

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:	
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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 ROSEGRANS 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 KIEREJCZYK			
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:	20070810422-38	# 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:	20120200384-00	# of Pages:	2
File Date:	3/22/2012	Effective Date:	
(No notes for this action)			
Action Type:	Annual List		
Document Number:	20130055286-03	# 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:	20140621046-58	# of Pages:	2
File Date:	12/23/2014	Effective Date:	
(No notes for this action)			

EXHIBIT “F”

DISTRICT COURT
CLARK COUNTY, NEVADA

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CHARLES SCHUELER,

Plaintiff,

vs.

CASE NO. A-15-722391-C

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

Defendants.

DEPOSITION OF TERRY J. LONG

Thursday, April 27, 2017

Reported by:
JOAN B. MERTEN
CSR No. 6922

Job No.: 378066

<p>Page 2</p> <p>1 BE IT REMEMBERED that, pursuant to Notice of 2 Deposition, and on Thursday, April 27, 2017, commencing at 3 the hour of 2:14 p.m., at REGUS - SAN FRANCISCO SHOWPLACE 4 SQUARE, 350 Rhode Island Street, South Building, Suite 5 240, San Francisco, California 94103, before me, 6 JOAN B. MERTEN, Certified Shorthand Reporter authorized 7 to administer oaths, there personally appeared 8 TERRY J. LONG, 9 called as a witness by the Plaintiff, who being by me 10 first duly sworn, was thereupon examined and testified as 11 set forth. 12 13 14 15 16 17 18 19 20 21 22 23 24 25</p>	<p>Page 4</p> <p>EXAMINATION INDEX</p> <p>1 2 3 WITNESS: Terry J. Long PAGE 4 Examination by Krametbauer 1, 80 5 Examination by Mr. Silverman 74, 83 6 7 ---c0o--- 8 9 EXHIBITS 10 For the Plaintiff PAGE 11 Exhibit 1 One-page document entitled Clark 5 County Building Department PERMIT, 12 ISSUE DATE 10/05/93" 13 Exhibit 2 Three-page document entitled 5 "AFFIDAVIT OF TERRY J. LONG," 14 Bates Nos. AD000150 - AD000152 15 Exhibit 3 Forty-four-page document entitled 89 "DEFENDANT 3A COMPOSITES USA INC., 16 E/k/a ALLCOBOND TECHNOLOGIES 17 CORPORATION'S EARLY CASE CONFERENCE 18 DISCLOSURE STATEMENT" 19 20 ---c0o--- 21 22 23 24 25</p>
<p>Page 3</p> <p>1 2 APPEARANCES 3 For the Plaintiff: BRENSKE & ANDREEVSKI 3800 Howard Hughes Parkway 4 Suite 500 Las Vegas, Nevada 89169 5 (702) 385-3300 6 BY: RYAN D. KRAMETBAUER, ESQ. (Appearing Telephonically) 7 rkrametbauer@hotmail.com 8 9 For the Deponent: AD ART 150 Executive Park Boulevard 10 San Francisco, California 94134 (415) 869-6466 11 BY: DANA LONG, Vice President and General Counsel 12 dana.long@adart.com 13 14 For the Defendant 3A Composites USA Inc., a/k/a Allcobond Technologies Corporation: 15 ALMERSON, TAYLOR, MORTENSEN & SANDERS 7401 West Charleston Boulevard 16 Las Vegas, Nevada 89117 (702) 385-7000 17 BY: EDWARD SILVERMAN, ESQ. (Appearing Telephonically) 18 esilverman@alversontaylor.com 19 20 For the Defendant Ad Art, Inc.: 21 RAY LEGO & ASSOCIATES 7450 Arroya Crossing Parkway 22 Suite 250 Las Vegas, Nevada 89113 23 (702) 479-4361 24 BY: TIMOTHY F. HUNTER, ESQ. (Appearing Telephonically) 25 TFHUNTER@travelers.com</p>	<p>Page 5</p> <p>1 (A one-page document entitled Clark County 2 Building Department PERMIT, ISSUE DATE 10/05/93," 3 was marked for identification as Plaintiff's 4 Exhibit 1.) 5 (A three-page document entitled "AFFIDAVIT OF 6 TERRY J. LONG," Bates Nos. AD000150 - AD000152, 7 was marked for identification as Plaintiff's 8 Exhibit 2.) 9 10 ---c0o--- 11 TERRY J. LONG, 12 sworn by the Court Reporter, testified as follows: 13 EXAMINATION BY MR. KRAMETBAUER 14 MR. KRAMETBAUER: Q. Mr. Long, my name is Ryan 15 Krametbauer. I represent the plaintiff, Charles Schueler, 16 in this case. I'm with the law firm of Brenske & 17 Andreevski here in Las Vegas, Nevada. Okay? 18 Can I get you to please state and spell your name 19 for the record. 20 A. Terry, T-e-r-r-y, Long, L-o-n-g. 21 Q. Mr. Long, have you ever had your deposition taken 22 before? 23 A. Yes. 24 Q. When was the last time you had it taken? 25 A. Maybe four or five years ago. Q. Okay. I'm just going to go real briefly through</p>

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1 the ground rules of the deposition process.
 2 The lawyers like to call them the admonitions,
 3 but essentially it's just a long list of rules that we go
 4 over at the beginning of the depo. Sometimes depositions
 5 can turn into conversations between me, you and counsel,
 6 but it's important to note that we need to not talk over
 7 one another, and this is so that the court reporter
 8 doesn't get mad at us and also so we can have a clear
 9 record.
 10 Okay?
 11 A. Okay.
 12 Q. There's going to be times when either your
 13 attorney or the attorneys for the other parties that are
 14 on the line want to lodge an objection to one of my
 15 questions. Go ahead and let them make their objection and
 16 then answer my question. Okay? The only time you don't
 17 have to answer one of my questions is if you are
 18 specifically instructed by your lawyer not to answer.
 19 Okay?
 20 A. Yes.
 21 Q. You're doing great so far. But what I want to
 22 make you aware of is because we're over the telephone and
 23 we've -- we're making a written transcript of everything
 24 that's being said here by the court reporter, please avoid
 25 answers like uh-huh and huh-uh because they just don't

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1 make a clear record. Okay? So do me a favor and use
 2 yes-or-no type answers and, of course, elaborate.
 3 Okay?
 4 A. Yes.
 5 Q. What was that?
 6 A. Yes.
 7 Q. Thank you.
 8 Sometimes the phone cuts out, so if you can do me
 9 a favor and just speak up, I would greatly appreciate
 10 that.
 11 A. Okay.
 12 Q. I want to make sure that you understand my
 13 questions here today. So if at any time you can't hear me
 14 because the phone cuts out or you just don't understand my
 15 question, please ask me to either rephrase or repeat the
 16 question. Because if you answer one of my questions, I'm
 17 going to assume that you understood the question; is that
 18 fair?
 19 A. Yes.
 20 Q. Do you understand that you're under oath?
 21 A. Yes.
 22 Q. And that that oath carries the same penalties and
 23 weight of perjury as if you were before a judge and jury.
 24 Do you understand that?
 25 A. Okay.

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1 Q. Excuse me?
 2 A. Yes.
 3 Q. At the conclusion of the deposition, you'll be
 4 given an opportunity to what we call read and sign your
 5 deposition transcript. At that point in time, you can
 6 make changes to your testimony. However, I'll advise you
 7 that if you make substantive changes -- and like in the
 8 plaintiff's personal injury world we use the example of
 9 changing, you know, a green light in an auto accident to a
 10 red light when you're reviewing your deposition
 11 transcript, that is something substantive that I can use
 12 to impeach your testimony at the time of trial.
 13 Do you understand that?
 14 A. Yes.
 15 Q. Feel free to take a break at any time, you know,
 16 whether or not you're going to go to the bathroom, get a
 17 drink of water, I don't care. It's your deposition. I
 18 want to make sure you're comfortable. If there's a
 19 question pending, please answer my question and we can go
 20 off the record and you can take your time.
 21 Okay?
 22 A. Okay.
 23 Q. Mr. Long, is there -- have you reviewed any
 24 documents in preparation for your deposition today?
 25 A. No.

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1 Q. Did you review your affidavit prior to today in
 2 preparation for your deposition?
 3 A. No.
 4 Q. Did you review any of the deposition testimony in
 5 this case?
 6 A. No.
 7 Q. Have you reviewed any of the records with regard
 8 to the MGM sign or the MGM pylon, which is the subject of
 9 this litigation?
 10 A. I don't have any records available, no.
 11 Q. Other than possibly having a conversation with
 12 your lawyers in this matter or the lawyers for Ad Art,
 13 Inc., did you talk to anybody else regarding your
 14 deposition today?
 15 A. Not really, no. I mean, you know, with Doug.
 16 Doug and I both know we had depositions today, but no real
 17 discussion.
 18 Q. What did you and Doug talk about?
 19 A. Just the timing of the depositions.
 20 Q. Okay.
 21 So you didn't talk to Doug about anything
 22 substantive about this case, you were just talking to Doug
 23 about the timing of the depositions?
 24 A. Correct.
 25 Q. At any point in time, have you talked to Doug

<p style="text-align: right;">Page 10</p> <p>1 about this case?</p> <p>2 MR. LONG: Without counsel.</p> <p>3 MR. HUNTER: I'm just going to object to the</p> <p>4 extent it calls for attorney-client privileged</p> <p>5 communications.</p> <p>6 THE REPORTER: I'm sorry, who said that?</p> <p>7 MR. HUNTER: Tim Hunter.</p> <p>8 THE REPORTER: Can you identify yourselves when</p> <p>9 you speak, please? Thank you.</p> <p>10 MR. KRAMETBAUER: Q. And Mr. Long, I want to</p> <p>11 make something very clear. I'm not asking you to repeat</p> <p>12 anything that you talked about with your lawyers. I'm</p> <p>13 simply asking you what, if anything, you and Doug ever</p> <p>14 talked about regarding this case.</p> <p>15 MR. HUNTER: I'm going to instruct him not to</p> <p>16 answer -- this is Tim Hunter -- if any of the</p> <p>17 conversations were had with Doug while I was present and</p> <p>18 Dana Long was present.</p> <p>19 MR. KRAMETBAUER: That's fair enough.</p> <p>20 Q. So other than conversations where counsel was</p> <p>21 present, what did you and Doug talk about?</p> <p>22 A. We haven't discussed or talked about this case.</p> <p>23 Q. Anybody else that you talked to about this case</p> <p>24 other than Doug?</p> <p>25 A. No.</p>	<p style="text-align: right;">Page 12</p> <p>1 MR. LONG: Hang on. I'm going to object for a</p> <p>2 second.</p> <p>3 Can you read back his first answer to that</p> <p>4 question. He said it right the first time, but it got</p> <p>5 messed up in the translation.</p> <p>6 (The record was read by the reporter as follows:</p> <p>7 "Question: What was the name of that company?</p> <p>8 "Answer: Basically Ad Art Electronic Sign</p> <p>9 Corporation. When it was a division of the public</p> <p>10 company.")</p> <p>11 MR. LONG: Thank you.</p> <p>12 MR. KRAMETBAUER: Q. Okay. So let's just back</p> <p>13 on.</p> <p>14 So you're currently the CEO of Ad Art, Inc.; is</p> <p>15 that correct?</p> <p>16 A. Yes.</p> <p>17 Q. And you have ownership in that company; is that</p> <p>18 correct?</p> <p>19 A. Ownership in Ad Art, Inc., yes.</p> <p>20 Q. The company that you're referring to as Ad Art,</p> <p>21 Inc. that you're CEO of and have ownership in, when was</p> <p>22 that company created?</p> <p>23 A. April 1st, 2003.</p> <p>24 Q. And then before you became the CEO of Ad Art,</p> <p>25 Inc., you worked at a company called Arrow Sign Company,</p>
<p style="text-align: right;">Page 11</p> <p>1 Q. Mr. Long, what is your current job?</p> <p>2 A. Currently with Ad Art, Inc.</p> <p>3 Q. Yes. What's your job with Ad Art, Inc.?</p> <p>4 A. The CEO.</p> <p>5 Q. And before becoming the CEO of Ad Art, Inc., what</p> <p>6 were you doing?</p> <p>7 A. You mean the job preceding Ad Art, Inc.?</p> <p>8 Q. Yeah.</p> <p>9 A. I was with Arrow Sign Company.</p> <p>10 Q. And what were you doing for Arrow Sign Company?</p> <p>11 A. Running their sales.</p> <p>12 Q. Did you have an ownership interest in Arrow Sign</p> <p>13 Company?</p> <p>14 A. No.</p> <p>15 Q. And before Arrow Sign Company, who were you</p> <p>16 working for or working as?</p> <p>17 A. Would have been the old Ad Art.</p> <p>18 Q. What was the name of that company?</p> <p>19 A. Basically Ad Art Electronic Sign Corporation.</p> <p>20 When it was a division of the public company.</p> <p>21 Q. Ad Art Electric Sign Corporation, is that the</p> <p>22 name of the company?</p> <p>23 A. Yes.</p> <p>24 Q. And what was your position with Ad Art Electric</p> <p>25 Sign Company?</p>	<p style="text-align: right;">Page 13</p> <p>1 correct?</p> <p>2 A. Yes.</p> <p>3 Q. And you were running sales for Arrow Sign</p> <p>4 Company?</p> <p>5 A. Yes.</p> <p>6 Q. How long were you working at Arrow Sign Company?</p> <p>7 A. Roughly two years. A little less than two years.</p> <p>8 Q. So from 2001 to 2003?</p> <p>9 A. Yes. Yeah, maybe from -- maybe April or May -- I</p> <p>10 think May of 2001 to March or February, March 2003. It's</p> <p>11 a little less than two years.</p> <p>12 Q. And it's my understanding from your testimony was</p> <p>13 that you were just running sales for Arrow Sign Company,</p> <p>14 you didn't have an ownership interest, correct?</p> <p>15 A. Yes, correct.</p> <p>16 Q. And then prior to your position in running sales</p> <p>17 for the Arrow Sign Company, you had a job with what you</p> <p>18 refer to as the old Ad Art?</p> <p>19 A. Old Ad Art, yes.</p> <p>20 Q. Which you're referring to Ad Art Electric Sign</p> <p>21 Company; is that correct?</p> <p>22 MR. LONG: Objection. Mischaracterizes his</p> <p>23 testimony.</p> <p>24 MR. KRAMETBAUER: Q. Feel free to correct me if</p> <p>25 I'm wrong.</p>

<p style="text-align: right;">Page 14</p> <p>1 MR. LONG: Ad Art Electronic Sign Corporation. I 2 had her read the answer back. 3 MR. KRAMETBAUER: What did I say? 4 MR. LONG: You said "Ad Art Electric Sign 5 Company." 6 MR. KRAMETBAUER: Okay. I apologize. 7 Ad Art Electric Sign Company. 8 MR. LONG: No. 9 MR. KRAMETBAUER: Incorporated. 10 MR. LONG: No. Try again. 11 MR. KRAMETBAUER: Ad Art Electric Sign 12 Corporation. 13 MR. LONG: Ehhh. Ad Art Electronic Sign 14 Corporation was the original answer to the question. 15 MR. KRAMETBAUER: All right. Let's go off the 16 record real quick here. 17 MR. LONG: Are you off the record? 18 THE REPORTER: Yes. 19 MR. LONG: All right. We're off. 20 (Discussion off the record.) 21 MR. KRAMETBAUER: All right. Let's go on. 22 Q. So Mr. Long, the company that you worked for 23 prior to running sales at Arrow Sign Company was Ad Art 24 Electronic Sign Corporation; is that correct? 25 A. Yes. The company I worked for had several names,</p>	<p style="text-align: right;">Page 16</p> <p>1 from 1976 until December of 2000. 2 Q. Okay. 3 So back in 1968 to 1970, did you own any interest 4 in Ad Art Electric -- excuse me, Ad Art Electronic Sign 5 Corporation? 6 A. The name wasn't that back then, but let's just 7 call it Ad Art the old company. And no, I didn't own 8 anything from 1968 to 1970. 9 Q. I can't refer to it as that because I've been 10 corrected by your lawyer multiple times. So I want to 11 make sure we're very clear that we're talking about the 12 right corporation. Okay? 13 So back in 1968 to 1970, what was the company 14 that you were working for that you're referring to as 15 Ad Art? 16 A. The company that I worked for was Ad Art, and I 17 don't know the -- I don't know the legal name of the 18 company then, but the company's name that I worked for was 19 Ad Art. 20 Q. Did you have any ownership interest in that 21 company in 1968 to 1970? 22 A. No. 23 Q. Who owned that company back then? 24 A. There were three owners. 25 Q. What are their names?</p>
<p style="text-align: right;">Page 15</p> <p>1 but one of them was Ad Art Electronic Sign Corporation. 2 Q. What were the other names of Ad Art Electronic 3 Sign Corporation? 4 A. The old company had many names for the years I 5 worked there and I don't remember them all, frankly. 6 Q. Do you remember any of them? 7 A. Basically Ad Art. You know, I was in sales with 8 the company, so not on the naming side. 9 Q. What were the other names it was referred to as? 10 A. It was primarily referred to as Ad Art. 11 Q. Anything else? 12 A. You know, it had various legal names throughout 13 the years, and I don't remember all of the names. 14 Q. Do you remember any of the names? 15 A. No, not sufficiently to state them and be certain 16 that I'm stating them correctly. 17 Q. Okay. 18 When you worked for Ad Art Electronic Sign 19 Corporation, did you own a part of that company? 20 MR. LONG: Objection. Vague as to time. 21 THE WITNESS: Yes. Give me the years you're 22 talking about. 23 MR. KRAMETBAUER: Q. How long were you with Ad 24 Art Electric Sign Corporation. 25 A. I was with Ad Art from 1968 to 1970. And then</p>	<p style="text-align: right;">Page 17</p> <p>1 A. Lou Papais, John Papais and Dan O'Leary. 2 Q. And then from 1970 to 1976, what were you doing? 3 A. I was in the sign business from 1970 to 1976. 4 Q. And who were you working for during that time? 5 A. Coast Signs and QRS Signs. 6 Q. QRS Signs? 7 A. Yes, QRS Signs. 8 Q. You worked for two companies, Coast Signs and QRS 9 Signs? 10 A. Yes. 11 Q. Did you work for both those companies at the same 12 time, or was it one for a couple of years and then the 13 other one for a couple of years? 14 A. Coast Signs from '70 to '72, and then QRS from 15 '72 to '76. 16 Q. I just want to back up a little bit. 17 When you worked for the company that you referred 18 to as Ad Art from 1968 to 1970 and that company was owned 19 by Lou Papais, John Papais and Dan O'Leary, what was your 20 job from 1968 to 1970? 21 A. I was in sales in the San Jose office. 22 Q. And then you moved from working at Ad Art in 1970 23 to start working at Coast Signs from 1970 to 1972; is that 24 correct? 25 A. Yes, '70 to '76, really.</p>

<p style="text-align: right;">Page 18</p> <p>1 Q. Well, I thought you worked at Coast Signs from</p> <p>2 '70 to '72 and QRS Signs from '72 to '76.</p> <p>3 A. In 1970 I was the prime purchaser -- the prime</p> <p>4 person who bought Coast Signs. And in '72 bought QRS. So</p> <p>5 from '70 to '76 it was Coast QRS.</p> <p>6 Q. Okay.</p> <p>7 What did you do for Coast Signs?</p> <p>8 A. Sales. And ran the company.</p> <p>9 Q. Okay.</p> <p>10 What does that entail?</p> <p>11 A. I'm sorry?</p> <p>12 Q. What does that entail? As part of your job</p> <p>13 description, what were you doing from day to day?</p> <p>14 A. Managing the business and selling.</p> <p>15 Q. And where was Coast Signs located?</p> <p>16 A. Redwood City, California.</p> <p>17 Q. And then did you leave Coast Signs to work with</p> <p>18 QRS or did they merge?</p> <p>19 A. We bought QRS in 1972. QRS of San Francisco in</p> <p>20 1972, we bought that, and changed our name to Coast QRS.</p> <p>21 Q. Did you own Coast Signs or were you a part owner</p> <p>22 in Coast Signs?</p> <p>23 A. Yes, I owned Coast Signs.</p> <p>24 Q. Were you the sole owner?</p> <p>25 A. No, I had one partner.</p>	<p style="text-align: right;">Page 20</p> <p>1 you ceased operations in 1976?</p> <p>2 A. Perhaps 30.</p> <p>3 Q. Why did you close the business?</p> <p>4 A. We -- in 1972 -- in '73 and '74 when essentially</p> <p>5 the economic crisis hit this area, the accounts we had</p> <p>6 stopped expanding, so we stopped making money and decided</p> <p>7 to close the business.</p> <p>8 Q. Did anybody purchase Coast QRS --</p> <p>9 A. No.</p> <p>10 Q. -- or did it just dissolve?</p> <p>11 A. Dissolved.</p> <p>12 Q. Did you sell any of your equipment?</p> <p>13 A. Yes.</p> <p>14 Q. Who was the equipment sold to?</p> <p>15 A. I don't recall.</p> <p>16 Q. How about your clients, where did your clients</p> <p>17 go?</p> <p>18 A. I would think that -- well, most of the clients</p> <p>19 at that time had stopped expanding, so I don't know where</p> <p>20 they went.</p> <p>21 Q. All right.</p> <p>22 Let ask you this: When you stopped operations</p> <p>23 for Coast QRS in 1976, did those clients then become</p> <p>24 clients of Ad Art?</p> <p>25 A. Some may have, but, you know, not any kind of</p>
<p style="text-align: right;">Page 19</p> <p>1 Q. What was your partner's name?</p> <p>2 A. Tom Cooper.</p> <p>3 Q. Is Mr. Cooper still alive?</p> <p>4 A. No.</p> <p>5 Q. And then Coast Signs bought QRS Signs to then</p> <p>6 become Coast QRS; is that correct?</p> <p>7 A. Yes.</p> <p>8 Q. And did you own Coast QRS?</p> <p>9 A. I was a partner -- primary partner in Coast QRS.</p> <p>10 Q. Who was your other partner?</p> <p>11 A. Floyd Troyer.</p> <p>12 Q. Can you spell Lloyd's last name for me?</p> <p>13 A. T-r-o-y-e-r.</p> <p>14 Q. Is Floyd Troyer still alive?</p> <p>15 A. No.</p> <p>16 Q. So after 1976, what did you do?</p> <p>17 A. I went back to work for Ad Art and closed down</p> <p>18 Coast QRS.</p> <p>19 Q. So you closed Coast QRS in 1976?</p> <p>20 A. Yes.</p> <p>21 Q. Did you file bankruptcy? Did you just liquidate</p> <p>22 it? What happened?</p> <p>23 A. Essentially liquidated it. I guess that would be</p> <p>24 the proper answer. No, we did not file bankruptcy.</p> <p>25 Q. How many employees did you have at Coast QRS when</p>	<p style="text-align: right;">Page 21</p> <p>1 primary account.</p> <p>2 Q. Can you give me an estimate of how many accounts</p> <p>3 went from Coast QRS when it closed to Ad Art?</p> <p>4 A. Not really. I don't recall.</p> <p>5 Q. So when you closed Coast QRS in '76, your next</p> <p>6 job was with Ad Art; is that correct?</p> <p>7 A. Yes. Yes.</p> <p>8 Q. And do you know the legal name of Ad Art in 1976?</p> <p>9 A. To me again, Ad Art. But I don't. I don't</p> <p>10 recall the legal name. But it was Ad Art, old Ad Art.</p> <p>11 Q. And when they hired you, what was your position</p> <p>12 in 1976?</p> <p>13 A. Sales in the Emeryville office.</p> <p>14 Q. In the Emeryville office?</p> <p>15 A. Yes.</p> <p>16 Q. And then after you were in charge of sales in the</p> <p>17 Emeryville office, what did you do?</p> <p>18 A. Meaning -- I mean, I basically was in sales in</p> <p>19 the Emeryville office and worked account work.</p> <p>20 Q. I mean, let's do this: So from 1976 onward, what</p> <p>21 were your jobs at Ad Art?</p> <p>22 A. I was in sales at Ad Art from 1976 to 1980. And</p> <p>23 then in 1980 I went to Saudi Arabia to work a project in</p> <p>24 Saudi Arabia at the airport in Riyadh for Ad Art. And</p> <p>25 then came back and worked in sales for Ad Art, and then</p>

<p style="text-align: right;">Page 22</p> <p>1 actually went to Saudi Arabia and lived in Saudi Arabia</p> <p>2 for a couple of years, '84 to '86.</p> <p>3 Q. So you from 1976 to 1980 you worked in sales for</p> <p>4 Ad Art in the Emeryville office; is that correct?</p> <p>5 A. Yes.</p> <p>6 Q. And then in 1980 you went to Saudi Arabia for an</p> <p>7 Ad Art project?</p> <p>8 A. Yes. In 1976 the Emeryville office, and they</p> <p>9 also bought Federal Signs and moved the Emeryville office</p> <p>10 to the Oakland office, so it was Emeryville/Oakland, so...</p> <p>11 Q. I appreciate the clarification.</p> <p>12 How long were you in Saudi Arabia building the</p> <p>13 project on behalf of Ad Art?</p> <p>14 A. How long did I live there or how long did I --</p> <p>15 Q. Yeah. So you said you went to Saudi Arabia</p> <p>16 specifically for a project for Ad Art. What was that</p> <p>17 again?</p> <p>18 A. I went to Saudi Arabia for the project in Saudi</p> <p>19 Arabia for Ad Art. It was the airport in Riyadh, Saudi</p> <p>20 Arabia.</p> <p>21 Q. Airport in Riyadh. Got it. I apologize.</p> <p>22 And how long did it take Ad Art to conduct the</p> <p>23 project in Saudi Arabia in Riyadh?</p> <p>24 A. 1980 to 1986.</p> <p>25 Q. So it was a six-year project?</p>	<p style="text-align: right;">Page 24</p> <p>1 Q. So in 1986 you acquired ownership in Ad Art; is</p> <p>2 that correct?</p> <p>3 A. Yes. Old Ad Art, yes.</p> <p>4 Q. What was your ownership interest in 1986?</p> <p>5 A. What do you mean "interest"?</p> <p>6 Q. How much of the company did you own, if you know?</p> <p>7 A. 20%.</p> <p>8 Q. Did that number ever increase as the years went</p> <p>9 on to 2000?</p> <p>10 A. No.</p> <p>11 Q. So up until 2000, you still owned 20% of Ad Art?</p> <p>12 A. Well, no. Actually, Ad Art sold in '98, roughly</p> <p>13 '98.</p> <p>14 Q. Okay.</p> <p>15 So in 1998, roughly, who was Ad Art sold to?</p> <p>16 A. In '98 it was sold to a public corporation named</p> <p>17 La-Man.</p> <p>18 Q. And did you have any ownership interest in La-Man</p> <p>19 after the sale?</p> <p>20 A. I had shares, some shares of stock, yes.</p> <p>21 Q. How much? How many shares of stock in La-Man did</p> <p>22 you own?</p> <p>23 A. I don't recall.</p> <p>24 Q. Were there any shares -- was Ad Art its own</p> <p>25 corporation with public shares or was it only La-Man?</p>
<p style="text-align: right;">Page 23</p> <p>1 A. Essentially, yes.</p> <p>2 Q. So it sounded to me -- I'm not trying to trick</p> <p>3 you or nothing. I'm really trying to get a timeline here.</p> <p>4 So from 1980, did you ever -- to 1986, did you</p> <p>5 ever come back to the states and work for Ad Art in the</p> <p>6 states for a period of time, or were you solely in Saudi</p> <p>7 Arabia from 1980 to 1986?</p> <p>8 A. From '80 to '84 I went back and forth. From '84</p> <p>9 to '86 I was in Saudi Arabia.</p> <p>10 Q. Okay. Thank you.</p> <p>11 And then what did you do after 1986?</p> <p>12 A. Came back to the office in Oakland for Ad Art.</p> <p>13 Q. And what was your job then, still in sales?</p> <p>14 A. Yes.</p> <p>15 Q. And how long did you stay in -- from 1986 onward,</p> <p>16 how long did you stay in sales in Oakland?</p> <p>17 A. From '86 -- stayed in sales from '86 until 2000.</p> <p>18 Q. Did you ever acquire ownership in Ad Art from '86</p> <p>19 to 2000?</p> <p>20 A. Yes.</p> <p>21 Q. When?</p> <p>22 A. In '86.</p> <p>23 Q. So in -- did you ever acquire ownership prior to</p> <p>24 '86?</p> <p>25 A. No.</p>	<p style="text-align: right;">Page 25</p> <p>1 A. Was Ad Art sold --</p> <p>2 Q. Let me ask you this: Did you own shares of</p> <p>3 La-Man and, at the same time, still have an interest in</p> <p>4 Ad Art?</p> <p>5 A. No, La-Man bought Ad Art.</p> <p>6 Q. Okay.</p> <p>7 In roughly 1998?</p> <p>8 A. Yes.</p> <p>9 Q. And after the sale, you owned shares of La-Man;</p> <p>10 is that correct?</p> <p>11 A. Correct.</p> <p>12 Q. You don't recall how many?</p> <p>13 A. I don't recall how many.</p> <p>14 Q. Do you know where you'd be able to find that</p> <p>15 information?</p> <p>16 A. I mean, I might have that information somewhere,</p> <p>17 but I don't -- you know, in the end it was worthless, so</p> <p>18 no, I don't know what happened to those shares.</p> <p>19 Q. So how long did La-Man own Ad Art?</p> <p>20 A. La-Man became Display Technologies, changed its</p> <p>21 name to Display Technologies.</p> <p>22 Q. So La-Man wasn't sold to Display Technologies, it</p> <p>23 became -- it changed its name to Display Technologies?</p> <p>24 A. Changed its name to Display Technologies. And</p> <p>25 Display Technologies owned Ad Art until it dissolved.</p>

<p style="text-align: right;">Page 26</p> <p>1 Q. Is it fair to say that when La-Man purchased 2 Ad Art, La-Man was the parent corporation of Ad Art or did 3 Ad Art become La-Man because it purchased it? 4 A. La-Man was a parent corporation of Ad Art. 5 La-Man was a public company that owned -- 6 Q. Okay. 7 And then when did La-Man change its name to 8 Display Technologies? 9 A. Maybe '78, '79 -- I mean, '88, '89, somewhere in 10 there. 11 Q. Did you have a hand in the name change? 12 A. No. Not me personally, no. 13 Q. Whose decision was it to make the name change? 14 A. It was the chairman of La-Man, and some of the 15 board of directors of La-Man that made the name change. 16 Q. In 1998 when La-Man purchased Ad Art, Ad Art 17 still operated under the name of Ad Art; is that correct? 18 A. Correct. 19 Q. Now, I just want to back up here. And I 20 apologize, but that's just the way my mind works. 21 But back in 1986, you had acquired 20% ownership 22 interest in Ad Art; is that correct? 23 A. Yes. 24 Q. Who else -- or who were your partners at that 25 time?</p>	<p style="text-align: right;">Page 28</p> <p>1 Q. You were president of Ad Art before the sale, and 2 you were president of Ad Art after the sale and you also 3 owned shares of stock in La-Man, the parent corporation, 4 is that correct? 5 A. Yes. 6 Q. Do you know if Dan O'Leary, even though he 7 retired, owned shares of stock in La-Man? 8 A. He did not. 9 Q. And Lou being on the board of directors, do you 10 know if he owned any shares of stock in La-Man? 11 A. Yes, he did. 12 Q. Do you know how many shares? 13 A. No. 14 Q. Then in about 1998, 1999 La-Man makes the 15 decision to change its name to Display Technologies; is 16 that correct? 17 A. Yes. 18 Q. And Ad Art is still operating as a subsidiary of 19 that corporation; is that correct? 20 A. Yes. Ad Art was owned by that corporation. 21 Q. And you were still president of Ad Art even 22 though La-Man had changed its name to Display 23 Technologies, correct? 24 A. Yes. 25 Q. What happened after 1999 -- or, excuse me, 1998</p>
<p style="text-align: right;">Page 27</p> <p>1 A. Lou Papais, John Papais and Dan O'Leary. 2 Q. And when La-Man purchased Ad Art, where did Lou 3 Papais, John Papais and Dan O'Leary go? Did they go along 4 with it? 5 MR. LONG: Objection. Vague. 6 MR. KRAMETBAUER: Q. Go ahead and answer. 7 A. Dan O'Leary retired. John Papais had passed 8 away. And Lou Papais stayed on as a consultant and on the 9 board of directors. 10 Q. Stayed on the board of directors of Ad Art or on 11 the board of directors of La-Man? 12 A. Let me restate that. Actually, I think he was on 13 the board of directors. On the board of directors of 14 La-Man. 15 Q. Okay. 16 So when Ad Art was sold in 1998 to La-Man, Lou 17 stayed on and was a consultant and on the board of 18 directors of La-Man, John had passed away and Dan O'Leary 19 retired, correct? 20 A. Yes. 21 Q. What was your position? 22 A. In Ad Art? 23 Q. Yeah. In 1998 when La-Man purchased Ad Art, what 24 became your position after the sale? 25 A. I was president before and after the sale.</p>	<p style="text-align: right;">Page 29</p> <p>1 or 1999 when the name change was made? Take me forward 2 now. What was your job at Ad Art? 3 A. President. 4 Q. After the name change to Display Technologies, 5 you're still president of Ad Art? Do you ever have 6 another position at Ad Art other than president? 7 A. In 1998, 1999, no other position, no. 8 Q. Going forward to 2000. 9 A. I was president in 2000 until August or 10 September. 11 Q. Of 2000? 12 A. Yes. 13 Q. Okay. 14 And during the time that Display Technologies was 15 the parent corporation of Ad Art where you were president, 16 did your -- did the number of shares that you owned in 17 Display Technologies increase during that time? 18 A. No. 19 Q. If you know, who were the main owners of Display 20 Technologies? 21 MR. LONG: Objection. Lacks foundation. 22 THE WITNESS: I don't recall. It was a public 23 corporation. 24 MR. KRAMETBAUER: Q. Do you know who owned a 25 majority of the stock?</p>

<p style="text-align: right;">Page 30</p> <p>1 A. I don't.</p> <p>2 Q. Were you ever on the board of directors for</p> <p>3 Display Technologies?</p> <p>4 A. Yes.</p> <p>5 Q. When did you become a member of the board of</p> <p>6 directors for Display Technologies?</p> <p>7 A. In '98.</p> <p>8 Q. So when it was first purchased -- when La-Man</p> <p>9 first purchased Ad Art, you were on La-Man's board of</p> <p>10 directors, and then when they changed their name, you were</p> <p>11 also a member on the board of directors for Display</p> <p>12 Technologies; is that correct?</p> <p>13 A. Yes.</p> <p>14 Q. And you sat on the board of directors of Display</p> <p>15 Technologies until the year 2000?</p> <p>16 A. Until, I would say, about August or September of</p> <p>17 2000, yes.</p> <p>18 Q. What happened in August or September of 2000?</p> <p>19 A. I was removed as president of Ad Art.</p> <p>20 Q. Why?</p> <p>21 MR. LONG: Objection. Lacks foundation. Calls</p> <p>22 for speculation.</p> <p>23 MR. KRAMETBAUER: Q. You can answer.</p> <p>24 A. Most likely because Display Technologies stock</p> <p>25 was not doing well.</p>	<p style="text-align: right;">Page 32</p> <p>1 at Arrow Sign Company?</p> <p>2 A. No. No employment, no.</p> <p>3 Q. Okay.</p> <p>4 Who owned Arrow Sign Company?</p> <p>5 A. Chuck Stern.</p> <p>6 Q. Anybody else?</p> <p>7 A. At the time his brother still owned a piece of</p> <p>8 it, but wasn't there.</p> <p>9 Q. And you worked in sales or running sales for</p> <p>10 Arrow Sign Company until 2003. And then what happened?</p> <p>11 A. I had worked there for the couple of years</p> <p>12 because Chuck had promised to sell the company. And when</p> <p>13 he didn't, ultimately I left.</p> <p>14 Q. So when you left Arrow Sign Company, what did you</p> <p>15 do?</p> <p>16 A. Looked for -- looked to buy sign companies.</p> <p>17 Q. Did you end up buying a sign company?</p> <p>18 A. No.</p> <p>19 Q. What did you do?</p> <p>20 A. Ultimately started Ad Art. New Ad Art.</p> <p>21 Q. Who did you start Ad Art or new Ad Art,</p> <p>22 quote-unquote, with?</p> <p>23 A. Say it again.</p> <p>24 Q. Who did you start the new Ad Art with? Was it</p> <p>25 just you?</p>
<p style="text-align: right;">Page 31</p> <p>1 Q. Now, were you also removed from the board of</p> <p>2 directors of Display Technologies?</p> <p>3 A. Yes.</p> <p>4 Q. At that same time?</p> <p>5 A. Yes.</p> <p>6 Q. And then what happened?</p> <p>7 MR. LONG: Objection. Vague.</p> <p>8 MR. HUNTER: Objection. Vague and ambiguous.</p> <p>9 MR. KRAMETBAUER: Q. What happened after you</p> <p>10 were removed as president of Ad Art and lost your</p> <p>11 membership on the board of directors for Display</p> <p>12 Technology?</p> <p>13 MR. LONG: Same objection.</p> <p>14 THE WITNESS: I was dismissed, let go in December</p> <p>15 of 2000.</p> <p>16 MR. KRAMETBAUER: Q. And where did you go work</p> <p>17 after that or at that time?</p> <p>18 A. From that time until about May of the following</p> <p>19 year I was not employed.</p> <p>20 Q. So from December 2000 to May of 2001 you were</p> <p>21 unemployed.</p> <p>22 And then it looks like you took a job at Arrow</p> <p>23 Sign Company running sales; is that correct?</p> <p>24 A. Correct.</p> <p>25 Q. Anything in between being unemployed and your job</p>	<p style="text-align: right;">Page 33</p> <p>1 A. It was myself and Jeremy Anderson.</p> <p>2 Q. Had Jeremy worked with you at the, quote, old Ad</p> <p>3 Art?</p> <p>4 A. He had worked not with me -- well, he had worked</p> <p>5 at the old Ad Art.</p> <p>6 Q. Do you know what he did?</p> <p>7 A. He was in some type of project management.</p> <p>8 Q. Anybody else other than you and Jeremy create</p> <p>9 the, quote, new Ad Art?</p> <p>10 A. Bob Kierejczyk.</p> <p>11 Q. It's my understanding that Bob Kierejczyk also</p> <p>12 worked at the, quote, old Ad Art; is that correct?</p> <p>13 A. Yes.</p> <p>14 Q. Anybody else start at the new, quote, Ad Art with</p> <p>15 you?</p> <p>16 A. Starting it -- so we started in April of 2003.</p> <p>17 Are you saying right at the start-up, at the beginning?</p> <p>18 Q. Or shortly thereafter.</p> <p>19 A. I mean, shortly thereafter Bob joined and Joy</p> <p>20 Turnipseed joined.</p> <p>21 Q. What about Duane Contento?</p> <p>22 A. Specifically what about Duane?</p> <p>23 Q. When did Duane join Ad Art?</p> <p>24 A. I think about a year later. --Maybe nine months to</p> <p>25 a year later.</p>

<p style="text-align: right;">Page 34</p> <p>1 Q. Had someone also worked at the, quote, old Ad 2 Art? 3 A. Yes. 4 Q. What about Doug Head? 5 A. He joined a year, year and a half later. 6 Q. And Doug had also worked at the, quote, old Ad 7 Art? 8 A. Yes. 9 Q. What about Jack Dubois? 10 A. Jack Dubois -- you mean when did he join the new 11 Ad Art, is that what you're asking? 12 Q. Yeah. 13 A. I don't remember exactly when Jack joined us, but 14 sometime after -- I don't remember when. 15 Q. Jack had also worked at the, quote, old Ad Art? 16 A. Yes. 17 Q. Now, I'm looking -- 18 Madam Court Reporter, have we received the 19 exhibits yet? 20 THE REPORTER: No. You want me to go look? 21 MR. KRAMETBAUER: No, don't worry about it. 22 Q. Mr. Long, do you remember authoring an affidavit 23 on or about November 18th of 2015? 24 A. Yes. 25 Q. And I believe you have a copy of that handy; is</p>	<p style="text-align: right;">Page 36</p> <p>1 A. It was definitely Ad Art. Definitely Ad Art. 2 Q. Are you testifying that you don't know the legal 3 name of the company at the time around 1993, 1994, or are 4 you testifying that the company's name was Ad Art? 5 A. I'm testifying that while Ad Art Electronic Sign 6 Corporation was a name that was used, basically it was Ad 7 Art. And so, you know, it probably was at that time a 8 proper name. 9 Q. And you're referring to Ad Art Electronic Sign 10 Corporation? 11 A. Yes. 12 Q. Now, during this time, 1993 to 1994, correct me 13 if I am wrong, you were working in sales in Oakland? 14 A. I was based in Oakland. I was president of the 15 company. I was working in sales in all of the divisions. 16 Q. When did you become president of the company? 17 A. 1986. 18 Q. So at the time that Ad Art was involved in the 19 original design and construction of the MGM pylon in or 20 about 1993 to 1994, you were president of that company; is 21 that correct? 22 A. Yes. 23 Q. What, if anything, do you recall about the design 24 and construction of the MGM pylon in or about 1993 or 25 1994?</p>
<p style="text-align: right;">Page 35</p> <p>1 that correct? It's been previously marked as Plaintiff's 2 Exhibit 2. 3 Do you see that? 4 A. Yes. 5 Q. Now, we've gone through this just by virtue of 6 going through your work history. It states that "Ad Art 7 Electronic Sign Corporation" -- this is paragraph 3 of 8 your document so you can follow along. 9 Do you see that? 10 A. Yes. 11 Q. -- "was involved in the original design and 12 construction of the MGM pylon in or about 1993 or 1994." 13 Do you see that? 14 A. Yes. 15 Q. And you were working for Ad Art Electronic Sign 16 Corporation at the time; is that correct? 17 A. Definitely was working for Ad Art at the time, 18 yes, Ad Art. 19 Q. So it appears to me -- I mean, it appears from 20 your affidavit that the legal name of the company at that 21 time was Ad Art Electronic Sign Corporation; is that 22 correct? 23 MR. LONG: Objection. Mischaracterizes the 24 document. The document speaks for itself. 25 MR. KRAMETBAUER: Q. You can answer.</p>	<p style="text-align: right;">Page 37</p> <p>1 MR. LONG: Objection. 2 MR. HUNTER: Objection. Vague and ambiguous and 3 overbroad. 4 MR. LONG: Go ahead and answer. 5 THE WITNESS: Please ask the question again. 6 MR. KRAMETBAUER: Madam Court Reporter, can you 7 read that back for me? 8 (The record was read by the reporter as follows: 9 "Question: What, if anything, do you recall 10 about the design and construction of the MGM pylon in 11 or about 1993 or 1994?") 12 THE WITNESS: I mean, I recall the development 13 and the design of the MGM sign with the company that owned 14 it with MGM. 15 MR. KRAMETBAUER: Q. What company was that? 16 A. It was Kerkorian. 17 Q. Did you deal directly with MGM? 18 A. I dealt directly with Fred Benninger, who 19 represented MGM; and Kerkorian, who owned it. 20 MR. LONG: Let me stop right there. Hang on, 21 Ryan. Your exhibits are here. You want me to hand them 22 to the court reporter? 23 MR. KRAMETBAUER: That's fine. We'll do that 24 later. 25 Q. You dealt with Fred Benninger. Can you spell his</p>

<p style="text-align: right;">Page 38</p> <p>1 last name?</p> <p>2 A. B-e-n-i-n-n-g-e-r [sic].</p> <p>3 THE REPORTER: I'm sorry, can you repeat that?</p> <p>4 THE WITNESS: B-e-n-i-n-n-g-e-r [sic].</p> <p>5 MR. KRAMETBAUER: Q. Now, Fred, do you have</p> <p>6 knowledge if he was working at MGM?</p> <p>7 A. I'm sorry?</p> <p>8 Q. Was he working for MGM or on behalf of MGM?</p> <p>9 A. On behalf of MGM, yes.</p> <p>10 Q. Do you know if Fred is still alive?</p> <p>11 A. He is not alive.</p> <p>12 Q. Do you know when Fred passed away?</p> <p>13 A. No.</p> <p>14 Q. Had you and Fred worked together on other</p> <p>15 projects?</p> <p>16 A. No.</p> <p>17 Q. I mean, this happened some time ago, and it's odd</p> <p>18 to me that you remember dealing with Fred Benninger. How</p> <p>19 do you know him?</p> <p>20 A. He was the person designated to manage the design</p> <p>21 of the sign and communicate with Ad Art and with the</p> <p>22 owner.</p> <p>23 Q. Now, did you deal directly with Kirk Kerkorian or</p> <p>24 just Fred?</p> <p>25 A. Just Fred.</p>	<p style="text-align: right;">Page 40</p> <p>1 A. Old Ad Art, no. New Ad Art?</p> <p>2 Q. No, new Ad Art?</p> <p>3 A. New Ad Art has an office in Stockton, yes.</p> <p>4 Q. Is it the same office?</p> <p>5 A. No.</p> <p>6 Q. Is it near the old office?</p> <p>7 A. Yes.</p> <p>8 Q. How close is it?</p> <p>9 A. Maybe a couple hundred feet.</p> <p>10 Q. So it's right next door?</p> <p>11 A. Essentially.</p> <p>12 Q. What happened with all those old records?</p> <p>13 A. You know, I left -- I was let go in December of</p> <p>14 2000, and essentially what happened after that was a</p> <p>15 liquidation. So I don't know what happened to all of the</p> <p>16 records.</p> <p>17 Q. So according to your affidavit, there was a</p> <p>18 liquidation of the Ad Art Electric Sign Corporation</p> <p>19 assets. And it looks like NASCO Electric Sign Co., LLC</p> <p>20 purchased the name Ad Art, the telephone number and the</p> <p>21 Web address; is that your understanding?</p> <p>22 A. Yes.</p> <p>23 Q. What else --</p> <p>24 MR. LONG: Ryan, can we take a break here?</p> <p>25 MR. KRAMETBAUER: Sure.</p>
<p style="text-align: right;">Page 39</p> <p>1 Q. Who else would Fred talk to at Ad Art besides</p> <p>2 yourself?</p> <p>3 A. As I recall, primarily just myself.</p> <p>4 Q. Were you the lead guy on the MGM project?</p> <p>5 MR. LONG: Objection. Vague.</p> <p>6 THE WITNESS: When you say "lead"...</p> <p>7 MR. KRAMETBAUER: Q. Yeah. Would you classify</p> <p>8 yourself as the lead person on behalf of Ad Art that was</p> <p>9 handling the MGM pylon sign construction and installation?</p> <p>10 MR. LONG: Same objection.</p> <p>11 THE WITNESS: I was president of the company and</p> <p>12 with Fred put together the contract, the design contract.</p> <p>13 MR. KRAMETBAUER: Q. Do you have a copy of that</p> <p>14 contract today?</p> <p>15 A. No.</p> <p>16 Q. Where would a copy of that contract be?</p> <p>17 MR. LONG: Lacks foundation. Calls for</p> <p>18 speculation.</p> <p>19 THE WITNESS: All of the records -- I have no</p> <p>20 records from Ad Art. The old Ad Art. Old Ad Art.</p> <p>21 MR. KRAMETBAUER: Q. Where would the records</p> <p>22 from the old Ad Art be?</p> <p>23 A. They would have been in Stockton, at the old Ad</p> <p>24 Art office in Stockton.</p> <p>25 Q. Ad Art still has an office in Stockton, correct?</p>	<p style="text-align: right;">Page 41</p> <p>1 MR. LONG: It's been an hour.</p> <p>2 MR. KRAMETBAUER: Let me just get my last</p> <p>3 question out.</p> <p>4 MR. LONG: Fine.</p> <p>5 MR. KRAMETBAUER: Q. What else was purchased in</p> <p>6 that transaction, to your knowledge?</p> <p>7 MR. LONG: Object. Objection. Vague.</p> <p>8 THE WITNESS: When you say "purchased"...</p> <p>9 MR. KRAMETBAUER: Q. Yeah, what else was</p> <p>10 purchased in that liquidation by NASCO?</p> <p>11 A. I don't know.</p> <p>12 Q. Do you know if anybody purchased Ad Art ESC's</p> <p>13 equipment?</p> <p>14 A. It was liquidated, but I don't know -- I have no</p> <p>15 knowledge of how or to whom -- where that equipment went,</p> <p>16 no, I don't know.</p> <p>17 MR. KRAMETBAUER: Okay. We'll go ahead and take</p> <p>18 a quick break.</p> <p>19 MR. LONG: Off the record.</p> <p>20 (A recess was taken from 3:13 p.m. to 3:25 p.m.)</p> <p>21 MR. KRAMETBAUER: Back on the record.</p> <p>22 Q. So Mr. Long, do you have any knowledge as to the</p> <p>23 whereabouts of the records kept at the Stockton facility</p> <p>24 of Ad Art after the sale to NASCO?</p> <p>25 A. No.</p>

<p style="text-align: right;">Page 42</p> <p>1 Q. Because it's my understanding that records of the</p> <p>2 MGM pylon sign would have been housed in Stockton; is that</p> <p>3 correct?</p> <p>4 MR. LONG: Calls for speculation. Lacks</p> <p>5 foundation.</p> <p>6 THE WITNESS: Records of the MGM -- say that</p> <p>7 again, please.</p> <p>8 MR. KRAMETBAUER: Q. Records regarding the</p> <p>9 construction and design of the MGM pylon from 1993 or</p> <p>10 1994, those would have been kept at the Stockton office of</p> <p>11 Ad Art ESC?</p> <p>12 A. Yes. It would have been kept at the Stockton</p> <p>13 office of Ad Art, yes.</p> <p>14 Q. And then at some point in time Ad Art ESC -- the</p> <p>15 name was purchased by NASCO; is that correct?</p> <p>16 A. NASCO purchased the Ad Art name during the</p> <p>17 liquidation.</p> <p>18 Q. Let me ask you this: Do you know who owned the</p> <p>19 building in Stockton where those records would have been</p> <p>20 kept prior to the sale to NASCO?</p> <p>21 A. I believe -- you know, I'm not sure who did at</p> <p>22 the time.</p> <p>23 Q. Did Display Technologies or Ad Art own the</p> <p>24 building in Stockton?</p> <p>25 A. If Ad Art owned the building at the time, it was</p>	<p style="text-align: right;">Page 44</p> <p>1 Q. And what is the building that Ad Art is in now in</p> <p>2 Stockton?</p> <p>3 A. I don't have the number, but it's on Ad Art Road.</p> <p>4 Q. You said 3133 North Ad Art Road?</p> <p>5 A. Was the old address, the address for old Ad Art.</p> <p>6 Q. Okay. Bear with me here for a minute.</p> <p>7 Do you know what business is at 3133 now?</p> <p>8 A. Yes.</p> <p>9 Q. What is it?</p> <p>10 A. Arrow Sign Company.</p> <p>11 Q. Did Arrow Sign Company purchase the building from</p> <p>12 Ad Art or from Display Technologies?</p> <p>13 MR. LONG: Lacks foundation. Calls for</p> <p>14 speculation.</p> <p>15 Go ahead.</p> <p>16 THE WITNESS: No.</p> <p>17 MR. KRAMETBAUER: Q. Do you know if Arrow Sign</p> <p>18 owns 3133 Ad Art Road?</p> <p>19 A. I don't know.</p> <p>20 Q. Do you know who owns it now?</p> <p>21 A. I don't know who owns it now.</p> <p>22 Q. But 3133 Ad Art Road is where Ad Art operated out</p> <p>23 of in 1993 and 1994; is that correct?</p> <p>24 A. Was the headquarters of the company, yes.</p> <p>25 Q. Do you know what the names of the companies are</p>
<p style="text-align: right;">Page 43</p> <p>1 sold to Display Technologies or La-Man -- it became</p> <p>2 Display Technologies, then they would have owned it. But</p> <p>3 I don't know --</p> <p>4 Q. Okay. I apologize, I didn't mean to interrupt</p> <p>5 you. You said no --</p> <p>6 A. I don't recall at the time who owned the property</p> <p>7 for sure.</p> <p>8 Q. Because NASCO is now in that building that Ad Art</p> <p>9 or Display Technologies used to be; is that correct?</p> <p>10 A. No.</p> <p>11 Q. That's not correct?</p> <p>12 A. Yes, that's not correct.</p> <p>13 Q. I thought that NASCO and Ad Art had buildings</p> <p>14 right next door to one another.</p> <p>15 A. Next door, yes.</p> <p>16 Q. Okay.</p> <p>17 A. But not -- separate properties.</p> <p>18 Q. Right.</p> <p>19 The old Ad Art, their office or their building in</p> <p>20 Stockton is not the building that NASCO is in now?</p> <p>21 A. Correct. The old Ad Art building in Stockton is</p> <p>22 not the building that NASCO is in.</p> <p>23 Q. What is the address of the old Ad Art building?</p> <p>24 A. 3133 North Ad Art Road. I'm doing that off the</p> <p>25 top of my head.</p>	<p style="text-align: right;">Page 45</p> <p>1 currently in that area? It looks like there's about four</p> <p>2 or five buildings in that area. Do you know the names of</p> <p>3 the companies in that area?</p> <p>4 A. Which area?</p> <p>5 Q. In Stockton, in that 3133 Ad Art Road area.</p> <p>6 In 3133 there's Arrow Sign Company, correct?</p> <p>7 A. Yeah, the name of the company is Arrow Sign</p> <p>8 Company.</p> <p>9 Q. Okay.</p> <p>10 And that's the company you used to work for; is</p> <p>11 that correct?</p> <p>12 A. Yes.</p> <p>13 Q. Did you work for them when they were in that</p> <p>14 building?</p> <p>15 A. Yes, I believe so.</p> <p>16 Q. And then Ad Art currently has a building or</p> <p>17 operates out of a building in that same area; is that</p> <p>18 correct?</p> <p>19 A. New Ad Art has an office on Ad Art Road in that</p> <p>20 area, yes.</p> <p>21 Q. And NASCO is right next door to it?</p> <p>22 A. Yes.</p> <p>23 Q. Do you know what the other -- there's two other</p> <p>24 buildings to the south of Ad Art and NASCO.</p> <p>25 Do you know the name of those companies or the</p>

<p style="text-align: right;">Page 46</p> <p>1 companies that are in those buildings?</p> <p>2 A. I think the buildings to the south are Arrow Sign</p> <p>3 Company buildings.</p> <p>4 Q. Okay.</p> <p>5 When you worked at Arrow Sign Company, do you</p> <p>6 know when -- strike that.</p> <p>7 When Ad Art moved out of 3133 Ad Art Road, Arrow</p> <p>8 moved in?</p> <p>9 MR. LONG: Objection. Lacks foundation and</p> <p>10 mischaracterizes the testimony.</p> <p>11 THE WITNESS: I mean, I worked at Ad Art until</p> <p>12 December 2000. Ad Art was liquidated after that. I don't</p> <p>13 know when Ad Art moved out of the Stockton facility.</p> <p>14 MR. KRAMETBAUER: Q. So you left in, I</p> <p>15 apologize, 2000; is that right?</p> <p>16 A. I was let go in December of 2000.</p> <p>17 Q. December of 2000. And then in 2001 you started</p> <p>18 up with Arrow; is that correct?</p> <p>19 A. In May of 2001 I started working for Arrow.</p> <p>20 Q. And it would have been out of that same building</p> <p>21 in Stockton, is that correct, 3133 Ad Art Road?</p> <p>22 A. No, no.</p> <p>23 Q. Where was your office when you first started with</p> <p>24 Arrow?</p> <p>25 A. Oakland.</p>	<p style="text-align: right;">Page 48</p> <p>1 Ad Art office in Las Vegas?</p> <p>2 A. Possibly, but not probable.</p> <p>3 Q. So when you left Ad Art in 2000, were those</p> <p>4 documents still located at 3133 Ad Art Road?</p> <p>5 MR. LONG: Objection. Lacks foundation.</p> <p>6 THE WITNESS: When I was let go in 2000,</p> <p>7 presumably those records were still there.</p> <p>8 MR. KRAMETBAUER: Q. Who at Ad Art would have</p> <p>9 maintained those records when you left in 2000, when you</p> <p>10 were let go?</p> <p>11 A. I have no idea.</p> <p>12 Q. Like where in that office were they kept? Were</p> <p>13 they in someone's office? Were they in a file room? Did</p> <p>14 you have a file clerk? Tell me a little bit about that.</p> <p>15 A. Records were kept -- large jobs and jobs were</p> <p>16 kept in job folders in cabinets. There wasn't somebody in</p> <p>17 charge of it. It was just all in cabinets numerically.</p> <p>18 Q. And when you were let go in 2000, do you know who</p> <p>19 was responsible for the upkeep of those files? Like, for</p> <p>20 example, if there was a new document to be added to one of</p> <p>21 those files, who would be responsible at Ad Art at that</p> <p>22 time for adding it to the file?</p> <p>23 MR. LONG: Lacks foundation.</p> <p>24 THE WITNESS: Whatever project manager was</p> <p>25 working on whatever job would be the person responsible to</p>
<p style="text-align: right;">Page 47</p> <p>1 Q. Did Arrow work out of the 3133 Ad Art Road when</p> <p>2 you started with Arrow?</p> <p>3 A. Arrow did -- no. Arrow didn't, no, no.</p> <p>4 Q. So while you were with Arrow, do you have</p> <p>5 knowledge as to when they moved into the building at 3133</p> <p>6 Ad Art Road?</p> <p>7 A. It would have been maybe the beginning of 2002,</p> <p>8 roughly.</p> <p>9 Q. And you, during that time, had an opportunity to</p> <p>10 work out of that 3133 Ad Art Road office?</p> <p>11 A. No.</p> <p>12 Q. Did you ever visit that office?</p> <p>13 A. When Arrow bought it?</p> <p>14 Q. Yeah.</p> <p>15 A. Perhaps. But I don't recall.</p> <p>16 Q. How many times?</p> <p>17 A. I primarily worked out of Oakland, so I don't</p> <p>18 recall -- maybe a few times. I don't recall.</p> <p>19 Q. Let me ask you this: So the documents regarding</p> <p>20 the MGM pylon built in 1993 and 1994 by Ad Art Electronic</p> <p>21 Sign Corporation, they were housed in the Stockton office</p> <p>22 at 3133 Ad Art Road; is that correct?</p> <p>23 A. Yes. At that time definitely.</p> <p>24 Q. Were there also copies in an office in Las Vegas</p> <p>25 or documents regarding the MGM pylon in Las Vegas, at an</p>	<p style="text-align: right;">Page 49</p> <p>1 adding to the file.</p> <p>2 MR. KRAMETBAUER: Q. Who was the project manager</p> <p>3 on the MGM pylon?</p> <p>4 A. I would think the project manager -- you mean in</p> <p>5 the fabrication and installation?</p> <p>6 Q. Yes, sir.</p> <p>7 A. Gordon Kitto.</p> <p>8 Q. So, so far you had dealt with MGM through Fred</p> <p>9 Benninger, correct?</p> <p>10 A. Correct.</p> <p>11 Q. And did you appoint Gordon Kitto as the project</p> <p>12 manager?</p> <p>13 A. Gordon Kitto was the project manager for large</p> <p>14 projects, including that display.</p> <p>15 Q. Who else, other than you and Gordon Kitto, at Ad</p> <p>16 Art worked on the MGM pylon?</p> <p>17 MR. LONG: Objection. Vague.</p> <p>18 THE WITNESS: There would have been many people</p> <p>19 that worked on it.</p> <p>20 MR. KRAMETBAUER: Q. Do you recall any of their</p> <p>21 names?</p> <p>22 A. Well, yes. It would depend on -- yes, yes.</p> <p>23 Q. List as many of them as you possibly can. Take</p> <p>24 your time.</p> <p>25 A. Paul Brengle.</p>

<p style="text-align: right;">Page 50</p> <p>1 Q. Can you spell his last name for me?</p> <p>2 A. B-r-e-n-g-l-e.</p> <p>3 Q. Go ahead.</p> <p>4 A. Other than that, I mean, the staff, the workers,</p> <p>5 you know, the factory. Paul Brengle was the engineer.</p> <p>6 Gordon was in charge of the project.</p> <p>7 Q. Who was the designer?</p> <p>8 A. Jack Dubois, I believe. I think Jack and -- Jack</p> <p>9 Dubois.</p> <p>10 Q. Is Paul Brengle still alive?</p> <p>11 A. Yes.</p> <p>12 Q. Is he still with the company?</p> <p>13 A. No.</p> <p>14 Q. Is he still with Ad Art as it is today?</p> <p>15 A. No.</p> <p>16 Q. Where is Paul at now?</p> <p>17 A. He's in Florida.</p> <p>18 Q. Is he retired?</p> <p>19 A. Yes.</p> <p>20 Q. Do you have his contact information?</p> <p>21 A. No.</p> <p>22 Q. When is the last time you talked to Paul?</p> <p>23 A. Maybe eight, ten years ago.</p> <p>24 Q. How do you know he's in Florida?</p> <p>25 A. The people I work with who knew him, knew that he</p>	<p style="text-align: right;">Page 52</p> <p>1 Kitto, Paul Brengle, Jack --</p> <p>2 Q. Right. And I appreciate that. I know that those</p> <p>3 are people that -- in your mind that you're certain -- you</p> <p>4 were certain that worked on it. But I want to know people</p> <p>5 in your mind that may have worked on it, that people</p> <p>6 you're thinking of right now that may have worked on the</p> <p>7 project, but you're not certain.</p> <p>8 MR. HUNTER: Objection. Calls for speculation.</p> <p>9 MR. KRAMETBAUER: Q. Go ahead.</p> <p>10 A. Ed McDonald might have worked on it. John Papais</p> <p>11 could have. I mean, there's lots of names I could throw,</p> <p>12 but I don't know -- I'm just speculating because I don't</p> <p>13 know if they worked on it. I know that Gordon worked on</p> <p>14 it, and Paul worked on it and I worked on it.</p> <p>15 Q. Okay.</p> <p>16 Ed McDonald, what did he do for the company?</p> <p>17 A. Installation.</p> <p>18 Q. What about John Papais?</p> <p>19 A. Was the owner and estimator.</p> <p>20 Q. Is Ed McDonald still alive?</p> <p>21 A. I believe so.</p> <p>22 Q. Does he work at Ad Art now?</p> <p>23 A. No.</p> <p>24 Q. Do you know where Ed McDonald is?</p> <p>25 A. I believe in Henderson or Las Vegas.</p>
<p style="text-align: right;">Page 51</p> <p>1 left Stockton and moved to Florida.</p> <p>2 Q. And Jeff Dubois, he's still with -- he's at Ad</p> <p>3 Art now?</p> <p>4 A. Jack Dubois, yes.</p> <p>5 Q. I apologize, I don't know why I said Jeff. But</p> <p>6 it's Jack Dubois?</p> <p>7 A. Yes.</p> <p>8 Q. Anybody else other than Gordon Kitto, Paul</p> <p>9 Brengle, Jack Dubois, yourself, anybody else whose name</p> <p>10 you recall that worked on this project? And I understand</p> <p>11 that there's many people, but I want you to do your best</p> <p>12 to recall as many people as possible that would have</p> <p>13 worked on the MGM pylon project on behalf of Ad Art.</p> <p>14 A. There are many people I can think of, but I'm not</p> <p>15 certain that they worked on the project because we were a</p> <p>16 large company. There were 350 people at the time, so...</p> <p>17 Q. If you can please list for me people that you</p> <p>18 think it was likely that worked on that project?</p> <p>19 A. That I what?</p> <p>20 Q. People that you think it was likely worked on the</p> <p>21 project. I know you're not sure if they worked on it or</p> <p>22 not, but who are the people that you're thinking of that</p> <p>23 may have worked on it?</p> <p>24 A. I mean, I can't come up with names for sure of</p> <p>25 people who worked on it, other than primarily Gordon</p>	<p style="text-align: right;">Page 53</p> <p>1 Q. So Ed was an -- he was an installer for Ad Art at</p> <p>2 the time?</p> <p>3 A. He was an installer and an installation manager.</p> <p>4 Q. During the time the MGM pylon was built in 1993,</p> <p>5 1994, how many people did Ad Art have in the Las Vegas</p> <p>6 office?</p> <p>7 A. About 40.</p> <p>8 Q. Who was the head of the Las Vegas office at that</p> <p>9 time, '93, '94?</p> <p>10 A. I was in charge of the Las Vegas office at that</p> <p>11 time.</p> <p>12 Q. Now, in the construction and installation of the</p> <p>13 MGM pylon in '93, '94 by Ad Art, it's my understanding</p> <p>14 that it was manufactured or fabricated out of the Stockton</p> <p>15 office and then it was brought to Las Vegas and then</p> <p>16 installed on the property; is that correct?</p> <p>17 A. Yes.</p> <p>18 Q. How long did that process take, approximately?</p> <p>19 MR. LONG: Objection. Vague.</p> <p>20 MR. KRAMETBAUER: Q. Probably four months,</p> <p>21 five months.</p> <p>22 Q. Who was in charge of ordering the materials used</p> <p>23 in the construction of the sign?</p> <p>24 A. It would depend on the material, and I --</p> <p>25 Q. Are you familiar with the Alucobond material?</p>

<p style="text-align: right;">Page 54</p> <p>1 A. Yes.</p> <p>2 Q. Who was in charge of ordering the Alucobond</p> <p>3 material for use on the sign?</p> <p>4 MR. LONG: Object to form. Calls for</p> <p>5 speculation.</p> <p>6 THE WITNESS: Probably Gordon Kitto.</p> <p>7 MR. KRAMETBAUER: Q. You can go ahead.</p> <p>8 A. Probably Gordon Kitto.</p> <p>9 Q. Anyone else?</p> <p>10 A. Not that I know of.</p> <p>11 Q. Now, this was built or constructed in 1993 and</p> <p>12 1994. So is it fair to say that that Alucobond would have</p> <p>13 been ordered in about the same time 1993, 1994?</p> <p>14 MR. HUNTER: Objection. Lacks foundation. Calls</p> <p>15 for speculation.</p> <p>16 MR. KRAMETBAUER: Q. Go ahead.</p> <p>17 A. Yes, it would have been ordered in the time it</p> <p>18 was installed.</p> <p>19 MR. HUNTER: Same objection.</p> <p>20 MR. KRAMETBAUER: Q. Let me ask you this: After</p> <p>21 1994, after completion of the pylon sign, did Ad Art do</p> <p>22 any revisions to the sign, to your knowledge?</p> <p>23 MR. LONG: Objection. Vague as to "revisions."</p> <p>24 THE WITNESS: No, not to my knowledge.</p> <p>25 MR. KRAMETBAUER: Q. To the best of your</p>	<p style="text-align: right;">Page 56</p> <p>1 Q. Can you tell if this is the building permit for</p> <p>2 the MGM pylon, which is the subject of this lawsuit?</p> <p>3 A. I can't tell if it's the permit for the large</p> <p>4 sign.</p> <p>5 Q. Is it fair to say that it was issued on or about</p> <p>6 the same time that fabrication and installation of the MGM</p> <p>7 pylon was done by Ad Art?</p> <p>8 A. Yes.</p> <p>9 Q. And the property owner is listed as MGM Grand</p> <p>10 Hotel, Inc.; is that correct?</p> <p>11 MR. LONG: The document speaks for itself.</p> <p>12 MR. KRAMETBAUER: Q. You can answer the</p> <p>13 question.</p> <p>14 A. MGM Grand Hotel, Inc. is listed as the property</p> <p>15 owner.</p> <p>16 Q. And the contractor is listed as Ad Art, Inc.; is</p> <p>17 that correct?</p> <p>18 A. That's what the document shows, yes.</p> <p>19 Q. And at the very bottom there's the "LICENSED</p> <p>20 CONTRACTOR'S DECLARATION," do you see that, and there's a</p> <p>21 signature there?</p> <p>22 A. Yes.</p> <p>23 Q. Okay.</p> <p>24 Is that the Richard Shade's signature there?</p> <p>25 A. Yeah. Dick Shade, yeah.</p>
<p style="text-align: right;">Page 55</p> <p>1 Knowledge, Ad Art was done with the MGM pylon at the</p> <p>2 latest at the end of 1994, correct?</p> <p>3 MR. LONG: Objection. Vague.</p> <p>4 THE WITNESS: Yes, essentially around that time.</p> <p>5 MR. KRAMETBAUER: Q. And Ad Art didn't do</p> <p>6 anything else to the sign thereafter; is that correct?</p> <p>7 A. Not that I recall.</p> <p>8 Q. Did Ad Art in 1993 or 1994 do any other projects</p> <p>9 for MGM other than the MGM pylon?</p> <p>10 A. I think we did a small entrance sign.</p> <p>11 Q. And where was that?</p> <p>12 A. On the property.</p> <p>13 Q. Was that done around the same time as the bigger</p> <p>14 pylon?</p> <p>15 A. I don't recall exactly when it was done.</p> <p>16 Q. And do you know if Alucobond was used on that</p> <p>17 project, the smaller entrance sign?</p> <p>18 A. I don't recall that.</p> <p>19 MR. SILVERMAN: I'm just going to object to the</p> <p>20 extent it calls for speculation. This is Eddy Silverman.</p> <p>21 MR. KRAMETBAUER: Q. Now, if you can look at</p> <p>22 Exhibit 1, which is the "Clark County Building Department</p> <p>23 PERMIT."</p> <p>24 Do you see that, Mr. Long?</p> <p>25 A. Yes.</p>	<p style="text-align: right;">Page 57</p> <p>1 Q. Do you know him or did you know him?</p> <p>2 A. Yes. He was an employee of Ad Art.</p> <p>3 Q. Did he work out of the Las Vegas office or the</p> <p>4 Stockton office?</p> <p>5 A. Las Vegas.</p> <p>6 Q. Do you know what he did for Ad Art?</p> <p>7 A. He did a variety of things.</p> <p>8 Q. Give me some examples.</p> <p>9 A. He was in service. He managed various service</p> <p>10 people. Occasionally ran permits.</p> <p>11 Q. And he's deceased; is that correct?</p> <p>12 A. I would -- I don't -- I would think so, but I</p> <p>13 don't know for sure.</p> <p>14 Q. Why do you think so?</p> <p>15 A. Well, he was pretty old then, so...</p> <p>16 Q. Okay. Fair enough.</p> <p>17 Do you know what his involvement was in the</p> <p>18 fabrication, construction and installation of the MGM</p> <p>19 pylon in 1993 or 1994?</p> <p>20 A. He might have assisted some -- you know, assisted</p> <p>21 in the Las Vegas, but no, I don't know directly.</p> <p>22 Q. Now, I don't think this is part of the records</p> <p>23 that were provided to you, but I'll represent to you that</p> <p>24 I have -- strike that.</p> <p>25 You have an understanding that Alucobond is</p>

<p style="text-align: right;">Page 58</p> <p>1 manufactured by a company named 3A Composites, correct?</p> <p>2 MR. LONG: Objection. Lacks foundation.</p> <p>3 THE WITNESS: I don't recall -- I recall</p> <p>4 Alucobond. I don't recall that specifically.</p> <p>5 MR. KRAMETBAUER: Q. Have you ever placed an</p> <p>6 order for Alucobond?</p> <p>7 A. Personally, no.</p> <p>8 Q. Who at Ad Art now is responsible for placing</p> <p>9 orders of Alucobond, if at all?</p> <p>10 A. Are you talking about at Ad Art today?</p> <p>11 Q. Yeah.</p> <p>12 A. I don't think we would be placing an order for</p> <p>13 Alucobond today.</p> <p>14 Q. Why is that?</p> <p>15 A. Because we're not fabricating signs directly.</p> <p>16 Q. Now, back in 1993, 1994, who would have, at Ad</p> <p>17 Art, been responsible for ordering Alucobond?</p> <p>18 A. Would have been the procurement department in</p> <p>19 Stockton.</p> <p>20 Q. Who headed the procurement department in</p> <p>21 Stockton?</p> <p>22 A. John Papais would have been the primary person on</p> <p>23 procurement.</p> <p>24 Q. Who else worked in the procurement under John?</p> <p>25 A. Pardon?</p>	<p style="text-align: right;">Page 60</p> <p>1 for speculation.</p> <p>2 THE WITNESS: I have a recollection that</p> <p>3 Alucobond was used in the fabrication, yes.</p> <p>4 MR. KRAMETBAUER: Q. Just bear with me. I'm</p> <p>5 just looking through my exhibits. I apologize.</p> <p>6 So Mr. Long, if I wanted to request the old Ad</p> <p>7 Art records and shop drawings and things of that nature</p> <p>8 regarding the MGM pylon from '93, '94, how would I go</p> <p>9 about getting those?</p> <p>10 MR. LONG: Objection. Lacks foundation. Vague.</p> <p>11 Go ahead.</p> <p>12 THE WITNESS: I don't know.</p> <p>13 MR. KRAMETBAUER: Q. If you needed them, where</p> <p>14 would you go to find them?</p> <p>15 A. I don't believe they exist, so I wouldn't go</p> <p>16 look.</p> <p>17 Q. Why do you have that belief?</p> <p>18 A. Because the company was liquidated.</p> <p>19 Q. So because the company was liquidated, you think</p> <p>20 that their documents were destroyed?</p> <p>21 A. I don't know of anything that was left there</p> <p>22 after the liquidation.</p> <p>23 Q. Do you have knowledge of the individual</p> <p>24 responsible for getting rid of the documents when the</p> <p>25 company was liquidated?</p>
<p style="text-align: right;">Page 59</p> <p>1 Q. Who else worked in the procurement department</p> <p>2 under John?</p> <p>3 A. I don't recall.</p> <p>4 Q. How many people were in that department, to the</p> <p>5 best of your knowledge?</p> <p>6 A. Typically three.</p> <p>7 Q. Do you know their names?</p> <p>8 A. No.</p> <p>9 Q. Now, in this litigation I've been provided some</p> <p>10 invoices from 3A Composites -- or they were formally known</p> <p>11 as a company by the name of Alusuisse Composites,</p> <p>12 Incorporated. And this is -- what they've given to me</p> <p>13 represents the order of Alucobond for the MGM sign. And</p> <p>14 the dates on the order are in 1998.</p> <p>15 Do you have any knowledge as to why there would</p> <p>16 be an order of Alucobond in 1998 when the sign was</p> <p>17 constructed in '93 or '94?</p> <p>18 MR. LONG: Objection. Lacks foundation. Calls</p> <p>19 for speculation.</p> <p>20 MR. HUNTER: Join.</p> <p>21 THE WITNESS: No, that doesn't sound right.</p> <p>22 MR. KRAMETBAUER: Q. Would you have a</p> <p>23 recollection that green Alucobond was used in the</p> <p>24 fabrication of the MGM sign in 1993, 1994, correct?</p> <p>25 MR. LONG: Objection. Lacks foundation. Calls</p>	<p style="text-align: right;">Page 61</p> <p>1 MR. LONG: Objection. Lacks foundation.</p> <p>2 Mischaracterizes prior testimony.</p> <p>3 THE WITNESS: I'm sorry, say that again.</p> <p>4 MR. KRAMETBAUER: Q. Yeah. Do you have</p> <p>5 knowledge of or do you know of anybody that it was their</p> <p>6 responsibility to get rid of or to destroy the documents</p> <p>7 after the company's liquidation?</p> <p>8 A. No.</p> <p>9 Q. So why is it that you think that those documents</p> <p>10 are no longer available?</p> <p>11 A. I left the company -- or was let go by the</p> <p>12 company in December of 2000. And basically had very</p> <p>13 little interaction. But when we started working with</p> <p>14 Arrow, there was nothing out there.</p> <p>15 Q. Do you know where -- let me just grab my records</p> <p>16 here.</p> <p>17 So in the liquidation of Ad Art ESC, do you know</p> <p>18 who purchased their fabrication equipment --</p> <p>19 A. I do not.</p> <p>20 Q. -- when it was liquidated?</p> <p>21 A. I don't.</p> <p>22 Q. Do you have any knowledge as to whether or not</p> <p>23 Arrow purchased anything from Ad Art ESC in the</p> <p>24 liquidation?</p> <p>25 A. I don't.</p>

<p style="text-align: right;">Page 62</p> <p>1 Q. Who was left at Ad Art ESC when you left, but 2 before the liquidation? 3 MR. LONG: Objection. Vague. 4 THE WITNESS: There were several people at Ad Art 5 still there. 6 MR. KRAMETBAUER: Q. Let me ask you this: When 7 you were removed as president, who took over as president? 8 A. I was removed as president in August or September 9 of 2000, and basically the chairman of the company and Lou 10 Papais ran it, to the best of my knowledge. 11 Q. Who was the chairman? 12 A. I don't recall his name. Bill something. 13 Q. Bill something? 14 A. Yeah. 15 Q. Anybody else that took over your responsibilities 16 at Ad Art ESC when you were let go? 17 MR. LONG: Lacks foundation. Calls for 18 speculation. 19 THE WITNESS: When I was let go, I have no idea 20 what happened after that. 21 MR. KRAMETBAUER: Q. Do you know if the company 22 filed bankruptcy or if it was just liquidated? 23 A. To the best of my knowledge, it was liquidated. 24 Q. Do you know who was in charge of the liquidation 25 of Ad Art ESC?</p>	<p style="text-align: right;">Page 64</p> <p>1 Q. -- paragraph 6. 2 A. Yes. 3 Q. It's on page 2. This talks about the liquidation 4 of Ad Art ESC, and the purchase by NASCO of the name Ad 5 Art, the trademark, work mark, trade service mark, trade 6 names, and then Ad Art ESC's telephone number and Web 7 address. 8 Do you know if NASCO purchased anything else 9 other than those three things? 10 A. I don't know. 11 Q. Do you know who would have been in charge of 12 NASCO at this time when they purchased these things from 13 Ad Art ESC? 14 A. Yes. 15 Q. Who? 16 A. Nagi Ali. 17 Q. Can you spell his name for me? 18 A. N-a-g-i A-l-i. 19 Q. So his first name is Nagi and his last name is 20 Ali? 21 A. Yes. 22 Q. Is he still alive? 23 A. Yes. 24 Q. Does he still own NASCO? 25 A. Yes.</p>
<p style="text-align: right;">Page 63</p> <p>1 A. There was a guy from the East Coast that the 2 chairman had brought in, and he was in charge -- he and 3 his company were in charge of the liquidation, but I don't 4 recall their names. 5 Q. Do you know the name of the company? 6 A. I don't. 7 Q. This would have been sometime after your 8 departure in 2000? 9 A. He was brought in when I was still there in the 10 fall of 2000. And he was there from -- during the time 11 where I was no longer president. And then after that, I'm 12 sure he was still there, and ultimately did the 13 liquidation. But I don't remember his name. 14 Q. Do you know who would have that information? 15 A. No. 16 Q. Do you know Lynn Weaver? 17 A. Lynn Weaver? 18 Q. Yeah. 19 A. I don't recall. 20 Q. In sales. 21 A. Lynn Weaver, no. 22 Q. Yeah. 23 A. No. 24 Q. I'm looking at your affidavit, Mr. Long -- 25 A. Yeah.</p>	<p style="text-align: right;">Page 65</p> <p>1 MR. LONG: Lacks foundation. 2 MR. KRAMETBAUER: Q. Was that a yes? 3 A. Yes. 4 Q. And then it says in paragraph 7 that sometime in 5 March 25th, 2003, a new corporation Ad Art, Inc., was 6 formed via filing articles of incorporation with the 7 secretary of state. And you were the CEO of that 8 corporation; is that correct? 9 A. Yes. 10 Q. And then shortly thereafter, you acquired through 11 an agreement with NASCO the name Ad Art, Inc., use of a 12 telephone number and the Internet Web address; is that 13 correct? 14 MR. LONG: Objection. The document speaks for 15 itself. Mischaracterizes the document. 16 MR. KRAMETBAUER: Q. You can go ahead. 17 A. We acquired the right to the name, and we formed 18 a new corporation, Ad Art, Inc. 19 Q. So you filed for articles of incorporation with 20 the name Ad Art, Inc. prior to obtaining permission from 21 NASCO to the trademark, work mark, service mark, trade 22 name, telephone number and Web address of Ad Art, Inc.? 23 MR. LONG: Objection. Lacks foundation. 24 THE WITNESS: It was done in concert with -- I 25 don't remember the exact dates, but it was done together.</p>

<p style="text-align: right;">Page 66</p> <p>1 MR. KRAMETBAUER: Q. I'm just looking at your 2 affidavit. It appears that the filing of the articles of 3 incorporation was in March of 2013 and your agreement with 4 NASCO for the rights to those things was done in April; is 5 that correct? 6 A. March of 2003. 7 Q. Right. 8 A. Not 2013. 9 Q. I apologize. 10 Your filing with the state of California for 11 articles of incorporation with the name of the corporation 12 as Ad Art, Inc. was done prior to the execution of your 13 agreement with NASCO to acquire the trademark, work mark, 14 service mark, trade name, use of the telephone number and 15 Internet Web address to Ad Art, Inc.; is that correct? 16 A. No, I think we had the agreement signed that went 17 into effect April 1, 2003, so the two were done in 18 concert. 19 Q. Now, when I looked at the permit from Clark 20 County, which is Exhibit 1 -- 21 A. Yes. 22 Q. -- it said that the contractor is Ad Art, Inc. 23 Do you see that? 24 A. Ad Art -- 25 Q. Your affidavit says that "Ad Art, Inc. was not</p>	<p style="text-align: right;">Page 68</p> <p>1 (A recess was taken from 4:13 p.m. to 4:18 p.m.) 2 MR. KRAMETBAUER: Q. So I've got in front of you 3 the agreement here between NASCO and Ad Art; do you see 4 that? 5 A. Yes. 6 Q. And that's your signature on the last page of 7 this document, along with Bob and Nagi Ali? 8 A. Yes. 9 Q. Do you remember how much it cost for Ad Art to 10 acquire these items from NASCO? 11 MR. LONG: Objection. The document speaks for 12 itself. 13 Is this redacted? 14 THE WITNESS: It's crossed out. 15 MR. KRAMETBAUER: No, it doesn't, because those 16 numbers have been blocked out. 17 MR. LONG: Tim, did you redact this? 18 MR. HUNTER: I did. It's financial information 19 that I don't believe is relevant in any way. 20 MR. KRAMETBAUER: Well, if he doesn't recall what 21 the numbers are, or we don't get an unredacted copy, I'm 22 going to reserve my right to redepose this witness on this 23 information, because I believe it is relevant. 24 MR. HUNTER: And I'm not going to agree to that. 25 I don't believe it is relevant.</p>
<p style="text-align: right;">Page 67</p> <p>1 involved in the design, construction or subsequent 2 maintenance of the MGM pylon." 3 Do you see that? 4 A. The permit says "Ad Art Sign, Inc." It does say 5 "Ad Art, Inc.," but I'm not sure that that's a correct 6 name. 7 Q. I'm specifically referencing where it says, 8 "Contractor: Ad Art, Inc." 9 Do you see that? 10 A. Yes. 11 Q. Do you know if at the time in 1993 that the 12 company was referred to as Ad Art, Inc.? 13 A. The company in '93 was referred to as Ad Art. I 14 don't know the name of the -- that the company would have 15 used for the business in Nevada. It could have been a 16 different name. 17 MR. KRAMETBAUER: Hey, Dana, is the agreement 18 there in the pile of documents that you've got, the 19 agreement between NASCO and Ad Art? 20 MR. LONG: Yeah, it's here. 21 I'd like to take a break first, though. 22 MR. KRAMETBAUER: No problem. Let's go ahead and 23 take five minutes, or if you need more, that's fine. 24 MR. LONG: No, five minutes. 25 Off the record.</p>	<p style="text-align: right;">Page 69</p> <p>1 If you want to file a motion to compel with the 2 discovery commissioner and she orders me to give you a 3 redacted copy, I'll give you one. But I don't believe you 4 need the financial information about the purchase. 5 MR. KRAMETBAUER: Are you going to allow the 6 witness to testify if he recalls how much it cost? 7 MR. HUNTER: If he remembers off the top of his 8 head, that's fine. 9 MR. KRAMETBAUER: Q. Mr. Long, do you remember 10 how much it cost, or approximately how much it cost, for 11 Ad Art to recover these items from NASCO? 12 MR. LONG: If you know. 13 THE WITNESS: Over the ten-year period it costs 14 us about 1,100,000. 15 MR. KRAMETBAUER: Q. And that was paid over a 16 term of ten years? 17 A. Yes. 18 Q. And I just want to make sure that that was for 19 the sale of the trademark, work mark, service mark; trade 20 name, quote, Ad Art; the telephone number listed on the 21 agreement; and the Internet Web address, www.adartesc.com; 22 is that correct? 23 MR. LONG: Now the document does speak for 24 itself. And it's asked and answered. 25 Go ahead.</p>

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1 THE WITNESS: Yes.
 2 MR. KRAMETBAUER: Q. And over the term of
 3 approximately ten years it cost Ad Art \$1.1 million?
 4 A. Yes.
 5 MR. LONG: Asked and answered.
 6 MR. KRAMETBAUER: Q. And maybe this is because I
 7 haven't reviewed the entire agreement, but it appears to
 8 me that it's over a six-year period of time, but according
 9 to you it was actually over a ten-year period?
 10 MR. LONG: The document speaks for itself. And
 11 you've had this agreement for a long time, so I don't know
 12 why you need to review it in the middle of a deposition.
 13 MR. KRAMETBAUER: Q. You can go ahead and answer
 14 the question, Mr. Long.
 15 A. Yes.
 16 Q. Do you know why it took ten years rather than six
 17 years?
 18 MR. LONG: Lacks foundation. Mischaracterizes
 19 the document.
 20 MR. KRAMETBAUER: Q. You can answer the
 21 question, Mr. Long.
 22 A. It was a ten-year agreement based on sales.
 23 Q. Gotcha. All right.
 24 Now, going back to the building of the sign in
 25 Stockton, the MGM pylon, would the materials for the

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1 construction of the sign had been shipped to Stockton and
 2 then put together and then you would have shipped the sign
 3 in pieces out to Las Vegas? Could you tell me a little
 4 bit about that process?
 5 MR. LONG: Lacks foundation.
 6 THE WITNESS: Yes, the sign was fabricated in
 7 Stockton in sections and then trucked to Las Vegas for
 8 installation.
 9 MR. KRAMETBAUER: Q. It would have been trucked
 10 in pieces; is that correct?
 11 A. Yes.
 12 Q. Because it's a fairly large sign. I don't -- I'm
 13 just a layperson. I don't have any experience or
 14 knowledge in sign building. But it just seems to me it
 15 wouldn't be feasible to build the entire thing and ship it
 16 in one big bundle, correct?
 17 A. Correct.
 18 Q. Do you know how many pieces it was shipped out
 19 in?
 20 A. No.
 21 Q. Do you know how long it took to install the sign
 22 once it was brought to Las Vegas?
 23 A. The installation from the time it would have
 24 started would have been at least a two-month process.
 25 Q. Other than Ad Art employees working on the

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1 installation, were there any subcontractors or third
 2 parties involved in the installation in Las Vegas of the
 3 sign?
 4 A. Yes.
 5 Q. Who?
 6 A. I don't know who.
 7 Q. Do you recall any of the names of the people you
 8 used in Las Vegas for the installation of the MGM pylon?
 9 A. The installation of the MGM pylon was done by our
 10 people. But you asked about, would there be others. And
 11 there would have been others to perform functions
 12 necessary to erect the display.
 13 Q. What are other functions that were needed for the
 14 installation other than by folks at Ad Art?
 15 A. The excavation of the foundation would have been
 16 done by a local excavator.
 17 Q. What else?
 18 A. Fabrication of the steel would have been done by
 19 a steel company. The cranes necessary to erect it would
 20 have been -- the cranes necessary to erect it would have
 21 been large cranes provided by others.
 22 Q. Anybody else you can think of?
 23 A. No.
 24 Q. And you don't recall any of the names of the
 25 excavating company, the steel fabricator or the crane

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1 folks?
 2 A. No.
 3 Q. Did you happen to visit the sign while it was
 4 being installed?
 5 A. Yes.
 6 Q. How many times?
 7 A. I was there every week.
 8 Q. How long would you stay when you would visit
 9 every week?
 10 A. One night and two days in Las Vegas.
 11 Q. Were there any problems, to your knowledge, with
 12 the installation?
 13 A. Not that I recall.
 14 Q. Was MGM satisfied with the product?
 15 MR. LONG: Objection. Vague. Lacks foundation.
 16 THE WITNESS: Yes.
 17 MR. LONG: Calls for speculation.
 18 THE WITNESS: Yes.
 19 MR. KRAMETBAUER: At this time, Mr. Long, I don't
 20 believe I have any further questions. I really do
 21 appreciate your time, and I apologize for not being there
 22 in person.
 23 Eddy, do you have anything?
 24 MR. SILVERMAN: Let's go off the record for a
 25 second.

<p style="text-align: right;">Page 74</p> <p>1 (Discussion off the record.)</p> <p>2 EXAMINATION BY MR. SILVERMAN</p> <p>3 MR. SILVERMAN: Q. Mr. Long, my name is Edward</p> <p>4 Silverman, I represent 3A Composites USA, Inc., and I just</p> <p>5 want to ask you a few questions regarding the conversation</p> <p>6 that the parties just had off the record about</p> <p>7 transactions that Ad Art may have probably been involved</p> <p>8 in at some other time that involved my client 3A.</p> <p>9 Let me begin by asking, Mr. Long: You alluded to</p> <p>10 this earlier, but to what extent are you familiar with my</p> <p>11 client, 3A; meaning, do you know what they do?</p> <p>12 A. 3A, no, I don't know what 3A is.</p> <p>13 Q. And do you know what 3A Composites USA, Inc. is?</p> <p>14 A. No.</p> <p>15 Q. Do you know what 3A Composites USA, Inc. does?</p> <p>16 A. No.</p> <p>17 Q. Or I should say -- let me clarify that.</p> <p>18 Do you know what 3A Composites USA, Inc.</p> <p>19 manufactures in terms of products?</p> <p>20 A. Well, no. I'm assuming it's Alucobond.</p> <p>21 Q. Now, from your deposition testimony earlier, I</p> <p>22 understand that there were various iterations of what</p> <p>23 today is known generally as Ad Art. And I don't want to</p> <p>24 get into all the various iterations and different</p> <p>25 corporate entities. So if I refer to "Ad Art," I'm</p>	<p style="text-align: right;">Page 76</p> <p>1 directly from 3A?</p> <p>2 A. I don't recall 3A.</p> <p>3 Q. So that would mean that you do not recall Ad Art</p> <p>4 -- any iteration of Ad Art purchasing Alucobond directly</p> <p>5 from 3A; is that correct?</p> <p>6 MR. KRAMETBAUER: This is Ryan Krametbauer.</p> <p>7 I'm going to object to the form of the question.</p> <p>8 Misstates testimony. Assumes facts.</p> <p>9 MR. SILVERMAN: Q. You can answer, Mr. Long.</p> <p>10 A. I recall Ad Art purchasing Alucobond several</p> <p>11 times.</p> <p>12 Q. But you do not recall Ad Art purchasing Alucobond</p> <p>13 directly from 3A; is that correct?</p> <p>14 MR. KRAMETBAUER: This is attorney Ryan</p> <p>15 Krametbauer.</p> <p>16 Same objection.</p> <p>17 MR. SILVERMAN: Q. I am also not trying to trick</p> <p>18 you, Mr. Long. I'm just asking for your recollection.</p> <p>19 Like Mr. Krametbauer -- go ahead.</p> <p>20 A. No.</p> <p>21 Q. No, you do not remember?</p> <p>22 A. I don't recall 3A. I recall Alucobond.</p> <p>23 Q. Have you seen the invoice in this case that</p> <p>24 purports to concern the Alucobond that 3A manufactured</p> <p>25 that was ultimately incorporated on the MGM pylon sign</p>
<p style="text-align: right;">Page 75</p> <p>1 referring to it holistically, and I'm referring to it in</p> <p>2 terms of any time that you ever were working for a company</p> <p>3 with the name Ad Art in the title.</p> <p>4 Is that clear?</p> <p>5 A. Yes.</p> <p>6 Q. So in the time that you worked for Ad Art, were</p> <p>7 you ever personally involved in a transaction in which Ad</p> <p>8 Art ordered Alucobond from 3A Composites USA, Inc.?</p> <p>9 MR. LONG: Lacks foundation.</p> <p>10 MR. KRAMETBAUER: Same objection. Join.</p> <p>11 This is Ryan Krametbauer, by the way.</p> <p>12 THE WITNESS: Personally involved? I was</p> <p>13 personally involved -- when you say "personally involved,"</p> <p>14 please define what you mean.</p> <p>15 MR. SILVERMAN: Q. Are you aware of any iteration</p> <p>16 of Ad Art placing an order for Alucobond directly from 3A</p> <p>17 Composites USA, Inc.?</p> <p>18 A. I'm aware in general of Ad Art purchasing</p> <p>19 Alucobond several times.</p> <p>20 Q. Do you know where that a -- I'm sorry, you can</p> <p>21 finish. I apologize for interrupting.</p> <p>22 A. I recall Ad Art --</p> <p>23 Q. Did you say something?</p> <p>24 A. -- purchasing Alucobond many times.</p> <p>25 Q. Do you recall Ad Art purchasing Alucobond</p>	<p style="text-align: right;">Page 77</p> <p>1 that we've been discussing?</p> <p>2 A. No.</p> <p>3 Q. Are you personally aware of any other invoices</p> <p>4 for materials that 3A sold that were ultimately</p> <p>5 incorporated on the MGM pylon sign?</p> <p>6 A. No.</p> <p>7 MR. HUNTER: Object to form.</p> <p>8 MR. SILVERMAN: Q. If you need her to read it</p> <p>9 back, Mr. Long, I can have her do that.</p> <p>10 MR. LONG: He answered.</p> <p>11 THE WITNESS: No.</p> <p>12 MR. SILVERMAN: Oh, I'm sorry, I didn't hear.</p> <p>13 THE WITNESS: No.</p> <p>14 MR. SILVERMAN: Q. Mr. Long, if I asked you</p> <p>15 whether or not there were other invoices concerning</p> <p>16 products that 3A sold that were incorporated on the MGM</p> <p>17 pylon sign, would you be speculating in response to my</p> <p>18 question?</p> <p>19 MR. KRAMETBAUER: Object to the form of the</p> <p>20 question.</p> <p>21 This is Ryan Krametbauer.</p> <p>22 THE WITNESS: Yes.</p> <p>23 MR. SILVERMAN: Q. Yes, you would be</p> <p>24 speculating?</p> <p>25 A. Yes, I don't recall --</p>

<p style="text-align: right;">Page 78</p> <p>1 MR. HUNTER: Same objection.</p> <p>2 THE WITNESS: Yes, I don't recall 3A.</p> <p>3 MR. SILVERMAN: Q. And I'm not trying to give</p> <p>4 you a hard time here, Mr. Long, I'm just trying to get an</p> <p>5 answer to my question.</p> <p>6 And my question was: You would be speculating if</p> <p>7 I asked you, correct?</p> <p>8 MR. HUNTER: Same objection. Asked and answered.</p> <p>9 THE WITNESS: Yes. If you're asking me about 3A,</p> <p>10 I have no recollection of 3A.</p> <p>11 MR. SILVERMAN: Q. All right.</p> <p>12 A. Is it fair to say, Mr. Long, that you would be</p> <p>13 guessing if you implied or otherwise represented that</p> <p>14 there are other invoices for products that 3A manufactured</p> <p>15 which may have ultimately been incorporated on the MGM</p> <p>16 sign?</p> <p>17 MR. KRAMETBAUER: This is Ryan Krametbauer.</p> <p>18 I object to the form of the question. This has</p> <p>19 been asked and answered. It assumes facts not in</p> <p>20 evidence.</p> <p>21 MR. LONG: It's vague too.</p> <p>22 MR. KRAMETBAUER: And it's vague.</p> <p>23 MR. SILVERMAN: Q. Does the question make sense,</p> <p>24 Mr. Long?</p> <p>25 THE WITNESS: No.</p>	<p style="text-align: right;">Page 80</p> <p>1 MR. KRAMETBAUER: Back on the record.</p> <p>2 FURTHER EXAMINATION BY MR. KRAMETBAUER</p> <p>3 MR. KRAMETBAUER: Q. Mr. Long, are you still</p> <p>4 there?</p> <p>5 A. Yes.</p> <p>6 Q. So I've e-mailed the court reporter who is taking</p> <p>7 down the testimony today the exhibit which contains the</p> <p>8 invoices which have been Bates SALE 00001 through 12.</p> <p>9 I'll represent to you that these were the documents</p> <p>10 provided to me, to my office. I represent the plaintiff</p> <p>11 in this case, Mr. Schueler. These were provided to me by</p> <p>12 defendant 3A Composites USA, Inc., formally known as</p> <p>13 Alucobond Technologies Corporation. These were provided</p> <p>14 to me to represent the Alucobond transaction to either</p> <p>15 Interstate Electric or Mikon Lighting regarding the</p> <p>16 Alucobond used on the MGM pylon.</p> <p>17 Now, it's my understanding from your deposition</p> <p>18 testimony today, that Ad Art and any variation, like</p> <p>19 Mr. Silverman was talking about, was the manufacturer and</p> <p>20 the installer of that MGM pylon sign in or about 1993 and</p> <p>21 1994; is that correct?</p> <p>22 A. Yes.</p> <p>23 Q. Now, the document that I'm showing you now, which</p> <p>24 we'll mark as Plaintiff's Exhibit No. 3, you're reading</p> <p>25 these off of your lawyer's phone, correct?</p>
<p style="text-align: right;">Page 79</p> <p>1 MR. SILVERMAN: Q. Previously I asked if you'd</p> <p>2 be speculating. I'm now asking if you would be guessing.</p> <p>3 THE WITNESS: I don't recall the name of the 3A</p> <p>4 composite company. I don't recall that name. I recall</p> <p>5 Alucobond.</p> <p>6 MR. SILVERMAN: Q. So it's fair to say that you</p> <p>7 would have no knowledge of any transactions involving 3A</p> <p>8 whatsoever?</p> <p>9 MR. HUNTER: Object to the form. Misstates</p> <p>10 testimony.</p> <p>11 THE WITNESS: I remember Alucobond.</p> <p>12 MR. SILVERMAN: Q. But you do not remember 3A?</p> <p>13 A. Correct.</p> <p>14 Q. Would you represent that you have any knowledge</p> <p>15 whatsoever of 3A's business dealings with respect to the</p> <p>16 MGM pylon sign?</p> <p>17 A. No. Not with 3A, no.</p> <p>18 MR. SILVERMAN: Okay. That's all I have.</p> <p>19 MR. KRAMETBAUER: Tim, did you have anything?</p> <p>20 MR. HUNTER: No. Are we done?</p> <p>21 MR. KRAMETBAUER: Well, I e-mailed the invoice to</p> <p>22 the court reporter.</p> <p>23 Could we go off the record for five minutes.</p> <p>24 MR. LONG: Yes.</p> <p>25 (Discussion off the record.)</p>	<p style="text-align: right;">Page 81</p> <p>1 A. Yes.</p> <p>2 MR. LONG: Off the court reporter's phone.</p> <p>3 MR. KRAMETBAUER: Q. I apologize, off the court</p> <p>4 reporter's phone.</p> <p>5 Are you comfortable reading those and you're able</p> <p>6 to read the letters and numbers?</p> <p>7 A. Yes.</p> <p>8 Q. And we're going to go ahead and attach it after</p> <p>9 the conclusion of the deposition; is that fair?</p> <p>10 A. Yes.</p> <p>11 Q. If at any point in time it's too small or you</p> <p>12 can't zoom in on anything, let me know and we can go about</p> <p>13 this a different way. I just want to make sure that</p> <p>14 you're comfortable being able to read this document.</p> <p>15 Okay?</p> <p>16 A. Okay.</p> <p>17 Q. Now, these were invoices provided to my office to</p> <p>18 me as the lawyer for the plaintiff that represent the</p> <p>19 Alucobond sold for the purposes of the pylon sign.</p> <p>20 Okay? Do you understand that?</p> <p>21 MR. LONG: The document speaks for itself. Do</p> <p>22 you have a question in here? What's the question?</p> <p>23 MR. KRAMETBAUER: Q. Yeah, I'm just making sure</p> <p>24 that he understands that these documents, Mr. Long, were</p> <p>25 provided to me by the defendant 3A Composites to represent</p>

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1 the Alucobond transaction in this case.
 2 Okay?
 3 MR. LONG: Well, I'll object they may have been
 4 produced to you by 3A, but what they represent is what
 5 they say. I don't know what the intention is of the
 6 documents.
 7 MR. KRAMETBAUER: Fair enough.
 8 Q. Do you see on page No. 2, sale 00002?
 9 A. Yes.
 10 Q. This is an invoice, right, to the best of your
 11 knowledge?
 12 A. Yes.
 13 Q. And you see the order date?
 14 A. Yes.
 15 Q. It says April 6, 1998?
 16 A. Yes.
 17 Q. This would have been after the completion of the
 18 sign by Ad Art in 1993 or 1994, correct?
 19 A. Yes.
 20 Q. And this is for an order of Alucobond 21. Do you
 21 see that in the description?
 22 A. Yes.
 23 Q. Do you see the name 3A Composites anywhere on
 24 this form? Take your time.
 25 MR. LONG: The document speaks for itself.

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1 THE WITNESS: No.
 2 MR. KRAMETBAUER: Q. In fact, the only companies
 3 I see on here are Interstate Electric Company. I see
 4 Mikon Lighting & Sign. And I see -- down at the bottom I
 5 see Alusuisse Composites, Incorporated.
 6 Do you see that?
 7 A. Yes.
 8 Q. I don't see 3A Composites anywhere on here, do
 9 you?
 10 MR. LONG: The document speaks for itself.
 11 THE WITNESS: No.
 12 MR. KRAMETBAUER: I don't have any further
 13 questions.
 14 MR. SILVERMAN: I have some follow-ups.
 15 FURTHER EXAMINATION BY MR. SILVERMAN
 16 MR. SILVERMAN: Q. This again is Eddy Silverman.
 17 Mr. Long, do you know for a fact that what I will refer to
 18 as the subject pylon sign was completed in 1993 or 1994?
 19 A. Yes.
 20 Q. Do you know precisely when the Alucobond that was
 21 used on the sign was affixed or otherwise incorporated
 22 into the MGM pylon sign?
 23 A. The Alucobond by Ad Art?
 24 Q. The Alucobond that Alusuisse manufactured.
 25 MR. LONG: Okay.


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1 MR. SILVERMAN: Q. Well, you know what? Sure.
 2 The Alucobond that was incorporated on the sign. You can
 3 strike what I said previously.
 4 Do you know when the Alucobond was affixed to the
 5 sign?
 6 A. Are you talking about the Alucobond in these --
 7 that was shipped to Mikon?
 8 Q. No, I'm asking you. Ad Art put the Alucobond on
 9 the MGM pylon; is that correct?
 10 A. As I recall, when we fabricated the sign it had
 11 Alucobond, yes.
 12 Q. And Ad Art fabricated the sign and put the
 13 Alucobond on the sign; is that correct?
 14 A. In 1993 and '94 when we erected the sign,
 15 correct.
 16 Q. Do you know where that Alucobond came from?
 17 A. Los Angeles? I don't know. I recall them being
 18 in Los Angeles.
 19 Q. You say you "recall them being in Los Angeles."
 20 Who's them?
 21 A. Alucobond.
 22 Q. Alucobond is a product name, Mr. Long. Do you
 23 know who provided the Alucobond?
 24 A. No. No, I don't.
 25 Q. But your recollection is that it came from Los

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1 Angeles?
 2 A. Yes.
 3 Q. And you don't recall the name of the entity from
 4 whom Ad Art acquired that Alucobond?
 5 A. No.
 6 Q. So if your testimony, Mr. Long, is that the
 7 subject sign was completed in 1993 or 1994, looking at
 8 these documents sale 1 through sale 12, is it also your
 9 testimony --
 10 THE REPORTER: I'm sorry, I can't hear you.
 11 Could you repeat that?
 12 MR. KRAMETBAUER: Object to the form of the
 13 question. Calls for speculation on the part of the
 14 witness.
 15 THE REPORTER: I'm sorry. I didn't get the
 16 question. The phone cut out.
 17 MR. LONG: You've got to repeat the question.
 18 The phone cut out.
 19 MR. SILVERMAN: Q. Mr. Long, how do you know
 20 that the sign was completed in 1993 or 1994?
 21 A. I was managing the project with respect to the
 22 contract, the collection. It was completed and collected.
 23 Q. What does that mean?
 24 A. That we sold the sign to MGM. They paid us. We
 25 erected the sign. They paid us for the sign in full.

<p style="text-align: right;">Page 86</p> <p>1 Q. What are you looking at, though, specifically to 2 confirm that the sign was completed on the date that you 3 represent?</p> <p>4 A. It's not a date that I represent. We talked 5 about '93 and '94. I don't know the date it was 6 completed.</p> <p>7 Q. That's what I'm trying to understand. Because 8 you have to see that by testifying that the sign was 9 completed in 1993 or 1994, you implicitly are testifying 10 that these documents don't represent the material that was 11 included on the sign, so that's what I'm trying to 12 understand.</p> <p>13 How do you know that the sign was completed in 14 1993 or 1994 --</p> <p>15 MR. LONG: Objection. It's argumentative.</p> <p>16 MR. SILVERMAN: Q. -- and not in 1996?</p> <p>17 MR. KRAMETBAUER: Same objection. Calls for 18 speculation on the part of the witness.</p> <p>19 This is Ryan Krametbauer.</p> <p>20 MR. SILVERMAN: Q. I'm not trying to beat you 21 up, Mr. Long.</p> <p>22 In 1993 or 1994, where is that coming from?</p> <p>23 A. Well, the contract that we had with MGM was 24 completed in '93 or '94 and collected. And after that, 25 Ad Art didn't work on the sign. Ad Art didn't do any</p>	<p style="text-align: right;">Page 88</p> <p>1 A. No.</p> <p>2 Q. Could you tell me one way or another whether the 3 product described on this invoice is the product that's on 4 the MGM sign?</p> <p>5 MR. LONG: Lacks foundation.</p> <p>6 MR. KRAMETBAUER: Calls for speculation on the 7 part of the witness.</p> <p>8 This is Ryan Krametbauer.</p> <p>9 And I'll join the objection by Counsel.</p> <p>10 MR. LONG: Yes. Join.</p> <p>11 THE WITNESS: Not specifically, no.</p> <p>12 MR. SILVERMAN: Q. I think Mr. Krametbauer asked 13 you this earlier, but you said that you were familiar with 14 Interstate Electric Company in name only, is that correct?</p> <p>15 MR. LONG: Mischaracterizes the testimony.</p> <p>16 MR. SILVERMAN: Q. Let me ask you: Are you 17 familiar with Interstate Electric Company?</p> <p>18 A. Yes. The company then that existed yes, 19 Interstate Electric, yes.</p> <p>20 Q. Had any iteration of Ad Art ever purchased 21 Alucobond from Interstate Electric Company?</p> <p>22 A. I don't recall.</p> <p>23 MR. LONG: Misstates testimony.</p> <p>24 MR. SILVERMAN: Give me a couple of minutes. 25 Let's go off the record.</p>
<p style="text-align: right;">Page 87</p> <p>1 changing of the sign.</p> <p>2 Q. Which contract specifically are you referring to? 3 Has it been produced in this case?</p> <p>4 A. No, it hasn't been produced. It was the original 5 contract that we had to fabricate and install the sign for 6 MGM when they opened.</p> <p>7 Q. So it's your testimony that Ad Art, in any of its 8 various iterations, did not do any further work with the 9 MGM or on MGM signage beyond 1994?</p> <p>10 A. Correct. Other than the small -- one small -- 11 one other small sign that I don't recall, but a small 12 sign. But no other work on that main pylon.</p> <p>13 Q. When you say "that main pylon," do you remember 14 what color the Alucobond panels on the main pylon are --</p> <p>15 A. No.</p> <p>16 Q. -- or were for that lettering?</p> <p>17 A. No, I don't remember.</p> <p>18 Q. Looking here at the sales documents, I'll refer 19 you specifically to SALE -- I'll omit the O's. Look at 20 sale 2.</p> <p>21 A. You're talking about the Mikon?</p> <p>22 Q. Correct.</p> <p>23 Under the description there when you read what it 24 says, "Alucobond 21," do you recognize that product 25 description?</p>	<p style="text-align: right;">Page 89</p> <p>1 (A recess was taken from 4:57 to 4:58 p.m.)</p> <p>2 MR. SILVERMAN: I don't have any further 3 questions.</p> <p>4 MR. LONG: Okay. Thank you.</p> <p>5 MR. KRAMETBAUER: Dana and Terry, thank you very 6 much for your time. I appreciate it.</p> <p>7 (A 44-page document entitled "DEPENDANT 3A 8 COMPOSITES USA INC., f/k/a ALUCOBOND TECHNOLOGIES 9 CORPORATION'S EARLY CASE CONFERENCE DISCLOSURE 10 STATEMENT," was marked for identification as 11 Plaintiff's Exhibit 3.) 12 (Whereupon, the proceedings adjourned at 13 4:58 p.m.)</p> <p>14</p> <p>15 ---000---</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>

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<p style="text-align: center;">1 CERTIFICATE OF DEPOSITION OFFICER</p> <p>2</p> <p>3 I, JOAN B. MERTEN, CSR No. 6922, duly authorized</p> <p>4 to administer oaths Pursuant to Section 2093(b) of the</p> <p>5 California Code of Civil Procedure, hereby certify that</p> <p>6 the witness in the foregoing deposition was by me duly</p> <p>7 sworn to testify the truth, the whole truth and nothing</p> <p>8 but the truth in the within-entitled cause; that said</p> <p>9 deposition was taken at the time and place therein stated;</p> <p>10 that the testimony of the said witness was reported by me</p> <p>11 and thereafter transcribed by me or under my direction</p> <p>12 into typewriting; that the foregoing is a full, complete</p> <p>13 and true record of said testimony; and that the witness</p> <p>14 was given an opportunity to read and correct said</p> <p>15 deposition and to subscribe the same.</p> <p>16 I further certify that I am not of counsel nor</p> <p>17 attorney for either or any of the parties in the</p> <p>18 deposition and caption named, or in any way interested in</p> <p>19 the outcome of the cause named in said caption.</p> <p>20 </p> <p>21 DEPOSITION OFFICER, CSR 6922</p> <p>22</p> <p>23</p> <p>24 Date: 9th day of May, 2017</p> <p>25</p>	<p style="text-align: center;">1 ERRATA SHEET</p> <p>2 Page Line Should read: Reason for Change:</p> <p>3</p> <p>4</p> <p>5</p> <p>6</p> <p>7</p> <p>8</p> <p>9</p> <p>10</p> <p>11</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23 Date: _____</p> <p>24 Signature of Witness _____</p> <p>25 Name Typed or Printed _____</p>
<p style="text-align: center;">1 ERRATA SHEET</p> <p>2</p> <p>3</p> <p>4</p> <p>5 I declare under penalty of perjury that I have read the</p> <p>6 foregoing _____ pages of my testimony, taken</p> <p>7 on _____ (date) at</p> <p>8 _____ (city), _____ (state),</p> <p>9</p> <p>10 and that the same is a true record of the testimony given</p> <p>11 by me at the time and place herein</p> <p>12 above set forth, with the following exceptions:</p> <p>13</p> <p>14 Page Line Should read: Reason for Change:</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>	<p>1</p> <p>2</p> <p>3</p> <p>4</p> <p>5</p> <p>6</p> <p>7</p> <p>8</p> <p>9</p> <p>10</p> <p>11</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>

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(c)]

(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(c)]

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

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

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

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

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

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

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

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

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

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

Directors' Determination of Execution and Use of Proxies

[Corp. Code § 212(b)(3)]

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

Voting Trust [Corp. Code § 706]

Voting Trust [Corp. Code § 706(b)]

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

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

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

Inspectors of Election [Corp. Code § 707]

Appointment [Corp. Code § 707(a)]

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

Number [Corp. Code § 707(a)]

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

Duties [Corp. Code § 707(b), (c)]

(c) The inspector of election shall

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

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

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

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

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

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

Action Without a Meeting [Corp. Code § 603]

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

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

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

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

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

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

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

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

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

ARTICLE V OFFICERS

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Meetings

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

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

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

Instruments

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

Hire and Fire Employees

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

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

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

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

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

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

5.09. The Secretary shall

Seal [Corp. Code § 207(a)]

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

Records, Reports, and Statements

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

Notices

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

Minutes

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

Minute Book [Corp. Code § 1500]

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

Articles of Incorporation [Corp. Code § 209]

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

Bylaws [Corp. Code § 213]

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

Record of Shareholders [Corp. Code § 1500]

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

Certify Records [Corp. Code § 314]

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

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

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

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

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

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

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

Exhibit Minutes to Shareholder [Corp. Code § 1601]

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

Exhibit Records to Director [Corp. Code § 1602]

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

Other Duties

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

Absence of Secretary

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

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

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

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

5.11. The Chief Financial Officer shall:

Funds-Custody and Deposit

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

Funds-Receipt

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

Funds-Disbursement

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

Maintain Accounts [Corp. Code § 1500]

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

Reports to President and Directors

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

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

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

Exhibit Accounts to Shareholders [Corp. Code § 1601]

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

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

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

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

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

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

Bond

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

Other Duties

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

Absence of Chief Financial Officer

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

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

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

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

Compensation [Corp. Code § 212(b)(6)]

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

ARTICLE VI

EXECUTION OF INSTRUMENTS AND DEPOSIT OF FUNDS

Limitations [see Corp. Code § 313; Snukal v. Flightways Manufacturing, Inc. (2000) 23 Cal. 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 depositaries 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 16% percent of the outstanding shares entitled to vote.

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

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

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

ARTICLE XI CONSTRUCTION OF BYLAWS

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

CERTIFICATION OF SECRETARY [Corp. Code § 314]

I, the undersigned, do hereby certify:

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

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


By: _____
Secretary

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

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

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

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

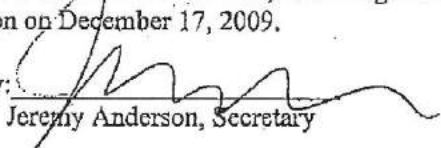
CERTIFICATION OF SECRETARY

I, Jeremy Anderson, do hereby certify:

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

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

By:


Jeremy Anderson, Secretary

AD000198

EXHIBIT "D"

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.adartco.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.adartsc.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:

NAGI 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.

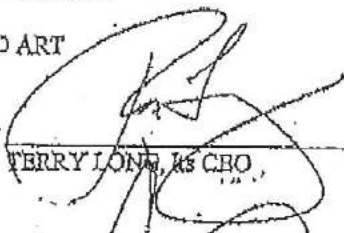
Confidentiality. The parties acknowledge that accounting for the payments to NASCO will likely disclose to NASCO confidential information and trade secrets of AD ART. NASCO agrees to keep said information confidential and not disclose such information to anyone except when necessary to disclose to professionals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

AD ART

By: 
TERRY LONG, its CEO

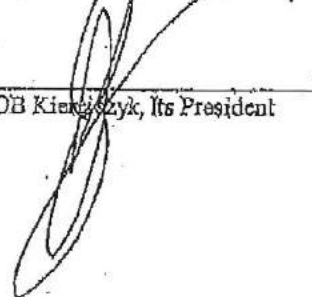
By: 
BOB Kienitz, its President

EXHIBIT "E"

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

Electronically Filed
Oct 03 2018 10:42 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.,

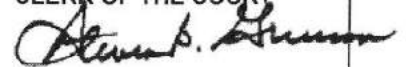
20 Respondent.

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

APPELLANT AND
RESPONDENT'S JOINT
APPENDIX

VOLUME II

Exhibit No.		Bates Nos.
13.	Defendant AD ART, INC.'s renewed Motion for Summary Judgment	140 - 245



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,

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 MOTION FOR SUMMARY JUDGMENT**

29 COMES NOW Defendant, Ad Art, Inc. ("Defendant Ad Art"), by and through their
30 counsel, Timothy F. Hunter, Esq. of Ray Lego & Associates. For the reasons set forth herein,
31 Defendant Ad Art respectfully requests that this court grant summary judgment in its favor on
32 the following grounds: (1) as an indisputable factual matter, Defendant Ad Art has in no way
33 participated in the design, manufacture, installation or maintenance of the MGM Pylon sign at
34 issue in this action; (2) as a matter of law, Defendant Ad Art cannot be held liable as a successor
35 to the entity that in fact performed certain services on the MGM Pylon; (3) the MGM Pylon is
36 not a "product" and therefore Plaintiff's claims are barred by the Statutes of Repose; and (4)
37 Defendant Ad Art is not the owner of the MGM Pylon nor are the occupier of the land that the
38 MGM Pylon is located.

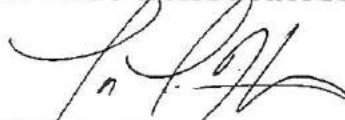
NOTICE OF MOTION

TO: ALL PARTIES AND COUNSEL OF RECORD

PLEASE TAKE NOTICE that the undersigned will bring the foregoing Motion For Summary Judgment on for hearing in **Department XVII** on the 6th day of September, 2017, at the hour of 8:30AM A.M., or as soon thereafter as counsel can be heard.

DATED this ____ day of August, 2017.

RAY LEGO & ASSOCIATES



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

I. STATEMENT OF FACTS

This is a products and premises liability claim brought by Plaintiff, Charles Schueler. Plaintiff alleged that "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." *See*, Plaintiff's Complaint, ¶ 4. Plaintiff further alleged that "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. *Id.* ¶ 26.

The MGM Pylon that is outside of MGM Grand Hotel and Casino in Las Vegas, Nevada was originally designed and/or erected in or about 1993 or 1994. *See*, Exhibit "A" – Affidavit of Terry J. Long; and Exhibit "B" – Sign Permit. The entity involved in the original design and construction of the MGM Pylon was not Defendant Ad Art, but rather a separate entity named Ad Art Electronic Sign Corporation ("Old Ad Art"). *See*, Exhibit "A." In or about 1998, Old Ad Art 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 Old Ad Art, La-Man changed its name to Display Technologies, Inc. ("DTEK"). *Id.* In 2001, DTEK ceased all business operations and liquidated the assets of Old Ad Art. *Id.*

1 In connection with the liquidation of Old Ad Art assets, in or about 2001, a third party
2 named NASCO Electric Sign Co., LLC ("NASCO") purchased the naming rights to "Ad Art."
3 *Id.* NASCO is solely owned by Nagi Ali, who has never been a shareholder or officer of Old
4 Ad Art or Defendant Ad Art. Along with the purchase, NASCO obtained trademark/work
5 mark/service mark/trade names status from the United States Government, and also purchased
6 Old Ad Art's telephone number and web address. *Id.*

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

15 Defendant Ad Art has had no involvement in the MGM Pylon since its formation in
16 2003. *See*, Exhibit "A". Defendant Ad Art was not involved in the design, construction or any
17 subsequent maintenance, improvement or retrofit of the MGM Pylon located outside of the
18 MGM Grand Hotel & Casino in Las Vegas, Nevada. *Id.*

19 II. POINTS AND AUTHORITIES

20 A. The Summary Judgment Standard

21 NRCP 56(b) provides:

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

25 Additionally, NRCP 56(c) states:

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

Summary judgment is appropriate when the pleadings and other evidence demonstrate
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,

1 and any reasonable inferences drawn from it, must be viewed in a light most favorable to the
2 non-moving party. *Wood v. Safeway*, 121 Nev. 724, 732, 121 P.3d 1026, 1031 (2005).

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

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

16 **B. Defendant Ad Art cannot be held liable for any claims relating to work
17 completed by Old Ad Art.**

18 Each claim against Defendant Ad Art fails for any or all of the following reasons: (1)
19 Defendant Ad Art did not exist at the time of the construction of the MGM Pylon; (2) Defendant
20 Ad Art did not purchase all or substantially all of the assets of Old Ad Art; (3) under Nevada
21 law, Defendant Ad Art did not purchase any assets from Old Ad Art, but rather from an
22 unrelated third party via an arms-length transaction. Thus, Defendant Ad Art cannot be subject
23 to successor liability for any act or omission of Old Ad Art merely because it shares a portion of
24 the predecessor's name. For these reasons, summary judgment is appropriate here.

25 **i. Defendant Ad Art was NOT in existence at the time of the
26 construction of the MGM Pylon.**

27 Defendant Ad Art, formed over 10 years after the installation of the MGM Pylon,
28 obviously could not have itself been involved in the design, manufacturing, construction, or
29 maintenance of the MGM pylon. Moreover, Ad Art has had no involvement with the MGM
30 pylon sign since its formation in 2003, whether through maintenance or retrofit of the pylon, or
31 otherwise. *See*, Exhibit "F" – Deposition of Terry Long, pg. 87:7-12.

32 Defendant Ad Art was not formed until March 25, 2003. *See*, Exhibit "A"; Exhibit "C."

1 Defendant Ad Art was formed via filing article of incorporation with the Secretary of State of
2 California on that date. *Id.* On April 1, 2003 Defendant Ad Art entered into a written
3 agreement with NASCO, whereby NASCO agreed to sell only the trademark/work mark/service
4 mark/trade name, use of the telephone number and Internet web address to New Ad Art. *See*,
5 Exhibit "A"; and Exhibit "D." Defendant Ad Art filed with the Nevada Secretary of State on
6 January 6, 2004 to become a Foreign Corporation in the State of Nevada. *See*, Exhibit "E" – Ad
Art, Inc. Entity Details.

7 The MGM Pylon was originally constructed in either 1993 or 1994. It is clear based
8 upon the evidence that Defendant Ad Art was not in business at the time of the construction of
9 the MGM pylon sign. Moreover, Defendant Ad Art has had no involvement with the MGM
10 Pylon since the formation of the company. Because Defendant Ad Art has had positively no
11 involvement with the MGM pylon sign, Plaintiff's claims against Defendant Ad Art involving
the MGM Pylon simply fail.

12 **ii. Defendant Ad Art is not a successor corporation to Old Ad Art.**

13 In, *Lamb v. Leroy Corp.*, 85 Nev. 276 (1969) the Nevada Supreme Court stated "it is the
14 general rule that when one corporation *sells all of its assets* to another corporation the purchaser
15 is not liable for the debts of the seller." Furthermore, the Nevada Supreme Court has also held,
16 "in order to overcome summary judgment on a successor liability claim, *the plaintiff bears the*
17 *initial burden of presenting evidence to establish that the general rule that a successor*
18 *corporation is not liable for the acts of its predecessor does not apply.*" *Village Builders 96,*
19 *L.P. v. U.S. Laboratories, Inc.*, 112 P.3d 1082, 1086 (Nev. 2005) (emphasis added). When one
20 corporation sells to another corporation, the purchaser is not liable for the debts of the seller. *Id.*
at 1087.

21 Here, there is no dispute that Defendant Ad Art did not purchase all (or even
22 substantially all) of the assets of Old Ad Art. At the time of its dissolution, Old Ad Art had
23 many different types of assets, including fixed assets, equipment, inventory, receivables, real
24 and personal property, and other assets. *See*, Exhibit "F" pg. 41:12-16. Defendant Ad Art *only*
25 purchased the right to use the name "Ad Art". Nor did it purchase any asset *directly from* Old
26 Ad Art – it did so from a third-party entity (NASCO) which acquired those rights during the Old
27 Ad Art liquidation process. *See*, Exhibit "D." Given that Defendant Ad Art purchased no assets
28 directly from Old Ad Art, Defendant Ad Art cannot in anyway be considered a successor
corporation of Old Ad Art.

1 Thus, even the **general** rule precluding liability to a corporation which buys **all** of the
2 assets of another corporation is inapplicable here. Moreover a corporation that purchases,
3 essentially, a *single* asset from a third party (long after the original acquisition from the original
4 selling corporation) could not be held responsible for the acts or omissions of that selling
5 corporation.

6 And even *if* the general rule of successor liability *does* apply here, the exceptions to that
7 rule do not. The Court has laid out four exceptions whereby a corporation may be held liable
8 for the predecessor:

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

14 In analyzing the exceptions to the rule, "courts should engage in fact-specific, case-by-
15 case analysis of the factors necessary to establish an exception to the general rule precluding
16 liability." *Id.* at 1087. Moreover, it is *plaintiff's* burden to demonstrate that an exception exists,
17 and if plaintiff cannot meet this burden, then summary judgment is appropriate. *Id.*

18 The evidence here does not support the application of any of the above exceptions in
19 *Village Builders*. First, the NASCO agreement makes clear there was no agreement, whether
20 express or implicit, by Defendant Ad Art to assume the debts of the prior entity. *See*, Exhibit
21 "E." Second, the transactions at issue were not part of a consolidation or a merger, but rather
22 arose the purchase of a name and trademark that at the time was not in use but still controlled by
23 NASCO. Third, the purchase from NASCO was not a continuation of the selling corporation,
24 because at the time defendant Ad Art purchased the naming rights in 2003, the name, and
25 therefore the company, had laid dormant for at least 2 years. Finally, the sale of the name "Ad
26 Art" by NASCO was not done in order to escape any liability, but instead was simply the sale of
27 an asset previously purchased from a company liquidating its own assets.

28 For all of those reasons, Defendant Ad Art is not a successor corporation, did not
purchase assets from Old Ad Art, and as a matter of law cannot incur liability for the alleged
acts and/or omissions of the entity that did in fact erect the MGM Pylon.

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

This is not a strict product liability case as the MGM Pylon, as a matter of law, is not a

1 product. Nevada law, as well as case law from most other jurisdictions, demonstrates that the
2 strict products liability doctrine does not apply to something that is uniquely designed and
3 constructed. *Calloway v. City of Reno*, 116 Ney, 250, 993 F.2d 1259 (2000) (overruled on other
4 grounds). The MGM Pylon is precisely the type of unique object that clearly falls outside of the
5 strict products liability doctrine.

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

13 First, the Court explained, "the doctrine of strict products liability was developed to
14 assist plaintiffs who could not prove that products which caused physical injury at the point of
15 use had been manufactured negligently." *Id.* at 268, 993 P.2d at 1270-71. Relying on
16 Restatement of Torts (Second) Section 402A, the Court explained that "the doctrine of strict
17 products liability developed from judicial concerns about a plaintiffs ability to prove a remote
18 manufacturers or seller's negligence, to spread the costs of damage from dangerously defective
19 products to the consumer by imposing them on the manufacturer or seller, and to promote safety
20 by eliminating the negligence requirement." *Id.*

21 The Court then went on to note that while other courts had found that a home could
22 constitute a product under a strict liability theory of negligence, many other courts had rejected
23 the idea. *Id.* at 269, 993 P.2d at 1271. In the cases where strict liability has been rejected in the
24 context of the building of a home, the "courts have recognized that in the construction context,
25 tracing a defect to a manufacturer or supplier an locating that entity generally poses no
26 significant problem, unlike the situation with the remote manufacturer of a product that travels
27 through Interstate commerce. Additionally, these courts have pointed out that a builder cannot
28 easily limit his liability by express warranties and disclaimers and that the purchaser of the
building has the opportunity to make a meaningful inspection of the property at issue." *Id.*

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

- products are mass produced goods;

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

Id. at 269-70, 993 P.2d .at 1271-72 (internal quotations omitted). For these reasons, the Court in *Calloway* determined that a homebuilder cannot be held liable under a theory of strict products liability because a home is a unique good that is not mass produced. *Id.*

There are also many cases from other jurisdictions that, have held the theory of product liability inapplicable when dealing with purported products that were not mass produced and were unique in design. See *Nationwide Agra Business Ins. Co. v. SMA Elevator Const., Inc.*, 816 F.Supp, 2d 631 (N.D. Iowa 2011) (a case involving a uniquely designed grain elevator that was deemed to not be a "product"); *Martens v. MCL Const. Corp.*, 347 Ill. App. 3d 303 (Ill. App.2004)(rejecting the argument that a steel beam from which an employee fell at a construction site could be considered a "product" for strict liability purposes); *Dayberry v. City of East Helena*, 80 P.3d 1218 (Mont. 2003)(holding that a city swimming pool was not a "product" for strict liability purposes as a pool was not in the stream of commerce nor was it mass produced or prefabricated); *Jessup v. Angelo Benedetti Inc.*, 2003 WL 23.114 (Ohio App. 2003)(a case involving a uniquely designed machine in an asphalt paving business that was designed and manufactured pursuant to the employer's instructions); *Estep v. Meter Automotive*,

1 N.Am., Inc, 774 N.E. 2d 323 (Ohio App. 2002)(rejecting application of theory of strict liability
2 in a case involving a "custom made" machine designed primarily by the employer); *Ettinger v.*
3 *Triangle-Pacific Corp.*, 799 A.2d 95 (Penn.2002) (rejecting application of product liability
4 doctrine in a case involving a uniquely designed oven that was assembled by the manufacturer
at the purchaser's plant).

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

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

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

Second, the manufacturer was "not in any better position to assume the costs than the
Customers [because tire tanker cars were] not a mass-scale enterprise..." *Id.* The purchaser of
the tanker cars selected the manufacturer "to produce a specific, one-time order of [tanker

1 cars] to meet the [purchaser's] need. In such case, the manufacturer has no opportunity to
2 spread the costs throughout its many customers, because no other customers exist." *Id.*

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

10 As applied to this case, the holding in *Calloway* and *Queen City* dictate that the MGM
11 Pylon is not a "product" as a matter of law. The sign was initially designed for the sole use of
12 MGM. It is unique, it was not mass produced, it was built under the direction of MGM, and it
13 was not intended to be injected into the stream of commerce.

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

24 "The uncritical application of the strict tort liability doctrine...disregards some very real
25 differences between mass-produced goods and [uniquely constructed projects] and their
26 respective methods of production." *Calloway*, 116 Nev. at 269, 993 P.2d at 1271 (citation
27 omitted). To apply the doctrine of strict product liability in this case would be to ignore "the
28 very real differences" between the unique nature of the design and construction of the MGM
Pylon in comparison to mass produced goods. The MGM Pylon is not a "product" and the
doctrine of strict, products liability has no application in this case. For these reasons, Plaintiff's
strict products liability claim must be dismissed.

///

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

Putting aside the fact that Defendant Ad Art had no involvement in the MGM Pylon, Plaintiff's claims are time barred due to the application of the statute of repose. Statutes of repose preclude recovery on causes of action after a certain period of time, irrespective of whether damage or an injury has been discovered. In other words, statutes of repose set an outside time limit; when that period expires, a cause of action for personal injury or property damage cannot be brought. *G and H Associates v. Ernest W. Hahn, Inc.*, 113 Nev. 265, 271, 934 P.2d 229, 233 (1997); *Allstate Ins. Co. v. Furgerson*, 104 Nev. 772, 775, 766 P.2d 904, 906, n.2 (1988).

In a personal injury case based on a claim of a construction defect, the statute of repose runs from the date of the substantial completion of the improvement, without regard to the date of the injury. *G and H Assoc.*, 113 Nev. at 271, 934 P.2d at 233. In addition to proving the elements of the cause of action, Plaintiff must also prove that his causes of action were brought within the time frame set forth by the statute of repose. *Id.* at 272, 934 P.2d at 229, n. 6. *The Nevada Legislature enacted the statutes of repose to protect persons engaged in the planning, design, and construction of improvements to real property who otherwise would endure unending liability, even after they had lost control over the use and maintenance of the improvement. Alsenz v. Twin Lakes Vill., Inc.*, 108 Nev. 1117, 1120, 843 P.2d 834, 836 (1992) (citing *Nevada Lakeshore Co. v. Diamond Elec., Inc.*, 89 Nev. 293, 295-96, 511 P.2d 113, 114 (1973)(emphasis added)).

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

Ad Art anticipates that Plaintiff will argue that the previous statutory scheme for the statutes of repose applies to this case. This argument is without merit. Even if the former statutes of repose (effective prior to February 24, 2015) applied, Plaintiff's claims against Defendant Ad Art would still be time-barred. Under these former statutes, Plaintiff's claim is

1 barred by NRS 11.204 for "latent" defects, NRS 11.205 for "patent" defects, and 11.206 for
2 "known" defects. Under NRS 11.206, an injury based on a known defect must be brought
3 within 10 years. Under NRS 11.204, an injury based on a latent defect must be brought within 8
4 years of substantial completion. Under NRS 11.205, the period is just 6 years. Whether the
5 alleged defect in the MGM Pylon is patent, latent, or known Plaintiff's claim is still time-barred
6 because Plaintiff's claims were not filed until July 30, 2015 which is more than 21 years after
the construction of the MGM Pylon by Old Ad Art in 1994.

7 All of Plaintiff's claims are involving the construction of the MGM Pylon fall outside of
8 the applicable statute of repose, and therefore his claims are barred.

9 **E. Plaintiff's premises liability claims fail because Defendant Ad Art was not**
10 **the owner or occupier of the property, nor were they the designer,**
manufacturer, constructor, or maintainer of the MGM pylon sign.

11 In any negligence case, the Plaintiff has the burden of demonstrating the following
12 elements by a preponderance of the evidence:

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

17 *Joynt v. California Hotel & Casino*, 108 Nev. 539, 835 P.2d 799 (1992). Moreover, the Nevada
18 Supreme Court has held that "the question of whether the defendant owes the plaintiff a duty of
19 care is a question of law," and thus, "if this court determines that no duty exists, it will affirm
20 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.

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

1 Plaintiff's claims against Defendant Ad Art pertaining to premises liability simply fail.
2 Defendant Ad Art was not the owner of the MGM pylon sign. Defendant Ad Art was not the
3 occupier of the land where the MGM Pylon was located. Finally, Defendant Ad Art was not
4 involved in maintaining the MGM pylon sign. For those reasons, Plaintiff's premises liability
5 claims against Defendant Ad Art fail.

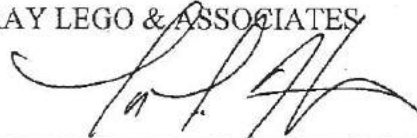
6 III. CONCLUSION

7 For the reasons set forth above, Defendant Ad Art requests that this court grant summary
8 judgment in its favor.

9 DATED this 1 day of August, 2017.

10 Respectfully submitted,

11 RAY LEGO & ASSOCIATES



12 TIMOTHY F. HUNTER, ESQ.

13 Nevada Bar No. 010622

14 7450 Arroyo Crossing Parkway, Suite 250

15 Las Vegas, NV 89113

16 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 2nd day of August, 2017 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


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**
2 TIMOTHY F. HUNTER, ESQ.
3 Nevada Bar No. 010622
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tfhunter@travelers.com

6 Attorney for Defendant,
7 AD ART, INC.

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

10 CHARLES SCHUELER,

11 Plaintiff,

CASE NO.: A-15-722391-C

DEPT. NO.: XVII

12 vs.

13 MGM GRAND HOTEL, LLC, a Domestic
14 Limited Liability Company d/b/a MGM
15 GRAND; MGM RESORTS
16 INTERNATIONAL, a Foreign Corporation
17 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,

18 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.

Ray Lego & Associates
7450 Arroyo Crossing Parkway Suite 250
Las Vegas, Nevada 89113
Telephone No. (702) 478-1350
Facsimile No. (702) 270-4602

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

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

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

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

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

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

FURTHER AFFIANT SAYETH NAUGHT

Terry J. Long

SUBSCRIBED and SWORN to this

____ day of November, 2015.

NOTARY PUBLIC in and for the County
and State

CALIFORNIA JURAT WITH AFFIANT STATEMENT
GOVERNMENT CODE § 8202

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

1 _____
2 _____
3 _____
4 _____
5 _____
6 _____
Signature of Document Signer No. 1 _____ Signature of Document Signer No. 2 (if any) _____

State of California

County of San Francisco

Subscribed and sworn to (or affirmed) before me
on this 18th day of Nov, 2015
by _____
Date Month Year

(1) Terry Long
(2) _____
Name(s) of Signer(s)



Place Notary Seal Above

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

Signature _____

Signature of Notary Public

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
PROJECT NAME MGM GRAND/SIGN SUBDIVISION
ISSUE DATE 10/05/93
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 BRAND 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
NO. UNITS: 0 SQ FOOTAGE: 0 NO. STORIES: 0 QAA: N
OCCUPANCY: TYPE OF CONST: SPRINKLER REQ:

VALUATION: 6720

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

CONDITIONS OF PERMIT

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

LICENSED CONTRACTORS DECLARATION

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

Ad Art Sign Inc.
Contractor Signature

OWNER-BUILDER DECLARATION

I, as owner of the property upon which I am requesting to build or improve a structure, and the structure to be built or improved is a residential structure which I intend to occupy. I do not intend to sell said structure or transfer ownership of said structure of 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

Stamped

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"

2508793



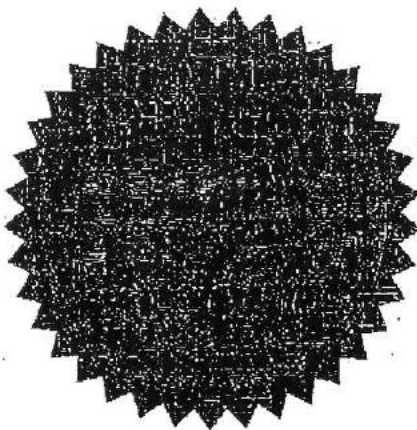
SECRETARY OF STATE

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

2506793

ARTICLES OF INCORPORATION

OF

AD ART, INC.

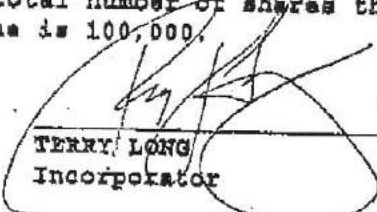
ENDORSED - FILED

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



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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 of votes were cast (or if action is taken by written consent, all shares entitled to vote were voted) and the entire number of directors authorized at the time of the director's most recent election were then being elected; and
- (2) When by the provisions of the Articles the holders of the shares of any class or series, voting as a class or series, are entitled to elect one or more directors, any director so selected may be removed only by the applicable vote of the holders of the shares of that class or series.

Removal by Court [Corp. Code § 304]

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

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

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

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

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

Filing Vacancies

By Board [Corp. Code § 305(a)]

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

2.13. A majority of the authorized number of directors constitutes a quorum of the Board for the transaction of business.

Transactions of Board [Corp. Code § 307(a)(8)]

2.14. Except as otherwise provided in the Articles of Incorporation or in these Bylaws, every act or decision done or made by a majority of the directors present at a meeting duly held at which a quorum is present is the act of the Board, subject to the provisions of Paragraphs 2.23 and 2.28 of these Bylaws.

Withdrawal of Quorum [Corp. Code § 307(a)(8)]

2.15. Any meeting which a quorum is initially present may continue to transact business notwithstanding the withdrawal of directors, if any action taken is approved by at least a majority of the required quorum for the meeting.

Adjournment [Corp. Code § 307(a)(4)]

2.16. A majority of the directors present, whether or not a quorum is present, may adjourn any meeting to another time and place.

Notice of Adjournment [Corp. Code § (a)(4)]

2.17. If the meeting is adjourned for more than 24 hours, however, notice of the adjournment to another time or place must be given prior to the time of the adjourned meeting to the directors who were not present at the time of the adjournment.

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

2.18. At every meeting of the Board, the Board Chairperson or, in the Chairperson's absence, the President of the corporation or, in the President's absence, the Vice-President designated by the President, or, in the absence of a designation, a chairperson chosen by a majority of the directors present shall preside. The Secretary of the corporation shall act as Secretary of the Board. In the event the Secretary is absent from any meeting, the Chairperson may appoint any person to act as secretary of the meeting.

Telephone Participation [Corp. Code §§ 212(b)(2), 307(a)(6)]

2.19. Members of the Board may participate in any meeting through use of conference telephone, electronic video screen communication, or other communications equipment, whenever the board authorizes this type of participation by adopting a resolution. The resolution must require that the corporation (1) verify the identity of any director communicating by telephone, electronic video screen, or other communications equipment and that director's right to participate in the board meeting, and (2) verify that all statements, questions, actions, and votes made by telephone, electronic video screen, or other communications equipment were made by that director and not someone permitted to participate as a director.

Participation in a meeting through use of electronic video screen communication or other communications equipment (other than a conference telephone) pursuant to this Paragraph constitutes presence in person at the meeting if all the following are true:

- (1) Each Board member participating in the meeting can communicate with all of the other members concurrently.
- (2) Each member is provided the means of participating in all matters before the board, including the capacity to propose, or interpose an objection, to a specific action to be taken by the corporation.
- (3) The board adopts a resolution pursuant to this Paragraph.

Action Without Meeting [Corp. Code § 307(b)]

2.20. Any action required or permitted to be taken by the Board may be taken without a meeting if all members of the Board individually or collectively consent in writing to the action. The written consent or consents must be filed with the minutes of the proceedings of the Board. Action by written consent has the same force and effect as a unanimous vote of the directors.

Duties of Directors [Corp. Code § 309]

2.21. (a) Each director shall perform the duties of a director, including duties as a member of any committee of the Board on which the director may serve, in good faith, in a manner the director believes to be in the best interest of the corporation and its shareholders and with care, including reasonable inquiry, as an ordinarily prudent person in a like position would use under similar circumstances.

2.21. (b) In performing his or her duties each director shall be entitled, so long as he or she acts in good faith after reasonable inquiry when the need for it is indicated by the circumstances and without knowledge that would cause the reliance to be unwarranted, to

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 §§ 2112(h)(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.