). That period does not run from the date of injury, rather, it starts when the "injured party  
16 discovers or reasonably should have discovered facts supporting a cause of action." Fisher. The  
17 Court finds Plaintiff's Complaint stems from personal injuries he suffered as a result of the  
18 defective product. Under NRS 11.190(4), the statute of limitations is 2 years. Plaintiff fell on July  
19 31, 2013 and his Complaint was filed on July 30, 2015. Therefore, the Complaint was filed within  
20 the requisite time frame. **THE COURT THEREFORE FURTHER ORDERS** Ad Art, Inc.'s  
21 Motion for Summary Judgment as to the statute of limitations is **DENIED**.

22 ///

23 ///

24 ///

Law Office of  
William R. Brenske  
630 South Third Street  
Las Vegas, Nevada 89101  
(702) 385-3300 • Fax (702) 385-3823

1 THE COURT THEREFORE ORDERS Defendant Ad Art, Inc.'s Motion for Summary  
2 Judgment is DENIED IN PART and GRANTED IN PART.

3 DATED this 20 day of October 2017.

4  
5  
6 

HON. MICHAEL VILLANI  
DISTRICT COURT JUDGE *RV*

7 Submitted by:

8 BRENSKE & ANDREEVSKI

9  
10  
11   
12 WILLIAM R. BRENSKE, ESQ.

Nevada Bar No. 1806

13 RYAN D. KRAMETBAUER, ESQ.

Nevada Bar No. 12800

14 3800 Howard Hughes Parkway, Suite 500

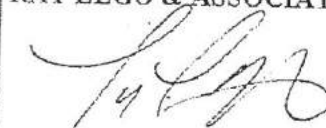
Las Vegas, NV 89169

15 Attorneys for Plaintiff,

Charles Schueler

16 Approved as to form and content by:

17 RAY LEGO & ASSOCIATES

18  
19  
20   
21 TIMOTHY F. HUNTER, ESQ.

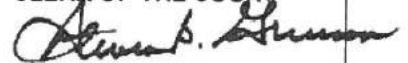
Nevada Bar No.: 10622

22 7450 Arroyo Crossing Party, Suite 250

Las Vegas, Nevada 89113

23 Attorney for Defendant,

Ad Art, Inc.



MRCN  
TIMOTHY F. HUNTER, ESQ.  
Nevada Bar No. 010622  
RAY LEGO & ASSOCIATES  
7450 Arroyo Crossing Parkway, Suite 250  
Las Vegas, NV 89113  
Tel: (702) 479-4350  
Fax: (702) 270-4602  
[tfhunter@travelers.com](mailto:tfhunter@travelers.com)

Attorney for Defendant,  
**AD ART, INC.**

**DISTRICT COURT**  
**CLARK COUNTY, NEVADA**

CHARLES SCHUELER,

Plaintiff,

vs.

MGM GRAND HOTEL, LLC, a Domestic  
Limited Liability Company d/b/a MGM  
GRAND; MGM RESORTS  
INTERNATIONAL, a Foreign Corporation  
d/b/a MGM GRAND; AD ART, INC., a  
Foreign Corporation; 3A COMPOSITES USA  
INC., a Foreign Corporation a/k/a  
ALUCOBOND TECHNOLOGIES  
CORPORATION; DOES 1 - 25; ROE  
CORPORATIONS 1 - 25; inclusive,

Defendants.

CASE NO.: A-15-722391-C

DEPT. NO.: XVII

**AD ART, INC.'S MOTION FOR RECONSIDERATION ON**  
**MOTION FOR SUMMARY JUDGMENT**

Defendant, Ad Art, Inc., by and through its attorney of record, Timothy F. Hunter, Esq. of the law firm of Ray Lego & Associates, hereby submits this Motion for Reconsideration on its Motion for Summary Judgment. The key issue presented in this motion is whether the court duly considered the Nevada Supreme Court cases, *Lamb v. Leroy Corp.*, 85 Nev. 276 (1969), *Village Builders 96, L.P. v. U.S. Laboratories, Inc.*, 121 Nev. 261, 112 P.3d 1082 (2005), and *Calloway v. City of Reno*, 116 Nev. 250, 993 F.2d 1259 (2000) which cases were not specifically addressed, cited, or analyzed in this Court's October 20, 2017, Order denying

1 Defendant Ad Art's motion.

2 Respectfully, Defendant Ad Art submits that there was no evidence to support that the  
3 company that that constructed the MGM Pylon was not dissolved and liquidated prior to this  
4 incident. There was no evidence that Defendant Ad Art, Inc. was a successor corporation to the  
5 dissolved and liquidated company. The application of the holdings in *Lamb v. Leroy Corp.*, 85  
6 Nev. 276 (1969) and *Village Builders 96, L.P. v. U.S. Laboratories, Inc.*, 121 Nev. 261, 112  
7 P.3d 1082 (2005), would prompt this Court to reconsider the issue of whether the Motion for  
8 Summary Judgment should have been granted in Defendant Ad Art's favor, as opposed to being  
9 denied.

10  
11 Furthermore, based upon the requirements for determination of a product under a theory  
12 of strict products liability, the Court only addressed one of the many factors contained in  
13 *Calloway v. City of Reno*, 116 Nev. 250, 993 F.2d 1259 (2000). In fact, the order issued by the  
14 Court only stated that the MGM sign "may" be a product. As a matter of law, and the  
15 interpretation of *Calloway*, Defendant believes the court did not apply the appropriate law.

16  
17 This motion is made based upon the pleadings and papers on file herein, the attached  
18 memorandum of points and authorities and any oral argument that the Court may entertain in  
19 this matter.

20 DATED this 21 day of December, 2017.

21 Respectfully submitted,

22 RAY LEGO & ASSOCIATES

23 

24 TIMOTHY F. HUNTER, ESQ.

25 Nevada Bar No. 010622

26 7450 Arroyo Crossing Parkway, Suite 250  
27 Las Vegas, NV 89113

28 Attorney for Defendant, **AD ART, INC.**

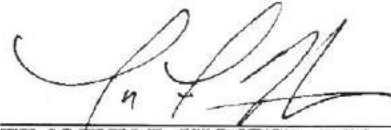
**NOTICE OF MOTION**

TO: ALL PARTIES AND COUNSEL OF RECORD

PLEASE TAKE NOTICE that the undersigned will bring the foregoing Motion For Summary Judgment on for hearing in Department XVII on the 24 day of JANUARY, 2018 **CHAMBERS** ~~2017~~, at the hour of \_\_\_\_\_ A.M., or as soon thereafter as counsel can be heard.

DATED this 21 day of December, 2017.

RAY LEGO & ASSOCIATES



TIMOTHY F. HUNTER, ESQ.  
Nevada Bar No. 10622  
7450 Arroyo Crossing Parkway, Suite 250  
Las Vegas, NV 89113  
Attorney for Defendant,  
Ad Art, Inc.

**I. INTRODUCTION**

It is always difficult for a party to ask a Court to "reconsider" a prior ruling, which motion may be perceived by the Court as a suggestion that the Court overlooked a specific issue or failed to address a cited case, and/or otherwise left a critical issue unresolved. However, Defendant Ad Art submits that the instant motion for reconsideration will provide this Court with the full opportunity to re-review the record, and allow the Court to clarify any perceived errors and/or otherwise provide sufficient reasoning and insight regarding why the Court ruled the way it did. This is opposed to having this issue addressed immediately on appeal, and if it recognizes that a specific issue was overlooked, the Court can duly correct the record.

In this case, Defendant Ad Art specifically seeks reconsideration of the Court's apparent failure to cite to or refer to *Lamb v. Leroy Corp.*, 85 Nev. 276 (1969) and *Village Builders 96, L.P. v. U.S. Laboratories, Inc.*, 121 Nev. 261, 112 P.3d 1082 (2005) in its Order denying Defendant Ad Art's Motion for Summary Judgment. Additionally, though the Court referenced

1 *Calloway v. City of Reno*, 116 Nev. 250, 993 F.2d 1259 (2000) in the Order, the Court only  
2 addressed one of the many factors in determining whether strict products liability theories apply  
3 here. Defendant Ad Art believes these cases supports its position and warrants a different  
4 outcome than the one the Court reached previously.

5  
6 As the Court will recall, Plaintiff, Charles Schueler, has raised several causes of action  
7 addressing the design of the MGM Pylon sign. The remaining allegations as it pertains to  
8 Defendant Ad Art pertain to the implication that Defendant Ad Art was responsible for the  
9 defective design or construction of the MGM Pylon. Plaintiff's allegations stem from the fact  
10 that he "fell approximately 150 feet to the ground" while performing repairs/renovations on the  
11 MGM Pylon.

12 Defendant Ad Art filed a Motion for Summary Judgment on August 2, 2017 based upon  
13 the following: (1) as an indisputable factual matter, Defendant Ad Art has in no way  
14 participated in the design, manufacture, installation or maintenance of the MGM Pylon sign at  
15 issue in this action; (2) as a matter of law, Defendant Ad Art cannot be held liable as a successor  
16 to the entity that in fact performed certain services on the MGM Pylon; (3) the MGM Pylon is  
17 not a "product" and therefore Plaintiff's claims are barred by the Statutes of Repose; and (4)  
18 Defendant Ad Art is not the owner of the MGM Pylon nor are the occupier of the land that the  
19 MGM Pylon is located. Plaintiff opposed the motion on August 22, 2017. Defendant Ad Art  
20 filed its Reply in Support of the Motion on August 30, 2017.

21  
22 The Court held a hearing on the Motion on September 6, 2017, but deferred ruling on  
23 the Motion at that time. On October 9, 2017, the Court issued a Minute Order denying the  
24 Motion and finding, in essence that ownership of Defendant Ad Art to be a question of fact for  
25 the jury amongst other findings. The Minute Order did not address the *Lamb* and *Village*  
26 *Builders* cases. The Minute Order directed Plaintiff's counsel to submit an Order denying the  
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28



1 Motion in part and Granting the Motion in Part within ten (10) days. Importantly, the Court's  
2 Order dated October 20, 2017, does not cite to or address *Lamb* or *Village Builders*, which  
3 identifies the criteria to be used by the trial court in determining whether a successor  
4 corporation can be held responsible for the actions of a predecessor corporation as a matter of  
5 Nevada law.

6  
7 The Order also only referenced *Calloway v. City of Reno*, 116 Nev. 250, 993 F.2d 1259  
8 (2000) in using the definition of a product. The Court did not look at all of the criteria that is  
9 required for the application of a product being under the theory of strict products liability. The  
10 Court only noted that "if the MGM sign is a product" but made no definitive statement that the  
11 MGM Pylon is a product. As a matter of law, Defendant Ad Art strongly believes that the sign  
12 would not be considered a product under Nevada Law.

## 13 II. LEGAL ARGUMENT

### 14 A. Standard for a Motion to Reconsider

15 Under EDCR 2.24, "a district court may reconsider a previously decided issue if  
16 substantially different evidence is introduced or the decision is clearly erroneous." *Masonry &*  
17 *Tile Contractors v. Jolly, Urga & Wirth*, 113 Nev. 737, 741, 941 P.2d 486, 489 (1997). A court  
18 has the inherent authority to reconsider its prior orders. *Trail v. Faretto*, 91 Nev. 401, 536 P.2d  
19 1026 (1975). Moreover, under NRCP 54(b), "the district court may at any time before the entry  
20 of final judgment, revise orders..." *Barry v. Lindner*, 119 Nev. 661, 670, 81 P.3d 537, 543  
21 (2003).

22  
23 In seeking reconsideration, Defendant Ad Art respectfully submits that the Court applied  
24 the incorrect legal test in determining whether Defendant Ad Art is a successor to a  
25 previously dissolved entity. As demonstrated herein, it appears that the Court relied solely on  
26 the building permit and the use of the same or similar name in making the determination that  
27  
28

1 Defendant Ad Art was a successor to a previously dissolved company. This is in contrast to the  
2 general rule established in *Lamb* or the exceptions to that rule addressed in *Village Builders*.

3 Moreover, the Court cited to *Calloway* only to define strict products liability. The Order  
4 states "one is strictly liable for dangerously defective product if one is a seller 'engaged in the  
5 business of selling such a product.'" The Court found that Ad Art, Inc. is a manufacturer of  
6 signs and the fact that the MGM sign is one of a kind does not preclude such a claim against its  
7 manufacturer, Ad. Art, Inc. None of the other factors in addressing whether strict products  
8 liability claims that were addressed in the papers and during oral arguments were addressed in  
9 the Order.  
10

11 **B. Statement of Undisputed Facts**

- 12 • The entity involved in the original design and construction of the MGM Pylon  
13 was a company by the name of Ad Art Electronic Sign Corporation. See, Exhibit  
14 "A" – Affidavit of Terry J. Long
- 15 • In or about 1998, the company that erected the MGM Pylon, Old Ad Art, was  
16 purchased by, and thereafter became a wholly-owned subsidiary of La-Man, Inc.  
17 ("La-Man"), a public company listed on the NASDAQ. *Id.*, See, Exhibit "B" –  
18 NASCO Agreement.
- 19 • Shortly after its acquisition of that company, La-Man changed its name to  
20 Display Technologies, Inc. *Id.*
- 21 • In 2001, Display Technologies ceased all business operations and liquidated the  
22 assets of Old Ad Art. *Id.*
- 23 • North American Sign Corporation ("NASCO") during the liquidation of Display  
24 Technologies purchased and owned the name "Ad Art"; the telephone number;  
25 internet web address; owns the building at 3180 N. Ad Art Road, Stockton,  
26 California, 95215; and contractors license under the dba of Ad Art Electronic  
27 Sign Corporation. See, Exhibit "B"
- 28 • On March 25, 2003 Defendant Ad Art was formed via filing article of  
incorporation with the Secretary of State of California. See, Exhibit "C" –  
Articles of Incorporation.
- On April 1, 2003 Defendant Ad Art entered into a written agreement with  
NASCO, whereby NASCO agreed to sell only the trademark/work mark/service  
mark/trade name, use of the telephone number and Internet web address to New  
Ad Art. See, Exhibit "B"
- Defendant Ad Art filed with the Nevada Secretary of State on January 6, 2004 to

1 become a Foreign Corporation in the State of Nevada. *See*, Exhibit "D" – Ad  
2 Art, Inc. Entity Details.

3 **C. Defendant Ad Art Cannot be Held Liable for Any Claims Relating to Work**  
4 **Completed by a Liquidated or Dissolved Corporation.**

5 The corporation that constructed the MGM Pylon originally in 1993 or 1994, Old Ad  
6 Art, was dissolved in 2001, along with its parent corporation Display Technologies. *See*,  
7 Exhibit "A"; Exhibit "B." The NASCO agreement specifically states "Ad Art Electronic Sign  
8 Corporation, which was sold to and became a division of LAMAN, INC. (later Display  
9 Technologies, Inc.) a public company in 1998, later to be liquidated in 2001." *See*, Exhibit "B"  
10 pg. 1. At the time of liquidation, NASCO purchased the name "Ad Art"; the telephone number;  
11 internet web address; owns the building at 3180 N. Ad Art Road, Stockton, California, 95215;  
12 and contractor's license under the dba of Ad Art Electronic Sign Corporation. *Id.* NASCO then  
13 sold the rights to the "trademark/word mark/service mark/trade name, use of the telephone  
14 number and Internet web address to AD ART." *Id.* NASCO sold the rights to a newly formed  
15 corporation, Defendant Ad Art. *Id.*

16 The Nevada Supreme Court addressed the issues of the responsibilities of a successor  
17 corporation in *Lamb v. Leroy Corp.*, 85 Nev. 276 (1969). In *Lamb*, Frank W. Lamb  
18 commended an action against National Insurance Agency of Nevada and Leroy Corporation on  
19 an indebtedness owing him by National Insurance Agency. *Id.* at 277-278. The debt had been  
20 assumed in writing by Nevada Land and Mortgage of Nevada of which Nevada Insurance  
21 Agency was a wholly owned subsidiary. *Id.* at 278. Leroy purchased the assets of Nevada  
22 Land and Mortgage in exchange for shares of Leroy stock. *Id.* Leroy then transferred the  
23 Nevada Land and Mortgage shares of Leroy stock to the Nevada Land and Mortgage  
24 stockholders. *Id.* The stockholders of Nevada Land and Mortgage then dissolved Nevada Land  
25 and Mortgage. *Id.*

1 The Nevada Supreme Court held that a merger or consolidation of the two companies  
2 did not result. *Id.* at 281. The transaction was a sale of assets in exchange for stock. *Id.* The  
3 stock was issued directly to Nevada Land and Mortgage. *Id.* The court noted, "this case is  
4 controlled by the general rule that when one corporation sells all of its assets to another  
5 corporation the purchaser is not liable for the debts of the seller. *Id.* Thus, even though there  
6 was a sale of all of the assets, and Leroy then transferred the stock back to Nevada Land and  
7 Mortgage, the Nevada Supreme Court held that Leroy was not responsible for the debts of  
8 Nevada Land and Mortgage. *Id.*

10 The applicability of the general rule against finding a successor corporation for the acts  
11 of its predecessor was also addressed in *Village Builders 96, L.P. v. U.S. Laboratories, Inc.*, 112  
12 Nev. 261, 112 P.3d 1082 (2005). In *Village Builders*, Ray Brannen formed Buena Nevada who  
13 performed geotechnical engineering as well as other services. *Id.* at 264-265. Brannen ran into  
14 financial difficulties and sold Buena Nevada to Geofon, Inc. that purchased 100% of the  
15 company and started Buena Geofon. *Id.* Brannen never acted as a shareholder, officer, or  
16 director of Buena Geofon, though the Secretary of State listed him as president, secretary, and  
17 treasurer. *Id.* Buena Geofon then sold the company back to Brannen, pursuant to his right of  
18 repurchase, so that Brannen could sell the company to U.S. Labs. *Id.*

20 Before Brannen repurchased Buena Geofon and then sold to U.S. Labs, Buena Geofon  
21 submitted a proposal to Village Builders, L.P. to perform an environmental assessment on land  
22 they intended to purchase if the environmental assessment was suitable. *Id.* After receiving the  
23 report, Village Builders purchased the land only to later find that the land was contaminated. *Id.*  
24 A clean up report was submitted by Buena Geofon, and Village Builders hired Buena Geofon to  
25 do the necessary clean up. *Id.*

27 Village Builders filed an action seeking to recover its clean-up against the former  
28

1 operators, then later amended their Complaint once they learned that U.S. Labs had purchased  
2 all the assets. *Id.* U.S. Labs filed a Motion for Summary Judgment upon the theory that they  
3 were not responsible as they were not Buena Geofon's successor. *Id.* The trial court granted  
4 U.S. Labs motion for summary judgment, determining that as a matter of law that U.S. Labs  
5 was not liable under a theory of successor liability. *Id.*  
6

7 The Nevada Supreme Court conducted an analysis on whether this transaction was a  
8 merger or a mere continuation and ultimately upheld the trial court's ruling granting summary  
9 judgment. *Id.* The court having found that the mere continuation exception did not apply  
10 because there was not continuation of corporate control and ownership. *Id.* As it pertains to the  
11 de facto merger question, the court held as follows:

12 In this case, we conclude that prima facie evidence showed continuity of the  
13 enterprise and that U.S. Labs assumed those obligations necessary to continue  
14 the normal operations of the business. However, we also conclude that there  
15 was no continuity of shareholders and that Buena Nevada continued to exist  
16 after the sale of its assets, making it amenable to suit for some time after the  
sale. Under these facts, we conclude that Village has failed to demonstrate the  
existence of a de facto merger.

17 *Id.* Therefore, even though there was continuity of enterprise, the court still found that there  
18 was not sufficient evidence to show a merger of the companies in order to find the successor  
19 corporation liable for the acts of the prior corporation.

20 The first issue to be considered is whether there was a transfer of all the assets. In both  
21 *Lamb* and *Village Builders*, even with a transfer of all the assets, the trial courts and the Nevada  
22 Supreme Court found that the transactions did not rise to the level of being an exception to the  
23 general rule that a successor corporation is not liable for the debts of the prior corporation. If  
24 there was not a transfer of all the assets, then there can be no liability and the court does not  
25 need to address the exceptions to the rule. The Nevada Supreme Court was definitive that the  
26 general rule states the purchasing company cannot be held liable even when there was a sell of  
27  
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1 all the assets.

2 Here, the only evidence Plaintiff has relied upon to support that Defendant Ad Art is a  
3 successor corporation is the building permit that references Ad Art, Inc. This Court relied upon  
4 only that permit in denying Defendant Ad Art's motion. The reliance upon the building permit  
5 has no impact on the analysis established in *Lamb* and *Village Builders*. Whether one  
6 document, in this case a building permit, has the same or similar name is not what this Court  
7 should be considering. Instead, this Court should be looking at the transfer of assets involved.

8  
9 There was absolutely no sale of any assets from Display Technologies, Inc. or Old Ad  
10 Art to Defendant Ad Art. It is undisputed that upon the liquidation of Display Technologies,  
11 Inc., the parent company of Old Ad Art, that the sale of assets was with NASCO. See, Exhibit  
12 "B." There was absolutely no sale of any assets between Display Technologies, Inc. or Old Ad  
13 Art to Defendant Ad Art at any time. Given that there was no sale of any assets between Old  
14 Ad Art and Defendant Ad Art, Defendant Ad Art cannot be held liable for any debts of Old Ad  
15 Art, as a matter of law.  
16

17 It is unquestionable that by following the holding in *Lamb* and *Village Builders* no  
18 liability can be bestowed on Defendant Ad Art for the work of a company that was liquidated  
19 and dissolved, and for which Defendant Ad Art did not purchase any assets.

20 **D. Defendant Ad Art Was Not a Successor Corporation to Old Ad Art, and**  
21 **Cannot be Held Responsible for Their Debts.**

22 Putting aside the issue of transfer of assets, pursuant to the Nevada Supreme Court's  
23 ruling in *Village Builders*, Defendant Ad Art cannot be considered a successor corporation of  
24 Old Ad Art based upon any exception to the general rule. The Nevada Supreme Court has held,  
25 "in order to overcome summary judgment on a successor liability claim, *the plaintiff bears the*  
26 *initial burden of presenting evidence to establish that the general rule that a successor*  
27  
28



1 *corporation is not liable for the acts of its predecessor does not apply.” Village Builders 96,*  
2 *L.P. v. U.S. Laboratories, Inc.*, 121 Nev. 261, 112 P.3d 1082 (2005) (emphasis added).

3 The Court has laid out four exceptions whereby a corporation may be held liable for the  
4 predecessor:

5 (1) where the purchaser expressly or implied agrees to assume such debts; (2)  
6 where the transaction is really a consolidation or a merger; (3) when the  
7 purchasing company is merely a continuation of the selling corporation; and (4)  
8 where the transaction was fraudulently made in order to escape liability for such  
debts. *Id.*

9 In analyzing the exceptions to the rule, “courts should engage in fact-specific, case-by-case  
10 analysis of the factors necessary to establish an exception to the general rule precluding  
11 liability.” *Id.* at 1087. Moreover, it is *plaintiff’s burden* to demonstrate that an exception  
12 exists, and if plaintiff cannot meet this burden, then summary judgment is appropriate. *Id.*  
13 (emphasis added).

14 The evidence does not support the application of any of the above exceptions in *Village*  
15 *Builders*. The NASCO agreement makes clear there was no agreement, whether express or  
16 implicit, by Defendant Ad Art to assume the debts of any prior entity, therefore the first  
17 exception does not apply. *See*, Exhibit “B.”

18 The transactions at issue were not part of a consolidation or a merger and was not a  
19 continuation of the selling corporation. The transaction between NASCO and Defendant Ad  
20 Art is clear. *Id.* There is no consolidation or merger between NASCO and Defendant Ad Art.  
21 *Id.* Defendant Ad Art simply purchased a number of assets, and established an entirely new  
22 corporation. *Id.* Moreover, NASCO still exists to this day. Thus, there was no consolidation or  
23 merger between NASCO and Defendant Ad Art.

24 Finally, the sale of the name “Ad Art” by NASCO to Defendant Ad Art was not done to  
25 escape any liability. NASCO had obtained the use of the name “Ad Art” during the liquidation  
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1 of Display Technologies, Inc. the parent company of Old Ad Art. The sale of the name "Ad  
2 Art" to Defendant Ad Art was simply the sale of an asset that was acquired in liquidation.

3 For all those reasons, Defendant Ad Art is not a successor corporation and as a matter of  
4 law pursuant to *Leroy* and *Village Builders* cannot incur liability for the alleged acts and/or  
5 omissions of the entity that did in fact erect the MGM Pylon.

6  
7 **E. The MGM Pylon Sign is NOT a "Product" and the Doctrine of Strict  
Products Liability has no Application in this Case.**

8 This is not a strict product liability case as the MGM Pylon, as a matter of law, is not a  
9 product. Nevada law, as well as case law from most other jurisdictions, demonstrates that the  
10 strict products liability doctrine does not apply to something that is uniquely designed and  
11 constructed. *Calloway v. City of Reno*, 116 Nev. 250, 993 F.2d 1259 (2000) (overruled on other  
12 grounds). The MGM Pylon is precisely the type of unique object that clearly falls outside of the  
13 strict products liability doctrine. This court held that "[t]he fact that the MGM sign is one of a  
14 kind does not preclude such a claim against its manufacturer, Ad Art, Inc." The fact that the  
15 MGM sign is "uniquely designed and constructed" does preclude the application of strict  
16 products liability claims under *Calloway*.

17  
18 *Calloway* involved a class action brought by townhouse owners against the builder of  
19 the homes. *Id.* at 254-55, 993 P.2d at 1262. The homeowners asserted a strict liability or  
20 products liability claim against the builders for the alleged defective-construction of the homes.  
21 *Id.* The trial court concluded that the homeowners could not pursue their strict liability claims  
22 because "a house is not a 'product' for strict liability purposes." *Id.* The court in *Calloway*  
23 affirmed the trial court's decision and explained why a home cannot be considered a "product"  
24 under the doctrine of products liability. *Id.*

25  
26 First, the Court explained, "the doctrine of strict products liability was developed to  
27  
28

1 assist plaintiffs who could not prove that products which caused physical injury at the point of  
2 use had been manufactured negligently." *Id.* at 268, 993 P.2d at 12.70-71. Relying on  
3 Restatement of Torts (Seconds) Section 402A, the Court explained that "the doctrine of strict  
4 products liability developed from judicial concerns about a plaintiffs ability to prove a remote  
5 manufacturers or seller's negligence, to spread the costs of damage from dangerously defective  
6 products to the consumer by imposing them on the manufacturer or seller, and to promote safety  
7 by eliminating the negligence requirement." *Id.*

9 The following is a list of distinctions highlighted by the Nevada Supreme Court in  
10 *Calloway* to support its holding that the doctrine of strict product liability should not be applied:

- 11 • products are mass produced goods;
- 12 • the construction of a building depends on the cooperative interaction of a number of
- 13 independent parties;
- 14 • most buildings are one of a kind requiring methods and materials that change with
- 15 each, product;
- 16 • the architect cannot work out a design weakness in a series of prototypes, which are
- 17 built but are never put on the market, as is often done with manufactured goods;
- 18 • the contractor cannot test a variety the methods and materials combinations before
- 19 putting up the final structure;
- 20 • even identical model subdivision homes are subject to vagaries of subsurface soil
- 21 conditions;
- 22 • generally, the project is designed by one independent firm and built by another;
- 23 • a building is normally put up at the direction of the owner/developer, and if his needs
- 24 change, the final product may be quite different, than that shown in the original
- 25 plans; and
- 26 • buildings have significantly longer expected useful life than other products, which
- 27 warrant different standards of maintenance and repair.

28 *Id.* at 269-70, 993 P.2d .at 1271-72 (internal quotations omitted). For these reasons, the Court in

1 Calloway determined that a homebuilder cannot be held liable under a theory of strict products  
2 liability because a home is a unique good that is not mass produced. *Id*

3 There are also many cases from other jurisdictions that, have held the theory of product  
4 liability inapplicable when dealing with purported products that were not mass produced and  
5 were unique in design. See *Nationwide Agra Business Ins. Co. v. SMA Elevator Const., Inc.*,  
6 816 F.Supp. 2d 631 (N.D. Iowa 2011) (a case involving a uniquely designed grain elevator that  
7 was deemed to not be a "product"); *Martens v. MCL Const. Corp.*, 347 Ill. App. 3d 303 (Ill.  
8 App.2004)(rejecting the argument that a steel beam from which an employee fell at a  
9 construction site could be considered a "product" for strict liability purposes); *Dayberry v. City*  
10 *of East Helena*, 80 P.3d 1218 (Mont. 2003)(holding that a city swimming pool was not a  
11 "product" for strict liability purposes as a pool was not in the stream of commerce nor was it  
12 mass produced or prefabricated); *Jessup v. Angelo Benedetti Inc.*, 2003 WL 23.114 (Ohio App.  
13 2003)(a case involving a uniquely designed machine in an asphalt paving business that was  
14 designed and manufactured pursuant to the employer's instructions); *Estep v. Meter Automotive*,  
15 N.Am., Inc, 774 N.E. 2d 323 (Ohio App. 2002)(rejecting application of theory of strict liability  
16 in a case involving a "custom made" machine designed primarily by the employer); *Ettinger v.*  
17 *Triangle-Pacific Corp.*, 799 A.2d 95 (Penn.2002) (rejecting application of product liability  
18 doctrine in a case involving a uniquely designed oven that was assembled by the manufacturer  
19 at the purchaser's plant).

20 In *Queen City Terminals, Inc. v. Gen. Am. Tramp. Corp.*, 653 N.E.2d 661 (Ohio 1995),  
21 the Supreme Court of Ohio took a careful look at the policy considerations underlying the strict  
22 product liability doctrine, and whether it should apply in cases involving uniquely designed and  
23 constructed products. In that case, the issue was whether specially ordered and designed tanker  
24 cars were "products" within the meaning of the strict product, liability doctrine. *Id.* at 620.  
25  
26  
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1 Analyzing Restatement of Torts (Second) Section 402A, which was also relied upon by the  
2 Nevada Supreme Court in Calloway, the court explained that although the "Restatement...does  
3 not specify exactly what constitutes a product meriting the application of strict  
4 liability,...[s]trict liability developed to achieve specific policy objectives." *Id.* at 621.  
5 "Situations which would not further these objectives have long been, recognized to be outside  
6 the purview of strict liability." *Id.* The policy objectives supporting the application of the strict  
7 product liability doctrine are as follows:

- 9 1. To promote product safety.
- 10 2. Shifting costs of defective products to those who market them because  
11 "manufacturers are in a better position to bear the costs of injuries and because  
12 they have the ability to distribute the losses of the few among the many who  
13 purchase products." *Id.*
- 14 3. Shifting the burden of proof to those who market defective products because  
15 proving negligence against a manufacturer "can be difficult and costly for the  
16 average consumer." *Id.*

17 In holding that the tanker cars were not "products" for the purposes of strict product  
18 liability, the court explained how none of the strict liability policy objectives would be furthered  
19 if the doctrine was applied. First, "safety policy is not furthered [because] the process of  
20 manufacturing a custom-made item...heavily involves the consumers...in making manufacturing  
21 decisions, computing risks, and setting safety specifications," *Id.*

22 Second, the manufacturer was "not in any better position to assume the costs than the  
23 Customers [because tire tanker cars were] not a mass-scale enterprise..." *Id.* The purchaser of  
24 the tanker cars selected the manufacturer "to produce a specific, one-time order of [tanker cars]  
25 to meet the [purchaser's] need. In such case, the manufacturer has no opportunity to spread the  
26 costs throughout its many customers, because no other customers exist." *Id.*

27 Finally, in light of the foregoing, the court concluded that the manufacturer was not in  
28

1 the best position to determine if the tanker cars were defective, and that other parties involved in  
2 the design and manufacturing process were "in a position to know and prove that the  
3 manufacturer might have been negligent," *Id.* at 623. According to the court, the doctrine of  
4 strict product liability did not apply because "the product was coaxed into the market by its  
5 consumers. [The manufacturer] did not launch this product into the stream of commerce, this  
6 was a custom-made order, fashioned expressly at the request of [the buyer]." *Id.* at 622.

7  
8 As applied to this case, the holding in *Calloway* and *Queen City* dictate that the MGM  
9 Pylon is not a "product" as a matter of law. The sign was initially designed for the sole use of  
10 MGM. It is unique, it was not mass produced, it was built under the direction of MGM, and it  
11 was not intended to be injected into the stream of commerce. The sign had many different  
12 companies involved in its production including, those involved in the foundation, supply of  
13 materials, and designers.

14  
15 Like *Calloway* and *Queens City*, the policy objectives of the strict products liability  
16 doctrine would not be furthered in this case. First, as was the case in *Queens City*, because the  
17 MGM Pylon is a custom, one-of-a-kind item that was built under the direct supervision of  
18 MGM, applying the strict products liability doctrine would do nothing to promote the safety of  
19 the MGM Pylon. MGM was involved in every aspect of the design of the MGM Pylon, and it  
20 was not simply Old Ad Art. Second, because the construction of the MGM Pylon was not a  
21 "mass-scale enterprise," Old Ad Art would not be in a better position to "spread the costs"  
22 across its customers by increasing the price of the MGM Pylon. Finally, it is readily  
23 ascertainable who built the MGM Pylon originally and who did maintenance, repairs, and  
24 changes to the MGM Pylon, which places no burden on Plaintiffs to prove if the MGM Pylon  
25 was negligently designed or constructed.

26  
27 "The uncritical application of the strict tort liability doctrine...disregards some very real  
28



1 differences between mass-produced goods and [uniquely constructed projects] and their  
2 respective methods of production.” *Calloway*, 116 Nev. at 269, 993 P.2d at 1271 (citation  
3 omitted). To apply the doctrine of strict product liability in this case would be to ignore “the  
4 very real differences” between the unique nature of the design and construction of the MGM  
5 Pylon in comparison to mass produced goods. The MGM Pylon is not a “product” and the  
6 doctrine of strict, products liability has no application in this case. For these reasons, Plaintiff’s  
7 strict products liability claim must be dismissed.  
8

9 **F. Plaintiff’s Claims are Barred by the Statute of Repose.**

10 Finally, the Court did not address the Statute of Repose in the Order on Defendant Ad  
11 Art’s Motion for Summary Judgment. The Court only addressed the Statute of Limitations.  
12 Statutes of repose preclude recovery on causes of action after a certain period of time,  
13 irrespective of whether damage or an injury has been discovered. In other words, statutes of  
14 repose set an outside time limit; when that period expires, a cause of action for personal injury  
15 or property damage cannot be brought. *G and H Associates v. Ernest W. Hahn, Inc.*, 113 Nev.  
16 265, 271, 934 P.2d 229, 233 (1997); *Allstate Ins. Co. v. Furgerson*, 104 Nev. 772, 775, 766 P.2d  
17 904, 906, n.2 (1988).  
18

19 In a personal injury case based on a claim of a construction defect, the statute of repose  
20 runs from the date of the substantial completion of the improvement, without regard to the date  
21 of the injury. *G and H Assoc.*, 113 Nev. at 271, 934 P.2d at 233. In addition to proving the  
22 elements of the cause of action, Plaintiff must also prove that his causes of action were brought  
23 within the time frame set forth by the statute of repose. *Id.* at 272, 934 P.2d at 229, n. 6. *The*  
24 *Nevada Legislature enacted the statutes of repose to protect persons engaged in the planning,*  
25 *design, and construction of improvements to real property who otherwise would endure*  
26 *unending liability, even after they had lost control over the use and maintenance of the*  
27  
28

1 *improvement. Alsenz v. Twin Lakes Vill., Inc.*, 108 Nev. 1117, 1120, 843 P.2d 834, 836 (1992)  
2 (citing *Nevada Lakeshore Co. v. Diamond Elec., Inc.*, 89 Nev. 293, 295-96, 511 P.2d 113, 114  
3 (1973)(emphasis added)).

4 Plaintiff's negligence claim is barred as to Defendant Ad Art by the applicable statutes  
5 of repose. Under the current statute of repose, NRS 11.202, no action may be commenced  
6 against Defendant Ad Art for personal injury caused by an alleged deficiency in the MGM  
7 Pylon more than 6 years after substantial completion of the allegedly defective work. Plaintiff's  
8 Complaint was initially filed on July 30, 2015. The original construction of the MGM Pylon  
9 was completed in or around 1994. Therefore, Plaintiff's Complaint was filed over 20 years after  
10 the completion of the MGM Pylon. Therefore, Plaintiff's claims are obviously barred by the  
11 current 6-year statute of repose.  
12

13 Ad Art anticipates that Plaintiff will argue that the previous statutory scheme for the  
14 statutes of repose applies to this case. This argument is without merit. Even if the former  
15 statutes of repose (effective prior to February 24, 2015) applied, Plaintiff's claims against  
16 Defendant Ad Art would still be time-barred. Under these former statutes, Plaintiffs claim is  
17 barred by NRS 11.204 for "latent" defects, NRS 11.205 for "patent" defects, and 11.206 for  
18 "known" defects. Under NRS 11.206, and injury based on a known defect must be brought  
19 within 10 years. Under NRS 11.204, an injury based on a latent defect must be brought within 8  
20 years of substantial completion. Under NRS 11.205, the period is just 6 years. Whether the  
21 alleged defect in the MGM Pylon is patent, latent, or known Plaintiff's claim is still time-barred  
22 because Plaintiff's claims were not filed until July 30, 2015 which is more than 21 years after  
23 the construction of the MGM Pylon by Old Ad Art in 1994.  
24

25 All of Plaintiff's claims are involving the construction of the MGM Pylon fall outside of  
26 the applicable statute of repose, and therefore his claims are barred.  
27  
28

III. CONCLUSION

For the reasons set forth above, Defendant Ad Art requests that this Court reconsider its findings and grant summary judgment in favor of Defendant Ad Art.

DATED this 21 day of December, 2017.

Respectfully submitted,

RAY LEGO & ASSOCIATES



TIMOTHY F. HUNTER, ESQ.  
Nevada Bar No. 010622  
7450 Arroyo Crossing Parkway, Suite 250  
Las Vegas, NV 89113

Attorney for Defendant, AD ART, INC.

**CERTIFICATE OF SERVICE**

Pursuant to NRCP 5(b), I hereby certify that I am an employee of RAY LEGO & ASSOCIATES and that on the 21st day of December, 2017 I caused the foregoing AD ART, INC.'S MOTION FOR RECONSIDERATION ON MOTION FOR SUMMARY JUDGMENT to be served as follows:

  X   pursuant to N.E.F.C.R. 9 by serving it via electronic service.

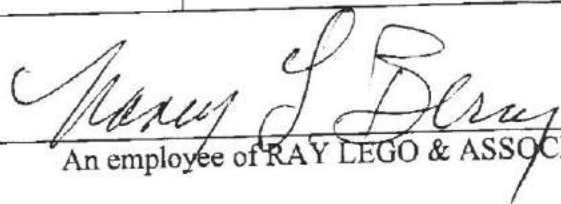
To the attorneys listed below:

William R. Brenske, #001806  
BRENSKE & ANDREEVSKI  
3800 Howard Hughes Parkway, #500  
Las Vegas, NV 89169  
[wbrenske@hotmail.com](mailto:wbrenske@hotmail.com)

P: 702/385-3300  
F: 702/385-3823  
Attorneys for Plaintiff, **CHARLES SCHUELER**

Leann Sanders, Esq., #000390  
Edward Silverman, Esq., #13584  
ALVERSON, TAYLOR, MORTENSEN & SANDERS  
6605 Grand Montecito Pkwy, Suite 200  
Las Vegas, NV 89149  
[esilverman@alversontaylor.com](mailto:esilverman@alversontaylor.com)

P: 702/384-7000  
F: 702/385-7000  
Attorneys for Defendants, **3A COMPOSITES USA INC., A/K/A ALUCOBOND TECHNOLOGIES CORPORATION**

  
An employee of RAY LEGO & ASSOCIATES

Ray Lego & Associates  
7450 Arroyo Crossing Parkway, Suite 250  
Las Vegas, Nevada 89113  
Telephone No. (702) 479-4350  
Facsimile No. (702) 270-4602

# EXHIBIT "A"

Ray Lego & Associates  
7450 Arroyo Crossing Parkway, Suite 250  
Las Vegas, Nevada 89113  
Telephone No. (702) 479-4350  
Facsimile No. (702) 270-4602

**AFF**  
TIMOTHY F. HUNTER, ESQ.  
Nevada Bar No. 010622  
RAY LEGO & ASSOCIATES  
7450 Arroyo Crossing Parkway, Suite 250  
Las Vegas, NV 89113  
Tel: (702) 479-4350  
Fax: (702) 270-4602  
tfhunter@travelers.com

Attorney for Defendant,  
**AD ART, INC.**

**DISTRICT COURT**  
**CLARK COUNTY, NEVADA**

**CHARLES SCHUELER,**

Plaintiff,

vs.

**MGM GRAND HOTEL, LLC**, a Domestic  
Limited Liability Company d/b/a **MGM**  
**GRAND; MGM RESORTS**  
**INTERNATIONAL**, a Foreign Corporation  
d/b/a **MGM GRAND; AD ART, INC.**, a  
Foreign Corporation; **3A COMPOSITES USA**  
**INC.**, a Foreign Corporation a/k/a  
**ALUCOBOND TECHNOLOGIES**  
**CORPORATION; DOES 1 - 25; ROE**  
**CORPORATIONS 1 - 25; inclusive,**

Defendants.

**CASE NO.: A-15-722391-C**

**DEPT. NO.: XVII**

**AFFIDAVIT OF TERRY J. LONG**

STATE OF NEVADA        )  
                                  ) ss.  
COUNTY OF CLARK        )

Terry J. Long, being duly sworn, deposes and says:

1. I am the Chief Executive Officer of the named Defendant Ad Art, Inc.

2. Upon information and belief, the MGM pylon that is outside of the MGM Grand Hotel and Casino in Las Vegas, Nevada was designed and constructed in or about 1993 or 1994.

3. Ad Art Electronic Sign Corporation ("Ad Art ESC") was involved in the original design and construction of the MGM pylon in or about 1993 or 1994.



4. In or about 1998, Ad Art ESC was purchased by, and became a wholly-owned subsidiary of, La-Man, Inc., a publicly traded company on the NASDAQ. At some point shortly thereafter, La-Man, Inc. changed its name to Display Technologies, Inc. ("DTEK").

5. In or about 2001, DTEK ceased all business operations and liquidated the assets of Ad Art ESC.

6. In connection with the liquidation of Ad Art ESC assets, I am informed and believe that NASCO Electric Sign Co., LLC (hereinafter "NASCO") purchased the name "Ad Art," which had trademark/work mark/service mark/trade names status from the United States Government, and also purchased Ad Art ESC's telephone number and web address.

7. On or about March 25, 2003, a new corporation, Ad Art, Inc., was formed via filing Articles of Incorporation with the Secretary of State of the State of California.

8. On or about April 1, 2003, Ad Art, Inc. entered into an agreement with NASCO wherein NASCO agreed to sell only the trademark/word mark/service mark/trade name, use of the telephone number and Internet web address to Ad Art, Inc.

9. Ad Art, Inc. was not involved in the design, construction or subsequent maintenance of the MGM pylon sign located outside of the MGM Grand Hotel & Casino in Las Vegas, Nevada.

FURTHER AFFIANT SAYETH NAUGHT

Terry J. Long

SUBSCRIBED and SWORN to this

\_\_\_\_ day of November, 2015.

NOTARY PUBLIC in and for the County  
and State

**CALIFORNIA JURAT WITH AFFIANT STATEMENT**  
**GOVERNMENT CODE § 8202**

- ☒ See Attached Document (Notary to cross out lines 1-6 below)  
☐ See Statement Below (Lines 1-6 to be completed only by document signer[s], not Notary)

1 \_\_\_\_\_  
2 \_\_\_\_\_  
3 \_\_\_\_\_  
4 \_\_\_\_\_  
5 \_\_\_\_\_  
6 \_\_\_\_\_

Signature of Document Signer No. 1 \_\_\_\_\_ Signature of Document Signer No. 2 (if any) \_\_\_\_\_

State of California

County of San Francisco

Subscribed and sworn to (or affirmed) before me

on this 18th day of Nov, 2015  
by \_\_\_\_\_ Date Month Year

(1) Terry Long  
(2) \_\_\_\_\_  
Name(s) of Signer(s)

proved to me on the basis of satisfactory evidence  
to be the person(s) who appeared before me.

Signature \_\_\_\_\_  
Signature of Notary Public



Place Notary Seal Above

**OPTIONAL**

Though the information below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent removal and reattachment of this form to another document.

**Further Description of Any Attached Document**

Title or Type of Document: Affidavit of Terry Long

Document Date: \_\_\_\_\_ Number of Pages: Two

Signer(s) Other Than Named Above: \_\_\_\_\_

# EXHIBIT "B"

### AGREEMENT

THIS AGREEMENT made this 1<sup>st</sup> day of April, 2003 between NASCO ELECTRIC SIGN CO., LLC ("NASCO") and AD ART, INC. ("AD ART"), with reference to the following facts:

### RECITALS

1. NASCO owns the name "AD ART" which has received trademark/word mark/service mark/trade name status from the appropriate entities of the United States Government.
2. NASCO owns the right to the telephone number (209) 931-0860.
3. NASCO owns the Internet web address, www.adartesc.com.
4. NASCO owns the building at 3180 N. Ad Art Road, Stockton, California 95215.
5. NASCO holds California C-45 Contractors license number 752396 under the dba of Ad Art Electric Sign Company.
6. AD ART is a new corporation formed by former officers and employees of Ad Art Electronic Sign Corporation, which was sold to and became a division of LAMAN, INC. (later Display Technology Inc.) a public company in 1998, later to be liquidated in 2001. In the process of the liquidation of Ad Art Electronic Sign Corporation, NASCO purchased the trademark AD ART, the telephone number and the Internet web address. AD ART desires to carry on the tradition and unity of the Ad Art name, a company in the sign business for more than 40 years.
7. NASCO desires to enter into this Agreement to sell the trademark/word mark/service mark/trade name, use of the telephone number and Internet web address to AD ART.

8. NASCO had a long association with the former AD ART, manufacturing product for the company, and desires to promulgate a similar relationship with the newly reformed organization.

#### AGREEMENT

9. Recitals. The provisions of the recitals above shall be part of this Agreement for purposes of interpretation, explanation, intention, and are incorporated herein.

10. Term. This Agreement shall run for a term of ten (10) years commencing April 1, 2003. AD ART shall make the payments to NASCO as set forth in paragraph 12. below.

11. Sale. Upon execution of this Agreement, NASCO will transfer to AD ART the following:

- a. The trademark/word mark/service mark/trade name "Ad Art";
- b. The right to the telephone number 209-931-0860; and
- c. The Internet web address, [www.adartesc.com](http://www.adartesc.com).

NASCO shall receive a security interest in the assets described in subparagraphs a., b., and c. above, as collateral for AD ART's obligations under this Agreement. The parties will, within ten (10) days of execution of this Agreement, execute documentation (bill of sale, assignment Note, security agreement, UCC-1 and other appropriate documentation) to transfer the above to AD ART maintaining for NASCO the above as security for payment to NASCO as required by this Agreement.

#### 12. Payment.

a. AD ART will pay to NASCO [REDACTED] of AD ART's gross receipts for ten years.

b. Payment shall be made quarterly with the quarters commencing April 1, 2003. Payment shall be made within thirty (30) days after the end of the quarter.

c. Gross receipts shall be defined as cash receipts less sales tax. Obligation to pay shall attach upon receipt by AD ART of monies (not booking of sales or submittal of invoices) for sales made.

d. AD ART shall keep good and accurate books of account. An accounting shall be rendered with the quarterly payments indicating the individual transactions and amounts. Upon reasonable notice NASCO may inspect the books and records of AD ART sufficient to ascertain sales histories, invoice histories and collection histories.

e. If Nagi Ali no longer owns NASCO and/or is no longer the principal operating person of NASCO, the payment under this agreement after six years will be [REDACTED]

13. Use of Premises. As part of this Agreement AD ART shall have the right to use, without additional rent, for six years from April 1, 2003 for its purposes, the offices on the top floor, on the west side of 3180 N. Ad Art Road, Stockton, CA 95215

14. Contractors license.

a. AD ART has applied for a corporation C-45 Contractors License. Terry Long, CEO/Chairman of AD ART, is a qualified RMO on inactive status. Due to enormous backlog of the State Contractors License Board due to fiscal constraints of the State Government, there are delays in the procedural process of licensing the application of AD ART, application no. 200 201 224 07. NASCO, through its subsidiary, AD ART ELECTRIC SIGN CO., which holds a California C-45 Contractor's license, will be the contracting entity for all sign sales requiring a California contractor's license pending the granting of a C-45 license to AD ART.



b. AD ART agrees to indemnify and hold NASCO harmless for any liabilities incurred by NASCO related to the matters set forth in 14 (a) above. AD ART agrees to defend any claims, including responsibility for costs and attorneys fees.

15. Preferred Sign Supplier.

a. NASCO manufactures and will continue to manufacture signs of the type to be sold by AD ART. AD ART agrees to utilize NASCO as a preferred sign supplier of AD ART. Subject to the "buy out" provision set forth in subparagraph c. below, as "preferred sign supplier", it is intended that AD ART intends and will use its best efforts, subject to the limitations set forth below, to contract with and have NASCO manufacture and sell to AD ART signs that are required by AD ART in its business, taking into consideration that there are some signs NASCO may not desire to or is not equipped to manufacture, limitations on NASCO's ability and capacity to manufacture the signs, along with geographical, logistical, and/or other factors. It is the spirit and intent of this provision that AD ART will provide much business for NASCO as realistically practical. With respect to any signs that NASCO elects not to manufacture, or in the event NASCO is operating at full capacity and does not have the personnel, space and/or equipment necessary to manufacture signage for AD ART, or if it is not economically or realistically practical for NASCO to manufacture the sign(s) as set forth above, then AD ART may have such signs manufactured by a third party or manufacture such sign itself.

b. AD ART agrees to pay NASCO for each sign manufactured by NASCO at a price which is competitive, using industry standards for sign suppliers. AD ART shall furnish to NASCO all necessary specifications for each sign.

c. The "preferred sign provider" provision of this Agreement shall terminate after six years from April 1, 2003. At any time during this six year period, AD ART shall have the option of "buying out" or terminating the above preferred sign supplier relationship between the parties by providing NASCO with written notice of its exercise of such option, and by payment to NASCO of the following amounts:

<u>If Option Exercised</u>	<u>Payment Amount</u>
<u>Prior to:</u>	
4/1/04	
4/1/05	
4/1/06	
4/1/07	
4/1/08	
4/1/09	

d. These provisions relating to NASCO being a "Preferred Sign Supplier" are intended to be personal to Nagi Ali, in that if Nagi Ali no longer owns NASCO and/or is no longer the principal operating person of NASCO, these provisions will terminate.

16. Representations And Warranties Of NASCO.

a. NASCO represent and warrants that it is the owner of the Trademark/word mark/service mark/trade name "Ad Art", registered on December 1, 1998, filing date November 26, 1996, with the U.S. Patent and Trademark Office, and further warrants that there has been no

adverse action, that the mark has been properly assigned to NASCO, and that the right has not lapsed.

b. NASCO will transfer the trademark/word mark/service mark/trade name to AD ART and execute any documents required to effect the transfer.

c. NASCO represent and warrants that it is the owner of the Internet web address, www.adartesc.com and the telephone number 209-931-0860; and will execute any documents required to effect the transfer called for in this Agreement.

17. Representations and Warranties of AD ART. AD ART is a corporation organized, validly existing, and in good standing under the laws of the State of California. The Board of Directors of AD ART will have duly authorized and approved the execution and delivery of this Agreement and all corporate action necessary or proper to fulfill AD ART's obligations to be performed under this Agreement on or before the Closing Date.

18. Termination.

a. NASCO may terminate this Agreement during the initial term immediately upon the occurrence of any of the following events:

- (i) AD ART fails to make any payment due NASCO hereunder which is not cured within ten (10) days after written notice thereof from NASCO;
- (ii) AD ART fails to cure any other material breach of this Agreement within thirty days written notice thereof from NASCO;
- (iii) AD ART becomes bankrupt, has a receiver appointed for it or its property; or makes an assignment for the benefit of its creditors;
- (iv) Or AD ART dissolves or is liquidated.

b. Termination of this Agreement shall in no way affect the rights or liabilities of AD ART arising during the period prior to such termination or expiration, or release AD ART from the obligation to make any payment due and owing to NASCO. Upon termination, AD ART will return to NASCO all tangible materials and information of a proprietary or confidential nature disclosed to AD ART under this Agreement and cease use of the "AD ART" trademark/word mark/service mark/trade name.

19. Miscellaneous.

Notices. Any notice required or permitted to be given under this Agreement shall be in writing, deemed delivered on the date received, when sent by (a) a recognized private courier company, (b) United States registered or certified mail, postage prepaid, return receipt requested, and addressed as follows:

<u>If to NASCO:</u>	NAGI ALI 3180 N. Ad Art Road Stockton, California 95215
<u>If to AD ART:</u>	TERRY LONG 5 Thomas Mellon Circle, Suite 260 San Francisco, CA 94134

Or such other address as either party may from time to time specify in writing to the other in the manner aforesaid.

Successors and Assigns. With the exception of the provisions of section 15 d. of this Agreement, this Agreement shall be binding upon, and inure to the benefit of, the parties hereto and their respective successors, heirs, administrators and assigns.

Amendments. This Agreement may be amended or modified only by a written instrument executed by the party asserted to be bound thereby.

Interpretation. Words used in the singular number shall include the plural, and vice-versa, and any gender shall be deemed to include each other gender. The captions and headings of the Articles and Sections of this Agreement are for convenience of reference only, and shall not be deemed to define or limit the provisions hereof.

Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of California.

Merger of Prior Agreements. This Agreement constitutes the entire agreement between the parties with respect to the purchase and sale of the Property and supersedes all prior and contemporaneous agreements and understandings between the parties hereto relating to the subject matter hereof.

Attorney's Fees. In the event of a dispute between the parties to this Agreement, whether or not resulting in litigation, or if any action at law or in equity, including an action for declaratory relief or arbitration, is brought to enforce or interpret the provisions of this Agreement, the prevailing party (as determined by the court, agency or other authority before which such suit or proceeding is commenced) shall, in addition to such other relief as may be awarded, be entitled to recover attorney's fees, expenses and costs of investigation as actually incurred (including, without limitation, attorneys' fees, expenses and costs of investigation incurred in appellate proceedings, costs incurred in establishing the right to indemnification, or in any action or participation in, or in connection with, any case or proceeding under Chapter 7, 11 or 13 of the Bankruptcy Code, 11 United States Code Section 101 et seq., or any successor statutes).

Default. Neither party shall be deemed to be in default of this Agreement except upon the expiration of thirty (30) days from receipt of written notice from the other party

specifying the particulars in which such party has failed to perform its obligations under this Agreement, and such party, prior to expiration of said thirty (30) day period, has failed to cure such default.

Time of the Essence. Time is of the essence of this Agreement.

Counterparts. This Agreement and all amendments and supplements to it may be executed in counterparts, and all counterparts together shall be construed as one document.

Confidentiality. The parties acknowledge that accounting for the payments to NASCO will likely disclose to NASCO confidential information and trade secrets of AD ART. NASCO agrees to keep said information confidential and not disclose such information to anyone except when necessary to disclose to professionals for financial review.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date first above written.

NASCO BLECTRIC SIGN CO., LLC

By

NAGI ALI

AD ART

By

TERRY LONG, Its CEO

By

BOB Kieriszczak, Its President



# EXHIBIT "C"

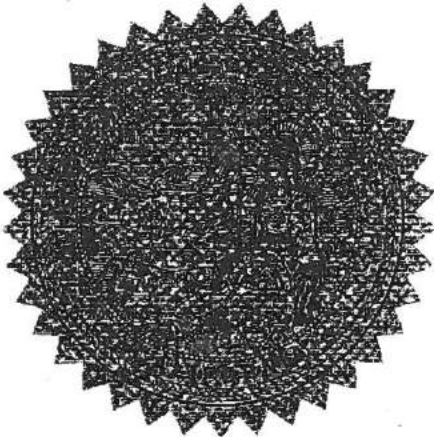
**SECRETARY OF STATE**

I, *Kevin Shelley*, Secretary of State of the State of California, hereby certify:

That the attached transcript of 1 page(s) has been compared with the record on file in this office, of which it purports to be a copy, and that it is full, true and correct.

**IN WITNESS WHEREOF**, I execute this certificate and affix the Great Seal of the State of California this day of

MAR 30 2003



*Kevin Shelley*  
Secretary of State

2503793

ARTICLES OF INCORPORATION

OF

AD ART, INC.

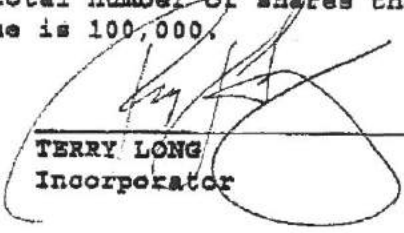
ENDORSED - FILED

in the office of the Secretary of State  
of the State of California

MAR 25 2003

KEVIN SHELLEY  
Secretary of State

- I. The name of this corporation is Ad Art, Inc.
- II. The purpose of the corporation is to engage in any lawful act or activity for which a corporation may be organized under the General Corporation Law of California other than the banking business, the trust company business, or the practice of a profession permitted to be incorporated by the California Corporations Code.
- III. The name and address in the State of California of this corporation's initial agent for service of process is:
- Blair M. White  
Attorney at Law  
3600 Carol Kennedy Drive  
San Andreas, CA 95249
- IV. The corporation is authorized to issue only one class of shares of common stock; and the total number of shares that this corporation is authorized to issue is 100,000.

  
TERRY LONG  
Incorporator

3/20/03



AD000154

## **BYLAWS OF AD ART, INC.**

### **ARTICLE I**

#### **OFFICES**

1.01. The principal executive office of the corporation shall be located at 5 Thomas Mellon Circle, Suite 260, San Francisco, California 94134.

#### **Other Offices**

1.02. The corporation may also have offices at any other places, within or without the State of California, where the corporation is qualified to do business, as the Board of Directors may from time to time designate or the business of the corporation may require.

### **ARTICLE II**

#### **DIRECTORS**

#### **Definitions**

##### **"Board"**

2.01. (a) As used in these "Bylaws", the word "Board" means the Board of Directors of the corporation.

##### **"Directors"**

(b) "Directors", as used in these bylaws in relation to any power or duty requiring collective action, means the Board of Directors of the corporation.

#### **Responsibility of Board [Corp. Code § 300(a)]**

2.02. Subject to the provisions of the General Corporation Law and to any limitations in the Articles of Incorporation relating to action required to be approved by the shareholders, as that term is defined in California Corporations Code § 153, or by the outstanding shares, as that term is defined in California Corporations Code § 152, the business and affairs of the corporation shall be managed and all corporate powers shall be exercised by or under the direction of the Board of Directors. The Board may delegate the management of the day-to-day operation of the business of the corporation to a management company or other person provided that the business and affairs of the corporation shall be managed and all corporate powers shall be exercised under the ultimate direction of the Board.

#### **Number of Directors [Corp. Code § 212(a)]**

2.03. The number of directors of the corporation shall be three (3).

#### **Election and Term of Office [Corp. Code § 301]**

2.04. Directors shall be elected at each annual meeting of shareholders to hold office until the next annual meeting. Each director, including a director elected to fill a vacancy (see Paragraph 2.07 of these Bylaws), shall hold office until the expiration of the term for which he or she was elected and until a successor has been elected and qualified.

**Resignation [Corp Code § 305(d)]**

2.05. Any director may resign effective on giving written notice to the Board Chairperson, the President, the Secretary, or the Board of Directors of the corporation, unless the notice specifies a later time for the effectiveness of the resignation. If the resignation is effective at a future time, a successor may be elected to take office when the resignation becomes effective.

**Vacancies [Corp. Code §§ 192, 302-304]**

**When Vacancy Occurs [Corp. Code § 192]**

2.06. (a) A vacancy on the Board of occurs when any authorized position of director is not filled by a duly elected director, whether caused by death, resignation, removal, change in the authorized number of directors (by the Board or the shareholders), or otherwise.

**Declaration of Vacancy [Corp. Code § 302]**

(b) The Board may declare vacant the office of a director who has been declared of unsound mind by an order of court or convicted of a felony.

**Removal of Director by Shareholders [Corp. Code § 303(a)]**

(c) Any or all of the directors may be removed without cause if removal is approved by the outstanding shares, as that term is defined in California Corporations Code Section 152, subject to the following:

- (1) No director may be removed (unless the entire Board is removed) when the votes cast against removal, or not consenting in writing to that removal, would be sufficient to elect that director if voted cumulatively at an election at which the same total number or votes were cast (or if action is taken by written consent, all shares entitled to vote were voted) and the entire number of directors authorized at the time of the director's most recent election were then being elected; and
- (2) When by the provisions of the Articles the holders of the shares of any class or series, voting as a class or series, are entitled to elect one or more directors, any director so selected may be removed only by the applicable vote of the holders of the shares of that class or series.

**Removal by Court [Corp. Code § 304]**

(d) Shareholders holding at least 10 percent of the number of outstanding shares of any class of the corporation may sue in the superior court of the county in which the principal executive office of the corporation is located to remove from office any director in case of fraudulent or dishonest acts or gross abuse of authority or discretion with reference to the corporation. In that case, the corporation shall be made a party to the action.

**Reduction of Authorized Number of Directors [Corp. Code § 303(b)]**

(e) Any reduction of the authorized number of directors shall not remove any director prior to the expiration of the director's term of office.

**Provisions Exclusive [Corp. Code § 303(c)]**

(f) Except as provided in subparagraphs e through d of this Paragraph 2.06, no director may be removed from office prior to the expiration of the director's term of office.

**Filing Vacancies**

**By Board [Corp. Code § 305(a)]**

2.07. (a) Except as otherwise provided in the Articles or in these Bylaws, and except for a vacancy created by the removal of a director as provided in Paragraph 2.06, vacancies on the Board may be filled by approval of the Board pursuant to Corporations Code Section 151, or, if the number of directors then in office is less than a quorum, by (1) the unanimous written consent of the directors then in office; (2) the affirmative vote of a majority of the directors then in office at a meeting held pursuant to notice or waivers of notice complying with Corporations Code Section 307; or (3) a sole remaining director.

**By Shareholders [Corp. Code § 305(a), (b), 603(d)]**

(b) Unless the Articles or a bylaw adopted by the shareholders provide that vacancies occurring in the Board by reason of the removal of directors may be filled by the Board, those vacancies may be filled only by approval of the shareholders, as that term is defined in Corporations Code Section 153. Moreover, the shareholders may elect a director at any time to fill any vacancy not filled by the directors. Directors may be elected by written consent only upon the unanimous written consent of all shares entitled to vote for the election of directors, except that the shareholders may elect a director to fill a vacancy created by removal, by the written consent of a majority of the outstanding shares entitled to vote.

**By Special Meeting [Corp. Code § 305(c)]**

(c) If, after the filling of any vacancy by the directors, the directors then in office who have been elected by the shareholders shall constitute less than a majority of the directors then in office, any holder or holders of an aggregate of 5 percent or more of the total number of shares at the time outstanding having the right to vote for the directors may call a special meeting of the shareholders, or apply to the superior court of the county in which the principal executive office of the corporation is located for an order that a special meeting be held to elect the entire Board. The term of office of any director not elected by the shareholders shall terminate on the election of a successor.

**Call of Meetings [Corp. Code §§ 212(b)(2), 307(a)(1)]**

2.08. Meetings of the Board may be called by the Board Chairperson, or the President, or any Vice-President, or the Secretary, or any two directors of the corporation.

**Place of Meetings [Corp. Code §§ 212(b)(2), 307(a)(5)]**

2.09. Meetings of the Board may be held at any place within or without California that has been designated in the notice of the meeting or, if not stated in the notice or if there is no notice, designated by resolution of the Board, and if not so designated, then at the principal executive office of the corporation.



**Time of Regular Meetings [Corp. Code §§ 212(b)(2), 307(a)(2)]**

2.10. Regular Meetings of the Board of Directors held, without call or notice, immediately following each annual meeting of the shareholders of this corporation.

**Notice of Meetings [Corp. Code §§ 113, 118, 212(b)(2), 307(1)(2)]**

2.11.1 Regular meetings of the Board may be held without notice. Special meetings shall be held four days' notice by first-class mail, postage prepaid, or 48 hours' notice delivered personally or by telephone, including a voice messaging system or other system or technology designed to record and communicate messages, telegraph, facsimile, electronic mail, or other electronic means. The notice need not specify the purpose of the meeting.

**Waiver of Notice [Corp. Code §§ 212(b)(2), 307(a)(2), (3)]**

2.12. Notice of any meeting need not be given to any director who signs a waiver of notice, or a consent to holding the meeting or an approval of the minutes of the meeting, whether before or after the meeting, or who attends the meeting without protesting, prior to the meeting or at its commencement, the lack of notice to the director. Any waiver of notice need not specify the purpose of the meeting. All waivers, consents, and approvals of minutes shall be filed with the corporate records or made a part of the minutes of the meeting to which they pertain.

**Quorum [Corp. Code §§ 212(b)(4), 307(a)(7)]**

2.13. A majority of the authorized number of directors constitutes a quorum of the Board for the transaction of business.

**Transactions of Board [Corp. Code § 307(a)(8)]**

2.14. Except as otherwise provided in the Articles of Incorporation or in these Bylaws, every act or decision done or made by a majority of the directors present at a meeting duly held at which a quorum is present is the act of the Board, subject to the provisions of Paragraphs 2.23 and 2.28 of these Bylaws.

**Withdrawal of Quorum [Corp. Code § 307(a)(8)]**

2.15. Any meeting which a quorum is initially present may continue to transact business notwithstanding the withdrawal of directors, if any action taken is approved by at least a majority of the required quorum for the meeting.

**Adjournment [Corp. Code § 307(a)(4)]**

2.16. A majority of the directors present, whether or not a quorum is present, may adjourn any meeting to another time and place.

**Notice of Adjournment [Corp. Code §(a)(4)]**

2.17. If the meeting is adjourned for more than 24 hours, however, notice of the adjournment to another time or place must be given prior to the time of the adjourned meeting to the directors who were not present at the time of the adjournment.

**Conduct of Meetings [Corp. Code § 212(b)(2)]**

2.18. At every meeting of the Board, the Board Chairperson or, in the Chairperson's absence, the President of the corporation or, in the President's absence, the Vice-President designated by the President, or, in the absence of a designation, a chairperson chosen by a majority of the directors present shall preside. The Secretary of the corporation shall act as Secretary of the Board. In the event the Secretary is absent from any meeting, the Chairperson may appoint any person to act as secretary of the meeting.

**Telephone Participation [Corp. Code §§ 212(b)(2), 307(a)(6)]**

2.19. Members of the Board may participate in any meeting through use of conference telephone, electronic video screen communication, or other communications equipment, whenever the board authorizes this type of participation by adopting a resolution. The resolution must require that the corporation (1) verify the identity of any director communicating by telephone, electronic video screen, or other communications equipment and that director's right to participate in the board meeting, and (2) verify that all statements, questions, actions, and votes made by telephone, electronic video screen, or other communications equipment were made by that director and not someone permitted to participate as a director.

Participation in a meeting through use of electronic video screen communication or other communications equipment (other than a conference telephone) pursuant to this Paragraph constitutes presence in person at the meeting if all the following are true:

- (1) Each Board member participating in the meeting can communicate with all of the other members concurrently.
- (2) Each member is provided the means of participating in all matters before the board, including the capacity to propose, or interpose an objection, to a specific action to be taken by the corporation.
- (3) The board adopts a resolution pursuant to this Paragraph.

**Action Without Meeting [Corp. Code § 307(b)]**

2.20. Any action required or permitted to be taken by the Board may be taken without a meeting if all members of the Board individually or collectively consent in writing to the action. The written consent or consents must be filed with the minutes of the proceedings of the Board. Action by written consent has the same force and effect as a unanimous vote of the directors.

**Duties of Directors [Corp. Code § 309]**

2.21. (a) Each director shall perform the duties of a director, including duties as a member of any committee of the Board on which the director may serve, in good faith, in a manner the director believes to be in the best interest of the corporation and its shareholders and with care, including reasonable inquiry, as an ordinarily prudent person in a like position would use under similar circumstances.

2.21. (b) In performing his or her duties each director shall be entitled, so long as he or she acts in good faith after reasonable inquiry when the need for it is indicated by the circumstances and without knowledge that would cause the reliance to be unwarranted, to