

obtained or depositions to be taken or discovery to be had or may make such other order as is just.

Denial of a request for additional time under NRCp 56(f) to conduct discovery in a lawsuit in its infant stages constitutes abuse of discretion. *Summerfield v. Coca Cola Bottling Co. of the Southwest*, 113 Nev. 1291, 1294, 948 P.2d 704,705 (1997), citing to *Harrison v. Falcon Products*, 103 Nev. 558, 560, 746 P.2d 642, 642-643 (1987).

The Complaint in this matter was filed on July 30, 2015, and the Early Case Conference was held on November 12, 2015. Since then, the parties have only conducted minimal discovery. As of today, no depositions have been taken, nor are any scheduled to go forward. In essence, the discovery process has just begun. This case is still in its infancy stages.

Although Plaintiffs firmly believe the evidence currently in the file already demonstrates Ad Art, Inc.'s Motion for Summary Judgment should be denied, it is obvious much discovery must still be conducted. There are several avenues of discovery which would provide valuable information on the issues in this case, such as depositions and designations of experts, depositions of the parties, and depositions and discovery of any percipient witnesses, if any. Should this Court be inclined to grant Defendants' motion, given the relative newness of this case, additional time should be granted in which to conduct discovery. Plaintiff therefore makes an alternative request for additional time to conduct discovery. *See* Affidavit of Counsel, below:

AFFIDAVIT OF COUNSEL

State of Nevada,)
County of Clark.)

I, William R. Brenske, after being duly sworn, depose and say as follows:

1. I am counsel of record for Plaintiff above-named, and unless otherwise stated, have personal knowledge of the facts contained within this affidavit.

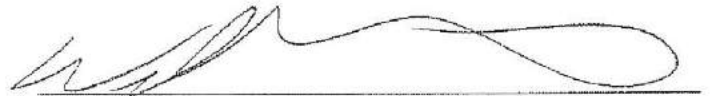
2. Plaintiff filed his Complaint on July 30, 2015 and the Early Case Conference was conducted on November 12, 2015. No written discovery responses have been served to date. No depositions have been noticed to date. Only NRCP 16.1 productions have been exchanged to date.

3. Given the infancy of this matter, it is necessary for Plaintiff to conduct additional discovery to be able to fully respond to the motion presently before the Court. Specifically, Plaintiff wishes to conduct written discovery and oral depositions and hire experts to ascertain:

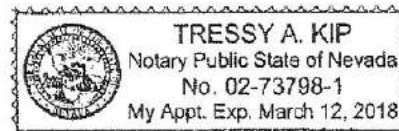
- A) The corporate history of Ad Art, Inc. and its predecessor entities; and,
- B) The identity of executives at Ad Art, Inc. and its predecessor entities.

4. Based on the foregoing, Plaintiff respectfully requests this Court for leave to conduct additional discovery pursuant to NRCP 56(f) and to deny Defendant's motion without prejudice.

DATED this 8th day of June, 2016.


WILLIAM R. BRENSKE

Subscribed and sworn to before me
this 8th day of June, 2016.



NOTARY PUBLIC, in and for County
of Clark, State of Nevada.

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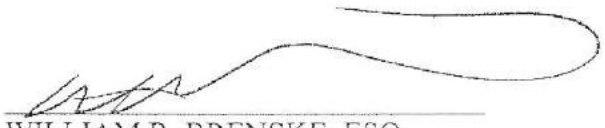
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1 Based on the pleadings and papers on file herein and the attached affidavit of counsel,
2 Plaintiff alternatively requests this Court for leave to conduct additional discovery pursuant to
3 NRCP 56(f). Plaintiff further requests this Court to deny Defendant's motion without prejudice
4 while the parties conduct the requested discovery.

5 DATED this 31 day of June, 2016.

6
7
8 
9 WILLIAM R. BRENSKE, ESQ.
10 Nevada Bar No. 1806
11 JENNIFER R. ANDREEVSKI, ESQ.
12 Nevada Bar No. 9095
13 LAW OFFICE OF WILLIAM R. BRENSKE
14 630 South Third Street
15 Las Vegas, NV 89101
16 *Attorneys for Plaintiff,*
17 *Charles Schueler*

CERTIFICATE OF SERVICE

I am employed with the Law Office of William R. Brenske. I am over the age of 18 and not a party to the within action; my business address is 630 South Third Street, Las Vegas, Nevada 89101. 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.

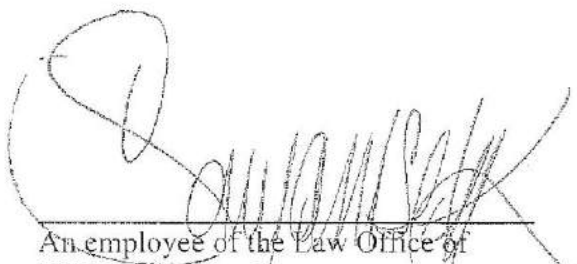
I served the foregoing document described as "**PLAINTIFF CHARLES SCHUELER'S OPPOSITION TO AD ART, INC.'S MOTION FOR SUMMARY JUDGMENT; ALTERNATIVE MOTION FOR ADDITIONAL DISCOVERY PURSUANT TO NRCP 56(f)**" on this 9th day of June, 2016, to all interested parties as follows:

- ☐ 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
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Timothy F. Hunter
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Facsimile No.: 702-270-4602


An employee of the Law Office of
William R. Brenske



CLERK OF THE COURT

1 RPLY
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,

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 DEFENDANT AD ART, INC.'S REPLY IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT

29 COMES NOW Defendant, Ad Art, Inc. ("Ad Art"), by and through their counsel,
30 Timothy F. Hunter, Esq. of Ray Lego & Associates and submits this Reply in Support of
31 Motion for Summary Judgment. For the reasons set forth herein, Ad Art again respectfully
32 requests that this court grant summary judgment in its favor on the following grounds: (1) as an
33 indisputable factual matter, defendant Ad Art has in no way participated in the design,
34 manufacture, installation or maintenance of the MGM Pylon sign at issue in this action, and (2)
35 as a matter of law, defendant Ad Art cannot be held liable as a successor to the entity that in fact
36 performed certain services on the MGM Pylon.

37 ///

1 I. POINTS AND AUTHORITIES

2 A. Defendant Ad Art was not in existence at the time the MGM pylon sign was
3 constructed.

4 Even assuming that the web screenshots taken offered by Plaintiff in his opposition
5 constitute authenticated evidence sufficient for this Court to consider at summary judgment,
6 those screenshots cannot support the contention that Defendant Ad Art was the entity who
7 secured the permit to build the MGM sign in 1993. Because, of course, Defendant Ad Art was
8 not in existence in 1993.

9 Ad Art ESC was the entity responsible for the construction of the MGM pylon sign, not
10 Defendant Ad Art. In looking at the California Secretary of State screenshot included in
11 Plaintiff's Opposition, it is clear that there were two completely different companies. Ad Art
12 ESC "resigned on 08/28/2001." *See*, Plaintiff's Opposition, pg. 6:3-17. Ad Art did not come
13 into existence until 03/25/2003. *Id.*

14 Moreover, even assuming that the data entry clerk at the Clark County Building
15 Department in 1993 correctly entered the full legal name of the entity obtaining the permit,
16 there was another entity named Ad Art, Inc. (although spelled "Ad-Art, Inc.") in existence at
17 that time. *See*, Plaintiff's Opposition, at 6:15.

18 Finally, Plaintiff's reliance on "The Story of the Phoenix Rising," which shows the
19 history of the name Ad Art, does nothing to change the entity analysis. *Id.* at 5:17-27. That
20 screenshot bears out the history of the name Ad Art. The history states the company was
21 purchased by Display Technologies; Display Technologies was forced to liquidate their
22 holdings; and Ad Art was closed as a casualty of the parent company losses. *Id.* Then, in 2003
23 former Ad Art executives "resurrected Ad Art from the ashes. *Starting fresh*, Ad Art 2.0 was
24 born..." *Id.* (emphasis added). Defendant Ad Art was a new privately-held company which
25 was not formed until 2003. Defendant Ad Art cannot be held responsible for the actions of a
26 completely different entity that was, at the time it ceased business operations, a wholly-owned
27 subsidiary of a publicly-traded corporation.

28 B. Defendant Ad Art was not a "continuation of the selling corporation" and
therefore cannot be held responsible for the actions of the prior corporation.

Ad Art is three transactions removed from the sale of Ad Art ESC and is in no way a
continuation of the selling corporation. The evidence does not support the application of the
"mere continuation" exception as stated in *Village Builders 96, L.P. v. U.S. Laboratories, Inc.*,

1 112 P.3d 1082, 1086 (Nev. 2005). Ad Art purchased only the rights to the name "Ad Art." Ad
2 Art is not a successor corporation that, as a matter of law, can incur liability for the alleged acts
3 and/or omissions of the entity that did in fact erect the MGM Pylon.

4 **C. Plaintiff's request for NRCP 56(f) relief must be denied, as the information**
5 **that Plaintiff wishes to conduct discovery on is not germane to the issues of**
6 **successor liability.**

7 Plaintiff seeks NRCP 56(f) in order to conduct discovery, but that discovery is not
8 needed in order for this court to decide the issue on this Motion for Summary Judgment. NRCP
9 56(f) states:

10 Should it appear from the affidavits of a party opposing the motion that the
11 party cannot for reasons stated present by affidavit facts essential to justify the
12 party's opposition, the court may refuse the application for judgment or may
13 order a continuance to permit affidavits to be obtained or depositions to be taken
14 or discovery to be had or may make such other order as is just.

15 The Nevada Supreme Court has held that "a motion for a continuance under NRCP 56(f) is
16 appropriate only when the movant expresses how further discovery will lead to the creation of a
17 genuine issue of material fact." *Aviation Ventures, Inc. v. Joan Morris, Inc.*, 121 Nev. 113, 117-
18 118, 110 P.3d 59, 62 (2005). A district court's decision to refuse such a continuance is reviewed
19 for abuse of discretion. *Id.*

20 Specifically, Plaintiff seeks information pertaining to "A) the corporate history of Ad
21 Art, Inc. and its predecessor entities; and, B) The identity of executives at Ad Art, Inc. and its
22 predecessor entities." *See*, Opposition pg. 9:3-9. The requested relief by Plaintiff is not
23 relevant, nor is it necessary for the court to rule on this Motion for Summary Judgment.

24 Ad Art did not come into existence until 2003, and therefore there is no corporate
25 history or predecessor entity prior to its inception. Ad Art purchased only the trade name and
26 marks in 2003. Ad Art did not purchase anything beyond the trademark/work mark/service
27 mark/trade name, use of the telephone number and Internet web address from NASCO. For the
28 same reason, the identity of executives at Ad Art is not relevant, and not needed for this court to
rule on Ad Art's Motion for Summary Judgment. Ad Art respectfully requests that Plaintiff's
request for NRCP 56(f) relief be denied, as the relief requested is not relevant to this motion.

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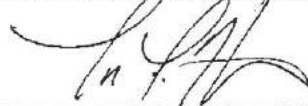
II. CONCLUSION

For the reasons set forth in the Motion for Summary judgment and in this reply, Defendant Ad Art requests that this court grant summary judgment in its favor. It is clear from all the evidence that defendant Ad Art had no involvement with the MGM pylon sign that is at the center of this litigation, nor can it be held liable under any theory of successor liability.

DATED this 16 day of June, 2016.

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.

Ray Lego & Associates
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Telephone No. (702) 479-4350
Facsimile No. (702) 270-4602

CERTIFICATE OF SERVICE

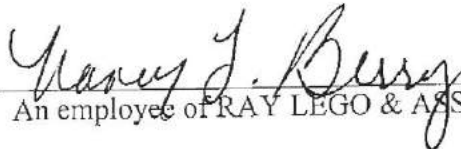
Pursuant to NRCP 5(b), I hereby certify that I am an employee of RAY LEGO & ASSOCIATES and that on the 16th day of June, 2016 I caused the foregoing DEFENDANT AD ART, INC.'S REPLY IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT to be served as follows:

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

To the attorneys listed below:

William R. Brenske, Esq., #1806
Ryan D. Krametbauer, Esq., #12800
LAW OFFICE OF WILLIAM R.
BRENSKE
630 S. Third Street
Las Vegas, NV 89101

P: 702/385-3300
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wbrenske@hotmail.com
Attorneys for Plaintiff, CHARLES
SCHUELER


An employee of RAY LEGO & ASSOCIATES

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Negligence - Other Negligence

COURT MINUTES

June 22, 2016

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

June 22, 2016 8:30 AM Defendant Ad Art, Inc.'s Motion for Summary Judgment

HEARD BY: Vega, Valorie J.

COURTROOM: RJC Courtroom 11A

COURT CLERK: Carol Donahoo

RECORDER: Michelle Ramsey

REPORTER:

PARTIES

PRESENT:

JOURNAL ENTRIES

- This is the time set for hearing on Defendant Ad Art, Inc.'s Motion for Summary Judgment.

Mr. Hunter advised that Ad Art, Inc. is a new corporation formed by the former officers and employees of Ad Art Electric Sign Corporation which was sold to become a division of La-Man, Inc. which later became Display Technologies, Inc. Later, NASCO Electric Sign Company purchased the naming rights to Ad Art. However, in March 2003 the new corporation Ad Art, Inc. was formed. Mr. Hunter's client only purchased the NAME Ad Art. Ad Art was liquidated and NASCO only purchased the ability to use the name Ad Art; the new corporation was formed in 2003. This is not a successor corporation; Ad Art Electric Sign Company or the Company that purchased them La-Man, Inc. or Display Technologies which is what La-Man changed their name to, those are the companies which were successor entities.

The MGM pylon sign that is outside the MGM Grand Hotel was built in either 1993 or 1994, which is ten (10) years before the formation of this corporation. Ad Art Electric Sign Corporation did not merge with Ad Art, Inc. The company that bought Ad Art, Inc. was dissolved in 2001 and then the new corporation was formed two (2) years later in 2003. Plaintiff has not provided any evidence that Ad Art, Inc. was in existence back in 1993 when the sign was actually built.

PRINT DATE: 07/12/2016

Page 1 of 2

Minutes Date: June 22, 2016

Additionally, Mr. Hunter advised that the Plaintiff is requesting NRCP 56(f) relief; the relief is not relevant because they are looking for information on the predecessor entities and there were no predecessor entities to Ad Art, Inc. Therefore, there is no relevance to anything that the predecessor entity may have done involving the MGM pylon sign and/or who the employees of Ad Art Inc. or the corporate designees of Ad Art Electric Sign Corporation were, which is the old corporation.

Mr. Brenske advised that no discovery has been done in this case. The purpose of discovery is to determine whether or not the current Deft. is liable for the injuries to his client. If you have a successor corporation, they are liable for the debts of a prior corporation. The Plaintiff is required to provide certain issues of fact in order to keep Ad Art, Inc. in this case. That is why the Plaintiff filed the Rule 56(f) motion because discovery needs to be done to determine those things and that is why the Rule 56(f) motion is relevant. Mr. Brenske requested that this Court deny the Motion for Summary Judgment, without prejudice, but alternatively, grant the motion under Rule 56(f); he would like one hundred twenty (120) days to perform some written discovery and take some depositions.

The COURT FINDS, that this is a recently filed case with no discovery having been conducted to date and that there are genuine issues of material fact as to whether successor liability exists and whether or not Ad Art, Inc. is a continued entity of the same corporation. Discovery needs to be conducted to flush out the facts and for the facts to become known to counsel; at this juncture it is difficult to determine how much time would be needed to conduct that discovery. The Court would have been inclined to a continuance under Rule 56(f) but because no discovery has been done yet, it is difficult to ascertain how much time is going to be needed. Therefore, COURT ORDERED, Motion for Summary Judgment DENIED, without prejudice. However, the Court will allow the discovery to go forward and then once the facts are flushed out and there is actual evidence and/or testimony that can be presented to attach as exhibits to this motion it may be brought anew. The denial is pursuant to Wood v. Safeway.

Mr. Hunter advised that some discovery has been done; Plaintiff propounded some written discovery upon his client and it was responded to; therefore, Mr. Hunter requested that this Court impose a discovery deadline. Court noted that counsel has the EDCR's the NRCP's and the Discovery Commissioner at his assistance.

Mr. Brenske to prepare the Order approved as to form and content.

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. 4th 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. 4th 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, not 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.

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(e)(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:

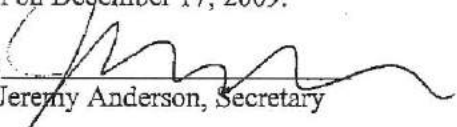
"The number of the directors of the corporation shall be five (5)."

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

EXHIBIT “D”

AGREEMENT

THIS AGREEMENT made this 1st 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.

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:

If Option Exercised	<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:

If to NASCO:

NAGH ALI
3180 N. Ad Art Road
Stockton, California 95215

If to AD ART:

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 ELECTRIC SIGN CO., LLC

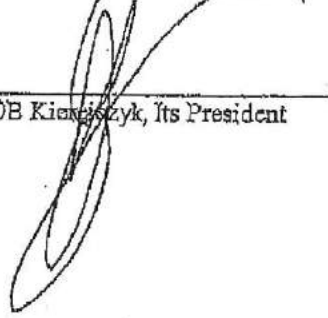
By 

NAJI ALI

AD ART

By 

TERRY LONG, AS CEO,

By 

BOB Kienitz, Its President

EXHIBIT “E”

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			

**Officers**☐ Include Inactive Officers**Secretary - JEREMY IAN ANDERSON**

Address 1:	351 SCOTT ST #1	Address 2:	
City:	SAN FRANCISCO	State:	CA
Zip Code:	94117	Country:	USA
Status:	Active	Email:	

Treasurer - JEREMY IAN ANDERSON

Address 1:	351 SCOTT ST #1	Address 2:	
City:	SAN FRANCISCO	State:	CA
Zip Code:	94117	Country:	USA
Status:	Active	Email:	

Director - DUANE CONTENTO

Address 1:	2321 ROSECRANS AVE, SUITE 1250	Address 2:	
City:	EL SEGUNDO	State:	CA

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

- Actions\Amendments			
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:	
List of Officers for 2005 to 2006			
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

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)			


CLERK OF THE COURT

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
Email: wbrenske@hotmail.com
6 *Attorneys for Plaintiff.*
7 *Charles Schueler*

8 DISTRICT COURT
9 CLARK COUNTY, NEVADA

10 CHARLES SCHUELER,

11 Plaintiff,

12 v.

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

18 Defendants.

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

**PLAINTIFF CHARLES
SCHUELER'S OPPOSITION TO
AD ART, INC.'S MOTION FOR
SUMMARY JUDGMENT;
ALTERNATIVE MOTION FOR
ADDITIONAL DISCOVERY
PURSUANT TO NRCP 56(f)**

Date of Hearing:
Time of Hearing:

19 Plaintiff, Charles Schueler, by and through his attorneys of record, the Law Office of
20 William R. Brenske, hereby opposes Defendant Ad Art, Inc.'s Motion for Summary Judgment.
21
22 Alternatively, Plaintiff moves this Court for an opportunity to conduct additional discovery
23 pursuant to NRCP 56(f).

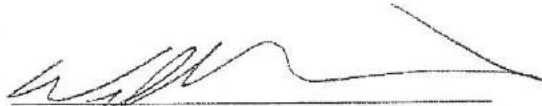
24 ///

25 ///

26 ///

1 This opposition and alternative motion is based on the pleadings and papers on file herein,
2 the attached memorandum of points and authorities, and any oral argument this Court may wish to
3 entertain.

4 DATED this 8th day of June, 2016.



6 WILLIAM R. BRENSKE, ESQ.

7 Nevada Bar No. 1806

8 JENNIFER R. ANDREEVSKI, ESQ.

9 Nevada Bar No. 9095

10 BRENSKE & ANDREEVSKI

3800 Howard Hughes Parkway, Suite 500

Las Vegas, NV 89169

Attorneys for Plaintiff,

Charles Schueler

11 **MEMORANDUM OF POINTS AND AUTHORITIES**

12 **I. INTRODUCTION**

13 On July 31, 2013, Plaintiff, Charles Schueler, was working with two of his co-workers on
14 the MGM Grand sign in Las Vegas, Nevada. He was tasked with replacing the LED display in the
15 sign. As Mr. Schueler was walking on the floor of the sign, a triangular panel on the floor
16 suddenly broke loose, causing him to fall 150 feet to the ground. Mr. Schueler survived, but
17 suffered debilitating injuries.

18 Defendant Ad Art, Inc. argues one of its predecessors built the sign and it cannot be held
19 responsible for Plaintiff's damages. The document attached as Exhibit "B" to Defendant's motion
20 belies this argument. Specifically, in the Clark County Building Department Permit issued for the
21 construction of the MGM Grand Hotel/Sign, the contractor is listed as "Ad Art Inc." and not Ad
22 Art Electronic Sign Corporation, as Defendant argues. Construing all facts in a light most
23 favorable to the non-moving party, this document alone suggested Ad Art Inc. did build the sign
24 and is a proper Defendant in this action.

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II. LEGAL ARGUMENT

Defendant argues it (Ad Art, Inc.) had nothing to do with constructing the MGM sign in question and surmises it cannot be held responsible for Plaintiff's injuries. Despite the affidavit of Defendant's employee, the building permit for the sign indicates this is not true. Specifically, on the building permit attached as Exhibit "B" to Defendant's motion, Ad Art Inc. is listed as the contractor on the job. A portion of Exhibit "B" with an added arrow and underline is pasted below:

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	PROJECT NAME		ISSUE DATE
93-16931 588	MGM GRAND/SIGN		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: <u>AD ART INC</u>			
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	50 FOOTAGE: 0	NO. STORIES: 0	QAA: N
OCCUPANCY: 1	TYPE OF CONST:	SPRINKLER REQ:	

FEE SUMMARY	CHARGED	PAID PREV.	PAID
PERMIT FEE	81.00	.00	81.00
ZONING BILLBOARD FEE	500.00	.00	500.00
	TOTAL PAID	581.00	

Given Ad Art, Inc. is listed as the contractor on the building permit, Ad Art Inc.'s protestations that it was not involved do not ring true. In a Motion for Summary Judgment, all inferences must be drawn in favor of the non-moving party. Wood v. Safeway, Inc., 121 Nev. 724, 732 (2005). Construing the evidence in a light most favorable to Plaintiff, the building permit alone offers evidence Defendant is an appropriate party to this lawsuit. Ad Art, Inc. was listed as the contractor on the job - not Ad Art ESC.

Should this Court choose to ignore the building permit, which clearly states the contractor for the MGM sign was Defendant, Ad Art, Inc., and to consider Defendant's arguments regarding successor liability, Defendant still loses. Specifically, in Nevada, there are four exceptions to the general rule that a purchasing corporation is not liable for the debts of its successor. Those are:

- 1) where the purchaser expressly or impliedly agrees to assume such debts;
- 2) where the transaction is really a consolidation or a merger;
- 3) when the purchasing corporation is merely a continuation of the selling corporation; and,
- 4) where the transaction was fraudulently made in order to escape liability for such debts.

Village Builders 96, L.P. v. U.S. Laboratories, Inc., 121 Nev. 261, 268 (2005).

Here, there is nothing to suggest Ad Art, Inc. is anything less than a mere continuation of the selling corporation. In fact, on Ad Art's website, it indicates Ad Art has been "a leader in the industry for more than 50 years." *See below:*

WELCOME TO AD ART

Ad Art is client-centric. Our customer relationships are characterized by trust, confidence, high expectations and satisfaction with results. When it comes to servicing valued account customers, we recognize that we are only as good as our last project. At Ad Art we understand that you have a choice in signage providers and we strive to create a stress free buying experience by managing all aspects of the design, permitting, fabrication & installation processes. Communication is key to our success as a leader in the industry for more than 50 years.



If Ad Art has been a "leader in the industry for more than 50 years", the company did not come into existence in 2003. It has changed its name and continued its business for more than 50 years.

1 In the Village Builders case, the Nevada Supreme Court indicated there are "two
2 requirements to justify bringing a sale of assets within the purview of the mere continuation
3 exception to the general rule: (1) only one corporation remains after the transfer of assets; and (2)
4 there is an identity of stock, stockholders, and directors between the two corporations." Id. at 274.
5 According to Ad Art's website, "former Ad Art executives resurrected Ad Art from the ashes" after
6 the company closed due to the market crash of 2001. *See below*:
7

8 Who We Are

9
10 Ad Art is an award-winning national sign company doing business in all 50 states. Ad Art currently
has seven branch offices located in California, Nevada and Texas.

11 We strive for versatility in all that we do. We are a full-service company that not only is able to
12 provide channel letters, pole signs, awnings, and interior signs, but also able to provide custom
13 pylons, monument displays, and a wide array of outdoor/indoor LED and LCD digital signage
solutions.

14 Most importantly we take responsibility for the outcome and performance expectations. We are only
15 as good as our last installation and the ability we have to maintain and build on long lasting
16 relationships. We are guided by ensuring client satisfaction.

17 The Story of the Phoenix Rising

18
19 To tell the true story of Ad Art one needs a lifetime. The first Ad Art (known as Ad Art 1.0) was
20 started in 1935 in Modesto, CA. In the early 1950's the Papais brothers (Lou and John) purchased
21 and relocated the company 15 miles north of Stockton, CA. Throughout the 1960's Ad Art grew to
become one of the top 5 largest sign companies in the US and dominated the Las Vegas market.

22 In the 1990's, Ad Art was purchased and taken public on the NASDAQ exchange, traded under the
23 name Display Technologies (DTEK). In the market crash of 2001, Display Technologies was forced
24 to close or liquidate many of their holdings in order to stave off bankruptcy. Ad Art, a highly
profitable business, was closed as a casualty of the parent company losses.

25 In 2003, Terry Long, Robert Klerejczyk & Jeremy Anderson, all former Ad Art executives,
26 resurrected Ad Art from the ashes. Starting fresh, Ad Art 2.0 was born and has again risen to
27 become one of the innovative leaders in the signage industry. Appropriately, the Phoenix is the
28 unofficial symbol of the company which tells the story of Ad Art's colorful past

In addition, according to the California Secretary of State's website, there is nothing left of Ad Art Electronic Sign Corporation. Only one active corporation remains: Ad Art, Inc. *See below:*

Business Search - Results

Data is updated to the California Business Search on Wednesday and Saturday mornings. Results reflect work processed through Friday, May 1, 2003. Processing times for the received dates of filings currently being processed. The data provided is not a complete or certified record of an entity.

- Select an entity name below to view additional information. Results are listed alphabetically in ascending order by entity name.
- For information on checking or reserving a name, refer to [Name Availability](#).
- For information on ordering certificates, copies of documents and/or status reports or to request a more extensive search, refer to [Information](#).
- For help with searching an entity name, refer to [Search Tips](#).
- For descriptions of the various fields and status types, refer to [Field Descriptions and Status Definitions](#).

Results of search for "AD ART" returned 10 entity records.

Entity Name	Entity Number	Effective Date	Status	Entity Name	Entity Number
AD ART ELECTRICAL PRODUCTS CORPORATION	C08-8931	06/14/1978	FTB SUSPENDED	AD ART ELECTRICAL PRODUCTS CORPORATION	COLEEN E PROVAN
AD ART ELECTRONIC SIGN CORPORATION	C2069696	02/18/1998	SOS/FTB FORFEITED	AD ART ELECTRONIC SIGN CORPORATION	** REGISTERED ON 06/13/2001
AD ART, INC.	C2501793	03/15/2003	ACTIVE	AD ART, INC.	BLAIR M WHITE
AD BC ART GALLERY, INC.	C2247218	07/20/2001	FTB SUSPENDED	AD BC ART GALLERY, INC.	** REGISTERED ON 03/13/2003
AD-ART FINANCIAL CORPORATION	C0976554	01/02/1979	FTB SUSPENDED	AD-ART FINANCIAL CORPORATION	RONALD R JOHNSON
AD-ART INDUSTRIES, INC.	C0908663	01/02/1979	FTB SUSPENDED	AD-ART INDUSTRIES, INC.	RONALD R JOHNSON
AD-ART SIGNS, INC.	C0813143	04/10/1971	SOS/FTB SUSPENDED	AD-ART SIGNS, INC.	BRENDA MCLATHRY
AD ART, INC.	C0199597	09/21/1945	SOS/FTB SUSPENDED	AD ART, INC.	COLEEN E PROVAN
AD-ART, INC., OF SAN JOSE	C0451294	04/17/1963	DISSOLVED	AD-ART, INC., OF SAN JOSE	
ART 'N' AD, INC.	C0539901	01/19/1966	SURRENDER	ART 'N' AD, INC.	

[Modify Search](#) [New Search](#)

Given only one corporation existed after Ad Art was "resurrected" and the same executives were involved in both companies, Ad Art, Inc. is a mere continuation of its predecessors. As such, Ad Art, Inc. is an appropriate defendant in this action.

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///

1 **III. CONCLUSION**

2 Given Ad Art, Inc. was listed as the contractor on the job for the MGM Sign, it can now be
3 held responsible for Plaintiff's claims. Alternatively, even if the present corporation is a successor
4 to the Ad Art, Inc. that constructed the sign, it is still responsible under the mere continuation
5 exception to the general rule that successor corporations are not liable for the debts of their
6 predecessors.
7

8 DATED this 24th day of June, 2016.

9 
10 WILLIAM R. BRENSKE, ESQ.
Nevada Bar No. 1806
11 JENNIFER R. ANDREEVSKI, ESQ.
Nevada Bar No. 9095
12 BRENSKE & ANDREEVSKI
3800 Howard Hughes Parkway, Suite 500
13 Las Vegas, NV 89169
14 Attorneys for Plaintiff,
Charles Schueler

15
16
17 **ALTERNATIVE COUNTERMOTION TO CONDUCT**
18 **ADDITIONAL DISCOVERY PURSUANT TO NRCP 56(f)**

19 Should this Court be inclined to grant Defendant's motion, Plaintiff hereby asserts the
20 foregoing alternative motion to conduct additional discovery pursuant to NRCP 56(f).

21 Specifically, Plaintiff seeks to conduct discovery to determine: (1) the corporate history of Ad Art,
22 Inc. and its predecessor entities; and (2) the identity of executives at Ad Art, Inc. and its
23 predecessor entities.

24 NRCP 56 allows the Court to deny or continue the motion to permit discovery to be conducted.

25 NRCP 56(f) states:

26
27 Should it appear from the affidavits of a party opposing the motion that he cannot for
28 reasons stated present by affidavit facts essential to justify his opposition, the court may
refuse the application for judgment or may order a continuance to permit affidavits to be

1 the liquidation of Ad Art ESC assets, NASCO Electric Sign Co., LLC ("NASCO") purchased
2 the naming rights to "Ad Art." *Id.* Along with the purchase, NASCO obtained trademark/work
3 mark/service mark/trade names status from the United States Government, and also purchased
4 Ad Art ESC's telephone number and web address. *Id.*

5 On or about March 25, 2003, a new corporation, Ad Art, Inc., the named Defendant
6 herein, was formed via filing article of incorporation with the Secretary of State of California.
7 *See*, Exhibit "A"; and Exhibit "C" – Articles of Incorporation. On April 1, 2003 Ad Art, Inc.
8 entered into a written agreement with NASCO, whereby NASCO agreed to sell only the
9 trademark/work mark/service mark/trade name, use of the telephone number and Internet web
10 address to Ad Art. *See*, Exhibit "A"; and Exhibit "D" – NASCO Agreement. Ad Art, Inc. filed
11 with the Nevada Secretary of State on January 6, 2004 to become a Foreign Corporation in the
12 State of Nevada. *See*, Exhibit "E" – Ad Art, Inc. Entity Details.

13 At all times since its formation in 2003, Defendant Ad Art was not involved in the
14 design, construction or subsequent maintenance of the MGM pylon sign located outside of the
15 MGM Grand Hotel & Casino in Las Vegas, Nevada. *See*, Exhibit "A."

16 II. POINTS AND AUTHORITIES

17 A. The Summary Judgment Standard

18 NRCP 56(b) provides:

19 A party against whom a claim, counterclaim or cross claim is asserted or declaratory
20 judgment is sought may, at any time, move with or without supporting affidavits for a
21 summary judgment in his favor as to all or any part thereof.

22 Additionally, NRCP 56(c) states:

23 The judgment sought shall be rendered forthwith if the pleadings, depositions, answers
24 to interrogatories, and admissions on file, together with the affidavits, if any, show that
25 there is no genuine issue as to any material fact and that the moving party is entitled to a
26 judgment as a matter of law.

27 Summary judgment is appropriate when the pleadings and other evidence demonstrate
28 that no genuine issue remains as to any material fact and that the moving party is entitled to a
judgment as a matter of law. When reviewing a motion for summary judgment, the evidence,
and any reasonable inferences drawn from it, must be viewed in a light most favorable to the
non-moving party. *Wood v. Safeway*, 121 Nev. 724, 732, 121 P.3d 1026, 1031 (2005).

The mere existence of some alleged factual dispute between the parties will not defeat

1 an otherwise properly supported motion for summary judgment. Instead, the requirement is that
2 there be no genuine issue of material fact. *Id.* at 731, 121 P.3d at 1031. Only disputes over facts
3 that might affect the outcome of the suit under the governing law will properly preclude the
4 entry of summary judgment. *Id.* Moreover, factual disputes that are irrelevant or unnecessary
5 will not be considered. *Id.*

6 A factual dispute is genuine when the evidence is such that a rational trier of fact could
7 return a verdict for the non-moving party. *Id.* While the pleadings and other proof must be
8 construed in a light most favorable to the non-moving party, the non-moving party must, by
9 affidavit or otherwise, set forth specific facts demonstrating the existence of a genuine issue for
10 trial or have summary judgment entered against him. *Id.* at 732, 121 P.3d at 1031. The non-
11 moving party is not entitled to build a case on the gossamer threads of whimsy, speculation, and
12 conjecture. *Id.*

13 **B. Defendant Ad Art had no involvement in the design, manufacturing,**
14 **construction, or maintenance of the MGM Pylon Sign.**

15 Defendant Ad Art, formed over 13 years after the installation of the MGM Pylon, was
16 not, and could not have been, involved in the design, manufacturing, construction, or
17 maintenance of the MGM pylon. Interestingly, Plaintiff has made a claim against Ad Art for
18 both premises liability as well as products liability. As discussed below, Plaintiff cannot meet
19 his burden as it pertains to Ad Art for either cause of action, because Ad Art was not in
20 existence at the time of the construction of the MGM pylon sign. Moreover, Ad Art has had no
21 involvement with the MGM pylon sign since they came into existence.

22 It is true that a company with a similar name, Ad Art ESC, was involved in the original
23 construction of the MGM pylon sign around 1993/1994. That company was subsequently
24 purchased by La Man, which later became DTEK. DTEK later liquidated its assets, likely due
25 to the market problems that occurred following September 11, 2001, part of that liquidation was
26 the sale of Ad Art ESC. When DTEK liquidated their assets, they sold certain rights of Ad Art
27 ESC to NASCO. NASCO then sold those same rights to Ad Art, which then allowed them to
28 actually function using the name Ad Art. Defendant Ad Art was not in business at the time of
the construction of the MGM pylon sign. Defendant Ad Art was not involved in maintaining
the MGM pylon sign. Because Ad Art has had positively no involvement with the MGM pylon
sign, Plaintiff's products liability claims are without merit.

///

- i. Plaintiff's premises liability claims fail because Ad Art, Inc. was not the owner or occupier of the property, nor were they the designer, manufacturer, constructor, or maintainer of the MGM pylon sign.

Plaintiff's claims against Ad Art for premises liability fail because Ad Art was not the owner or occupier of the land, nor did they have any involvement in the construction of the MGM pylon sign. Ad Art was not negligent, and had no duty pertaining to the Plaintiff as Ad Art did not own, maintain, occupy, and or manage the premises where this incident occurred. In any negligence case, the Plaintiff has the burden of demonstrating the following elements by a preponderance of the evidence:

1. That the defendant had the duty to exercise due care with respect to the plaintiff;
2. That the defendant breached this duty;
3. That the breach was both the actual and proximate cause of plaintiff's injuries; and
4. That plaintiff was damaged.

Joynt v. California Hotel & Casino, 108 Nev. 539, 835 P.2d 799 (1992). Moreover, the Nevada Supreme Court has held that "the question of whether the defendant owes the plaintiff a duty of care is a question of law," and thus, "if this court determines that no duty exists, it will affirm summary judgment." *Rodriguez v. Primadonna Company*, 216 P.3d 793, 798 (Nev. 2009). Thus, it is up to this Court to determine whether a duty exists, and not a jury or other trier of fact.

Additionally, the Nevada Supreme Court has limited the responsibility when someone is injured upon the land to the owner or occupier of the land, which in this case was certainly not Ad Art. "An *owner or occupier of land* should be held to the general duty of reasonable care when another is injured on that land..." *Moody v. Manny's Auto Repair*, 110 Nev. 320, 871 P.2d 935, 943 (1994) (emphasis added). The Nevada Supreme Court also recently adopted the Restatement (Third) of Torts: Physical and Emotional Harm section 51 (2012) which states, "[A] *land possessor* owes a duty of reasonable care to entrants on the land..." *Foster v. Costco*, 128 Nev. Adv. Op. 71 (2012) (emphasis added).

Plaintiff's claims against Ad Art pertaining to premises liability simply fail. Ad Art was not the owner of the MGM pylon sign. Ad Art was not involved in maintaining the MGM pylon sign. Ad Art was not involved in the construction of the MGM pylon sign. Ad Art has had absolutely no involvement with MGM pylon sign. For those reasons, Plaintiff's premises liability claims against Ad Art fail.

///

1 ii. **Plaintiff's products liability claims fail because Ad Art was not**
2 **involved in the design, manufacture, construction, or maintenance of**
3 **the MGM pylon sign.**

4 Plaintiff cannot support a products liability claim because Ad Art was not in existence
5 nor has it had any involvement with the MGM pylon sign. Plaintiff has alleged that "Defendant
6 AD ART, INC....designed, manufactured, constructed, assembled, sold, and/or distributed the
7 MGM pylon sign wherein Plaintiff CHARLES SCHUELER was working on July 31, 2013."
8 See, Plaintiff's Complaint, ¶ 26. Plaintiff simply cannot support this allegation, because
9 Defendant Ad Art was not in existence at the time of the construction of this MGM pylon sign.

10 C. **Ad Art cannot be held liable as a successor entity for any claims relating to**
11 **work completed by Ad Art ESC.**

12 Each claim against Ad Art fails because, under Nevada law, Ad Art retains no liability
13 for act or omission of a corporation, simply because it shares a portion of the predecessor's
14 name. The Nevada Supreme Court has held, "in order to overcome summary judgment on a
15 successor liability claim, the plaintiff bears the initial burden of presenting evidence to establish
16 that the general rule that a successor corporation is not liable for the acts of its predecessor does
17 not apply." *Village Builders 96, L.P. v. U.S. Laboratories, Inc.*, 112 P.3d 1082, 1086 (Nev.
18 2005). When one corporation sells to another corporation, the purchaser is not liable for the
19 debts of the seller. *Id.* at 1087. To determine if plaintiff has met this initial burden, "courts
20 should engage in fact-specific, case-by-case analysis of the factors necessary to establish an
21 exception to the general rule precluding liability." *Id.* at 1087. If plaintiff cannot meet this
22 burden, then summary judgment is appropriate. *Id.*

23 The Court laid out four exceptions to the general rule, none of which apply here:

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

 As a preliminary matter, these exceptions are irrelevant because Ad Art was not a direct
successor to Ad Art ESC. Ad Art ESC was first purchased by La-Man, Inc. which later
changed its name to DTEK. Then, there was then a second sale by DTEK. When DTEK went
out of business in 2001 and sold off its assets, one of those assets was the name "Ad Art," which
was purchased by a separate entity, NASCO. Finally, there was the third sale by NASCO.

1 NASCO sold the right to use the name "Ad Art" to a new company, which fittingly was then
2 named Ad Art. Ad Art is three transactions removed from the sale of Ad Art ESC.

3 Moreover, the evidence here does not support the application of any of the above
4 exceptions in *Village Builders*. First, in the NASCO agreement it is clear that there was no
5 agreement by Ad Art to assume the debts of the prior entity. See, Exhibit "E." In fact, when the
6 new Ad Art purchased the rights to the name "Ad Art" there was no company in existence, only
7 a trade name and marks. Moreover, this was not a consolidation or a merger, but was the
8 purchase of a name and trademark that at the time was not in use but still controlled by NASCO.
9 Nor was the purchase from NASCO a continuation of the selling corporation, because at the
10 time of the purchase of the name, it again was only a name and not a functioning company.
11 Finally, the sale of the name "Ad Art" by NASCO was not done in order to escape any liability,
12 but instead was simply the sale of an asset that they had previously purchased from company
13 that was liquidating assets. For all of those reasons, Ad Art is not a successor corporation that,
14 as a matter of law, can incur liability for the alleged acts and/or omissions of the entity that did
15 in fact erect the MGM Pylon.

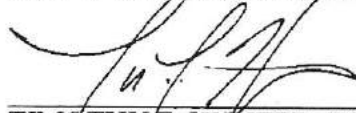
14 III. CONCLUSION

15 For the reasons set forth above, Defendant Ad Art requests that this court grant summary
16 judgment in its favor. It is clear from all the evidence that defendant Ad Art had no
17 involvement with the MGM pylon sign that is at the center of this litigation, nor can it be held
18 liable under any theory of successor liability.

19 DATED this 18 day of May, 2016.

20 Respectfully submitted,

21 RAY LEGO & ASSOCIATES

22 

23 TIMOTHY F. HUNTER, ESQ.

24 Nevada Bar No. 010622

25 7450 Arroyo Crossing Parkway, Suite 250
26 Las Vegas, NV 89113

27 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 20th day of May, 2016 I caused the foregoing **DEFENDANT AD ART, INC.'S 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, Esq., #1806 Ryan D. Krametbauer, Esq., #12800 LAW OFFICE OF WILLIAM R. BRENSKE 630 S. Third Street Las Vegas, NV 89101	P: 702/385-3300 F: 702/385-3823 wbrenske@hotmail.com Attorneys for Plaintiff, CHARLES SCHUELER
Leann Sanders, Esq., #000390 Edward Silverman, Esq., #13584 ALVERSON, TAYLOR, MORTENSEN & SANDERS 7401 W. Charleston Blvd. Las Vegas, NV 89117	P: 702/384-7000 F: 702/385-7000 esilverman@alversontaylor.com Attorneys for Defendant, 3A COMPOSITES USA INC., f/k/a ALUCOBOND TECHNOLOGIES CORPORATION
Riley A. Clayton, Esq., #005260 HALL JAFFE & CLAYTON 7425 Peak Drive Las Vegas, NV 89128	P: 702/316-4111 F: 702/316-4114 rclayton@lawhjc.com Attorneys for Defendant, MGM GRAND HOTEL, LLC d/b/a MGM GRAND; MGM RESORTS INTERNATIONAL d/b/a MGM GRAND

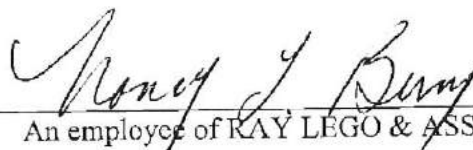

An employee of RAY LEGO & ASSOCIATES

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

1 **AFF**

TIMOTHY F. HUNTER, ESQ.

2 Nevada Bar No. 010622

RAY LEGO & ASSOCIATES

3 7450 Arroyo Crossing Parkway, Suite 250

Las Vegas, NV 89113

4 Tel: (702) 479-4350

Fax: (702) 270-4602

5 tfhunter@travelers.com

6 Attorney for Defendant,
AD ART, INC.

7 **DISTRICT COURT**

8 **CLARK COUNTY, NEVADA**

9 CHARLES SCHUELER,

CASE NO.: A-15-722391-C

10 Plaintiff,

DEPT. NO.: XVII

11 vs.

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

Defendants.

19 **AFFIDAVIT OF TERRY J. LONG**

20 STATE OF NEVADA)
21) ss.
COUNTY OF CLARK)

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

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

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

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

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

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

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

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

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

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

18
19 FURTHER AFFIANT SAYETH NAUGHT

20
21
22 Terry J. Long

23 SUBSCRIBED and SWORN to this

24 ____ day of November, 2015.

25 NOTARY PUBLIC in and for the County
26 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”

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

FOUNDATION ONLY THIS PERMIT DOES NOT

INCLUDE SUPERSTRUCTURE

FOUNDATION ONLY AND 36" DIA PIPE ONLY/DB

THIS DOES NOT INCLUDE SUPERSTRUCTURE/DEF

VALUATION:

6720

NO. UNITS: 0

60 FOOTAGE: 0

NO. STORIES: 0

QAA: N

OCCUPANCY:

TYPE OF CONST:

SPRINKLER REQ:

FEE SUMMARY

PERMIT FEE

ZONING BILLBOARD FEE

CHARGED

81.00

500.00

PAID PREV

.00

.00

PAID

81.00

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 at least until I occupy the premises for a period of 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 624.230 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

Sealed

1238

THIS PERMIT BECOMES NULL AND VOID if work or 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

EXHIBIT “C”

**SECRETARY OF STATE**

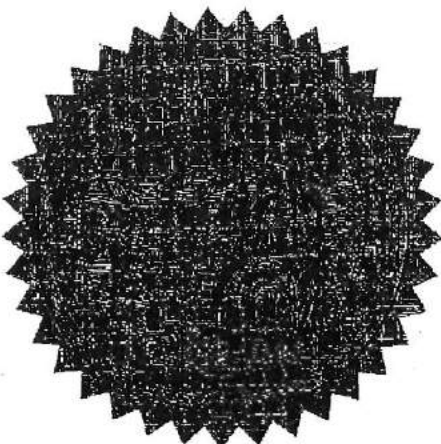
I, *Kevin Shelley*, Secretary of State of the State of California, hereby certify:

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

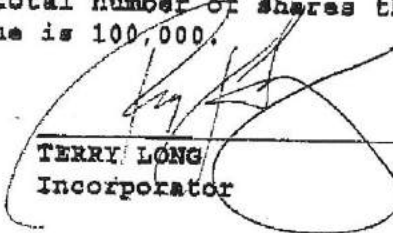
AD ART, INC.

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.

Filling 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

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 60th 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 §§ 212(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

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.
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14 Charles Schueler

Electronically Filed
Oct 03 2018 10:41 a.m.
Elizabeth A. Brown
Clerk of Supreme Court

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

16 CHARLES SCHUELER,
17 Appellant,
18 v.

19 AD ART, INC.,
20 Respondent.

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

APPELLANT AND
RESPONDENT'S JOINT
APPENDIX

VOLUME I

Exhibit No.		Bates Nos.
1.	Plaintiffs' Complaint	001 - 011
2.	Affidavit of Service on MGM Resorts International	012 - 014
3.	Affidavit of Service on MGM Grand Hotel, LLC	015 - 017
4.	Defendant MGM Grand Hotel, LLC's Answer to	018 - 023

	Plaintiff's Complaint	
5.	Affidavit of Service on 3A Composites USA Inc.	024 - 026
6.	Defendant 3A Composites USA Inc.'s Answer to Plaintiff's Complaint	027 - 035
7.	Affidavit of Service on AD ART, INC.	036 - 038
8.	Defendant AD ART, INC.'s Answer to Plaintiff's Complaint	039 - 046
9.	Defendant AD ART, INC.'s Motion for Summary Judgment	047 - 121
10.	Plaintiff's Opposition to Defendant AD ART, INC.'s Motion for Summary Judgment; Alternative Motion for Additional Discovery Pursuant to NRCP 56(f)	122 - 132
11.	Defendant AD ART, INC.'s Reply in Support of Motion for Summary Judgment	133 - 137
12.	June 22, 2016 Minutes from Hearing on Defendant AD ART, INC.'s Motion for Summary Judgment (Denied without Prejudice)	138 - 139

DISTRICT COURT CIVIL COVER SHEET

XVII

Clark

County, Nevada

Case No.

(Assigned by Clerk's Office)

I. Party Information (provide both home and mailing addresses if different)

Plaintiff(s) (name/address/phone):

Charles Schueler

Defendant(s) (name/address/phone):

MGM GRAND HOTEL, LLC, d/b/a MGM GRAND;

MGM RESORTS INTERNATIONAL, d/b/a MGM GRAND, AD-ART, INC., and

3D COMPOSITES USA INC., and ALPHACORP TECHNOLOGIES CORPORATION

Attorney (name/address/phone):

WILLIAM R. BRENSKE, ESQ.

630 South 3rd Street

Las Vegas, NV 89101

Attorney (name/address/phone):

UNKNOWN

II. Nature of Controversy (please select the one most applicable filing type below)**Civil Case Filing Types**

Real Property	Negligence	Torts
☐ Landlord/Tenant ☐ Unlawful Detainer ☐ Other Landlord/Tenant ☐ Title in Property ☐ Judicial Foreclosure ☐ Other Title in Property ☐ Other Real Property ☐ Condemnation/Eminent Domain ☐ Other Real Property	☐ Negligence ☐ Auto ☐ Premises Liability ☒ Other Negligence ☐ Malpractice ☐ Medical/Dental ☐ Legal ☐ Accounting ☐ Other Malpractice	☐ Other Torts ☐ Product Liability ☐ Intentional Misconduct ☐ Employment Tort ☐ Insurance Tort ☐ Other Tort
Probate	Construction Defect & Contract	Judicial Review/Appeal
☐ Probate (select case type and estate value) ☐ Summary Administration ☐ General Administration ☐ Special Administration ☐ Set Aside ☐ Trust/Conservatorship ☐ Other Probate ☐ Estate Value ☐ Over \$200,000 ☐ Between \$100,000 and \$200,000 ☐ Under \$100,000 or Unknown ☐ Under \$2,500	☐ Construction Defect ☐ Chapter 40 ☐ Other Construction Defect ☐ Contract Case ☐ Uniform Commercial Code ☐ Building and Construction ☐ Insurance Carrier ☐ Commercial Instrument ☐ Collection of Accounts ☐ Employment Contract ☐ Other Contract	☐ Judicial Review ☐ Foreclosure Modification Case ☐ Petition to Seal Records ☐ Mental Competency ☐ Nevada State Agency Appeal ☐ Department of Motor Vehicle ☐ Worker's Compensation ☐ Other Nevada State Agency ☐ Appeal Other ☐ Appeal from Lower Court ☐ Other Judicial Review/Appeal
Civil Writ	Other Civil Filing	
☐ Civil Writ ☐ Writ of Habeas Corpus ☐ Writ of Mandamus ☐ Writ of Quo Warrant	☐ Other Civil Filing ☐ Writ of Prohibition ☐ Other Civil Writ ☐ Compromise of Minor's Claim ☐ Foreign Judgment ☐ Other Civil Matters	

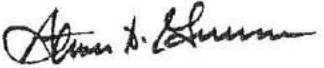
Business Court filings should be filed using the Business Court civil coversheet.

July 30th, 2015

Date

Signature of initiating party or representative

See other side for family-related case filings.


CLERK OF THE COURT

1 **COMP**
2 WILLIAM R. BRENSKE, ESQ.
3 Nevada Bar No. 1806
4 RYAN D. KRAMETBAUER, ESQ.
5 Nevada Bar No. 12800
6 LAW OFFICE OF WILLIAM R. BRENSKE
7 630 South Third Street
8 Las Vegas, NV 89101
9 Telephone: (702) 385-3300
10 Facsimile: (702) 385-3823
11 Email: wbrenske@hotmail.com
12 Attorneys for Plaintiffs

13 **DISTRICT COURT**

14 **CLARK COUNTY, NEVADA**

15 **CHARLES SCHUELER,**

16 Plaintiff,

17 v.

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

28 Defendants.

Case No.: A-15-722391-C

Dept. No.: XVII

COMPLAINT

Date of Hearing: N/A

Time of Hearing: N/A

JURISDICTIONAL ALLEGATIONS

1. Plaintiff CHARLES SCHUELER is a resident of Clark County, Nevada.
2. Defendant MGM GRAND HOTEL, LLC d/b/a MGM GRAND is a Nevada Limited Liability Company licensed to do business and actually doing business in Clark County, Nevada at all times relevant to this Complaint.

270.00
CHECKS 7517
JANEL WASHINGTON
CLERK

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

3. Defendant MGM RESORTS INTERNATIONAL d/b/a MGM GRAND is a Delaware Corporation that was licensed to do business and actually doing business in Clark County, Nevada at all times relevant to this Complaint.

4. Defendant AD ART, INC. is a California Corporation that was licensed to do business and actually doing business in Clark County, Nevada at all times relevant to this Complaint.

5. Defendant 3A COMPOSITES USA INC., is a Missouri Corporation a/k/a ALUCOBOND TECHNOLOGIES CORPORATION that is actually doing business in Clark County, Nevada.

6. Defendant 3A COMPOSITES USA INC is the manufacturer, designer, supplier, and or seller, of a product known commonly as "Alucobond" which was the material used in construction and/or manufacturing of the MGM pylon sign which is the subject of this Complaint.

7. Defendants DOES 1 – 5 and ROE CORPORATIONS 1 – 5 are individuals, associations, corporations, partnerships, and/or other entities that are owners, controllers, and/or partners in association with Defendant MGM GRAND HOTEL, LLC d/b/a MGM GRAND, and may have in some way caused or contributed to Plaintiff's damages as alleged herein. The true names and/or capacities of DOES 1 – 5 and ROE CORPORATIONS 1 – 5 are unknown to Plaintiff. Plaintiff will ask leave of Court to amend this Complaint to insert the true names and capacities of DOES 1 – 5 and/or ROE CORPORATIONS 1 – 5 when they are ascertained.

8. Defendants DOES 6 – 10 and ROE CORPORATIONS 6 – 10 are individuals, associations, corporations, partnerships, and/or other entities that are owners, controllers, and/or partners in association with Defendant MGM RESORTS INTERNATIONAL d/b/a MGM GRAND, and may have in some way caused or contributed to Plaintiff's damages as alleged herein. The true names and/or capacities of DOES 6 – 10 and ROE CORPORATIONS 6 – 10 are

1 unknown to Plaintiff. Plaintiff will ask leave of Court to amend this Complaint to insert the true
2 names and capacities of DOES 6 – 10 and/or ROE CORPORATIONS 6 – 10 when they are
3 ascertained.

4
5 9. Defendants DOES 11 – 15 and ROE CORPORATIONS 11 – 15 are individuals,
6 associations, corporations, partnerships, and/or other entities that are owners, controllers, and/or
7 partners in association with Defendant AD ART, INC., and may have in some way caused or
8 contributed to Plaintiff's damages as alleged herein. The true names and/or capacities of DOES 11
9 – 15 and ROE CORPORATIONS 11 – 15 are unknown to Plaintiff. Plaintiff will ask leave of
10 Court to amend this Complaint to insert the true names and capacities of DOES 11 – 15 and/or
11 ROE CORPORATIONS 11 – 15 when they are ascertained.

12
13 10. Defendants DOES 16 – 20 and ROE CORPORATIONS 16 – 20 are individuals,
14 associations, corporations, partnerships, and/or other entities that are owners, controllers, and/or
15 partners in association with Defendant 3A COMPOSITES USA INC., and may have in some way
16 caused or contributed to Plaintiff's damages as alleged herein. The true names and/or capacities of
17 DOES 16 – 20 and ROE CORPORATIONS 16 – 20 are unknown to Plaintiff. Plaintiff will ask
18 leave of Court to amend this Complaint to insert the true names and capacities of DOES 16 – 20
19 and/or ROE CORPORATIONS 16 – 20 when they are ascertained.

20
21 11. Defendants DOES 21 - 25 and ROE CORPORATIONS 21 - 25 are individuals,
22 associations, corporations, partnerships, and/or other entities that are owners, controllers, and/or
23 partners that may have in some way caused or contributed to Plaintiff's damages as alleged herein.
24 The true names and/or capacities of DOES 21 - 25 and ROE CORPORATIONS 21 - 25 are
25 unknown to Plaintiff. Plaintiff will ask leave of Court to amend this Complaint to insert the true
26 names and capacities of DOES 21 - 25 and/or ROE CORPORATIONS 21 - 25 when they are
27 ascertained.
28

12. Defendants are agents, servants, employees, employers, trade venturers, partners and/or family members of each other. At the time of the incident described in this Complaint, Defendants were acting within the color, purpose and scope of their relationships, and by reason of their relationships, Defendants may be jointly and severally and/or vicariously responsible and liable for the acts and omissions of their co-Defendants.

GENERAL ALLEGATIONS

13. Plaintiff repeats and realleges paragraphs 1 – 12 of this Complaint as though fully set forth herein.

14. On July 31, 2013, Plaintiff CHARLES SCHUELER was lawfully on the premises of Defendant MGM GRAND HOTEL, LLC and/or MGM RESORTS INTERNATIONAL d/b/a MGM GRAND, located in Clark County, Nevada, to update the MGM pylon sign display adjacent to Las Vegas Boulevard.

15. When attempting to sever the structure connecting the LED cabinet to the main structure, Plaintiff CHARLES SCHUELER went in search for the missed angle iron attachment point to sever the display. At that point, Plaintiff CHARLES SCHUELER, fell approximately 150 feet to the ground below as a result of a piece of "Alucobond" giving way.

FIRST CAUSE OF ACTION

(Premises Liability- MGM GRAND HOTEL, LLC, MGM RESORTS INTERNATIONAL and AD ART, INC.)

16. Plaintiff repeats and realleges paragraphs 1 – 15 of this Complaint as though fully set forth herein.

17. Defendants MGM GRAND HOTEL, LLC, MGM RESORTS INTERNATIONAL, AD ART, INC., DOES 1 – 25, and/or ROE CORPORATIONS 1 – 25 owned, operated, maintained, controlled, implemented, and/or designed a certain MGM pylon sign located within Clark County, Nevada.

1 18. At all times herein mentioned, MGM GRAND HOTEL, LLC, MGM RESORTS
2 INTERNATIONAL, AD ART, INC., DOES 1 - 25, and/or ROE CORPORATIONS 1 - 25 had a
3 duty to provide a safe and defect free environment upon the premises of the MGM pylon sign and
4 to reasonably and adequately repair or warn of dangerous conditions upon the premises which
5 were known to them or should have been known.
6

7 19. Defendants failed to use reasonable care in the design, construction, inspection,
8 maintenance, upkeep, control, repairing, and/or maintenance of the premises, rendering the
9 premises unreasonably dangerous.

10 20. The unreasonably dangerous condition, under the exercise of reasonable care should
11 have been known to Defendants in adequate time for a reasonably prudent person to warn of, or
12 make safe the condition. Defendants negligently failed and neglected to take any action to warn
13 Plaintiff CHARLES SCHUELER or to make the condition safe.
14

15 21. As a direct and proximate cause of the aforementioned negligence of Defendants,
16 Plaintiff suffered injuries which required and may continue to require medical attention and
17 services all to his continuing expense and damage in an amount in excess of Ten Thousand Dollars
18 (\$10,000.00).

19 22. As a further direct and proximate cause of the aforementioned negligence of
20 Defendants, Plaintiff incurred and may continue to incur pain, suffering, disability and mental
21 anguish all to his general damage in an amount in excess of ten thousand dollars (\$10,000.00).

22 23. As a further direct and proximate cause of the aforementioned negligence of
23 Defendants, Plaintiff incurred, and may continue to incur, lost wages and loss of earning capacity,
24 in an amount in excess of ten thousand dollars (\$10,000.00).
25
26
27
28

24. As a further direct and proximate cause of the aforementioned negligence of Defendants, and each of them, Plaintiff has been forced to hire counsel to prosecute this action and has incurred attorney's fees and costs in an amount to be proven at time of trial.

SECOND CAUSE OF ACTION
(Product Liability – AD ART, INC.)

25. Plaintiff repeats and realleges paragraphs 1 – 24 of this Complaint as though fully set forth herein.

26. Defendant AD ART, INC., DOES 1 – 25 and/or ROE CORPORATIONS 1 – 25 designed, manufactured, constructed, assembled, sold, and/or distributed the MGM pylon sign wherein Plaintiff CHARLES SCHUELER was working on July 31, 2013.

27. By reason of a defect in its design, manufacture, and/or assembly, the MGM pylon sign was defective, unfit, and/or unreasonably dangerous for its intended use at the time Plaintiff CHARLES SCHULER was working on July 31, 2013 and at the time it left the control of Defendant AD ART, DOES 1-25 and/or ROE CORPORATIONS 1-25.

28. Defendant AD ART, DOES 1-25 and/or ROE CORPORATIONS 1-25 knew or should have known the defective condition of the MGM pylon sign could cause injury to users of the product and/or Defendant AD ART, DOES 1-25 and/or ROE CORPORATIONS 1-25 should have known the MGM pylon sign was not fit for the purpose for which it was ordinarily used.

29. As a direct and proximate cause of Defendant AD ART, DOES 1-25 and/or ROE CORPORATIONS 1-25 defective manufacture and/or design of the MGM pylon sign, Plaintiff incurred, and continues to incur medical treatment and billing in an amount in excess of Ten Thousand Dollars (\$10,000.00).

30. As a further direct and proximate cause of Defendant AD ART, DOES 1-25 and/or ROE CORPORATIONS 1-25 defective manufacture and/or design of the MGM pylon sign,

1 Plaintiff incurred, and continues to incur, lost wages and/or loss of earning capacity in an amount
2 in excess of Ten Thousand Dollars (\$10,000.00).

3 31. As a further direct and proximate cause of Defendant AD ART, DOES 1-25 and/or
4 ROE CORPORATIONS 1-25 defective manufacture and/or design of the MGM pylon sign,
5 Plaintiff endured, and continues to endure pain, suffering, disability, and mental anguish in an
6 amount in excess of Ten Thousand Dollars (\$10,000.00).

7
8 32. As a further direct and proximate cause of Defendant AD ART, DOES 1-25 and/or
9 ROE CORPORATIONS 1-25 defective manufacture and/or design of the MGM pylon sign,
10 Plaintiff incurred, and continues to incur, attorney's fees and court costs in an amount to be proven
11 at trial.

12 **THIRD CAUSE OF ACTION**

13 (Product Liability -- 3A COMPOSITES USA INC.)

14 33. Plaintiff repeats and realleges paragraphs 1 - 32 of this Complaint as though fully
15 set forth herein.

16 34. Defendant 3A COMPOSITES USA INC., DOES 1 - 25 and/or ROE
17 CORPORATIONS 1 - 25 designed, manufactured, assembled, sold, and/or distributed the material
18 known commonly as "Alucobond" which was used to manufacture and/or construct the MGM
19 pylon sign in question.

20
21 35. By reason of a defect in its design, manufacture, and/or assembly, the Alucobond
22 material inside and surrounding the MGM pylon sign was defective, unfit, and/or unreasonably
23 dangerous for its intended use at the time Plaintiff CHARLES SCHULER was working on July 31,
24 2013 and at the time it left the control of Defendant 3A COMPOSITES USA INC., DOES 1-25
25 and/or ROE CORPORATIONS 1-25.

26
27 36. Defendant 3A COMPOSITES USA INC., DOES 1-25 and/or ROE
28 CORPORATIONS 1-25 knew or should have known the defective condition of the "Alucobond"

1 could cause injury to users of the product and/or Defendant 3A COMPOSITES USA INC., DOES
2 1-25 and/or ROE CORPORATIONS 1-25 should have known the "Alucobond" was not fit for the
3 purpose for which it was ordinarily used.

4 37. As a direct and proximate cause of Defendant 3A COMPOSITES USA INC.,
5 DOES 1-25 and/or ROE CORPORATIONS 1-25 defective manufacture and/or design of the
6 "Alucobond," Plaintiff incurred, and continues to incur medical treatment and billing in an amount
7 in excess of Ten Thousand Dollars (\$10,000.00).
8

9 38. As a further direct and proximate cause of Defendant 3A COMPOSITES USA
10 INC., DOES 1-25 and/or ROE CORPORATIONS 1-25 defective manufacture and/or design of the
11 "Alucobond," Plaintiff incurred, and continues to incur, lost wages and/or loss of earning capacity
12 in an amount in excess of Ten Thousand Dollars (\$10,000.00).
13

14 39. As a further direct and proximate cause of Defendant 3A COMPOSITES USA
15 INC., DOES 1-25 and/or ROE CORPORATIONS 1-25 defective manufacture and/or design of the
16 "Alucobond," Plaintiff endured, and continues to endure pain, suffering, disability, and mental
17 anguish in an amount in excess of Ten Thousand Dollars (\$10,000.00).
18

19 40. As a further direct and proximate cause of Defendant 3A COMPOSITES USA
20 INC., DOES 1-25 and/or ROE CORPORATIONS 1-25 defective manufacture and/or design of the
21 "Alucobond," Plaintiff incurred, and continues to incur, attorney's fees and court costs in an
22 amount to be proven at trial.

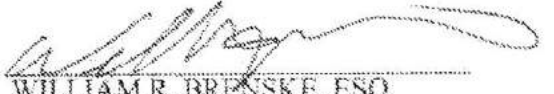
23 **WHEREFORE** Plaintiffs pray for Judgment for their First, Second, and Third Causes of
24 Action as follows:

- 25 1) For special damages in an amount in excess of Ten Thousand Dollars (\$10,000.00);
26 2) For general damages in an amount in excess of Ten Thousand Dollars (\$10,000.00);
27 3) For attorney's fees and court costs in an amount to be proven at trial;
28

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

1 4) For such other and further relief as this Court may deem just and proper.

2 DATED this 9th day of July, 2015.

3 

4 WILLIAM R. BRENSKE, ESQ.

Nevada Bar No. 1806

5 RYAN D. KRAMETBAUER, ESQ.

Nevada Bar No. 12800

6 LAW OFFICE OF WILLIAM R. BRENSKE

630 South Third Street

7 Las Vegas, NV 89101

8 Telephone: (702) 385-3300

9 Facsimile: (702) 385-3823

Email: wbrenske@hotmail.com

10 Attorneys for Plaintiff Charles Schueler

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

LAFD

WILLIAM R. BRENSKE, ESQ.
Nevada Bar No. 1806
RYAN D. KRAMETBAUER, ESQ.
Nevada Bar No. 12800
LAW OFFICE OF WILLIAM R. BRENSKE
630 South Third Street
Las Vegas, NV 89101
Telephone: (702) 385-3300
Facsimile: (702) 385-3823
Email: wbrenske@hotmail.com
Attorney for Plaintiff

**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.:
Dept. No.:

**INITIAL APPEARANCE FEE
DISCLOSURE**

Pursuant to NRS Chapter 19, as amended by Senate Bill 106, filing fees are submitted for
parties appearing in the above-entitled action as indicated below:

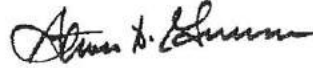
Plaintiff Charles Schueler: \$ 270.00

TOTAL REMITTED: \$ 270.00

DATED this 30th day of April 2015.

LAW OFFICE OF WILLIAM R. BRENSKE

WILLIAM R. BRENSKE, ESQ.
Nevada Bar No. 1806
JENNIFER R. ANDREEVSKI, ESQ.
Nevada Bar No. 9095
630 South Third Street
Las Vegas, Nevada 89101



CLERK OF THE COURT

1 WILLIAM R. BRENSKE, ESQ.
Nevada Bar No. 1806
2 RYAN D. KRAMETBAUER, ESQ.
Nevada Bar No. 12800
3 LAW OFFICE OF WILLIAM R. BRENSKE
630 South Third Street
4 Las Vegas, NV 89101
Telephone: (702) 385-3300
5 Facsimile: (702) 385-3823
Email: wbrenske@hotmail.com
6 Attorneys for Plaintiff,
7 Charles Schueler

8 DISTRICT COURT

9 CLARK COUNTY, NEVADA

10 CHARLES SCHUELER,

11 Plaintiff,

12 v.

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

18 Defendants.

Case No.: A-15-722391-C

Dept. No.: XVII

SUMMONS

19 TO: MGM RESORTS INTERNATIONAL, A Foreign Corporation d/b/a MGM GRAND

20
21 NOTICE! YOU HAVE BEEN SUED. THE COURT MAY DECIDE AGAINST YOU WITHOUT
22 YOUR BEING HEARD UNLESS YOU RESPOND WITHIN 20 DAYS. READ THE
INFORMATION BELOW.

23 TO THE DEFENDANT: A civil Complaint has been filed by the plaintiffs against you for the relief
24 set forth in the Complaint.

25 1. If you intend to defend this lawsuit, within 20 days after this Summons is served on you
(State of Nevada, its political subdivisions, agencies, officers, employees, board members, commission
26 members, and legislators, each has 45 days), exclusive of the day of service, you must do the
27 following:
28

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

1 a. File with the Clerk of this Court, whose address is shown below, a formal
2 written response to the Complaint in accordance with the rules of the Court.

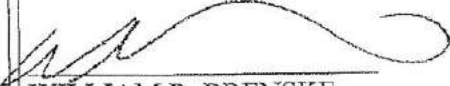
3 b. Serve a copy of your response upon the attorney whose name and address is
4 shown below.

5 2. Unless you respond, your default will be entered upon application of the plaintiff and
6 this Court may enter a judgment against you for the relief demanded in the Complaint, which could
7 result in the taking of money or property or other relief requested in the Complaint.

8 3. If you intend to seek the advice of an attorney in this matter, you should do so promptly
9 so that your response may be filed on time.

10 Issued at direction of:

11 **LAW OFFICE OF
WILLIAM R. BRENSKE**

12 
13 WILLIAM R. BRENSKE
14 Nevada Bar No. 1806
15 630 South Third Street
16 Las Vegas, NV 89101
17 *Attorneys for Plaintiff*

CLERK OF COURT


By: Deputy Clerk, Date: 8/10/05
Regional Justice Center
200 Lewis Avenue
Las Vegas, NV 89155

AFFIDAVIT OF SERVICE

State of Nevada

County of Clark

District Court

Case Number: A-15-722391-C

Plaintiff:

CHARLES SCHUELER

vs.

Defendants:

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; et al.

Received by Bullet Legal Services on the 20th day of August, 2015 at 11:57 am to be served on **MGM RESORTS INTERNATIONAL, A Foreign Corporation d/b/a MGM GRAND, CSC Services of Nevada, Inc. - Registered Agent, 2215-B Renaissance Dr., Las Vegas, NV 89119.**

I, Anthony Spada, being duly sworn, depose and say that on the **24th day of August, 2015 at 2:10 pm, I:**

served the defendant by delivering a true copy of the **SUMMONS and COMPLAINT**, to: **KRIS EPPES, Manager**, pursuant to NRS 14.020 as a person of suitable age and discretion at the address of: **CSC Services of Nevada, Inc. - Registered Agent, 2215-B Renaissance Dr., Las Vegas, NV 89119**, which address is the address of the registered agent as shown on the current certificate of designation filed with the Secretary of State.

Description of Person Served: Age: 50, Sex: F, Race/Skin Color: WHITE, Height: 5'6", Weight: 135, Hair: BLONDE, Glasses: N

I certify that at all times herein Affiant was and is a citizen of the United States, over 18 years of age, and not a party to or interested in the proceeding in which this affidavit is made.

State of Nevada
County of Clark

Subscribed and Sworn to before me on the 27th
day of AUGUST 2015 by the affiant
who is personally known to me.

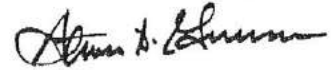
NOTARY PUBLIC




Anthony Spada
R-045877

Bullet Legal Services
1930 Village Center Circle, #3-965
Las Vegas, NV 89134
(702) 823-1000

Our Job Serial Number: BRT-2015002748



CLERK OF THE COURT

1 WILLIAM R. BRENSKE, ESQ.
Nevada Bar No. 1806
2 RYAN D. KRAMETBAUER, ESQ.
Nevada Bar No. 12800
3 LAW OFFICE OF WILLIAM R. BRENSKE
630 South Third Street
4 Las Vegas, NV 89101
Telephone: (702) 385-3300
5 Facsimile: (702) 385-3823
Email: wbrenske@hotmail.com
6 *Attorneys for Plaintiff,*
7 *Charles Schueler*

8 DISTRICT COURT

9 CLARK COUNTY, NEVADA

10 CHARLES SCHUELER,

11 Plaintiff,

12 v.

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

18 Defendants.

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

SUMMONS

19 TO: MGM GRAND HOTEL, LLC, a Domestic Limited Liability Company d/b/a MGM
20 GRAND

21 NOTICE! YOU HAVE BEEN SUED. THE COURT MAY DECIDE AGAINST YOU WITHOUT
22 YOUR BEING HEARD UNLESS YOU RESPOND WITHIN 20 DAYS. READ THE
23 INFORMATION BELOW.

24 TO THE DEFENDANT: A civil Complaint has been filed by the plaintiffs against you for the relief
set forth in the Complaint.

25 1. If you intend to defend this lawsuit, within 20 days after this Summons is served on you
26 (State of Nevada, its political subdivisions, agencies, officers, employees, board members, commission
27 members, and legislators, each has 45 days), exclusive of the day of service, you must do the
28 following:

Law Office of
William R. Brenske
630 South Third Street
Las Vegas, Nevada 89101
(702) 385-3300 • Fax (702) 385-3825

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

1 a. File with the Clerk of this Court, whose address is shown below, a formal
2 written response to the Complaint in accordance with the rules of the Court.

3 b. Serve a copy of your response upon the attorney whose name and address is
4 shown below.

5 2. Unless you respond, your default will be entered upon application of the plaintiff and
6 this Court may enter a judgment against you for the relief demanded in the Complaint, which could
7 result in the taking of money or property or other relief requested in the Complaint.

8 3. If you intend to seek the advice of an attorney in this matter, you should do so promptly
9 so that your response may be filed on time.

10 Issued at direction of:

11 LAW OFFICE OF
12 WILLIAM R. BRENSKE

13 WILLIAM R. BRENSKE
14 Nevada Bar No. 1806
15 630 South Third Street
16 Las Vegas, NV 89101
17 Attorneys for Plaintiff

CLERK OF COURT

18 
19 By: Deputy Clerk, Date:
20 Regional Justice Center
21 200 Lewis Avenue
22 Las Vegas, NV 89155
23
24
25
26
27
28

AFFIDAVIT OF SERVICE

State of Nevada

County of Clark

District Court

Case Number: A-15-722391-C

Plaintiff:

CHARLES SCHUELER

vs.

Defendants:

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; et al.

Received by Bullet Legal Services on the 20th day of August, 2015 at 11:57 am to be served on **MGM GRAND HOTEL, LLC, a Domestic Limited Liability Company d/b/a MGM GRAND, CSC Services of Nevada, Inc. - Registered Agent, 2215-B Renaissance Dr., Las Vegas, NV 89119.**

I, Anthony Spada, being duly sworn, depose and say that on the **24th day of August, 2015 at 2:10 pm, I:**

served the defendant by delivering a true copy of the **SUMMONS and COMPLAINT**, to: **KRIS EPPES, Manager**, pursuant to NRS 14.020 as a person of suitable age and discretion at the address of: **CSC Services of Nevada, Inc. - Registered Agent, 2215-B Renaissance Dr., Las Vegas, NV 89119**, which address is the address of the registered agent as shown on the current certificate of designation filed with the Secretary of State.

Description of Person Served: Age: 50, Sex: F, Race/Skin Color: WHITE, Height: 5'6", Weight: 135, Hair: BLONDE, Glasses: N

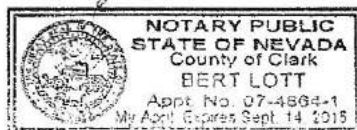
I certify that at all times herein Affiant was and is a citizen of the United States, over 18 years of age, and not a party to or interested in the proceeding in which this affidavit is made.

State of Nevada

County of Clark

Subscribed and Sworn to before me on the 27th
day of August, _____ by the affiant
who is personally known to me.

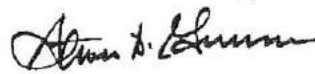
[Signature]
NOTARY PUBLIC



[Signature]
Anthony Spada
R-045877

**Bullet Legal Services
1930 Village Center Circle, #3-965
Las Vegas, NV 89134
(702) 823-1000**

Our Job Serial Number: BRT-2015002749



CLERK OF THE COURT

1 ANSC
2 RILEY A. CLAYTON
3 Nevada Bar No. 005260
4 rclayton@lawhjc.com

5 HALL JAFFE & CLAYTON, LLP
6 7425 PEAK DRIVE
7 LAS VEGAS, NEVADA 89128
8 (702) 316-4111
9 FAX (702)316-4114

10 Attorney for Defendants,
11 MGM Grand Hotel, LLC, d/b/a MGM Grand and
12 MGM Resorts International, d/b/a MGM Grand

13 DISTRICT COURT
14 CLARK COUNTY, NEVADA

15 CHARLES SCHUELER,
16 Plaintiff,

17 v.

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

28 Defendants.

CASE NO.: A-15-722391-C
DEPT NO.: XVII

DEFENDANT MGM GRAND HOTEL, LLC,
d/b/a MGM GRAND'S ANSWER TO
PLAINTIFF'S COMPLAINT

Defendant, MGM Grand Hotel, LLC, d/b/a MGM Grand ("Defendant"), by and through its attorneys, Hall Jaffe & Clayton, LLP, and hereby answer Plaintiff's Complaint as follows:

1. Answering Paragraphs 1, 3, 4, 5, 6, 7, 8, 9, 10, 11, and 12 of the Complaint, this Answering Defendant is without sufficient knowledge or information to form a belief as to the truth or falsity of the allegations contained therein and, accordingly, those allegations are hereby denied.

2. Answering Paragraph 2 of the Complaint, this Answering Defendant admits all allegations contained therein.

1 Defendant is without sufficient knowledge or information to form a belief as to the truth or falsity of the
2 allegations contained therein and, accordingly, those allegations are hereby denied.

3 **AFFIRMATIVE DEFENSES**

4 As for their affirmative defenses, Defendant state as follows:

5 1. Defendant alleges that the negligence of the Plaintiff exceeds that of the Defendant, if
6 any, and that the Plaintiff is thereby barred from any recovery.

7 2. Plaintiff has failed to mitigate his damages and, thus, monetary recovery, if any, should
8 be reduced accordingly.

9 3. All risks and dangers involved in the factual situation set forth in the Complaint were
10 open and obvious to the Plaintiff.

11 4. Defendant alleges that the injuries, if any, suffered by the Plaintiff as set forth in the
12 Plaintiff's Complaint was caused in whole or in part by the negligence of a third party over which
13 Defendant had no control.

14 5. Plaintiff's injuries and problems, as alleged herein, pre-existed the accident at issue in
15 this matter, thereby barring or limiting recovery.

16 6. Defendant had no actual or constructive notice of the allegedly dangerous condition of
17 which Plaintiff complains; therefore, Plaintiff's claims are barred.

18 7. Defendant hereby incorporates by reference those affirmative defenses enumerated in
19 Rule 8 of the Nevada Rules of Civil Procedure as if fully set forth herein. Such defenses are herein
20 incorporated by reference for the specific purpose of not waiving any such defense. In the event further
21 investigation or discovery reveals the applicability of any such defenses, Defendant reserve the right to
22 seek leave of court to amend this answer to specifically assert any such defense.

23 8. Defendant alleges that the allegations contained in the Plaintiff's Complaint failed to state
24 a cause of action against Defendant upon which relief can be granted.

25 9. Plaintiff's claims are barred pursuant to the doctrine of laches and/or the applicable
26 statutes of limitation.

27 10. The incident which is the subject matter of this action was unavoidable, wherefore,
28

1 Plaintiff is barred from any recovery against this Defendant.

2 11. Defendant alleges that the Plaintiff expressly or impliedly assumed whatever risk or
3 hazard existed at the time of the claimed incident(s) and were therefore responsible for the alleged
4 injuries suffered and further, that the Plaintiff was guilty of negligence on his own part which caused or
5 contributed to any injuries suffered by the Plaintiff.

6 12. Plaintiff's injuries and damages were caused by an intervening, superceding cause or
7 event, which broke the causal connection between Plaintiff's damages and the purported conduct of
8 Defendant; therefore, Plaintiff's claims are barred.

9 13. Plaintiff was in the course and scope of his employment at the time of the subject
10 incident, and as such, his claims are barred under Nevada's workers compensation "exclusive remedy"
11 doctrine.

12 14. Defendant is entitled to introduce evidence of amounts paid or received through workers
13 compensation consistent with Tri County Equip. v. Klinke, 286 P.3d 593 (Nev. 2012) and NRS
14 616c.215.

15 **PRAYER FOR RELIEF**

16 Wherefore; Defendant respectfully request that the Court enter judgment in favor of the
17 Defendant and against Plaintiff as follows:

- 18 1. That Plaintiff's Complaint be dismissed and that Plaintiff take nothing thereby;
19 2. That Defendant be awarded attorney fees and costs incurred in this case together with
20 interest at the highest rate permitted by law until paid in full;

21 ///

22 ///

23 ///

24 ///

25 ///

26 ///

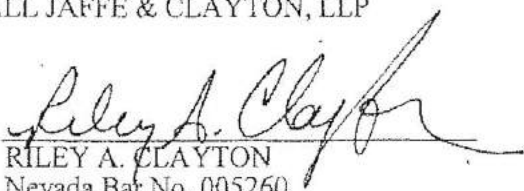
27 ///

1 3. Such other and further relief as this Court deems just and appropriate under the
2 circumstances of this case.

3 DATED this 17th day of September, 2015.

4 HALL JAFFE & CLAYTON, LLP

5
6 By


RILEY A. CLAYTON

Nevada Bar No. 005260

7425 Peak Drive

Las Vegas, Nevada 89128

Attorneys for Defendants,

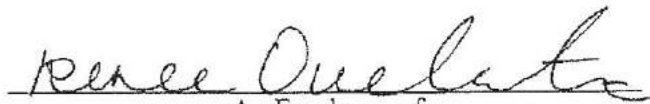
MGM Grand Hotel, LLC, d/b/a MGM Grand;

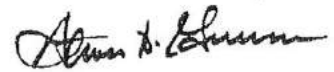
MGM Resorts International, d/b/a MGM Grand

1 CERTIFICATE OF SERVICE

2 Pursuant to NRCP 5(b) and EDCR 7.26, I certify that on the 17th day of September, 2015, I
3 served the foregoing DEFENDANT MGM GRAND HOTEL, LLC, d/b/a MGM GRAND'S
4 ANSWER TO PLAINTIFF'S COMPLAINT on the following parties by electronic transmission
5 through the Wiznet system:
6

7 William R. Brenske, Esq.
8 Ryan D. Krametbauer, Esq.
9 LAW OFFICE OF WILLIAM R. BRENSKE
10 630 S. Third Street
11 Las Vegas, NV 89101
12 Tel.: (702) 385-3300
13 Fax: (702) 385-3823
14 wbrenske@hotmail.com
15 *Attorneys for Plaintiff*

16
17 
18 An Employee of
19 HALL JAFFE & CLAYTON, LLP.
20
21
22
23
24
25
26
27
28



CLERK OF THE COURT

1 WILLIAM R. BRENSKE, ESQ.
Nevada Bar No. 1806
2 RYAN D. KRAMETBAUER, ESQ.
Nevada Bar No. 12800
3 LAW OFFICE OF WILLIAM R. BRENSKE
630 South Third Street
4 Las Vegas, NV 89101
Telephone: (702) 385-3300
5 Facsimile: (702) 385-3823
Email: wbrenske@hotmail.com
6 Attorneys for Plaintiff,
7 Charles Schueler

8 DISTRICT COURT

9 CLARK COUNTY, NEVADA

10 CHARLES SCHUELER,

11 Plaintiff,

12 v.

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

18 Defendants.

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

SUMMONS

19 TO: 3A COMPOSITES USA INC., a Foreign Corporation a/k/a ALUCOBOND
20 TECHNOLOGIES CORPORATION

21 NOTICE! YOU HAVE BEEN SUED. THE COURT MAY DECIDE AGAINST YOU WITHOUT
22 YOUR BEING HEARD UNLESS YOU RESPOND WITHIN 20 DAYS. READ THE
23 INFORMATION BELOW.

24 TO THE DEFENDANT: A civil Complaint has been filed by the plaintiffs against you for the relief
set forth in the Complaint.

25 1. If you intend to defend this lawsuit, within 20 days after this Summons is served on you
26 (State of Nevada, its political subdivisions, agencies, officers, employees, board members, commission
members, and legislators, each has 45 days), exclusive of the day of service, you must do the
27 following:
28

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

1 a. File with the Clerk of this Court, whose address is shown below, a formal
2 written response to the Complaint in accordance with the rules of the Court.

3 b. Serve a copy of your response upon the attorney whose name and address is
4 shown below.

5 2. Unless you respond, your default will be entered upon application of the plaintiff and
6 this Court may enter a judgment against you for the relief demanded in the Complaint, which could
7 result in the taking of money or property or other relief requested in the Complaint.

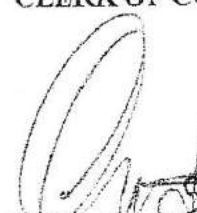
8 3. If you intend to seek the advice of an attorney in this matter, you should do so promptly
9 so that your response may be filed on time.

10 Issued at direction of:

11 **LAW OFFICE OF
WILLIAM R. BRENSKE**

12 
13 WILLIAM R. BRENSKE
14 Nevada Bar No. 1806
15 630 South Third Street
16 Las Vegas, NV 89101
17 *Attorneys for Plaintiff*

CLERK OF COURT


By: Deputy Clerk,
Regional Justice Center
200 Lewis Avenue
Las Vegas, NV 89155

Date:

AFFIDAVIT OF SERVICE

State of Nevada

County of Clark

District Court

Case Number: A-15-722391-C

Plaintiff:

CHARLES SCHUELER

vs.

Defendants:

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; et al.

Received by Bullet Legal Services on the 25th day of August, 2015 at 3:29 pm to be served on **3A COMPOSITES USA INC., a Foreign Corporation a/k/a ALUCOBOND TECHNOLOGIES CORPORATION, CSC Lawyers**

Incorporating Service Company - Registered Agent, 221 Bolivar Street, Jefferson City, MO 65101.
Ruth R. Harmon, being duly sworn, depose and say that on the 4th day of Sept., 2015
at 2:30 p.m., executed service by delivering a true copy of the **SUMMONS** and **COMPLAINT** in accordance with
state statutes in the manner marked below:

☒ CORPORATION: By serving Shelley Lawes as
an agent designated by statute to accept service of process.

☐ RECORDS CUSTODIAN: By serving _____ as
Authorized Agent of CSC, an agent designated by statute to accept service of process.

☐ PUBLIC AGENCY: By serving _____ as _____ of
the within-named agency.

☐ OTHER SERVICE: As described in the Comment below by serving _____ as
_____, who stated they were authorized to accept.

☐ NON SERVICE: For the reasons detailed in the Comments below.

COMMENTS: _____

Age 40 Sex M Race white Height 5'6" Weight 160 Hair Brown Glasses Y ☒

I certify that I have no interest in the above action, am of legal age and have proper authority in the jurisdiction in which this service was made.

State of Missouri

County of COLE

Subscribed and Sworn to before me on the 17th
day of SEPTEMBER, 2015 by the affiant who
is personally known to me.

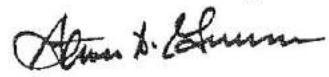
Donna R. Meyr
NOTARY PUBLIC

Ruth R. Harmon
PROCESS SERVER # _____
Appointed in accordance with State Statutes

Bullet Legal Services
1930 Village Center Circle, #3-965
Las Vegas, NV 89134
(702) 823-1000

Our Job Serial Number: 2015002750




CLERK OF THE COURT

1 ANSC
2 ALVERSON, TAYLOR,
3 MORTENSEN & SANDERS
4 LEANN SANDERS, ESQ.
5 Nevada Bar No. 000390
6 EDWARD SILVERMAN, ESQ.
7 Nevada Bar No.: 13584
8 7401 W. Charleston Boulevard
9 Las Vegas, Nevada 89117
10 (702) 384-7000
(702) 385-7000 (facsimile)
efile@alversontaylor.com
Attorneys for Defendant
3A COMPOSITES USA INC., f/k/a
ALUCOBOND TECHNOLOGIES
CORPORATION

DISTRICT COURT

CLARK COUNTY, NEVADA

>0<

14 CHARLES SCHUELER,
15
16 Plaintiff,

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

17 vs.

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

Defendants,

3A COMPOSITES USA INC., f/k/a ALUCOBOND TECHNOLOGIES
CORPORATION'S ANSWER TO COMPLAINT

26 COMES NOW, Defendant, 3A COMPOSITES USA INC., f/k/a ALUCOBOND
27 TECHNOLOGIES CORPORATION, by and through its attorneys of record, ALVERSON,
28

TAYLOR, MORTENSEN & SANDERS, and answers Plaintiff's Complaint on file herein as follows:

JURISDICTIONAL ALLEGATIONS

1. Answering Paragraphs 1, 2, 3, 4, 7, 8, 9, 10, 11 and 12 of Plaintiff's Complaint, Defendant is without sufficient knowledge to form a belief as to the truth of the allegations contained in said paragraphs and therefore denies the same.

2. Answering Paragraph 5 of Plaintiff's Complaint, Defendant admits that 3A Composites USA Inc. is a Missouri Corporation, but denies that 3A Composites USA Inc. is also known as Alucobond Technologies Corporation, and that Alucobond Technologies Corporation is a Missouri Corporation. Defendant is without sufficient knowledge to form a belief as to the truth of the remaining allegations of said paragraph, and therefore denies the same with regard to both 3A Composites USA Inc. and Alucobond Technologies Corporation.

3. Answering Paragraph 6 of Plaintiff's Complaint, Defendant admits that 3A COMPOSITES USA INC. is the manufacturer and seller of Alucobond®, a trademarked aluminum composite material. As to the remaining allegations, Defendant is without sufficient knowledge to form a belief as to the truth of the allegations contained in said paragraph and therefore denies the same.

GENERAL ALLEGATIONS

4. Defendant repeats and realleges its answers to Paragraphs 1 through 12, inclusive, as if fully set forth herein.

5. Answering Paragraphs 14 and 15 of Plaintiff's Complaint, Defendant is without sufficient knowledge to form a belief as to the truth of the allegations contained in said paragraphs and therefore denies the same.

///

FIRST CAUSE OF ACTION

(Premises Liability – MGM GRAND HOTEL, LLC, MGM RESORTS INTERNATIONAL and AD ART, INC.)

6. Defendant repeats and realleges its answers to Paragraphs 1 through 15, inclusive, as if fully set forth herein.

7. Answering Paragraphs 17, 18, 19, 20, 21, 22, 23 and 24 of Plaintiff's Complaint, Defendant is without sufficient knowledge to form a belief as to the truth of the allegations contained in said paragraphs and therefore denies the same.

SECOND CAUSE OF ACTION

(Product Liability – AD ART, INC.)

8. Defendant repeats and realleges its answers to Paragraphs 1 through 24, inclusive, as if fully set forth herein.

9. Answering Paragraphs 26, 27, 28, 29, 30, 31 and 32 of Plaintiff's Complaint, Defendant is without sufficient knowledge to form a belief as to the truth of the allegations contained in said paragraphs and therefore denies the same.

THIRD CAUSE OF ACTION

(Product Liability – 3A COMPOSITES USA INC.)

11. Defendant repeats and realleges its answers to Paragraphs 1 through 32, inclusive, as if fully set forth herein.

12. Answering Paragraph 34 of Plaintiff's Complaint, Defendant admits that 3A COMPOSITES USA INC. manufactured and sold Alucobond®. As to the remaining allegations, Defendant is without sufficient knowledge to form a belief as to the truth of the allegations contained in said paragraph and therefore denies the same.

13. Answering Paragraphs 35, 36, 37, 38, 39 and 40 of Plaintiff's Complaint, Defendant denies said allegations in said paragraphs.

AFFIRMATIVE DEFENSES

FIRST AFFIRMATIVE DEFENSE

Plaintiff's Complaint fails to state a claim on which relief may be granted.

SECOND AFFIRMATIVE DEFENSE

Plaintiff's damages, if any, were caused in whole or in part, or were contributed to by reason of the negligence of the Plaintiff.

THIRD AFFIRMATIVE DEFENSE

All risks and dangers involved in the factual situation described in the Complaint were open, obvious, and known to the Plaintiff and said Plaintiff voluntarily assumed said risks and dangers.

FOURTH AFFIRMATIVE DEFENSE

The incident alleged in the Complaint and the resulting damages, if any, to the Plaintiff was proximately caused or contributed to by Plaintiff's own negligence, and such negligence was greater than the alleged negligence of the Defendant.

FIFTH AFFIRMATIVE DEFENSE

The occurrence referred to in the Complaint, and all injuries and damages, if any, resulting therefrom were caused by the acts or omissions of a third party over whom Defendant had no control.

SIXTH AFFIRMATIVE DEFENSE

The Plaintiff's claims are time-barred by the applicable statute of limitations, and/or statute of repose.

SEVENTH AFFIRMATIVE DEFENSE

The Plaintiff's claims are barred by lack of personal jurisdiction on this Defendant.

///

///

EIGHTH AFFIRMATIVE DEFENSE

Plaintiff failed to take reasonable efforts to mitigate his damages, if any, and Plaintiff is therefore barred from recovering any damages from Defendant.

NINTH AFFIRMATIVE DEFENSE

Defendant hereby incorporates by reference those affirmative defenses enumerated in Rule 8 and Rule 12 of the Nevada Rules of Civil Procedure as if fully set forth herein. In the event further investigation or discovery reveals the applicability of any such defenses, Defendant reserves the right to seek leave of Court to amend their Answer to specifically assert any such defense(s). Such defenses are herein incorporated by reference for the specific purpose of not waiving any such defense.

TENTH AFFIRMATIVE DEFENSE

Pursuant to Rule 11 of the Nevada Rules of Civil Procedure, as amended, all possible affirmative defenses may not have been alleged herein insofar as sufficient facts are not available after reasonable inquiry from the filing of Plaintiff's Complaint, and therefore, Defendant reserves the right to amend its Answer to assert additional affirmative defenses in the event discovery indicates that additional affirmative defenses would be appropriate.

ELEVENTH AFFIRMATIVE DEFENSE

Defendant denies each and every allegation of Plaintiff's Complaint not specifically admitted or otherwise pled to herein.

TWELFTH AFFIRMATIVE DEFENSE

Plaintiff's alleged injuries were not caused by the negligence of Defendant, but rather were proximately caused by the unforeseeable and/or unintended use(s) and/or misuse(s) of the products in question, and Plaintiff's claims against this Defendant are therefore barred under applicable law.

1 THIRTEENTH AFFIRMATIVE DEFENSE

2 The products at issue were altered, modified or otherwise rendered to a form not substantially
3 similar to their form when they left the custody or control of this Defendant.

4 FOURTEENTH AFFIRMATIVE DEFENSE

5 This Defendant states that the products at issue were not defective in any manner, and that at
6 all pertinent times, were reasonably fit and suited for the purpose for which they were manufactured
7 and intended, and were delivered with such advice and warnings as were consistent with the state of
8 the existing scientific, medical, technological and industrial art.

9 FIFTEENTH AFFIRMATIVE DEFENSE

10 Plaintiff's claims are barred in whole or in part by the lack of defect, as any products
11 allegedly manufactured by Defendant was properly manufactured in accordance with the applicable
12 standard of care and in compliance with all applicable federal and state statutes and regulations, if
13 any, existing at the time of design and/or manufacture that prescribed standards for design,
14 inspection, testing, manufacture, labeling, warning or instructions for use of the product or products
15 allegedly designed, manufactured and/or sold by this Defendant.

16 SIXTEENTH AFFIRMATIVE DEFENSE

17 This Defendant denies that the product in question had any inherent design defect, but if there
18 existed any inherent design defect with respect to the product, such defect being expressly denied,
19 such defect could not have been effectively eliminated without rendering the product incapable of
20 reasonable use.

21 ///

22 ///

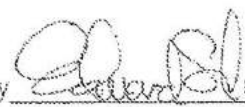
23 ///

PRAYER FOR RELIEF

This Defendant denies that Plaintiff is entitled to any of the requested relief as contained within Plaintiff's Complaint.

Dated this 23rd day of October, 2015.

ALVERSON, TAYLOR, MORTENSEN & SANDERS

By  10/23/2015
ALVERSON, TAYLOR,
MORTENSEN & SANDERS
LEANN SANDERS, ESQ.
Nevada Bar No. 000390
EDWARD SILVERMAN, ESQ.
Nevada Bar No.: 13584
7401 W. Charleston Boulevard
Las Vegas, Nevada 89117
(702) 384-7000
Attorneys for Defendant
3A COMPOSITES USA INC., f/k/a
ALUCOBOND TECHNOLOGIES
CORPORATION

CERTIFICATE OF SERVICE

Pursuant to Administrative Order 14-2, I hereby certify that on this 23rd day of October, 2015, I did cause a true and correct copy of the above and foregoing 3A COMPOSITES USA INC., f/k/a ALUCOBOND TECHNOLOGIES CORPORATION'S ANSWER TO COMPLAINT to be e-filed and e-served through the Eighth Judicial District Court EFP system pursuant to the Electronic Filing and Service Order entered on the Court's docket in the above-referenced matter.

William R. Brenske, Esq.
Ryan D. Kramerbauer, Esq.
LAW OFFICE OF WILLIAM R. BRENSKE
630 South Third Street
Las Vegas, NV 89101
Attorneys for Plaintiffs

Riley A. Clayton, Esq.
HALL JAFFE & CLAYTON, LLP
7425 Peak Drive
Las Vegas, NV 89128
Attorney for Defendants
MGM GRAND HOTEL, LLC d/b/a
MGM GRAND; and MGM RESORTS
INTERNATIONAL d/b/a MGM GRAND


An Employee of ALVERSON, TAYLOR,
MORTENSEN & SANDERS

AFFIRMATION
Pursuant to N.R.S. 239B.030

The undersigned does hereby affirm that the preceding 3A COMPOSITES USA INC., f/k/a
ALUCOBOND TECHNOLOGIES CORPORATION'S ANSWER TO COMPLAINT, filed in
District Court Case No.: A-15-722391-C:

X Does not contain the social security number of any person.

-OR-

Contains the social security number of a person as required by:

A. A specific state or federal law, to wit:

[Insert specific law]

-or-

B. For the administration of a public program or for an application for a
federal or state grant.

Dated this 23rd day of October, 2015.

ALVERSON, TAYLOR, MORTENSEN & SANDERS

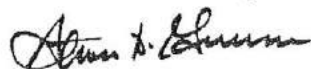
By: Edward Silverman 10/24/2015

ALVERSON, TAYLOR,
MORTENSEN & SANDERS
LEANN SANDERS, ESQ.
Nevada Bar No. 000390
EDWARD SILVERMAN, ESQ.
Nevada Bar No.: 13584
7401 W. Charleston Boulevard
Las Vegas, Nevada 89117
(702) 384-7000
Attorneys for Defendant
3A COMPOSITES USA INC., f/k/a
ALUCOBOND TECHNOLOGIES
CORPORATION

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

1 WILLIAM R. BRENSKE, ESQ.
Nevada Bar No. 1806
2 RYAN D. KRAMETBAUER, ESQ.
Nevada Bar No. 12800
3 LAW OFFICE OF WILLIAM R. BRENSKE
630 South Third Street
4 Las Vegas, NV 89101
Telephone: (702) 385-3300
5 Facsimile: (702) 385-3823
6 Email: wbrenske@hotmail.com
7 Attorneys for Plaintiff,
Charles Schueler

Electronically Filed
11/12/2015 10:35:59 AM



CLERK OF THE COURT

DISTRICT COURT

CLARK COUNTY, NEVADA

10 CHARLES SCHUELER,

11 Plaintiff,

12 v.

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

18 Defendants.

Case No.: A-15-722391-C

Dept. No.: XVII

SUMMONS

19 TO: AD ART, INC., A Foreign Corporation.
20

21 NOTICE! YOU HAVE BEEN SUED. THE COURT MAY DECIDE AGAINST YOU WITHOUT
22 YOUR BEING HEARD UNLESS YOU RESPOND WITHIN 20 DAYS. READ THE
INFORMATION BELOW.

23 TO THE DEFENDANT: A civil Complaint has been filed by the plaintiffs against you for the relief
24 set forth in the Complaint.

25 1. If you intend to defend this lawsuit, within 20 days after this Summons is served on you
26 (State of Nevada, its political subdivisions, agencies, officers, employees, board members, commission
members, and legislators, each has 45 days), exclusive of the day of service, you must do the
27 following:
28

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

1 a. File with the Clerk of this Court, whose address is shown below, a formal
2 written response to the Complaint in accordance with the rules of the Court.

3 b. Serve a copy of your response upon the attorney whose name and address is
4 shown below.

5 2. Unless you respond, your default will be entered upon application of the plaintiff and
6 this Court may enter a judgment against you for the relief demanded in the Complaint, which could
7 result in the taking of money or property or other relief requested in the Complaint.

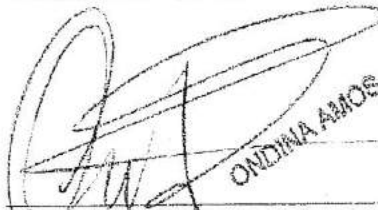
8 3. If you intend to seek the advice of an attorney in this matter, you should do so promptly
9 so that your response may be filed on time.

10 Issued at direction of:

11 **LAW OFFICE OF
WILLIAM R. BRENSKE**

12 
13 WILLIAM R. BRENSKE
14 Nevada Bar No. 1806
15 630 South Third Street
16 Las Vegas, NV 89101
17 *Attorneys for Plaintiff*

CLERK OF COURT



By: Deputy Clerk,
Regional Justice Center
200 Lewis Avenue
Las Vegas, NV 89155

Date:

AUG 5 2005

AFFIDAVIT OF SERVICE

State of Nevada

County of Clark

District Court

Case Number: A-15-722391-C

Plaintiff:

CHARLES SCHUELER

vs.

Defendants:

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; et al.

Received by Bullet Legal Services on the 29th day of October, 2015 at 3:10 pm to be served on AD ART, INC., Nevada Secretary of State, 555 E. Washington Avenue, Suite 5200, Las Vegas, NV 89101.

I, Anthony Spada, being duly sworn, depose and say that on the 2nd day of November, 2015 at 3:47 pm, I:

Served the entity, **AD ART, INC.**, by personally delivering and leaving a copy of the **LETTER, SUMMONS and COMPLAINT** with **ROXANNA (Refused Full Name) as Admin. III** at Nevada Secretary of State, 555 E. Washington Avenue, Suite 5200, Las Vegas, NV 89101. Affiant states that on 11/2/2015, Affiant personally posted one copy of said documents at the District Court, Clark County, Nevada, Regional Justice Center, 200 Lewis Avenue, Third Floor, Las Vegas, Nevada.

Description of Person Served: Age: 30, Sex: F, Race/Skin Color: HISPANIC, Height: SIT, Weight: SIT, Hair: BROWN, Glasses: N

I certify that at all times herein Affiant was and is a citizen of the United States, over 18 years of age, and not a party to or interested in the proceeding in which this affidavit is made.

State of Nevada
County of Clark

Subscribed and Sworn to before me on the 5th day of November 2015 by the affiant who is personally known to me.

NOTARY PUBLIC



Anthony Spada
R-045877

Bullet Legal Services
1930 Village Center Circle, #3-965
Las Vegas, NV 89134
(702) 823-1000

Our Job Serial Number: BRT-2015003764



CLERK OF THE COURT

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

6 Attorney for Defendant,
AD ART, INC.

7 DISTRICT COURT
8 CLARK COUNTY, NEVADA

9 CHARLES SCHUELER,

CASE NO.: A-15-722391-C

10 Plaintiff,

DEPT. NO.: XVII

11 vs.

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

18 Defendants.

19 DEFENDANT, AD ART, INC.'S, ANSWER TO PLAINTIFF'S COMPLAINT

20 Defendant, AD ART, INC. ("Answering Defendant"), by and through their attorney,
21 TIMOTHY F. HUNTER, ESQ., of RAY LEGO & ASSOCIATES, hereby answers the
22 Plaintiff's Complaint as follows:

23 JURISDICTIONAL ALLEGATIONS

24 1. Answering Paragraphs 1, 2, 3 and 5 through 12 of Plaintiff's Complaint on file
25 herein, this answering Defendant lacks knowledge, information and belief as to the truth or
26 falsity of the allegations set forth therein and therefore DENIES same.

27 2. Answering Paragraph 4 of Plaintiff's Complaint on file herein, this answering
28

1 Defendant ADMITS it is a California Corporation licensed to do business in Clark County,
2 Nevada. As to all remaining allegations, Defendant DENIES same as set forth therein.

3 **GENERAL ALLEGATIONS**

4 3. Answering Paragraph 13 of Plaintiff's Complaint on file herein, this answering
5 Defendant repeats and realleges their responses to Paragraphs 1 through 12 of Plaintiff's
6 Complaint on file herein as though set forth in detail.

7 4. Answering Paragraphs 14 and 15 of Plaintiff's Complaint on file herein, this
8 answering Defendant lacks knowledge, information and belief as to the truth or falsity of the
9 allegations set forth therein and therefore DENIES same.

10 **FIRST CAUSE OF ACTION**

11 **(Premises Liability – MGM GRAND HOTEL, LLC, MGM RESORTS
INTERNATIONAL and AD ART, INC.)**

12 5. Answering Paragraph 16 of the First Cause of Action of Plaintiff's Complaint on
13 file herein, this answering Defendant repeats and realleges their responses to Paragraphs 1
14 through 15 of Plaintiff's Complaint on file herein as though set forth in detail.

15 6. Answering Paragraphs 17 through 24 of Plaintiff's Complaint on file herein, this
16 answering Defendant DENIES the allegations set forth therein.

17 **SECOND CAUSE OF ACTION**

18 **(Product Liability – AD ART, INC.)**

19 7. Answering Paragraph 25 of the Second Cause of Action of Plaintiff's Complaint
20 on file herein, this answering Defendant repeats and realleges their responses to Paragraphs 1
21 through 24 of Plaintiff's Complaint on file herein as though set forth in detail.

22 8. Answering Paragraphs 26 through 32 of Plaintiff's Complaint on file herein, this
23 answering Defendant DENIES the allegations set forth therein.

24 **THIRD CAUSE OF ACTION**

25 **(Product Liability – 3A COMPOSITES USA INC.)**

26 9. Answering Paragraph 33 of the Third Cause of Action of Plaintiff's Complaint
27 on file herein, this answering Defendant repeats and realleges their responses to Paragraphs 1
28 through 32 of Plaintiff's Complaint on file herein as though set forth in detail.

1 10. Answering Paragraphs 34 through 40 of Plaintiff's Complaint on file herein, this
2 answering Defendant is unable to answer these paragraphs as there are no allegations set forth
3 therein. To the extent an answer is required, the defendant DENIES any allegations.

4 **AFFIRMATIVE DEFENSES**

5 **FIRST AFFIRMATIVE DEFENSE**

6 Answering Defendant denies the allegations of the Complaint, each cause of action, and
7 each paragraph in each cause of action, and each and every part thereof, including a denial that
8 Plaintiff was damaged in the sum or sums alleged, or to be alleged, or any other sum.

9 **SECOND AFFIRMATIVE DEFENSE**

10 Answering Defendant denies that by reason of any act or omission, fault, conduct or
11 liability on their part, Plaintiff was injured or damaged in any of the amounts alleged, or in any
12 other manner or amount whatsoever. Answering Defendant further denies that they were
13 careless, reckless, wanton, acted unlawfully or are liable, whether in the manner alleged or
14 otherwise.

15 **THIRD AFFIRMATIVE DEFENSE**

16 Answering Defendant is informed and believes, and thereon alleges, that the Complaint,
17 and each and every cause of action stated therein, fails to state facts sufficient to constitute a
18 cause of action, or any cause of action, as against this Answering Defendant.

19 **FOURTH AFFIRMATIVE DEFENSE**

20 Answering Defendant is informed and believes, and thereon alleges, that Answering
21 Defendant is not legally responsible for the acts and/or omissions of those Defendants named by
22 Plaintiff as fictitious Defendants.

23 **FIFTH AFFIRMATIVE DEFENSE**

24 Answering Defendant is informed and believes, and thereon alleges, that if Plaintiff
25 herein suffered or sustained any loss, injury, damage or detriment, the same is directly and
26 proximately caused and contributed to, in whole or in part, by the conduct, acts, omissions,
27 activities, and/or intentional misconduct of Plaintiff, thereby completely or partially barring
28

1 Plaintiff's recovery herein.

2 **SIXTH AFFIRMATIVE DEFENSE**

3 Answering Defendant is informed and believes, and therefore alleges, that it is not
4 legally responsible in any fashion with respect to the damages and injuries by Plaintiff,
5 however, if Answering Defendant is subjected to any liability to Plaintiff, it will be due, in
6 whole or in part, to the conduct, acts, omissions, activities, and/or intentional misconduct of
7 others; wherefore any recovery obtained by Plaintiff against Answering Defendant should be
8 reduced in proportion to the respective fault and legal responsibility of all other parties, persons
9 and entities, their agents, servants and employees who contributed to and/or caused any such
10 injury and/or damages; consequently, Answering Defendant is informed and believes, and
11 therefore alleges, that the liability of Answering Defendant, if any, is limited in direct
12 proportion to the percentage of fault actually attributed to Answering Defendant.

13 **SEVENTH AFFIRMATIVE DEFENSE**

14 If Answering Defendant is found responsible in damages to Plaintiff or some other
15 party, whether as alleged or otherwise, then Answering Defendant is informed and believes, and
16 therefore alleges, that the liability will be predicated upon the active conduct of Plaintiff, which
17 unlawful conduct proximately caused the alleged incident and that Plaintiff's action against
18 Answering Defendant is barred by that active and affirmative conduct.

19 **EIGHTH AFFIRMATIVE DEFENSE**

20 Answering Defendant is informed and believe, and therefore allege, that the Complaint,
21 and each and every cause of action contained therein, is barred by the applicable Statutes of
22 Repose.

23 **NINTH AFFIRMATIVE DEFENSE**

24 Answering Defendant is informed and believes, and therefore alleges, that as to each
25 alleged cause of action, Plaintiff has failed, refused and neglected to take reasonable steps to
26 mitigate their alleged damages, if any, thus barring or diminishing Plaintiff's recovery herein.

27 **TENTH AFFIRMATIVE DEFENSE**

28

1 Answering Defendant is informed and believes, and therefore alleges, that the
2 Complaint, and each and every cause of action contained therein, is barred by the applicable
3 Statues of Limitation.

4 **ELEVENTH AFFIRMATIVE DEFENSE**

5 Answering Defendant is informed and believes, and therefore alleges, that Plaintiff
6 unreasonably delayed both the filing of the Complaint and notification of Answering
7 Defendants of the alleged allegations, which has unduly and severely prejudiced Answering
8 Defendant in their defense of the action, thereby barring or diminishing Plaintiff's recovery
9 herein under the Doctrine of Estoppel.

10 **TWELFTH AFFIRMATIVE DEFENSE**

11 Answering Defendant is informed and believes, and therefore alleges, that Plaintiff
12 unreasonably delayed both the filing of the Complaint and notification of Answering Defendant
13 of the alleged allegations, which has unduly and severely prejudiced Answering Defendant in
14 their defense of the action, thereby barring or diminishing Plaintiff's recovery herein under the
15 Doctrine of Waiver.

16 **THIRTEENTH AFFIRMATIVE DEFENSE**

17 Answering Defendant is informed and believes, and therefore alleges, that Plaintiff
18 unreasonably delayed both the filing of the Complaint and notification of Answering Defendant
19 of the alleged allegations, which has unduly and severely prejudiced Answering Defendant in
20 their defense of the action, thereby barring or diminishing Plaintiff's recovery herein under the
21 Doctrine of Laches.

22 **FOURTEENTH AFFIRMATIVE DEFENSE**

23 Answering Defendant is informed and believes, and therefore allege, that Plaintiff has
24 failed to join all necessary and indispensable parties to this lawsuit.

25 **FIFTEENTH AFFIRMATIVE DEFENSE**

26 Answering Defendant is informed and believes, and therefore alleges, that the injuries
27 and damages of which Plaintiff complains were proximately caused by, or contributed to by, the
28

1 acts of other entities, and that said acts were an intervening and superseding cause of the injuries
2 and damages, if any, of which Plaintiff complains, thus barring Plaintiff from any recovery
3 against Answering Defendant.

4 **SIXTEENTH AFFIRMATIVE DEFENSE**

5 It has been necessary for Answering Defendant to retain the services of an attorney to
6 defend this action, and Answering Defendant is entitled to a reasonable sum as and for
7 attorneys' fees.

8 **SEVENTEENTH AFFIRMATIVE DEFENSE**

9 Answering Defendant is informed and believes, and therefore allege, that the claims of
10 Plaintiff are reduced, modified and/or barred by the Doctrine of Unclean Hands.

11 **EIGHTEENTH AFFIRMATIVE DEFENSE**

12 Answering Defendant is informed and believes, and therefore alleges, that the claims of
13 Plaintiff are reduced, modified and/or barred by the Doctrine of Res Judicata.

14 **NINTEENTH AFFIRMATIVE DEFENSE**

15 Answering Defendant is informed and believes, and therefore allege, that the claims of
16 Plaintiff are reduced, modified and/or barred by the Doctrine of Collateral Estoppel.

17 **TWENTIETH AFFIRMATIVE DEFENSE**

18 Answering Defendant is informed and believes, and therefore allege, that any and all
19 events, happenings, injuries and damages alleged by Plaintiff were a direct result of an act of
20 God.

21 **TWENTY-FIRST AFFIRMATIVE DEFENSE**

22 Answering Defendant is informed and believes, and therefore allege, that at no time
23 prior to the filing of this action did Plaintiff, or any agent, representative or employee thereof,
24 notify Answering Defendant of any breach of any duty to Plaintiff; therefore, Plaintiff is barred
25 from any right of recovery from Answering Defendants.

26 **TWENTY-SECOND AFFIRMATIVE DEFENSE**

27 Pursuant to N.R.C.P. 11, as amended, all possible affirmative defense may not have been
28

1 alleged herein insofar as sufficient facts were not available for Answering Defendant after
2 reasonable inquiry, and therefore, Answering Defendant reserves the right to amend this
3 Answer to allege additional affirmative defenses, if subsequent investigation so warrants.

4 PRAYER

5 WHEREFORE, Defendant, AD ART, INC., by and through his undersigned counsel,
6 prays this Honorable Court grant the following relief:

7 1. That Plaintiff take nothing by virtue of this action and that the same be dismissed
8 with prejudice;

9 2. That in the alternative, Plaintiff be awarded only such monies as constitute
10 reasonable compensation for those injuries and damages proved by admissible evidence to have
11 been directly and proximately caused by the incident in question, same subject to Plaintiff's
12 independent duty to mitigate damages;

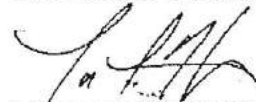
13 3. For attorney's fees and costs incurred in defending this action; and,

14 4. For such other and further relief as the Court may deem just, equitable and
15 proper.

16 DATED this 16 day of November, 2015.

17 Respectfully submitted,

18 RAY LEGO & ASSOCIATES

19 

20 TIMOTHY F. HUNTER, ESQ.

21 Nevada Bar No. 010622

22 7450 Arroyo Crossing Parkway, Suite 250

23 Las Vegas, NV 89113

24 Attorney for Defendant, AD ART, INC.

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

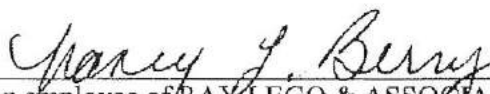
CERTIFICATE OF SERVICE

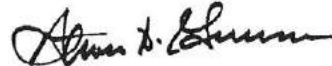
Pursuant to NRCP 5(b), I hereby certify that I am an employee of RAY LEGO & ASSOCIATES and that on the 17th day of November, 2015 I caused the foregoing **DEFENDANT, AD ART, INC.'S , ANSWER TO PLAINTIFF'S COMPLAINT** to be served as follows:

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

To the attorneys listed below:

William R. Brenske, Esq., #1806 Ryan D. Krametbauer, Esq., #12800 LAW OFFICE OF WILLIAM R. BRENSKE 630 S. Third Street Las Vegas, NV 89101	P: 702/385-3300 F: 702/385-3823 wbrenske@hotmail.com Attorneys for Plaintiff, CHARLES SCHUELER
Leann Sanders, Esq., #000390 Edward Silverman, Esq., #13584 ALVERSON, TAYLOR, MORTENSEN & SANDERS 7401 W. Charleston Blvd. Las Vegas, NV 89117	P: 702/384-7000 F: 702/385-7000 esilverman@alversontaylor.com Attorneys for Defendant, 3A COMPOSITES USA INC., f/k/a ALUCOBOND TECHNOLOGIES CORPORATION
Riley A. Clayton, Esq., #005260 HALL JAFFE & CLAYTON 7425 Peak Drive Las Vegas, NV 89128	P: 702/316-4111 F: 702/316-4114 relayton@lawhjc.com Attorneys for Defendant, MGM GRAND HOTEL, LLC d/b/a MGM GRAND; MGM RESORTS INTERNATIONAL d/b/a MGM GRAND


An employee of RAY LEGO & ASSOCIATES



CLERK OF THE COURT

1 **MSJ**
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,

CASE NO.: A-15-722391-C

15 Plaintiff,

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 COROPORATION; DOES 1 - 25; ROE
26 CORPORATIONS 1 - 25; inclusive,

27 Defendants.

28 **DEFENDANT AD ART, INC.'S MOTION FOR SUMMARY JUDGMENT**

COMES NOW Defendant, Ad Art, Inc.'s ("Ad Art"), by and through their counsel, Timothy F. Hunter, Esq. of Ray Lego & Associates. For the reasons set forth herein, Ad Art respectfully requests that this court grant summary judgment in its favor on the following grounds: (1) as an indisputable factual matter, defendant Ad Art has in no way participated in the design, manufacture, installation or maintenance of the MGM Pylon sign at issue in this action, and (2) as a matter of law, defendant Ad Art cannot be held liable as a successor to the entity that in fact performed certain services on the MGM Pylon.

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1 **NOTICE OF MOTION**

2 TO: ALL PARTIES AND COUNSEL OF RECORD

3 PLEASE TAKE NOTICE that the undersigned will bring the foregoing Motion For
4 Summary Judgment on for hearing in **Department XVII** on the 22 day of Jun. 2016
5 ~~2015~~, at the hour of 8 : 30 A.M., or as soon thereafter as counsel can be heard.

6 DATED this 20th day of May, 2016.

7 RAY LEGO & ASSOCIATES

8 

9
10 TIMOTHY F. HUNTER, ESQ.
11 Nevada Bar No. 10622
12 7450 Arroyo Crossing Parkway, Suite 250
13 Las Vegas, NV 89113
14 Attorney for Defendant,
15 Ad Art, Inc.

16 **I. STATEMENT OF FACTS**

17 This is a products and premises liability claim brought by Plaintiff, Charles Schueler.
18 Plaintiff alleged that “[d]efendant, AD ART, INC. is a California Corporation that was licensed
19 to do business and actually doing business in Clark County, Nevada at all times relevant to this
20 Complaint.” See, Plaintiff’s Complaint, ¶ 4. Plaintiff further alleged that “Defendant, AD
21 ART, INC., DOES 1-25 and/or ROE CORPORATIONS 1-25 designed, manufactured,
22 constructed, assembled, sold, and/or distributed the MGM pylon sign wherein Plaintiff
23 CHARLES SCHUELER was working on July 31, 2013. *Id.* ¶ 26.

24 The MGM pylon sign that is outside of MGM Grand Hotel and Casino in Las Vegas,
25 Nevada was designed and/or erected in or about 1993 or 1994. See, Exhibit “A” – Affidavit of
26 Terry J. Long; and Exhibit “B” – Sign Permit. The entity involved in the original design and
27 construction of the MGM Pylon was not defendant Ad Art, but rather a separate entity named
28 Ad Art Electronic Sign Corporation (“Ad Art ESC”). See, Exhibit “A.” In or about 1998, Ad
Art-ESC was purchased by, and thereafter became a wholly-owned subsidiary of La-Man, Inc.
 (“La Man”), a public company listed on the NASDAQ. Shortly after its acquisition of Ad Art
 ESC, La-Man changed its name to Display Technologies, Inc. (“DTEK”). *Id.* In 2001, DTEK
 ceased all business operations and liquidated the assets of Ad Art ESC. *Id.* In connection with