

Electronically Filed
Feb 21 2020 01:23 p.m.
Elizabeth A. Brown
Clerk of Supreme Court

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Lead Counsel for Plaintiffs

IN THE EIGHTH JUDICIAL DISTRICT COURT FOR THE STATE OF NEVADA

IN AND FOR THE COUNTY OF CLARK

In re NEWPORT CORPORATION
SHAREHOLDER LITIGATION

) Lead Case No. A-16-733154-B

) (Consolidated with Case No. A-16-734039-B)

This Document Relates To:

) CLASS ACTION

ALL ACTIONS.

) **NOTICE OF APPEAL**

NOTICE IS HEREBY GIVEN that Plaintiffs Hubert C. Pincon and Locals 302 and 612 of the International Union of Operating Engineers-Employers Construction Industry Retirement Trust, by and through their counsel, David C. O'Mara, Esq., of the O'Mara Law Firm, P.C., appeal to the Supreme Court of Nevada from the following orders:

1. Findings of Fact, Conclusions of Law and Order Granting Defendants' Motion for Summary Judgment entered in this action on the 23rd day of January, 2020;
2. Order Denying Plaintiffs' Motion for Leave to Amend the Second Amended Complaint entered in this action on the 20th day of November, 2019; and
3. Order Striking the Jury Demand and Amending the Order Setting Civil Jury Trial, Pre-Trial and Calendar Call entered in this action on the 4th day of June, 2019.

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DATED: February 18, 2020

s/ David C. O'Mara
DAVID C. O'MARA

Liaison Counsel

Lead Counsel for Plaintiffs

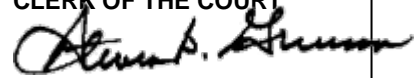
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CERTIFICATE OF SERVICE

I, Bryan Snyder, hereby certify that I am an employee of The O’Mara Law Firm, P.C., and further certify that the foregoing document was electronically filed and served upon all parties via the Court’s Electronic Filing system.

DATED: February 18, 2020

/s/ Bryan Snyder
BRYAN SNYDER



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Lead Counsel for Plaintiffs

IN THE EIGHTH JUDICIAL DISTRICT COURT FOR THE STATE OF NEVADA
IN AND FOR THE COUNTY OF CLARK

In re NEWPORT CORPORATION)	Lead Case No. A-16-733154-B
SHAREHOLDER LITIGATION)	
_____)	(Consolidated with Case No. A-16-734039-B)
This Document Relates To:)	<u>CLASS ACTION</u>
ALL ACTIONS.)	CASE APPEAL STATEMENT
_____)	

1. Name of appellant filing this case appeal statement: Hubert C. Pincon and Locals 302 and 612 of the International Union of Operating Engineers-Employers Construction Industry Retirement Trust, individually, and on behalf of others similarly situated.

2. Identify the judge issuing the decision, judgment, or order appealed from: The Honorable Nancy L. Allf of Department XXVII of the Eighth Judicial District Court of the County of Clark in and for the State of Nevada.

3. Identify each appellant and the name and address of counsel for each appellant:
Appellants Hubert C. Pincon and Locals 302 and 612 of the International Union of Operating Engineers-Employers Construction Industry Retirement Trust. Counsel David C. O'Mara, Esq, The O'Mara Law Firm, P.C., 311 E. Liberty Street, Reno, Nevada 89501; David T. Wissbroecker, David

1 A. Knotts, Christopher H. Lyons, Robbins Geller Rudman & Dowd LLP, 655 West Broadway, Suite
2 1900San Diego, CA 92101.

3 **4. Identify each respondent and the name and address of appellate counsel, if**
4 **known, for each respondent (if the name of a respondent's appellate counsel is unknown,**
5 **indicate as much and provide the name and address of that respondent's trial counsel):**

6 Respondents Robert J. Phillippy, Kenneth F. Potashner, Christopher Cox, Siddhartha C. Kadia, Oleg
7 Khaykin, and Peter J. Simone. Counsel Adam K. Bult, Maximilien Fetaz, Brownstein Hyatt Farber
8 Schreck, LLP, 100 North City Parkway, Suite 1600, Las Vegas, NV 89106; Brian M. Lutz, Gibson,
9 Dunn & Crutcher, LLP, 555 Mission Street, Suite 3000, San Francisco, CA 94105; Meryl L. Young,
10 Colin B. Davis, Gibson, Dunn & Crutcher, 3161 Michelson Drive, Irvine, CA 92612.

11 **5. Indicate whether any attorney identified above in response to question 3 or 4 is**
12 **not licensed to practice law in Nevada and, if so, whether the district court granted that**
13 **attorney permission to appear under SCR 42 (attach a copy of any district court order**
14 **granting such permission):** Counsel for Appellants Counsel for Appellants David T.

15 Wissbroecker, Esq is not licensed to practice in Nevada, the order granting permission to appear is
16 attached as Exhibit 1. Counsel for Appellants David Knotts, Esq. is not licensed to practice in
17 Nevada, the order granting permission to appear is attached as Exhibit 2. Counsel for Appellants
18 Christopher H. Lyons, Esq. is not licensed to practice in Nevada, the order granting permission to
19 appear is attached as Exhibit 3. Counsel for Respondents Brian M. Lutz is not licensed to practice in
20 Nevada, the order granting permission to appear is attached as Exhibit 4. Counsel for Respondents
21 Meryl L. Young is not licensed to practice in Nevada, the order granting permission to appear is
22 attached as Exhibit 5. Counsel for Respondents Colin B. Davis is not licensed to practice in Nevada,
23 the order granting permission to appear is attached as Exhibit 6.

24 **6. Indicate whether appellant was represented by appointed or retained counsel in**
25 **the district court:** Appellants were represented by retained counsel.

26 **7. Indicate whether appellant is represented by appointed or retained counsel on**
27 **appeal:** Appellants were represented by retained counsel.

1 **8. Indicate whether appellant was granted leave to proceed in forma pauperis, and**
2 **the date of entry of the district court order granting such leave:** Not applicable.

3 **9. Indicate the date the proceedings commenced in the district court (e.g., date**
4 **complaint, indictment, information, or petition was filed):** March 9, 2016.

5 **10. Provide a brief description of the nature of the action and result in the district**
6 **court, including the type of judgment or order being appealed and the relief granted by the**
7 **district court:** This is a certified stockholder class action brought by the Class Representative
8 Plaintiffs on behalf of the holders of Newport Corporation common stock, alleging breaches of
9 fiduciary duty against Newport's Board of Directors in connection with the all-cash acquisition of
10 Newport by MKS Instruments, Inc. at \$23.00 per share, announced on February 23, 2016.
11 Appellants appeal the following orders: (1) the District Court's granting of Defendants' Motion for
12 Summary Judgment entered in this action on January 23, 2020; (2) the District Court's denial of
13 Plaintiffs' Motion for Leave to Amend the Second Amended Complaint entered in this action on
14 November 20, 2019; and (3) the District Court's Order Striking the Jury Demand and Amending the
15 Order Setting Civil Jury Trial, Pre-Trial and Calendar Call entered in this action on June 4, 2019.

16 **11. Indicate whether the case has previously been the subject of an appeal to or**
17 **original writ proceeding in the Supreme Court and, if so, the caption and Supreme Court**
18 **docket number of the prior proceeding:** None

19 **12. Indicate whether this appeal involves child custody or visitation:** No.

20 **13. If this is a civil case, indicate whether this appeal involves the possibility of**
21 **settlement:** There is always a possibility of settlement; however, the chances of settlement appear to
22 be unlikely here.

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AFFIRMATION

(Pursuant to NRS 239B.030)

The undersigned does hereby affirm that the preceding document filed in the above referenced matter does not contain the social security number of any person.

DATED: February 18, 2020

THE O'MARA LAW FIRM, P.C.

/s/ David C. O'Mara
DAVID C. O'MARA

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Liaison Counsel

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Lead Counsel for Plaintiffs

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CERTIFICATE OF SERVICE

I, Bryan Snyder, hereby certify that I am an employee of The O’Mara Law Firm, P.C., and further certify that the foregoing document was electronically filed and served upon all parties via the Court’s Electronic Filing system.

DATED: February 18, 2020

/s/ Bryan Snyder
BRYAN SNYDER

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INDEX OF EXHIBITS

Exh No.	Description	Pages
1	Order Admitting to Practice- DTW	2
2	Order Admitting to Practice- DAK	1
3	Order Admitting to Practice- CHL	2
4	Order Admitting to Practice- BML	2
5	Order Admitting to Practice- MYL	2
6	Order Admitting to Practice- CBD	2

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EXHIBIT 1

EXHIBIT 1



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17 Lead Counsel for Plaintiffs

18
19 IN THE EIGHTH JUDICIAL DISTRICT COURT FOR THE STATE OF NEVADA
20
21 IN AND FOR THE COUNTY OF CLARK

22 In re NEWPORT CORPORATION
23 SHAREHOLDER LITIGATION

24) Lead Case No. A-16-733154-B

25) (Consolidated with Case No. A-16-734039-B)

26 This Document Relates To:

27) CLASS ACTION

28 ALL ACTIONS.

29) Hearing Date: October 16, 2018
30) Hearing Time: In Chambers

31
32 ORDER GRANTING MOTION TO ASSOCIATE COUNSEL
33 (DAVID TODD WISSBROECKER, ESQ)

34 This matter came for hearing before the Court on October 16, 2018, in chambers on the
35 Motion to Associate Counsel of David Todd Wissbroecker, Esq. of the law firm of Robbins Geller
36 Rudman & Dowd LLP, which was filed pursuant to Nevada Supreme Court Rule 42, together with
37 a Verified Application for Association of Counsel, Certificate of Good Standing and the State Bar
38 Statement. The Motion to Associate Counsel having been properly noticed, no Opposition having
39 been filed pursuant to EDCR 2.20(e), the Court being fully apprised in the premises, and good
40 cause appearing,

41 IT IS HEREBY ORDERED that the Motion to Associate Counsel is hereby GRANTED
42 on the merits, and pursuant to Rule 42 of the Supreme Court Rules. Mr. David Todd

1 Wissbroecker, Esq. is hereby admitted to practice before the above-entitled Court for the purposes
2 of the above-entitled matter only.

3 **IT IS FURTHER ORDERED** that by accepting this admission, Mr. Wissbroecker agrees
4 to submit to the Court's jurisdiction and appear without subpoena for any proceedings required by
5 the Court which relate to Mr. Wissbroecker's conduct in this matter, including motions,
6 depositions, and evidentiary hearings, whether or not Mr. Wissbroecker has withdrawn from
7 representing any party pursuant to Nevada Supreme Court Rule 42(13)(a).

8 **IT IS SO ORDERED.**

9 DATED this 16 day of October, 2018.

10
11 Nancy J. Alf
12 DISTRICT COURT JUDGE

13 Respectfully submitted by:

14 By David C. O'Mara
15 David C. O'Mara, Esq.
16 The O'Mara Law Firm, P.C.
17 311 E. Liberty Street
18 Reno, Nevada 89501
19 775.323.1321

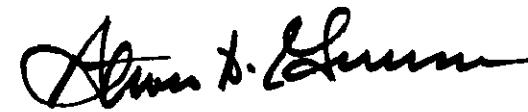
20 ROBBINS GELLER RUDMAN
21 & DOWD LLP
22 RANDALL J. BARON
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Attorneys for Plaintiffs

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EXHIBIT 2

EXHIBIT 2



CLERK OF THE COURT

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Attorneys for Plaintiff

IN THE EIGHTH JUDICIAL DISTRICT COURT FOR THE STATE OF NEVADA

IN AND FOR THE COUNTY OF CLARK

IN RE NEWPORT CORPORATION
SHAREHOLDER LITIGATION,

This Document Relates To:
ALL ACTIONS.

) Lead Case No. A-16-733154-B
) Dept. No. XXVII

) (Consolidated with Case No. A-16-734039-B)

) CLASS ACTION

**ORDER GRANTING MOTION TO ASSOCIATE COUNSEL
(DAVID ANTHONY KNOTTS, ESQ.)**

Based upon the Motion to Associate Counsel (David Anthony Knotts, Esq.), and good cause appearing,

IT IS HEREBY ORDERED that Plaintiffs' Motion To Associate Counsel (David Anthony Knotts, Esq.) is granted. DAVID ANTHONY KNOTTS, ESQ., is hereby admitted to practice in the above-entitled Court for the purposes of the above-entitled matter only.

DATED: June 2, 2016.



DISTRICT JUDGE

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EXHIBIT 3

EXHIBIT 3

**ROBBINS GELLER RUDMAN
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Telephone: 619/231-1058
619/231-7423 (fax) Attorneys for Plaintiff**

IN AND FOR THE COUNTY OF CLARK

CLASS ACTION

- 1 -

1 **CHRISTOPHER H. LYONS, ESQ.**, having filed his Motion to Associate Counsel under
2 Nevada Supreme Court Rule 42, together with a Verified Application for Association of Counsel, a
3 Certificate of Good Standing for the state of California, and the State Bar of Nevada Statement; said
4 application having been noticed, no objections having been made, and the Court being fully apprised
5 in the premises, and good cause appearing,

6 IT IS HEREBY ORDERED that the Motion to Associate Counsel is hereby GRANTED on
7 the merits, and pursuant to Rule 42 of the Supreme Court Rules. Mr. Christopher H. Lyons, Esq.
8 is hereby admitted to practice before the above-entitled Court for the purposes of the above-
9 entitled matter only.

10 IT IS FURTHER ORDERED that by accepting this admission, Mr. Christopher H. Lyons
11 agrees to submit to the Court's jurisdiction and appear without subpoena for any proceedings
12 required by the Court which relate to Mr. Lyons' conduct in this matter, including motions,
13 depositions, and evidentiary hearings, whether or not Mr. Lyon has withdrawn from representing
14 any party pursuant to Nevada Supreme Court Rule 42(13)(a).

15 DATED: 7/17/19
16 4:28 pm

NANCY ALF
DISTRICT JUDGE

17 Submitted by:
18 THE O'MARA LAW FIRM, P.C.

19 _____
20 *David C. O'Mara*

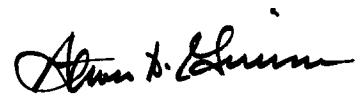
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26 *Attorney for Plaintiff*
27
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EXHIBIT 4

EXHIBIT 4



CLERK OF THE COURT

ORAP

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*Attorneys for Defendants NEWPORT CORPORATION, ROBERT
J. PHILLIPPY, KENNETH F. POTASHNER, CHRISTOPHER
COX, SIDDHARTHA C. KADIA, OLEG KHAYKIN and PETER J.
SIMONE*

DISTRICT COURT

CLARK COUNTY, NEVADA

DIXON CHUNG, individually and on behalf
of all others similarly situated,

Plaintiffs

v.

NEWPORT CORP., KENNETH F.
POTASHNER, CHRISTOPHER COX,
SIDDHARTHA C. KADIA, OLEG
KHAYKIN, ROBERT J. PHILLIPPY, PETER
J. SIMONE, MKS INSTRUMENTS, INC.,
and PSI EQUIPMENT, INC.,

Defendants

CASE NO. : A-16-733154-C

DEPT NO.: I

ORDER ADMITTING TO PRACTICE

BRIAN M. LUTZ, ESQ. having filed his Motion to Associate Counsel on Order
Shortening Time under Nevada Supreme Court Rule 42, together with a Verified Application for
Association of Counsel, a Certificate of Good Standing for the State Bar of California, a

1 Certificate of Good Standing from the Appellate Division of the Supreme Court of the State of
2 New York, First Judicial Department and the State Bar of Nevada Statement; said application
3 having been noticed on order shortening time, no objections having been made, and the Court
4 being fully apprised in the premises, and good cause appearing, it is hereby

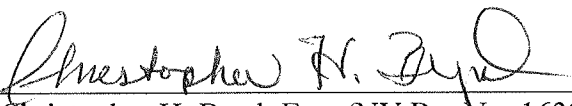
5 ORDERED, that said application is hereby granted, and BRIAN M LUTZ, ESQ. is hereby
6 admitted to practice in the above entitled Court for the purposes of the above entitled matter and
7 any later consolidated matters.

8 Dated this 14 day of April, 2016.

9
10 
11 DISTRICT COURT JUDGE

12 Submitted by:

13 **FENNEMORE CRAIG, P.C.**

14 
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Attorneys for Defendants NEWPORT CORPORATION,
ROBERT J. PHILLIPPY, KENNETH F. POTASHNER,
CHRISTOPHER COX, SIDDHARTHA C. KADIA,
OLEG KHAYKIN and PETER J. SIMONE

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EXHIBIT 5

EXHIBIT 5


CLERK OF THE COURT

ORAP

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Attorneys for Defendants NEWPORT CORPORATION, ROBERT J. PHILLIPPY, KENNETH F. POTASHNER, CHRISTOPHER COX, SIDDHARTHA C. KADIA, OLEG KHAYKIN and PETER J. SIMONE

DISTRICT COURT

CLARK COUNTY, NEVADA

DIXON CHUNG, individually and on behalf
of all others similarly situated,

Plaintiffs

v.

NEWPORT CORP., KENNETH F.
POTASHNER, CHRISTOPHER COX,
SIDDHARTHA C. KADIA, OLEG
KHAYKIN, ROBERT J. PHILLIPPY, PETER
J. SIMONE, MKS INSTRUMENTS, INC.,
and PSI EQUIPMENT, INC.,

Defendants

CASE NO. : A-16-733154-C

DEPT NO.: I

ORDER ADMITTING TO PRACTICE

MERYL L. YOUNG, ESQ. having filed her Motion to Associate Counsel on Order Shortening Time under Nevada Supreme Court Rule 42, together with a Verified Application for Association of Counsel, a Certificate of Good Standing for the State Bar of California, a

1 Certificate of Good Standing from the Appellate Division of the Supreme Court of the State of
2 New York, First Judicial Department and the State Bar of Nevada Statement; said application
3 having been noticed on order shortening time, no objections having been made, and the Court
4 being fully apprised in the premises, and good cause appearing, it is hereby

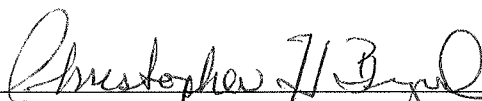
5 ORDERED, that said application is hereby granted, and MERYL L. YOUNG, ESQ. is
6 hereby admitted to practice in the above entitled Court for the purposes of the above entitled
7 matter and any later consolidated matters.

8 Dated this 14 day of April, 2016.

9
10 
11 _____
DISTRICT COURT JUDGE

12 Submitted by:

13 **FENNEMORE CRAIG, P.C.**

14 
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18 -and-

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24 Attorneys for Defendants NEWPORT CORPORATION,
25 ROBERT J. PHILLIPPY, KENNETH F. POTASHNER,
CHRISTOPHER COX, SIDDHARTHA C. KADIA,
26 OLEG KHAYKIN and PETER J. SIMONE

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EXHIBIT 6

EXHIBIT 6


CLERK OF THE COURT

ORAP

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DISTRICT COURT

CLARK COUNTY, NEVADA

DIXON CHUNG, individually and on behalf
of all others similarly situated,

Plaintiffs

v.

NEWPORT CORP., KENNETH F.
POTASHNER, CHRISTOPHER COX,
SIDDHARTHA C. KADIA, OLEG
KHAYKIN, ROBERT J. PHILLIPPY, PETER
J. SIMONE, MKS INSTRUMENTS, INC.,
and PSI EQUIPMENT, INC.,

Defendants

CASE NO. : A-16-733154-C

DEPT NO.: I

ORDER ADMITTING TO PRACTICE

COLIN B. DAVIS, ESQ. having filed his Motion to Associate Counsel on Order
Shortening Time under Nevada Supreme Court Rule 42, together with a Verified Application for
Association of Counsel, a Certificate of Good Standing for the State Bar of California and the

1 State Bar of Nevada Statement; said application having been noticed on order shortening time, no
2 objections having been made, and the Court being fully apprised in the premises, and good cause
3 appearing, it is hereby


4 ORDERED, that said application is hereby granted, and COLIN B. DAVIS, ESQ. is
5 hereby admitted to practice in the above entitled Court for the purposes of the above entitled
6 matter and any later consolidated matters.

7 Dated this 14 day of April, 2016.

8
9 
10 _____
DISTRICT COURT JUDGE

11 Submitted by:

12 **FENNEMORE CRAIG, P.C.**

13 
14 _____
15 Christopher H. Byrd, Esq. (NV Bar No. 1633)
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23 *Attorneys for Defendants NEWPORT CORPORATION,*
24 *ROBERT J. PHILLIPPY, KENNETH F. POTASHNER,*
CHRISTOPHER COX, SIDDHARTHA C. KADIA,
25 *OLEG KHAYKIN and PETER J. SIMONE*

CASE SUMMARY**CASE NO. A-16-733154-B**

Dixon Chung, Plaintiff(s)
vs.
Newport Corp, Defendant(s)

§
§
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§

Location: **Department 27**
 Judicial Officer: **Allf, Nancy**
 Filed on: **03/09/2016**
 Case Number History:
 Cross-Reference Case Number: **A733154**

CASE INFORMATION**Related Cases**

A-16-734039-B (Consolidated)

Case Type: **Other Business Court Matters****Statistical Closures**

01/17/2020 Summary Judgment

Case Status: **01/17/2020 Closed**

DATE**CASE ASSIGNMENT****Current Case Assignment**

Case Number A-16-733154-B
 Court Department 27
 Date Assigned 04/04/2016
 Judicial Officer Allf, Nancy

PARTY INFORMATION

		<i>Lead Attorneys</i>
Plaintiff	Chung, Dixon	O'Mara, David C. <i>Retained</i> 775-323-1321(W)
Defendant	Cox, Christopher Removed: 02/07/2019 Dismissed	Bult, Adam K. <i>Retained</i> 7028623300(W)
	Guyett, Robert L Removed: 03/25/2016 Inactive	
	Kadia, Siddhartha C Removed: 02/07/2019 Dismissed	Bult, Adam K. <i>Retained</i> 7028623300(W)
	Khaykin, Oleg Removed: 02/07/2019 Dismissed	Bult, Adam K. <i>Retained</i> 7028623300(W)
	MKS Instruments Inc Removed: 08/11/2017 Dismissed	
	Newport Corp	Planet, Brandi M. <i>Retained</i> 702-258-6665(W)
	O'Neill, Michael T Removed: 03/25/2016 Inactive	
	Patel, C Kumar N Removed: 03/25/2016 Inactive	
	Phillippy, Robert J	Bult, Adam K.

CASE SUMMARY**CASE NO. A-16-733154-B**

Removed: 02/07/2019
Dismissed

Retained
7028623300(W)

Potashner, Kenneth F

Removed: 02/07/2019
Dismissed

Bult, Adam K.
Retained
7028623300(W)










PSI Equipment Inc

Removed: 02/07/2019
Dismissed

Simone, Peter J














Removed: 02/07/2019
Dismissed

Bult, Adam K.
Retained
7028623300(W)

DATE	EVENTS & ORDERS OF THE COURT	INDEX
	<u>EVENTS</u>	
03/09/2016	 Complaint Filed By: Plaintiff Chung, Dixon <i>Class Action Complaint for Breach of Fiduciary Duty</i>	
03/25/2016	 Amended Complaint Filed By: Plaintiff Chung, Dixon <i>Amended Class Action Complaint</i>	
03/31/2016	 Declaration Filed By: Plaintiff Chung, Dixon <i>Declaration of David C. O'Mara in Support of Plaintiff's Motion for Consolidation of Related Actions and Appointment of Robbins Geller Rudman and Dowd LLP as Lead Counsel</i>	
03/31/2016	 Request Filed by: Defendant MKS Instruments Inc <i>Joint Request for Reassignment to Business Court</i>	
04/01/2016	 Motion Filed By: Plaintiff Chung, Dixon <i>Plaintiff's Motion for Consolidation of related Actions and Appointment of Robbins Geller Rudman & Dowd LLP as Lead Counsel; And Memorandum of Points and Authorities in Support Thereof; on Order Shortening Time</i>	
04/04/2016	 Initial Appearance Fee Disclosure Filed By: Defendant MKS Instruments Inc <i>Initial Appearance Fee Disclosure</i>	
04/04/2016	 Notice of Department Reassignment Party: Defendant MKS Instruments Inc <i>Notice of Department Reassignment</i>	
04/07/2016	 Motion Filed By: Plaintiff Chung, Dixon <i>Motion for Appointment as Lead Counsel and Response to Appointment of Robbins Geller Rudman & Dowd LLP as Lead Counsel</i>	
04/07/2016	 Declaration Filed By: Plaintiff Chung, Dixon <i>Declaration of John P. Aldrich, Esq. In Support of Motion for Appointment as Lead Counsel</i>	

CASE SUMMARY


CASE NO. A-16-733154-B

04/07/2016	 Certificate of Service Filed by: Plaintiff Chung, Dixon <i>Certificate of Service</i>
04/08/2016	 Motion Filed By: Plaintiff Chung, Dixon <i>Ex Parte Motion for Order Shortening Time and Order Shortening Time</i>
04/08/2016	 Notice Filed By: Plaintiff Chung, Dixon <i>Notice Regarding Amended Production and Deposition Timeframe for Plaintiff's Motion to Waive Requirements of Nev. R. Civ. P. 16.1 and Order for Limited Expedited Discovery</i>
04/08/2016	 Notice Filed By: Plaintiff Chung, Dixon <i>Notice Regarding Amended Production and Deposition Timeframe for Plaintiff's Motion to Waive Requirements of Nev. R. Civ. P. 16.1 and Order for Limited Expedited Discovery</i>
04/12/2016	 Motion to Associate Counsel Filed By: Defendant PSI Equipment Inc <i>Motion to Associate Counsel (Daniel W. Halston) on Order Shortening Time</i>
04/12/2016	 Motion to Associate Counsel Filed By: Defendant PSI Equipment Inc <i>Motion to Associate Counsel (Alexandra C. Boudreau) on Order Shortening Time</i>
04/12/2016	 Certificate of Service Filed by: Defendant MKS Instruments Inc <i>Certificate of Service of Motions to Associate Counsel (Daniel W. Halston and Alexandra C. Boudreau)</i>
04/13/2016	 Reply in Support Filed By: Plaintiff Chung, Dixon <i>Plaintiff's Reply Brief in Support of Motion to Waive Requirements of Nev. R. Civ. P. 16.1 and Order for Limited Expedited Discovery</i>
04/13/2016	 Motion to Associate Counsel Filed By: Defendant Newport Corp <i>Motion to Associate Counsel on Order Shortening Time</i>
04/13/2016	 Motion to Associate Counsel Filed By: Defendant Newport Corp <i>Motion to Associate Counsel on Order Shortening Time</i>
04/14/2016	 Order Admitting to Practice Filed By: Defendant Newport Corp <i>Order Admitting to Practice</i>
04/14/2016	 Order Admitting to Practice Filed By: Consolidated Case Party Potashner, Kenneth F <i>Order Admitting to Practice</i>
04/15/2016	 Order Admitting to Practice Filed By: Defendant Newport Corp

CASE SUMMARY

CASE NO. A-16-733154-B

Order Admitting to Practice

04/15/2016	 Recorders Transcript of Hearing <i>Transcript of Proceedings: All Pending Motions -- 4-14-16</i>
04/15/2016	 Stipulation and Order Filed by: Plaintiff Chung, Dixon <i>Stipulation and Order on Consolidation of Related Actions and Appointment of Lead Counsel</i>
04/15/2016	 Stipulation and Order Filed by: Plaintiff Chung, Dixon <i>Stipulated Confidentiality Agreement and Protective Order Regarding the Sealing of Court Records</i>
04/15/2016	 Notice of Entry of Stipulation and Order Filed By: Plaintiff Chung, Dixon <i>Notice of Entry- Stipulation and Order on Consolidation of Related Actions and Appointment of Lead Counsel</i>
04/15/2016	 Notice of Entry of Stipulation and Order Filed By: Plaintiff Chung, Dixon <i>Notice of Entry- Stipulated Confidentiality Agreement and Protective Order Regarding the Sealing of Court Records</i>
04/15/2016	 Motion to Associate Counsel Filed By: Defendant Newport Corp <i>Motion to Associate Counsel on Order Shortening Time</i>
04/18/2016	 Notice of Entry of Order Filed By: Defendant Newport Corp <i>Notice of Entry of Order</i>
04/18/2016	 Notice of Entry of Order Filed By: Defendant Newport Corp <i>Notice of Entry of Order</i>
04/18/2016	 Notice of Entry of Order Filed By: Defendant Newport Corp <i>Notice of Entry of Order</i>
04/20/2016	 Request Filed by: Consolidated Case Party Pincon, Hubert C <i>Plaintiff's Request to Vacate Preliminary Injunction Hearing Date</i>
04/21/2016	 Notice of Non Opposition Filed By: Defendant Newport Corp <i>Newport Defendants' Statement of Non-Opposition to Plaintiffs' Request to Vacate Preliminary Injunction Hearing Date</i>
04/25/2016	 Motion to Associate Counsel Filed By: Defendant Newport Corp <i>Motion to Associate Counsel (David Anthony Knotts, Esq.)</i>
04/25/2016	 Order Granting

CASE SUMMARY

CASE NO. A-16-733154-B

Order Granting Plaintiff's Request to Vacate Preliminary Injunction Hearing Date

04/28/2016



Order Granting Motion

Filed By: Defendant Newport Corp

Order Granting Plaintiff's Motion to Waive Requirements of Nev. R. Civ. P. 16.1 and Order for Limited Expedited Discovery

04/28/2016



Order Granting

Filed By: Defendant MKS Instruments Inc

Order Granting Motion to Associate Counsel (Daniel W. Halston) on Order Shortening Time

04/28/2016



Notice of Entry of Order

Filed By: Plaintiff Chung, Dixon

Notice of Entry of Order

04/28/2016



Order Granting Motion

Filed By: Defendant MKS Instruments Inc

Order Granting Motion to Associate Counsel (Alexandria C. Boudreau) on Order Shortening Time

06/14/2016



Order Granting Motion

Filed By: Plaintiff Chung, Dixon

Order Granting Motion to Associate Counsel (David Anthony Knotts, Esq.)

06/15/2016



Notice of Entry of Order

Filed By: Plaintiff Chung, Dixon

Notice of Entry of Order Granting Motion to Associate Counsel (David Anthony Knotts, Esq.)

10/18/2016



Motion to Seal/Redact Records

Filed By: Plaintiff Chung, Dixon

Plaintiffs' Motion to Seal First Amended Complaint for Breach of Fiduciary Duty

10/25/2016



Filed Under Seal

Filed By: Plaintiff Chung, Dixon

First Amended Complaint

11/07/2016



Notice of Entry of Stipulation and Order

Filed By: Defendant Newport Corp

Notice of Entry of Stipulation and Order

11/07/2016



Stipulation and Order

Filed by: Defendant Newport Corp

Stipulation and Order to Extend Time for Defendants to Respond to Plaintiffs' First Amended Complaint and Set Briefing Schedule

12/06/2016



Motion to Associate Counsel

Filed By: Defendant MKS Instruments Inc

Motion to Associate Counsel (Shira Beth Furman)

12/09/2016



Initial Appearance Fee Disclosure

Filed By: Defendant Newport Corp

Initial Appearance Fee Disclosure

12/09/2016



Declaration

CASE SUMMARY

CASE NO. A-16-733154-B

	<p>Filed By: Defendant Newport Corp <i>Declaration of Brian M. Lutz in Support of Newport Defendants' Motion to Dismiss Plaintiffs' First Amended Complaint</i></p>
12/09/2016	<p> Notice of Motion Filed By: Defendant MKS Instruments Inc <i>Notice of Motion</i></p>
12/09/2016	<p> Motion to Seal/Redact Records Filed By: Defendant MKS Instruments Inc <i>Defendants' Motion to Seal Motoin to Dismiss Plaintiffs' Verified Consolidated First Amended Class Action Complaint</i></p>
12/09/2016	<p> Filed Under Seal Filed By: Defendant Newport Corp; Consolidated Case Party Potashner, Kenneth F; Consolidated Case Party Cox, Christopher; Consolidated Case Party Khaykin, Oleg; Consolidated Case Party Phillippy, Robert J; Consolidated Case Party Simone, Peter J; Consolidated Case Party Kadia, Siddhartha C <i>Newport Defendants' Motion to Dismiss Plaintiffs' First Amended Complaint</i></p>
12/09/2016	<p> Filed Under Seal Filed By: Defendant Newport Corp; Consolidated Case Party Potashner, Kenneth F; Consolidated Case Party Cox, Christopher; Consolidated Case Party Khaykin, Oleg; Consolidated Case Party Phillippy, Robert J; Consolidated Case Party Simone, Peter J; Consolidated Case Party Kadia, Siddhartha C <i>Appendix of Exhibits in Support of Newport Defendants' Motion to Dismiss Plaintiffs' First Amended Complaint Volume 1 of 1</i></p>
12/09/2016	<p> Filed Under Seal Filed By: Defendant MKS Instruments Inc <i>Defendant MKS Instruments, Inc.'s Brief in Support of Its Motion to Dismiss Plaintiffs' Verified Consolidated First Amended Class Action Complaint</i></p>
12/12/2016	<p> Certificate of Service Filed by: Defendant MKS Instruments Inc <i>Certificate of Service</i></p>
12/13/2016	<p> Motion to Seal/Redact Records Filed By: Defendant Newport Corp <i>Newport Defendants' Motion to Seal Newport Defendants' Motion to Dismiss Plaintiffs' First Amended Complaint and Newport Defendants' Appendix</i></p>
12/14/2016	<p> Motion to Associate Counsel Filed By: Defendant Newport Corp <i>Motion to Associate Counsel</i></p>
12/21/2016	<p> Order Admitting to Practice Filed By: Defendant Newport Corp <i>Order Admitting to Practice</i></p>
12/22/2016	<p> Notice of Entry of Order Filed By: Defendant Newport Corp <i>Notice of Entry of Order Admitting to Practice</i></p>
01/12/2017	<p> Stipulation and Order Filed by: Consolidated Case Party Phillippy, Robert J</p>

CASE SUMMARY

CASE NO. A-16-733154-B

Stipulation and Order Continuing Hearing Dates on Defendants' Motions to Dismiss and Parties' Motions to Seal and Permitting Omnibus Opposition

01/13/2017



Notice of Entry of Stipulation and Order

Filed By: Defendant Newport Corp

Notice of Entry of Stipulation and Order

01/13/2017



Motion to Seal/Redact Records

Filed By: Defendant Newport Corp

Plaintiff's Motion to Seal Plaintiffs' Omnibus Opposition to All Defendants' Motion to Dismiss

01/13/2017



Motion to Seal/Redact Records

Filed By: Defendant Newport Corp

Plaintiffs' Motion to Seal Plaintiffs' Motion to Strike Exhibits A and B in the Appendix of Exhibits Submitted with the Declaration of Brian Lutz

01/20/2017



Filed Under Seal

Filed By: Consolidated Case Party Pincon, Hubert C

Plaintiff's Omnibus Opposition to all Defendants' Motions to Dismiss

01/20/2017



Filed Under Seal

Filed By: Consolidated Case Party Pincon, Hubert C

Plaintiffs' Motion to Strike Exhibits A and B in the Appendix of Exhibits Submitted With the Declaration of Brian Lutz

01/25/2017



Notice of Entry of Order

Filed By: Defendant MKS Instruments Inc

Notice of Entry of Order

01/25/2017



Order Granting Motion

Filed By: Defendant MKS Instruments Inc

Order Granting Motion to Associate Counsel (Shira Beth Furman)

02/03/2017



Opposition

Filed By: Defendant Newport Corp

Defendants' Joint Opposition to Plaintiffs' Motion to Strike Exhibits A and B in the Appendix of Exhibits Submitted with the Declaration of Brian Lutz

02/03/2017



Declaration

Filed By: Defendant Newport Corp

Declaration of Brian M. Lutz in Support of the Newport Defendants' Reply in Support of Their Motion to Dismiss Plaintiffs' First Amended Complaint

02/03/2017



Stipulation and Order

Filed by: Defendant Newport Corp

Stipulation and Order Setting Briefing Schedule and Hearing on Plaintiff's Motion to Strike

02/03/2017



Motion to Seal/Redact Records

Filed By: Defendant Newport Corp

Newport Defendants' Motion to Seal Newport Defendants' Reply in Support of Their Motion to Dismiss Plaintiffs' First Amended Complaint

02/03/2017



Motion to Seal/Redact Records

Filed By: Defendant MKS Instruments Inc

Defendants Motion to Seal Reply in Support of Motion to Dismiss Plaintiffs Verified

CASE SUMMARY

CASE NO. A-16-733154-B

Consolidated First Amended Class Action Complaint

02/03/2017	 Filed Under Seal Filed By: Defendant Newport Corp <i>Newport Defendants' Reply in Support of Their Motion to Dismiss Plaintiffs' First Amended Complaint</i>
02/03/2017	 Filed Under Seal Filed By: Defendant MKS Instruments Inc <i>Defendant MKS Instruments, Inc.'s Reply Brief in Support of its Motion to Dismiss Plaintiffs' Verified Consolidated First Amended Class Action Complaint</i>
02/03/2017	 Filed Under Seal Filed By: Defendant MKS Instruments Inc <i>Appendix of Exhibits in Support of Defendant MKS Instruments, Inc.'s Motion to Dismiss Plaintiffs' Verified Consolidated First Amended Class Action Complaint</i>
02/06/2017	 Certificate of Service Filed by: Defendant MKS Instruments Inc <i>Certificate of Service</i>
02/10/2017	 Reply in Support Filed By: Defendant Newport Corp <i>Plaintiffs' Reply in Support of their Motion to Strike Exhibits A and B in the Appendix Submitted with the Declaration of Brian Lutz</i>
02/27/2017	 Recorders Transcript of Hearing <i>Transcript of Proceedings - see page 2 - February 15, 2017</i>
05/24/2017	 Supplemental <i>Plaintiffs' Notice of Supplemental Authority</i>
06/02/2017	 Response Filed by: Defendant Newport Corp <i>Defendants' Response to Plaintiffs' Notice of Supplemental Authority</i>
06/02/2017	 Notice Filed By: Defendant Newport Corp <i>Defendants' Notice of Supplemental Authorities</i>
06/09/2017	 Response Filed by: Plaintiff Chung, Dixon <i>Plaintiff's Response to Defendant's Notice of Supplemental Authorities</i>
06/27/2017	 Order Granting Motion <i>Order Granting Newport Defendants' Motion to Dismiss Plaintiff First Amended Complaint & Granting MkS Instruments, Inc.'s Brief in Support of its Motion to Dismiss Plaintiff's Verified Consolidated First Amended Class Action Complaint</i>
06/27/2017	 Notice of Entry of Order Filed By: Defendant Newport Corp <i>Notice of Entry of Order</i>
07/27/2017	 Motion to Seal/Redact Records


CASE SUMMARY

CASE NO. A-16-733154-B

	<p>Filed By: Plaintiff Chung, Dixon <i>Plaintiff's Motion to Seal Second Amended Complaint</i></p>
07/28/2017	<p> Filed Under Seal <i>Plaintiffs' Motion to Seal Second Amended Complaint</i></p>
07/28/2017	<p> Filed Under Seal <i>Second Amended Complaint</i></p>
08/11/2017	<p> Stipulation and Order for Dismissal Without Prejudice Filed By: Plaintiff Chung, Dixon <i>(A733154, A734039) Stipulation and Order for Voluntary Dismissal Without Prejudice of MKS Intruments, Inc. Only</i></p>
08/11/2017	<p> Stipulation and Order for Dismissal Without Prejudice Filed By: Plaintiff Chung, Dixon <i>(A733154, A734039) Stipulation and Order for Voluntary Dismissal without Prejudice of Newport Corporation Onnly</i></p>
08/16/2017	<p> Stipulation and Order Filed by: Defendant Newport Corp <i>Stipulation and Order Setting Deadline to Respond to the Complaint and Setting Briefing Schedule</i></p>
08/16/2017	<p> Notice of Entry of Stipulation and Order Filed By: Defendant Newport Corp <i>Notice of Entry of Stipulation and Order</i></p>
09/01/2017	<p> Filed Under Seal Filed By: Consolidated Case Party Phillippy, Robert J <i>Defendants' Motion to Dismiss Plaintiffs' Second Amended Complaint</i></p>
09/01/2017	<p> Motion to Seal/Redact Records Filed By: Defendant Newport Corp <i>Defendants' Motion to Seal Defendants' Motion to Dismiss Plaintiffs' Second Amended Complaint and Appendix</i></p>
09/01/2017	<p> Declaration Filed By: Defendant Newport Corp <i>Declaration of Colin B. Davis in Support of Defendants' Motion to Dismiss Plaintiffs' Second Amended Complaint</i></p>
09/01/2017	<p> Filed Under Seal Filed By: Plaintiff Chung, Dixon <i>Appendix of Exhibits in Support of Defendants' Motion to Dismiss Plaintiffs' Second Amended Complaint Volume 1 of 1</i></p>
09/01/2017	<p> Notice of Change of Hearing <i>Notice of Change of Hearing</i></p>
09/01/2017	<p> Certificate of Service Filed by: Defendant Newport Corp <i>Certificate of Service</i></p>
10/06/2017	

CASE SUMMARY

CASE NO. A-16-733154-B

	 Motion to Seal/Redact Records Filed By: Plaintiff Chung, Dixon <i>Plaintiff's Motion to Seal Plaintiff's Opposition to Defendant's Motion to Dismiss</i>
10/11/2017	 Filed Under Seal Filed By: Plaintiff Chung, Dixon <i>Plaintiffs' Opposition to Defendants' Motion to Dismiss the Second Amended Complaint</i>
10/13/2017	 Stipulation and Order Filed by: Defendant Newport Corp <i>Stipulation and Order to Move Hearings on (1) Defendants' Motion to Seal Defendants' Motion to Dismiss Plaintiffs' Second Amended Complaint and Appendix and (2) Defendants' Motion to Dismiss Plaintiffs' Second Amended Complaint</i>
10/13/2017	 Notice of Entry of Stipulation and Order Filed By: Defendant Newport Corp <i>Notice of Entry of Stipulation and Order</i>
10/27/2017	 Motion to Seal/Redact Records Filed By: Defendant Newport Corp <i>Motion to Seal Defendants' Reply in Support of Their Motion to Dismiss Plaintiffs' Second Amended Complaint and Declaration of Colin B. Davis, Esq.</i>
10/30/2017	 Filed Under Seal <i>Defendants' Reply in Support of Their Motion to Dismiss Plaintiffs' Second Amended Complaint</i>
10/30/2017	 Filed Under Seal <i>Declaration of Colin B. Davis, Esq. in Support of Defendants' Reply in Support of Their Motion to Dismiss Plaintiffs' Second Amended Complaint</i>
12/11/2017	 Notice of Withdrawal of Attorney Filed by: Defendant Newport Corp <i>Defendants' Notice of Withdrawal of Jason R. Meltzer, Esq. as Attorney of Record</i>
12/14/2017	 Recorders Transcript of Hearing <i>Transcript of Proceedings, Defendants' Motion to Dismiss Plaintiffs' Second Amended Complaint Defendants' Reply in Support of Their Motion to Dismiss Plaintiffs' Second Amended Complaint, Heard on December 7, 2017</i>
01/05/2018	 Order Denying Motion Filed By: Plaintiff Chung, Dixon <i>Order Denying Defendants' Motion to Dismiss the Second Amended Complaint</i>
01/08/2018	 Notice of Entry of Order Filed By: Plaintiff Chung, Dixon <i>Notice of Entry of Order Denying Defendants' Motion to Dismiss the Second Amended Complaint</i>
02/08/2018	 Motion to Associate Counsel Filed By: Plaintiff Chung, Dixon <i>Motion to Associate Counsel (Timothy Zimmer Lacombe, Esq.)</i>
02/20/2018	 Filed Under Seal <i>Defendant Siddhartha C. Kadia Answer to Plaintiff's Second Amended Complaint</i>

CASE SUMMARY

CASE NO. A-16-733154-B

02/20/2018	 Filed Under Seal <i>Defendant Christopher Cox Answer to Plaintiff's Second Amended Complaint</i>
02/20/2018	 Filed Under Seal <i>Defendant Kenneth F. Potashner Answer to Plaintiff's Second Amended Complaint</i>
02/20/2018	 Filed Under Seal <i>Defendant Robert J. Phillippy Answer to Plaintiff's Second Amended Complaint</i>
02/20/2018	 Filed Under Seal <i>Defendant Peter J. Simone Answer to Plaintiff's Second Amended Complaint</i>
02/20/2018	 Filed Under Seal <i>Defendant Oleg Khaykin Answer to Plaintiff's Second Amended Complaint</i>
02/20/2018	 Motion to Seal/Redact Records Filed By: Consolidated Case Party Potashner, Kenneth F; Consolidated Case Party Cox, Christopher; Consolidated Case Party Khaykin, Oleg; Consolidated Case Party Phillippy, Robert J; Consolidated Case Party Simone, Peter J; Consolidated Case Party Kadia, Siddhartha C <i>Defendants' Motion to Seal Defendants' Answers to Plaintiffs' Second Amended Complaint</i>
02/26/2018	 Order Admitting to Practice <i>Order Admitting to Practice (Timothy Zimmer Lacombe, Esq.)</i>
04/02/2018	 Order Filed By: Defendant Newport Corp <i>[Proposed] Business Court Scheduling Order and Trial Setting Order</i>
04/04/2018	 Notice of Entry of Order Filed By: Defendant Newport Corp <i>Notice of Entry of Order</i>
04/16/2018	 Stipulation <i>Electronically Stored Information Protocol</i>
05/01/2018	 Order Setting Civil Jury Trial, Pre-Trial, and Calendar Call Filed By: Plaintiff Chung, Dixon <i>Order Setting Civil Jury Trial, Pre-Trial and Calendar Call</i>
05/09/2018	 Motion Filed By: Plaintiff Chung, Dixon <i>Plaintiffs' Unopposed Motion for Voluntary Dismissal of Dixon Chung Without Prejudice Pursuant to NRCP 41(a)(2)</i>
05/17/2018	 Declaration <i>Declaration of Hubert C. Pincon in Support of Motion for Class Certification</i>
05/17/2018	 Filed Under Seal <i>SEALED PER MINUTE ORDER 09/27/18 Plaintiff's Motion for Class Certification and Memorandum of Points and Authorities in Support Thereof</i>

CASE SUMMARY

CASE NO. A-16-733154-B

05/17/2018	 Motion to Seal/Redact Records <i>Motion to File Plaintiff's Motion for Class Certification and Memorandum of Points and Authorities in Support thereof Under seal</i>
05/18/2018	 Filed Under Seal Filed By: Plaintiff Chung, Dixon <i>Plaintiff's Motion for Class Certification and Memorandum of Points and Authorities in Support Thereof</i>
05/21/2018	 Application for Issuance of Commission to Take Deposition Party: Consolidated Case Party Pincon, Hubert C <i>Application for Issuance of Commission to Take Deposition and Receive Documents Outside the State of Nevada</i>
06/19/2018	 Stipulation and Order Filed by: Consolidated Case Party Pincon, Hubert C <i>Stipulation and Order Setting Briefing Schedule and Hearing on Plaintiffs' Motion for Class Certification</i>
07/03/2018	 Joinder To Motion Filed By: Consolidated Case Party Pincon, Hubert C <i>Joinder to Plaintiffs' Motion for Class Certification</i>
07/12/2018	 Motion Filed By: Consolidated Case Party Pincon, Hubert C <i>Amended Motion for Class Certification and Memorandum of Points and Authorities in Support Thereof</i>
07/13/2018	 Motion to Seal/Redact Records Filed By: Defendant Newport Corp <i>Motion to Seal Defendants' Opposition to Plaintiff's Motion for Class Certification and Appendix in Support, and Motion to Strike the Joinder in Plaintiff's Motion for Class Certification</i>
07/13/2018	 Motion to Seal/Redact Records <i>Motion to File Plaintiff's Amended Motion for Class Certification and Memorandum of Points and Authorities in Support Thereof Under Seal</i>
07/13/2018	 Filed Under Seal Filed By: Consolidated Case Party Potashner, Kenneth F; Consolidated Case Party Phillippy, Robert J <i>Defendants' Opposition to Plaintiff's Motion for Class Certification</i>
07/13/2018	 Filed Under Seal Filed By: Consolidated Case Party Potashner, Kenneth F; Consolidated Case Party Cox, Christopher; Consolidated Case Party Phillippy, Robert J; Consolidated Case Party Kadia, Siddhartha C <i>Defendants' Motion to Strike the Joinder in Plaintiff's Motion for Class Certification</i>
07/13/2018	 Filed Under Seal Filed By: Consolidated Case Party Potashner, Kenneth F; Consolidated Case Party Cox, Christopher; Consolidated Case Party Khaykin, Oleg; Consolidated Case Party Phillippy, Robert J; Consolidated Case Party Simone, Peter J; Consolidated Case Party Kadia, Siddhartha C <i>Appendix of Exhibits in Support of Defendants' Opposition to Plaintiff's Motion for Class Certification</i>

CASE SUMMARY

CASE NO. A-16-733154-B

07/13/2018	 Declaration Filed By: Defendant Newport Corp <i>Declaration of Colin B. Davis, Esq. in Support of Defendants' Opposition to Plaintiff's Motion for Class Certification</i>
07/13/2018	 Certificate of Service Filed by: Defendant Newport Corp <i>Certificate of Service</i>
07/13/2018	 Declaration <i>Declaration of Locals 302 and 612 of the International Union of Operating Engineers-Employers Construction Industry Retirement Trust in Support of Amended Motion for Class Certification</i>
07/18/2018	 Filed Under Seal Filed By: Plaintiff Chung, Dixon <i>Plaintiffs' Amended Motion for Class Certification and Memorandum of Points and Authorities in Support Thereof</i>
07/30/2018	 Filed Under Seal <i>Defendant's Opposition to Plaintiff's Amended Motion for Class Certification</i>
07/30/2018	 Motion to Seal/Redact Records Filed By: Defendant Newport Corp <i>Motion to Seal Defendants' Opposition to Plaintiff's Amended Motion for Class Certification</i>
07/30/2018	 Motion to Seal/Redact Records <i>Motion to file Plaintiffs' Opposition to Defendants' Motion to Strike the Joinder in Plaintiff's Motion for Class Certification Under Seal</i>
07/31/2018	 Filed Under Seal <i>Plaintiffs' Opposition to Defendants' Motion to Strike the Joinder in Plaintiff's Motion for Class Certification</i>
08/17/2018	 Motion to Seal/Redact Records Filed By: Consolidated Case Party Pincon, Hubert C <i>Motion to File Plaintiffs' Reply Brief in Support of their Motion for Class Certification and Joinder Under Seal</i>
08/20/2018	 Filed Under Seal Filed By: Plaintiff Chung, Dixon <i>Plaintiff's Reply Brief in Support of Their Motion for Class Certification and Joinder</i>
09/14/2018	 Motion to Associate Counsel <i>Motion to Associate Counsel- David Todd Wissbroecker, Esq.</i>
09/20/2018	 Motion to Seal/Redact Records Filed By: Defendant Newport Corp <i>Motion to Seal Defendants' Reply in Support of their Motion to Strike the Joinder in Plaintiff's Motion for Class Certification</i>
09/20/2018	 Filed Under Seal Filed By: Attorney Byrd, Christopher H. <i>Defendants' Reply in Support of Their Motion to Strike the Joinder in Plaintiff's Motion for</i>

CASE SUMMARY












CASE NO. A-16-733154-B

Class Certification

09/20/2018	 Reply in Support Filed By: Consolidated Case Party Pincon, Hubert C <i>Reply Brief in Support of Plaintiffs' Amended Motion for Class Certification</i>
09/28/2018	 Stipulation and Order Filed by: Defendant Newport Corp <i>Joint Stipulation and Order Setting Forth the Order in Which Each of the Matters Set for Hearing on September 27, 2018 Shall be Argued</i>
10/12/2018	 Recorders Transcript of Hearing <i>Transcript of Proceedings, All Pending Motions, Heard on September 27, 2018</i>
10/16/2018	 Decision and Order <i>Decision and Order</i>
10/22/2018	 Order Admitting to Practice Filed By: Consolidated Case Party Pincon, Hubert C <i>Order Granting Motion to Associate counsel (David Todd Wissbroecker, Esq.)</i>
10/22/2018	 Notice of Entry of Order Filed By: Consolidated Case Party Pincon, Hubert C <i>Notice of Entry of Order Granting Motion to Associate Counsel (David Todd Wissbroecker, Esq.)</i>
11/12/2018	 Order Filed By: Consolidated Case Party Pincon, Hubert C <i>Order Regarding Class Certification and Joinder</i>
11/13/2018	 Notice of Entry of Order Filed By: Consolidated Case Party Pincon, Hubert C <i>Notice of Entry of Order Regarding Class Certification and Joinder</i>
11/21/2018	 Order Setting Civil Jury Trial <i>Order Re-Setting Civil Jury Trial and Calendar Call</i>
11/21/2018	 Amended Filed By: Consolidated Case Party Pincon, Hubert C <i>Amended Business Court Scheduling Order and Trial Setting Order</i>
11/27/2018	 Notice of Entry of Order Filed By: Consolidated Case Party Pincon, Hubert C <i>Notice of Entry of Amended Business Court Scheduling Order and Trial Setting Order</i>
11/29/2018	 Motion to Seal/Redact Records <i>Motion to Seal Plaintiffs' Motion to Compel Defendants to Search for Relevant Electronic Evidence and the Affidavit of Timothy Z. Lacombe in Support Thereof</i>
11/30/2018	 Filed Under Seal Filed By: Plaintiff Chung, Dixon <i>Plaintiffs Motion to Compel Defendants to Search for Relevant Electronic Evidence</i>
11/30/2018	 Filed Under Seal

CASE SUMMARY

CASE NO. A-16-733154-B

	<p>Filed By: Plaintiff Chung, Dixon <i>Affidavit of Timothy Z. Lacombe in Support of Plaintiffs Motion to Compel Defendants to Search for Relevant Electronic Evidence</i></p>
12/05/2018	<p> Certificate of Service <i>Certificate of Service</i></p>
12/17/2018	<p> Motion to Seal/Redact Records Filed By: Defendant Newport Corp <i>Motion to Seal Defendants' Opposition to Plaintiffs' Motion to Compel Defendants to Search for Relevant Electronic Evidence and Appendix in Support Thereof</i></p>
12/17/2018	<p> Filed Under Seal Filed By: Consolidated Case Party Potashner, Kenneth F; Consolidated Case Party Cox, Christopher; Consolidated Case Party Khaykin, Oleg; Consolidated Case Party Phillippy, Robert J; Consolidated Case Party Simone, Peter J; Consolidated Case Party Kadia, Siddhartha C <i>Defendants' Opposition to Plaintiffs' Motion to Compel Defendants to Search for Relevant Electronic Evidence</i></p>
12/17/2018	<p> Filed Under Seal Filed By: Consolidated Case Party Potashner, Kenneth F; Consolidated Case Party Cox, Christopher; Consolidated Case Party Khaykin, Oleg; Consolidated Case Party Phillippy, Robert J; Consolidated Case Party Simone, Peter J; Consolidated Case Party Kadia, Siddhartha C <i>Declaration of Colin B Davis, Esq. In Support of Defendants' Opposition to Plaintiffs' Motion to Compel Defendants to Search for Relevant Electronic Evidence</i></p>
12/17/2018	<p> Filed Under Seal Filed By: Consolidated Case Party Potashner, Kenneth F; Consolidated Case Party Cox, Christopher; Consolidated Case Party Khaykin, Oleg; Consolidated Case Party Phillippy, Robert J; Consolidated Case Party Simone, Peter J; Consolidated Case Party Kadia, Siddhartha C <i>Appendix of Exhibits in Support of Defendants' Motion to Compel Defendants to Search for Relevant Electronic Evidence</i></p>
12/17/2018	<p> Certificate of Service Filed by: Defendant Newport Corp <i>Certificate of Service</i></p>
12/21/2018	<p> Motion to Seal/Redact Records <i>Motion to Seal Reply in Support of Plaintiffs' Motion to Compel Defendants to Search for Relevant Electronic Evidence</i></p>
12/24/2018	<p> Filed Under Seal Filed By: Plaintiff Chung, Dixon <i>Reply in Support of Plaintiffs' Motion to Compel Defendants to Search for Relevant Electronic Evidence</i></p>
01/07/2019	<p> Recorders Transcript of Hearing <i>Transcript of Proceedings, All Pending Motions, Heard on January 3, 2019</i></p>
02/07/2019	<p> Order Granting Motion <i>Order Granting Plaintiffs' Motion for Voluntary Dismissal of Dixon Chung</i></p>
02/14/2019	<p> Application for Issuance of Commission to Take Deposition</p>

CASE SUMMARY

CASE NO. A-16-733154-B

Application for Issuance of COmmission to take Deposition and Receive Documents Outside the State of Nevada

02/14/2019



Application for Issuance of Commission to Take Deposition

Application for Issuance of Commission to take Deposition and Receive Documents Outside the State of Nevada

02/20/2019



Order

Filed By: Defendant Newport Corp

Order Regarding Plaintiffs' Motion to Compel Defendants to Search for Relevant Electronic Evidence

02/20/2019



Application for Issuance of Commission to Take Deposition

Party: Plaintiff Chung, Dixon; Defendant Newport Corp; Consolidated Case Party Pincon, Hubert C

Application for Issuance of COmmission to Take Deposition and Receive Documents Outside the State of Nevada

02/20/2019



Application for Issuance of Commission to Take Deposition

Party: Plaintiff Chung, Dixon; Defendant Newport Corp; Consolidated Case Party Pincon, Hubert C

Application for Issuance of COmmission to Take Deposition and Receive Documents Outside the State of Nevada

02/20/2019



Application for Issuance of Commission to Take Deposition

Party: Plaintiff Chung, Dixon; Defendant Newport Corp; Consolidated Case Party Pincon, Hubert C

Application for Issuance of COmmission to Take Deposition and Receive Documents Outside the State of Nevada

02/20/2019



Application for Issuance of Commission to Take Deposition

Party: Consolidated Case Party Pincon, Hubert C

Application for Issuance of COmmission to Take Deposition and Receive Documents Outside the State of Nevada

02/20/2019



Notice of Entry of Order

Filed By: Defendant Newport Corp

Notice of Entry of Order

03/04/2019



Motion to Amend

Filed By: Defendant Newport Corp

Defendants' Motion to Amend the Order Setting Civil Jury Trial, Pre-Trial and Calendar Call

03/06/2019



Clerk's Notice of Hearing

Notice of Hearing

03/11/2019



Application for Issuance of Commission to Take Deposition

Application for Issuance of Commission to take Deposition Outside the State of Nevada

03/12/2019



Application for Issuance of Commission to Take Deposition

Application for Issuance of Commission to Take Deposition Outside the State of Nevada

03/19/2019



Application for Issuance of Commission to Take Deposition

Application for Issuance of Commission to Take Deposition Outside the State of Nevada

CASE SUMMARY















CASE NO. A-16-733154-B

03/26/2019	 Stipulation and Order Filed by: Defendant Newport Corp <i>Stipulation and Order to Reschedule Hearing on Defendants' Motion to Amend the Order Setting Civil Jury Trial, Pre-Trial and Calendar Call</i>
03/26/2019	 Notice of Entry of Stipulation and Order Filed By: Defendant Newport Corp <i>Notice of Entry of Stipulation and Order</i>
04/09/2019	 Stipulation and Order <i>Stipulation and Order Regarding Expert Discovery</i>
04/12/2019	 Opposition to Motion Filed By: Consolidated Case Party Pincon, Hubert C <i>Plaintiffs' Opposition to Defendants' Motion to Amend the Order Setting Civil Jury Trial</i>
04/16/2019	 Status Report <i>Report Regarding Class Notice Dissemination</i>
04/18/2019	 Motion to Associate Counsel Filed By: Defendant Newport Corp <i>Motion to Associate Counsel on Order Shortening Time</i>
04/19/2019	 Amended Notice Filed By: Defendant Newport Corp <i>Amended Notice of Hearing on Motion to Associate Counsel on Order Shortening Time</i>
04/22/2019	 Notice of Non Opposition Filed By: Consolidated Case Party Pincon, Hubert C <i>Notice of Non-Opposition to Defendant's Motion to Associate Counsel [Katie Magallanes]</i>
04/22/2019	 Reply in Support Filed By: Defendant Newport Corp <i>Defendants' Reply Brief in Support of their Motion to Amend the Order Setting Civil Jury Trial, Pre-Trial and Calendar Call</i>
04/22/2019	 Order Admitting to Practice Filed By: Defendant Newport Corp <i>Order Admitting to Practice</i>
04/23/2019	 Notice of Entry of Order Filed By: Defendant Newport Corp <i>Notice of Entry of Order</i>
05/08/2019	 Stipulation and Order <i>Amended Stipulation and Order regarding Expert Discovery</i>
05/13/2019	 Notice of Entry of Stipulation and Order Filed By: Consolidated Case Party Pincon, Hubert C <i>Notice of Entry of Amended Stipulation and Order Regarding Expert Discovery</i>
06/04/2019	 Order Filed By: Defendant Newport Corp <i>Order Striking the Jury Demand and Amending the Order Setting Civil Jury Trial, Pre-Trial</i>

CASE SUMMARY

CASE NO. A-16-733154-B

and Calendar Call

06/04/2019	 Notice of Entry of Order Filed By: Defendant Newport Corp <i>Notice of Entry of Order</i>
06/06/2019	 Notice of Withdrawal of Attorney <i>Notice of Withdrawal of Appearance of Attorney Timothy Z. LaComb, Esq.</i>
06/10/2019	 Recorders Transcript of Hearing <i>Transcript of Proceedings, Motions, Heard on May 1, 2019</i>
07/18/2019	 Motion to Associate Counsel <i>Motion to Associate Counsel on Order Shortening Time (Christopher H. Lyons)</i>
07/18/2019	 Notice of Non Opposition Filed By: Defendant Newport Corp <i>Notice of Non-Opposition to Motion to Associate Counsel on Order Shortening Time</i>
07/18/2019	 Order Admitting to Practice <i>Order Admitting to Practice (Christopher H. Lyons)</i>
07/18/2019	 Notice of Entry of Order <i>Notice of Entry- Order Admitting to Practice (Christopher H. Lyons)</i>
08/09/2019	 Motion to Seal/Redact Records Filed By: Plaintiff Chung, Dixon <i>Plaintiffs' Motion to Seal Plaintiffs' Motion for Leave to Amend the Second Amended Complaint and Appendix of Exhibits</i>
08/09/2019	 Clerk's Notice of Hearing <i>Notice of Hearing</i>
08/12/2019	 Filed Under Seal Filed By: Plaintiff Chung, Dixon <i>Plaintiff's Motion for Leave to Amend the Second Amended Complaint</i>
08/12/2019	 Filed Under Seal Filed By: Plaintiff Chung, Dixon <i>Appendix of Exhibits for Motion for Leave to Amend the Second Amended Complaint</i>
08/13/2019	 Substitution of Attorney Filed by: Defendant Newport Corp <i>Notice of Substitution of Counsel</i>
08/15/2019	 Clerk's Notice of Hearing <i>Notice of Hearing</i>
08/23/2019	 Motion to Seal/Redact Records Filed By: Consolidated Case Party Potashner, Kenneth F; Consolidated Case Party Cox, Christopher; Consolidated Case Party Khaykin, Oleg; Consolidated Case Party Phillippy, Robert J; Consolidated Case Party Simone, Peter J; Consolidated Case Party Kadia, Siddhartha C <i>Defendant's Motion to Seal Defendants' Motion for Summary Judgment and Certain Exhibits</i>

CASE SUMMARY

CASE NO. A-16-733154-B

in the Appendix of Exhibits in Support of Defendants' Motion for Summary Judgment

08/23/2019



Filed Under Seal

Filed By: Consolidated Case Party Potashner, Kenneth F; Consolidated Case Party Cox, Christopher; Consolidated Case Party Khaykin, Oleg; Consolidated Case Party Phillippy, Robert J; Consolidated Case Party Simone, Peter J; Consolidated Case Party Pincon, Hubert C; Consolidated Case Party Kadia, Siddhartha C
Defendants' Motion for Summary Judgment

08/23/2019



Declaration

Filed By: Defendant Newport Corp
Declaration of Brian M. Lutz, Esq. in Support of Defendants' Motion for Summary Judgment

08/23/2019



Appendix

Filed By: Plaintiff Chung, Dixon
Appendix of Exhibits in Support of Defendants' Motion for Summary Judgment - Volume 1 of 3

08/23/2019



Appendix

Filed By: Defendant Newport Corp
Appendix of Exhibits in Support of Defendants' Motion of Summary Judgment - Volume 2 of 3

08/23/2019



Appendix

Filed By: Defendant Newport Corp
Appendix of Exhibits in Support of Defendants' Motion for Summary Judgment - Volume 3 of 3

08/26/2019



Motion to Seal/Redact Records

Filed By: Consolidated Case Party Potashner, Kenneth F; Consolidated Case Party Cox, Christopher; Consolidated Case Party Khaykin, Oleg; Consolidated Case Party Phillippy, Robert J; Consolidated Case Party Simone, Peter J; Consolidated Case Party Kadia, Siddhartha C
Motion to Seal Defendants' Opposition to Plaintiff's Motion for Leave to Amend the Second Amended Complaint; Supporting Declaration of Brian M. Lutz, Esq., and Certain Exhibits in the Appendix of Exhibits in Support of Defendants' Opposition to Plaintiffs' Motion for Leave to Amend

08/26/2019



Appendix

Filed By: Consolidated Case Party Potashner, Kenneth F; Consolidated Case Party Cox, Christopher; Consolidated Case Party Khaykin, Oleg; Consolidated Case Party Phillippy, Robert J; Consolidated Case Party Simone, Peter J; Consolidated Case Party Kadia, Siddhartha C
Appendix of Exhibits in Support of Defendants' Opposition to Plaintiffs' Motion for Leave to Amend the Second Amended Complaint

08/26/2019



Filed Under Seal

Filed By: Consolidated Case Party Phillippy, Robert J
Defendants' Opposition To Plaintiffs' Motion For Leave To Amend The Second Amended Complaint

08/27/2019



Filed Under Seal

Filed By: Consolidated Case Party Phillippy, Robert J
Appendix Of Exhibits In Support Of Defendants' Motion For Summary Judgment

08/27/2019



Filed Under Seal

Filed By: Consolidated Case Party Potashner, Kenneth F; Consolidated Case Party Cox, Christopher; Consolidated Case Party Khaykin, Oleg; Consolidated Case Party Phillippy, Robert J; Consolidated Case Party Simone, Peter J; Consolidated Case Party Pincon, Hubert C; Consolidated Case Party Kadia, Siddhartha C

CASE SUMMARY

CASE NO. A-16-733154-B

Appendix of Exhibits in Support of Defendants' Motion for Leave to Amend the Second Amended Complaint

08/27/2019



Filed Under Seal

Filed By: Consolidated Case Party Potashner, Kenneth F; Consolidated Case Party Cox, Christopher; Consolidated Case Party Khaykin, Oleg; Consolidated Case Party Phillippy, Robert J; Consolidated Case Party Simone, Peter J; Consolidated Case Party Pincon, Hubert C; Consolidated Case Party Kadia, Siddhartha C
Declaration of Brian M Lutz Esq in Support of Defendants' Opposition to Plaintiffs' Motion for Leave to Amend the Second Amended Complaint

10/03/2019



Motion to Seal/Redact Records

Motion to Seal Plaintiffs' reply Brief in Support of Motion for Leave to Amend the Second Amended Complaint and Declaration of David C. O'Mara in Further Support

10/04/2019



Clerk's Notice of Hearing

Notice of Hearing

10/04/2019



Filed Under Seal

Filed By: Attorney O'Mara, David C.
Plaintiffs' Reply Brief in Support of Motion for Leave to Amend the Second Amended Complaint. (10/3/19 Motion to Seal Plaintiff's Reply Brief in Support of Motion for Leave to Amend the Second Amended Complaint and Declaration of Davif C. O'Mara in Futher Support)

10/04/2019



Filed Under Seal

Filed By: Attorney O'Mara, David C.
Declaration of David C. O'Mara in Further Support of Plaintiffs' Reply Brief in Support of Motion for Leave to Amend the Second Amended Complaint (10/3/19 Motion to Seal Plaintiff's Reply Brief in Support of Motion for Leave to Amend the Second Amended Complaint and Declaration of Davif C. O'Mara in Futher Support)

10/04/2019



Motion to Seal/Redact Records

Filed By: Plaintiff Chung, Dixon
Motion to Seal Plaintiffs' Opposition to Defendants' Motion for Summary Judgment, Declaration of David C. O'Mara in Support and Appendices of Exhibits

10/07/2019



Motion to Seal/Redact Records

Filed By: Plaintiff Chung, Dixon
Motion to Seal Plaintiff's Separate Statement of Material Facts and Evidence in Support of their Opposition to Defendants' Motion for Summary Judgment

10/07/2019



Filed Under Seal

Plaintiffs' Opposition to Defendants' Motion for Summary Judgment

10/07/2019



Filed Under Seal

Declaration of David C O'Mara in Support of Plaintiffs' Opposition to Defendants' Motion for Summary Judgment

10/07/2019



Filed Under Seal

Appendix of Exhibits in Support of Plaintiffs' Opposition to Defendants' Motion for Summary Judgment - Vollume I

10/07/2019

















Filed Under Seal

Appendix Exhibits in Support of Plaintiff's Opposition to Defendants' Motion for Summary Judgment - Vollume II










CASE SUMMARY

CASE NO. A-16-733154-B

10/07/2019	 Filed Under Seal <i>Appendix Exhibits in Support of Plaintiff's Opposition to Defendants' Motion for Summary Judgment - Volume III</i>
10/07/2019	 Filed Under Seal <i>Appendix Exhibits in Support of Plaintiff's Opposition to Defendants' Motion for Summary Judgment - Volume IV</i>
10/07/2019	 Filed Under Seal <i>Appendix Exhibits in Support of Plaintiff's Opposition to Defendants' Motion for Summary Judgment - Volume V</i>
10/07/2019	 Filed Under Seal <i>Appendix Exhibits in Support of Plaintiff's Opposition to Defendants' Motion for Summary Judgment - Volume VI</i>
10/07/2019	 Filed Under Seal <i>Appendix Exhibits in Support of Plaintiff's Opposition to Defendants' Motion for Summary Judgment - Volume VII</i>
10/07/2019	 Filed Under Seal <i>Appendix Exhibits in Support of Plaintiff's Opposition to Defendants' Motion for Summary Judgment - Volume VIII</i>
10/07/2019	 Filed Under Seal <i>Appendix Exhibits in Support of Plaintiff's Opposition to Defendants' Motion for Summary Judgment - Volume IX</i>
10/07/2019	 Filed Under Seal <i>Appendix Exhibits in Support of Plaintiff's Opposition to Defendants' Motion for Summary Judgment - Volume X</i>
10/07/2019	 Filed Under Seal <i>Appendix Exhibits in Support of Plaintiff's Opposition to Defendants' Motion for Summary Judgment - Volume XI</i>
10/07/2019	 Filed Under Seal <i>Appendix Exhibits in Support of Plaintiff's Opposition to Defendants' Motion for Summary Judgment - Volume XII</i>
10/07/2019	 Filed Under Seal <i>Plaintiffs' Separate Statement of Material Facts and Evidence in Support of Their Opposition to Defendants' Motion for Summary Judgment</i>
10/07/2019	 Certificate of Service <i>Certificate of Service</i>
10/14/2019	 Recorders Transcript of Hearing <i>Transcript of Proceedings, Motions, Heard on October 10, 2019</i>
11/05/2019	 Motion to Seal/Redact Records Filed By: Consolidated Case Party Potashner, Kenneth F; Consolidated Case Party Cox, Christopher; Consolidated Case Party Khaykin, Oleg; Consolidated Case Party Phillippy,

CASE SUMMARY

CASE NO. A-16-733154-B

	<p>Robert J; Consolidated Case Party Simone, Peter J; Consolidated Case Party Kadia, Siddhartha C</p> <p><i>Motion to Seal Errata to Defendants' Motion for Summary Judgment</i></p>
11/05/2019	<p> Filed Under Seal</p> <p>Filed By: Consolidated Case Party Potashner, Kenneth F; Consolidated Case Party Cox, Christopher; Consolidated Case Party Khaykin, Oleg; Consolidated Case Party Phillippy, Robert J; Consolidated Case Party Simone, Peter J; Consolidated Case Party Kadia, Siddhartha C</p> <p><i>Errata to Defendants' Motion for Summary Judgment</i></p>
11/05/2019	<p> Request</p> <p>Filed by: Consolidated Case Party Potashner, Kenneth F; Consolidated Case Party Cox, Christopher; Consolidated Case Party Khaykin, Oleg; Consolidated Case Party Phillippy, Robert J; Consolidated Case Party Simone, Peter J; Consolidated Case Party Kadia, Siddhartha C</p> <p><i>Request for in Chambers Hearing on Motion to Seal Errata to Defendants' Motion for Summary Judgment</i></p>
11/06/2019	<p> Motion to Seal/Redact Records</p> <p>Filed By: Defendant Newport Corp</p> <p><i>Motion to Seal (1) Defendants' Reply in Support of Their Motion for Summary Judgment and (2) Declaration of Brian M. Lutz in Support of Defendants' Reply in Support of Their Motion for Summary Judgment</i></p>
11/06/2019	<p> Clerk's Notice of Hearing</p> <p><i>Notice of Hearing</i></p>
11/06/2019	<p> Request</p> <p>Filed by: Defendant Newport Corp</p> <p><i>Request for in Chambers Hearing on Motion to Seal (1) Defendants' Reply in Support of Their Motion for Summary Judgment and (2) Declaration of Brian M. Lutz in Support of Defendants' Reply in Support of Their Motion for Summary Judgment</i></p>
11/06/2019	<p> Filed Under Seal</p> <p>Filed By: Consolidated Case Party Potashner, Kenneth F; Consolidated Case Party Cox, Christopher; Consolidated Case Party Khaykin, Oleg; Consolidated Case Party Phillippy, Robert J; Consolidated Case Party Simone, Peter J; Consolidated Case Party Kadia, Siddhartha C</p> <p><i>Reply in Support of Defendants' Motion for Summary Judgment (Sealed per Filed Motion to Seal (1) Defendants' Reply in Support of Their Motion for Summary Judgment and (2) Declaration of Brian M. Lutz in Support of Defendants' Reply in Support of Their Motion for Summary Judgment on 11/6/2019)</i></p>
11/06/2019	<p> Filed Under Seal</p> <p>Filed By: Consolidated Case Party Potashner, Kenneth F; Consolidated Case Party Cox, Christopher; Consolidated Case Party Khaykin, Oleg; Consolidated Case Party Phillippy, Robert J; Consolidated Case Party Simone, Peter J; Consolidated Case Party Kadia, Siddhartha C</p> <p><i>Reply in Support of Defendants' Motion for Summary Judgment (Sealed per Filed Motion to Seal (1) Defendants' Reply in Support of Their Motion for Summary Judgment and (2) Declaration of Brian M. Lutz in Support of Defendants' Reply in Support of Their Motion for Summary Judgment on 11/6/2019)</i></p>
11/07/2019	<p> Clerk's Notice of Hearing</p> <p><i>Notice of Hearing</i></p>
11/12/2019	<p> Motion to Strike</p>









CASE SUMMARY

CASE NO. A-16-733154-B

	Filed By: Defendant Newport Corp <i>Motion to Strike; Ex Parte Application for Order Shortening Time</i>
11/18/2019	 Opposition to Motion Filed By: Plaintiff Chung, Dixon <i>Plaintiffs' Opposition to Defendants' Motion to Strike Plaintiffs' Separate Statement of Material Facts and Evidence</i>
11/20/2019	 Reply in Support Filed By: Defendant Newport Corp <i>Reply in Support of Motion to Strike</i>
11/20/2019	 Order Denying Motion Filed By: Defendant Newport Corp <i>Order Denying Plaintiffs' Motion for Leave to Amend the Second Amended Complaint</i>
11/20/2019	 Notice of Entry of Order Filed By: Defendant Newport Corp <i>Notice of Entry of Order</i>
11/22/2019	 Order Granting Motion Filed By: Defendant Newport Corp <i>Order Granting Motion to Seal Defendants' Motion for Summary Judgment and Certain Exhibits in the Appendix of Exhibits in Support of Defendants' Motion for Summary Judgment</i>
11/22/2019	 Notice of Entry of Order Filed By: Defendant Newport Corp <i>Notice of Entry of Order</i>
11/22/2019	 Notice of Entry of Order Filed By: Defendant Newport Corp <i>Notice of Entry of Order</i>
11/22/2019	 Order Granting Motion Filed By: Defendant Newport Corp <i>Order Granting Motion to Seal Defendants' Opposition to Plaintiffs' Motion for Leave to Amend the Second Amended Complaint; Supporting Declaration of Brian M. Lutz, Esq.; and Certain Exhibits in Support of Defendants' Opposition to Plaintiffs' Motion for Leave to Amend</i>
11/22/2019	 Notice of Entry of Order Filed By: Defendant Newport Corp <i>Notice of Entry of Order</i>
11/26/2019	 Recorders Transcript of Hearing <i>Transcript of Proceedings, All Pending Motions, Heard on November 21, 2019</i>
12/04/2019	 Order Setting Civil Jury Trial, Pre-Trial, and Calendar Call <i>Order Re-Setting Civil Jury Trial, and Calendar Call</i>
12/05/2019	 Order Setting Civil Non-Jury Trial <i>Amended Order Setting Civil Non-Jury Trial, and Calendar Call</i>
12/06/2019	 Motion to Seal/Redact Records











CASE SUMMARY

CASE NO. A-16-733154-B

	<p>Filed By: Consolidated Case Party Potashner, Kenneth F; Consolidated Case Party Cox, Christopher; Consolidated Case Party Khaykin, Oleg; Consolidated Case Party Phillippy, Robert J; Consolidated Case Party Simone, Peter J; Consolidated Case Party Kadia, Siddhartha C</p> <p><i>Motion to Seal Defendants'(1) Motion in Limine. 1; (2) Motion in Limine No. 2;(3) Delcaration of Maximilien D. Fetaz, Esq. in Support of Defendants' Motion in Limine Nos. 1 and 2; and (4) Exhibits 2-4,6, and 9 to the Appendix of Exhibits in Support of Defendants' Motions in Limine Nos. 1 and 2</i></p>
12/06/2019	<p> Appendix</p> <p>Filed By: Consolidated Case Party Potashner, Kenneth F; Consolidated Case Party Cox, Christopher; Consolidated Case Party Khaykin, Oleg; Consolidated Case Party Phillippy, Robert J; Consolidated Case Party Simone, Peter J; Consolidated Case Party Kadia, Siddhartha C</p> <p><i>Appendix of Exhibits in Support of Defendants' Motion in Limine Nos. 1 and 2</i></p>
12/06/2019	<p> Clerk's Notice of Hearing</p> <p><i>Notice of Hearing</i></p>
12/06/2019	<p> Filed Under Seal</p> <p>Filed By: Defendant Newport Corp</p> <p><i>Defendants' Motion in Limine No. 1 to Exclude Evidence, Testimony, and Argument Related to Post-Merger Financial Performance Per 12/6/19 Motion to Seal Defendants'(1) Motion in Limine. 1; (2) Motion in Limine No. 2;(3) Delcaration of Maximilien D. Fetaz, Esq. in Support of Defendants' Motion in Limine Nos. 1 and 2; and (4) Exhibits 2-4,6, and 9 to the Appendix of Exhibits in Support of Defendants' Motions in Limine Nos. 1 and 2</i></p>
12/06/2019	<p> Filed Under Seal</p> <p>Filed By: Defendant Newport Corp</p> <p><i>Defendants' Motion in Limine No. 2 to Preclude Plaintiffs' Purported Expert Brian Foley from Offering Non-Opinion Testimony Regarding Factual "Observations" Per 12/6/19 Motion to Seal Defendants'(1) Motion in Limine. 1; (2) Motion in Limine No. 2;(3) Delcaration of Maximilien D. Fetaz, Esq. in Support of Defendants' Motion in Limine Nos. 1 and 2; and (4) Exhibits 2-4,6, and 9 to the Appendix of Exhibits in Support of Defendants' Motions in Limine Nos. 1 and 2</i></p>
12/06/2019	<p> Filed Under Seal</p> <p><i>Declaration of Maximilien D. Fetaz, Esq. in Support of Defendants' Motions in Limine Nos. 1 and 2 Per 12/6/19 Motion to Seal Defendants'(1) Motion in Limine. 1; (2) Motion in Limine No. 2;(3) Delcaration of Maximilien D. Fetaz, Esq. in Support of Defendants' Motion in Limine Nos. 1 and 2; and (4) Exhibits 2-4,6, and 9 to the Appendix of Exhibits in Support of Defendants' Motions in Limine Nos. 1 and 2</i></p>
12/06/2019	<p> Clerk's Notice of Hearing</p> <p><i>Notice of Hearing</i></p>
12/06/2019	<p> Filed Under Seal</p> <p>Filed By: Defendant Newport Corp</p> <p><i>Appendix of Exhibits in Support of Defendants' Motions in Limine Nos. 1 and 2 Per 12/6/19 Motion to Seal Defendants'(1) Motion in Limine. 1; (2) Motion in Limine No. 2;(3) Delcaration of Maximilien D. Fetaz, Esq. in Support of Defendants' Motion in Limine Nos. 1 and 2; and (4) Exhibits 2-4,6, and 9 to the Appendix of Exhibits in Support of Defendants' Motions in Limine Nos. 1 and 2</i></p>
01/23/2020	<p> Order Denying Motion</p> <p>Filed By: Defendant Newport Corp</p> <p><i>Order Denying Defendants' Motion to Strike</i></p>
01/23/2020	

CASE SUMMARY

CASE NO. A-16-733154-B

	 Findings of Fact, Conclusions of Law and Order Filed By: Defendant Newport Corp <i>Findings of Fact, Conclusions of Law, and Order Granting Defendants' Motion for Summary Judgment</i>
01/23/2020	 Notice of Entry of Order Filed By: Defendant Newport Corp <i>Notice of Entry of Order</i>
01/23/2020	 Notice of Entry of Findings of Fact, Conclusions of Law Filed By: Defendant Newport Corp <i>Notice of Entry of Findings of Fact, Conclusions of Law, and Order Granting Defendants' Motion for Summary Judgment</i>
01/27/2020	 Exhibits Filed By: Defendant Newport Corp <i>Exhibits G, Part 1 of 2 to Memorandum of Costs</i>
01/27/2020	 Memorandum of Costs and Disbursements Filed By: Defendant Newport Corp <i>Memorandum of Costs</i>
01/27/2020	 Exhibits Filed By: Defendant Newport Corp <i>Exhibit G, Part 2 of 2 to Memorandum of Costs</i>
01/27/2020	 Exhibits Filed By: Defendant Newport Corp <i>Exhibits H through L to Memorandum of Costs</i>
01/29/2020	 Motion to Extend <i>Motion to Extend Time to File a Motion to Retax Costs on Shorten Time (First Request)</i>
02/18/2020	 Notice of Appeal <i>Notice of Appeal</i>
02/18/2020	 Case Appeal Statement <i>Case Appeal Statement</i>
	<u>DISPOSITIONS</u>
08/11/2017	Order of Dismissal Without Prejudice (Judicial Officer: Allf, Nancy) Debtors: Newport Corp (Defendant) Creditors: Dixon Chung (Plaintiff) Judgment: 08/11/2017, Docketed: 08/16/2017
08/11/2017	Order of Dismissal Without Prejudice (Judicial Officer: Allf, Nancy) Debtors: MKS Instruments Inc (Defendant) Creditors: Dixon Chung (Plaintiff) Judgment: 08/11/2017, Docketed: 08/16/2017
02/07/2019	Order of Dismissal Without Prejudice (Judicial Officer: Allf, Nancy) Debtors: Dixon Chung (Plaintiff), Newport Corp (Defendant), Kenneth F Potashner (Defendant), Christopher Cox (Defendant), Oleg Khaykin (Defendant), Robert J Phillippy (Defendant), Peter J Simone (Defendant), PSI Equipment Inc (Defendant), Siddhartha C Kadia (Defendant) Creditors: Hubert C Pincon (Consolidated Case Party) Judgment: 02/07/2019, Docketed: 02/08/2019

CASE SUMMARY

CASE NO. A-16-733154-B

HEARINGS

- 04/14/2016 **Motion to Consolidate** (9:30 AM) (Judicial Officer: Allf, Nancy)
Plaintiff's Motion for Consolidation of related Actions and Appointment of Robbins Geller Rudman & Dowd LLP as Lead Counsel; And Memorandum of Points and Authorities in Support Thereof; on Order Shortening Time [A-16-733154-C/A-16-734039-B]
 Granted;
- 04/14/2016 **Motion for Appointment** (9:30 AM) (Judicial Officer: Allf, Nancy)
Plaintiff's Motion for Appointment as Lead Counsel and Response top Appointment of Robbins Geller Rudman & Dowd LLP as Lead Counsel on Order Shortening Time
 Granted;
- 04/14/2016 **Motion** (9:30 AM) (Judicial Officer: Allf, Nancy)
Ex Parte Motion for Order Shortening Time and Order Shortening Time
 Granted;
- 04/14/2016 **Motion to Associate Counsel** (9:30 AM) (Judicial Officer: Allf, Nancy)
Motion to Associate Counsel (Daniel W. Halston) On Order Shortening Time
 Granted;
- 04/14/2016 **Motion to Associate Counsel** (9:30 AM) (Judicial Officer: Allf, Nancy)
Motion to Associate Counsel (Alexandra C. Boudreau) On Order Shortening Time
 Granted;
- 04/14/2016 **Motion to Associate Counsel** (9:30 AM) (Judicial Officer: Allf, Nancy)
Motion to Associate Counsel (Meryl L. Young, Esq.) on Order Shortening Time
 Granted;
- 04/14/2016 **Motion to Associate Counsel** (9:30 AM) (Judicial Officer: Allf, Nancy)
Motion to Associate Counsel (Colin B. Davis, Esq.) On Order Shortening Time
 Granted;

04/14/2016  **All Pending Motions** (9:30 AM) (Judicial Officer: Allf, Nancy)

Matter Heard;
 Journal Entry Details:


A733154 - PLAINTIFF'S MOTION FOR CONSOLIDATION OF RELATED ACTIONS AND APPOINTMENT OF ROBBINS GELLER RUDMAN & DOWD LLP AS LEAD COUNSEL; AND MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT THEREOF; ON ORDER SHORTENING TIME [A-16-733154-C/A-16-734039-B]...PLAINTIFF'S MOTION FOR APPOINTMENT AS LEAD COUNSEL AND RESPONSE TOP APPOINTMENT OF ROBBINS GELLER RUDMAN & DOWD LLP AS LEAD COUNSEL ON ORDER SHORTENING TIME...EX PARTE MOTION FOR ORDER SHORTENING TIME AND ORDER SHORTENING TIME...MOTION TO ASSOCIATE COUNSEL (DANIEL W. HALSTON) ON ORDER SHORTENING TIME...MOTION TO ASSOCIATE COUNSEL (ALEXANDRA C. BOUDREAU) ON ORDER SHORTENING TIME...MOTION TO ASSOCIATE COUNSEL (MERYL L. YOUNG, ESQ.) ON ORDER SHORTENING TIME...MOTION TO ASSOCIATE COUNSEL (COLIN B. DAVIS, ESQ.) ON ORDER SHORTENING TIME A734039 -PLAINTIFF'S MOTION TO WAIVE REQUIREMENTS OF NEV. R. CIV. P. 16.1 AND ORDER FOR LIMITED EXPEDITED DISCOVERY; AND MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT THEREOF...PLAINTIFF'S MOTION FOR CONSIDERATION OF RELATED ACTIONS AND APPOINTMENTS OF ROBBIN GELLER RUDMAN & DOWD LLP AS LEAD COUNSEL; AND MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT THEREOF COUNSEL PRESENT: David O'Mara, Esq. present on behalf of Plaintiff (A734039); David Knotts, Pro Hac Vice Pending, present on behalf of Plaintiff (A734039); Abe Vigil, Esq. present on behalf of Defendants MK Instruments and PSI Equipment (A733154 & A734039); Brian Lutz, Pro Hac Vice Pending, present on behalf of Defendant Newport Corporation (A733154 & A734039); Collin Davis, Pro Hac Vice Pending, present on behalf of Defendant Newport Corporation (A733154 & A734039); Christopher Byrd, Esq. present on behalf of Defendant Newport Corporation (A733154 & A734039); Dan Halsten, Pro Hac Vice Pending (appearing telephonically), present on behalf of Defendants MK Instruments (A733154 & A734039); Meryl Young, Pro

CASE SUMMARY

CASE NO. A-16-733154-B

*Hac Vice Pending (appearing telephonically), present on behalf of Defendant Newport Corporation (A733154 & A734039). Court inquired if there would be any oppositions regarding the four pending pro hac vice application. Counsel agreed there were no oppositions. COURT ORDERED, Motion to Associate Counsel (Daniel W. Halston) GRANTED; Motion to Associate Counsel (Alexandra C. Boudreau) GRANTED; Motion to Associate Counsel (Meryl L. Young, Esq.) GRANTED; and Motion to Associate Counsel (Colin B. Davis) GRANTED. Court noted that Mr. Lutz has a Motion to Associate counsel set for the chamber calendar on April 20, 2016. Upon inquiry by the Court, counsel had no objection to the motion. COURT ORDERED, Motion to Associate Counsel (Lutz) GRANTED AND VACATED from the April 20, 2016 calendar. There being no opposition, Court stated everyone who is present today will be allowed to participate. As to Plaintiff's Motion for Consolidation of related actions and Appointment of Robbins Geller Rudman & Dowd LLP as Lead Counsel; and Memorandum of Points and Authorities in Support Thereof; on OST [A-16-733154-B/A-16-734039-B], Mr. O'Mara stated they provided a stipulation and that parties are in agreement to that effect. COURT ORDERED, motion GRANTED, cases A733154 and A734039 CONSOLIDATED. Order SIGNED IN OPEN COURT. Mr. O'Mara further stated they provided the Court a stipulation as to confidentiality that has been signed by all parties. Upon inquiry by Court, all counsel stated they have reviewed it and there is no objection. Order SIGNED IN OPEN COURT. Arguments by Mr. Knotts, Mr. Lutz and Mr. Halsten regarding the merits of and opposition to Plaintiff's Motion to Waive Requirements of Nev. R. Civ. P. 16.1 and Order for Limited Expedited Discovery; and Memorandum of Points and Authorities in Support Thereof on Order Shortening Time. Court stated its findings and ORDERED, Plaintiff's Motion to Waive Requirements of Nev. R. Civ. P. 16.1 and Order for Limited Expedited Discovery; and Memorandum of Points and Authorities in Support Thereof on Order Shortening Time GRANTED. Court directed counsel to meet as whether there are any issues of scope counsel can agree to. Matter trailed. RECALLED: Same parties present as before. Colloquy and arguments regarding stipulations, discovery, search terms, potential custodians, and scope to the transaction and sale process. Court stated the search term for Mr. Potashner as chairman of the board will be an allowable search term, Court is inclined to allow his deposition as a preliminary matter only so if additional discovery is produced, his deposition could be expanded at a later time, Court will not restrict Plaintiff to just the complaint, and Court will expand the search terms to items they've received in the informal discovery period within reasonable limits. Colloquy regarding setting a preliminary injunction. COURT ORDERED, preliminary junction SET April 25, 2016 at 10:00 a.m., Plaintiff's brief due April 18, 2016 by 7:00 p.m., Defendant's brief due April 21, 2016. Court directed counsel to reduce the scope of discovery to writing in an order. -----CONSOLIDATED WITH A734039-----
PLACE ALL DOCUMENTS IN LEAD CASE A733154-----;*

04/20/2016 **CANCELED Motion to Associate Counsel** (10:00 AM) (Judicial Officer: Allf, Nancy)
Vacated - Previously Decided
Defendant's Motion to Associate Counsel (Brian M. Lutz, Esq.) on Order Shortening Time

04/22/2016  **Minute Order** (3:00 AM) (Judicial Officer: Allf, Nancy)
Minute Order: Evidentiary Hearing set 4/25/2016 VACATED
Minute Order - No Hearing Held;
Journal Entry Details:

Court FINDS that on April 20, 2016 Plaintiffs filed a Request to Vacate Preliminary Injunction Hearing Date. COURT FURTHER FINDS on April 21, 2016 Newport Defendants filed a Statement of Non-Opposition to Plaintiffs' Request to Vacate Preliminary Injunction hearing Date. For good cause appearing, COURT ORDERS, Evidentiary Hearing set April 25, 2016 VACATED. CLERK S NOTE: Counsel is to ensure a copy of the forgoing minute order is distributed to all interested parties; additionally, a copy of the foregoing minute order was distributed to the following Service Recipients via Wiznet E-Service: Traci Bixenmann (traci@johnaldrichlawfirm.com); Abran Vigil (vigila@ballardspahr.com); Catherine Wrangham-Rowe (wranghamrowec@ballardspahr.com); Las Vegas Docketing (lvdocket@ballardspahr.com) Maria Gall (GallM@BallardSpahr.com); Christopher H. Byrd, Esq. (cbyrd@fclaw.com); Trista Day (tday@fclaw.com); Brian M. Lutz, Esq. (blutz@gibsondunn.com); Colin B. Davis, Esq. (cdavis@gibsondunn.com); Meryl L. Young, Esq. (myoung@gibsondunn.com); Barbie Akin (bakin@gibsondunn.com); Patti L. McLean (pmclean@gibsondunn.com); Bryan Snyder, Paralegal (bsnyder@omaralaw.net); David C. O'Mara, Esq. (david@omaralaw.net); Valerie Weis, Paralegal (val@omaralaw.net). And faxed to: The O'Mara Law Firm, P.C. (775-323-4082), Robbins Geller Rudman & Dowd LLP (619-321-7423), Ballard Spar (702-471-7070), Fennemore Craig P.C. (702-692-8099), Wilmer Hale (617-526-5000); Gibson Dunn (Irvine, CA) (949-451-4220) and Gibson Dunn (San Fransisco,

CASE SUMMARY

CASE NO. A-16-733154-B

CA) (415-393-8306) ;

04/25/2016

CANCELED Evidentiary Hearing (10:00 AM) (Judicial Officer: Allf, Nancy)
Vacated - per Attorney or Pro Per

05/31/2016



Motion to Associate Counsel (3:00 AM) (Judicial Officer: Allf, Nancy)

Motion to Associate Counsel (David Anthony Knotts, Esq.)

Granted;

Journal Entry Details:

COURT FINDS after review that on April 25, 2016 Plaintiffs filed a Motion to Associate Counsel, David Anthony Knotts, Esq. and the Hearing was set for Chambers Calendar on May 31, 2016. COURT FURTHER FINDS after review the Motion is in compliance with SCR 42 and no opposition has been filed. COURT ORDERS after review, for good cause appearing and pursuant to EDCR 2.20 (e), failure to file an opposition may be construed as an admission that the motion is meritorious and consent to granting the same, Plaintiffs Motion to Associate Counsel, David Anthony Knotts, Esq. is GRANTED; Hearing on CHAMBERS CALENDAR on May 31, 2016 is VACATED. The Court has signed the Order previously submitted by Plaintiffs. CLERK'S NOTE: Counsel is to ensure a copy of the forgoing minute order is distributed to all interested parties; additionally, a copy of the foregoing minute order was distributed to the following Service Recipients via Wiznet E-Service: Aldrich Law Firm, Ltd. Traci Bixenmann traci@johnaldrichlawfirm.com Ballard Spahr Abran Vigil vigila@ballardspahr.com Ballard Spahr LLP Catherine Wrangham-Rowe wranghamrowec@ballardspahr.com Las Vegas Docketing lvdocket@ballardspahr.com Ballard Spahr, LLP Maria Gall GallM@BallardSpahr.com Fennemore Craig, P.C. Christopher H. Byrd, Esq. cbyrd@fclaw.com Trista Day tday@fclaw.com Gibson Dunn & Crutcher LLP Brian M. Lutz, Esq. blutz@gibsondunn.com Colin B. Davis, Esq. cdavis@gibsondunn.com Meryl L. Young, Esq. myoung@gibsondunn.com Gibson Dunn & Crutcher LLP Barbie Akin bakin@gibsondunn.com Gibson Dunn & Crutcher LLP Patti L. McLean pmclean@gibsondunn.com O'Mara Law Firm, P.C. Bryan Snyder, Paralegal bsnyder@omaralaw.net David C. O'Mara, Esq. david@omaralaw.net Valerie Weis, Paralegal val@omaralaw.net;

01/10/2017



Motion to Associate Counsel (3:00 AM) (Judicial Officer: Allf, Nancy)

Motion to Associate Counsel (Shira Beth Furman)

Granted;

Journal Entry Details:

COURT FINDS after review that on December 6, 2016, Defendants filed a Motion to Associate Counsel (Shira Beth Furman) and the matter was set for Chambers Calendar on January 10, 2017. COURT FURTHER FINDS after review the Motion seeks to associate Shira Beth Furman, Esq. of the law firm of Wilmer Cutler Pickering Hale & Dorr LLP; The Motion is in compliance with SCR 42 and no opposition has been filed. COURT ORDERS after review, for good cause appearing and pursuant to EDCR 2.20 (e), failure to file an opposition may be construed as an admission that the motion is meritorious and consent to granting the same, Defendant s Motion to Associate Counsel (Shira Beth Furman) is GRANTED; Hearing on CHAMBERS CALENDAR on January 10, 2017 is VACATED; Movant to submit the Order. CLERK S NOTE: Counsel is to ensure a copy of the forgoing minute order is distributed to all interested parties; additionally, a copy of the foregoing minute order was distributed to the following Service Recipients via Wiznet E-Service: Aldrich Law Firm, Ltd. Traci Bixenmann traci@johnaldrichlawfirm.com Ballard Spahr LLP Abran Vigil vigila@ballardspahr.com Las Vegas Docketing lvdocket@ballardspahr.com Maria Gall GallM@BallardSpahr.com Fennemore Craig, P.C. Name Email Select Christopher H. Byrd, Esq. cbyrd@fclaw.com Trista Day tday@fclaw.com Gibson Dunn & Crutcher LLP Brian M. Lutz, Esq. blutz@gibsondunn.com Colin B. Davis, Esq. cdavis@gibsondunn.com Meryl L. Young, Esq. myoung@gibsondunn.com Gibson Dunn & Crutcher LLP Barbie Akin bakin@gibsondunn.com Jason R. Meltzer, Esq. jmeltzer@gibsondunn.com Gibson Dunn & Crutcher LLP Patti L. McLean pmclean@gibsondunn.com Johnson & Weaver, LLP Frank J. Johnson, Esq. frankj@johnsonandweaver.com W. Scott Holleman, Esq. scotth@johnsonandweaver.com Levi & Korsinsky LLP Shane T. Rowley srowley@zlk.com O'Mara Law Firm, P.C. Bryan Snyder, Paralegal bsnyder@omaralaw.net David C. O'Mara, Esq. david@omaralaw.net Valerie Weis, Paralegal val@omaralaw.net Robbins Geller David A. Knotts, Esq. dknotts@rgrdlaw.com David T. Wissbroecker dwissbroecker@rgrdlaw.com Jamie McDade jamiem@rdrdlaw.com Randall J. Baron, Esq. randyb@rgrdlaw.com Robbins Geller Rudman & Dowd Edward M. Gergosian, Esq. egregosian@rgrdlaw.com Wilmer Cutler Pickering Hale & Dorr LLP Daniel W. Halston daniel.halston@wilmerhale.com ;

CASE SUMMARY

CASE NO. A-16-733154-B

01/17/2017



Motion to Associate Counsel (3:00 AM) (Judicial Officer: Allf, Nancy)

Def't's Motion to Associate Counsel

Granted;

Journal Entry Details:

COURT FINDS after review that on December 14, 2016, Defendants filed a Motion to Associate Counsel (Jason R. Meltzer) and the matter was set for Chambers Calendar on January 17, 2017. COURT FURTHER FINDS after review the Motion seeks to associate Jason R. Meltzer, Esq. of the law firm of Gibson, Dunn & Crutcher LLP; The Motion is in compliance with SCR 42 and no opposition has been filed. COURT ORDERS after review, for good cause appearing and pursuant to EDCR 2.20 (e), failure to file an opposition may be construed as an admission that the motion is meritorious and consent to granting the same, Defendant's Motion to Associate Counsel (Jason R. Meltzer) is GRANTED; Hearing on CHAMBERS CALENDAR on January 17, 2017 is VACATED; Movant to submit the Order. CLERK S NOTE: Counsel is to ensure a copy of the forgoing minute order is distributed to all interested parties; additionally, a copy of the foregoing minute order was distributed to the following Service Recipients via Wiznet E-Service: Aldrich Law Firm, Ltd. Traci Bixenmann traci@johnaldrichlawfirm.com Ballard Spahr LLP Abran Vigil vigila@ballardspahr.com Las Vegas Docketing lvdocket@ballardspahr.com Maria Gall GallM@BallardSpahr.com Fennemore Craig, P.C. Christopher H. Byrd, Esq. cbyrd@fclaw.com Trista Day tday@fclaw.com Gibson Dunn & Crutcher LLP Brian M. Lutz, Esq. blutz@gibsondunn.com Colin B. Davis, Esq. cdavis@gibsondunn.com Meryl L. Young, Esq. myoung@gibsondunn.com Gibson Dunn & Crutcher LLP Barbie Akin bakin@gibsondunn.com Jason R. Meltzer, Esq. jmeltzer@gibsondunn.com Gibson Dunn & Crutcher LLP Patti L. McLean pmclean@gibsondunn.com Johnson & Weaver, LLP Frank J. Johnson, Esq. frankj@johnsonandweaver.com W. Scott Holleman, Esq. scotth@johnsonandweaver.com Levi & Korsinsky LLP Shane T. Rowley srowley@zlk.com O'Mara Law Firm, P.C. Bryan Snyder, Paralegal bsnyder@omaralaw.net David C. O'Mara, Esq. david@omaralaw.net Valerie Weis, Paralegal val@omaralaw.net Robbins Geller David A. Knotts, Esq. dknotts@rgrdlaw.com David T. Wissbroecker dwissbroecker@rgrdlaw.com Jamie McDade jamiem@rdrgrlaw.com Randall J. Baron, Esq. randyb@rgrdlaw.com Robbins Geller Rudman & Dowd Edward M. Gergosian, Esq. egregosian@rgrdlaw.com Wilmer Cutler Pickering Hale & Dorr LLP Daniel W. Halston daniel.halston@wilmerhale.com ;

02/15/2017

Motion to Dismiss (10:30 AM) (Judicial Officer: Allf, Nancy)

Events: 12/09/2016 Filed Under Seal

Newport Defendants' Motion to Dismiss Plaintiffs' First Amended Complaint

MINUTES



Filed Under Seal

Filed By: Defendant Newport Corp; Consolidated Case Party Potashner, Kenneth F; Consolidated Case Party Cox, Christopher; Consolidated Case Party Khaykin, Oleg; Consolidated Case Party Phillippy, Robert J; Consolidated Case Party Simone, Peter J; Consolidated Case Party Kadia, Siddhartha C

Newport Defendants' Motion to Dismiss Plaintiffs' First Amended Complaint

Continued for Chambers Decision;

02/15/2017

Motion to Dismiss (10:30 AM) (Judicial Officer: Allf, Nancy)

MKS Motion to Dismiss Plaintiff's Verified Consolidated First Amended Class Action Complaint

Continued for Chambers Decision;

02/15/2017

Motion to Seal/Redact Records (10:30 AM) (Judicial Officer: Allf, Nancy)

Newport Defendants' Motion to Seal Newport Defendants' Motion to Dismiss Plaintiffs' First Amended Complaint and Newport Defendants' Appendix

Granted;

02/15/2017

Motion to Seal/Redact Records (10:30 AM) (Judicial Officer: Allf, Nancy)

Plaintiffs' Motion to Seal First Amended Complaint for Breach of Fiduciary Duty

Granted;

02/15/2017


Motion to Seal/Redact Records (10:30 AM) (Judicial Officer: Allf, Nancy)

Defendant MKS Instruments, Inc.'s Motion to Seal Motion to Dismiss Plaintiffs' Verified First

EIGHTH JUDICIAL DISTRICT COURT

CASE SUMMARY

CASE NO. A-16-733154-B


	<i>Amended Class Action Complaint</i> Granted;
02/15/2017	Motion to Strike (10:30 AM) (Judicial Officer: Allf, Nancy) Events: 01/20/2017 Filed Under Seal <i>Plaintiffs' Motion to Strike Exhibits A and B in the Appendix of Exhibits Submitted With the Declaration of Brian Lutz</i> Denied;
02/15/2017	Motion to Seal/Redact Records (10:30 AM) (Judicial Officer: Allf, Nancy) <i>Newport Defendants' Motion to Seal Newport Defendants' Reply in Support of Their Motion to Dismiss Plaintiffs' First Amended Complaint</i> Granted;
02/15/2017	Motion to Seal/Redact Records (10:30 AM) (Judicial Officer: Allf, Nancy) <i>Defendants' Motion To Seal Reply In Support Of Motion To Dismiss Plaintiffs' Verified Consolidated First Amended Class Action Complaint</i> Granted;
02/15/2017	 All Pending Motions (10:30 AM) (Judicial Officer: Allf, Nancy) Matter Heard; Journal Entry Details: <i>Following arguments by Counsel, COURT ORDERED as follows: As to PLAINTIFFS' MOTION TO STRIKE EXHIBITS A AND B IN THE APPENDIX OF EXHIBITS SUBMITTED WITH THE DECLARATION OF BRIAN LUTZ, Court DENIED the motion as procedurally incorrect. It stated it won't consider the contents of the exhibits in its ruling for the purposes of this motion. As to all pending motions to seal, Court inquired whether parties had any objections, and there being none, COURT ORDERED all pending motion's to seal including NEWPORT DEFENDANT'S MOTION TO SEAL NEWPORT DEFENDANTS' MOTION TO DISMISS PLAINTIFF'S FIRST AMENDED COMPLAINT AND NEWPORT DEFENDANTS' APPENDIX...PLAINTIFF'S MOTION TO SEAL FIRST AMENDED COMPLAINT FOR BREACH OF FIDUCIARY DUTY...DEFENDANT MKS INSTRUMENTS, INC. 'S MOTION TO SEAL MOTION TO DISMISS PLAINTIFFS' VERIFIED FIRST AMENDED COMPLAINT FOR BREACH OF FIDUCIARY DUTY...GRANTED. COURT FURTHER ORDERED, Motions to seal Newport Defendants' Motion to Seal Newport Defendant's Reply in Support of Their Motion to Dismiss Plaintiff's First Amended Complaint and Defendants' Motion to Seal Reply In Support of Motion to Dismiss Plaintiffs' Verified Consolidated First Amended Class Action Complaint, ADVANCED to today, and GRANTED. Louisa Garcia, Courtroom Clerk present. As to MKS MOTION TO DISMISS PLAINTIFF'S VERIFIED CONSOLIDATED FIRST AMENDED CLASS ACTION COMPLAINT...NEWPORT DEFTS' MOTION TO DISMISS PLTFs' FIRST AMENDED COMPLAINT, COURT ORDERED, Motions to Dismiss taken UNDER ADVISEMENT. Court stated it was its inclination to grant both Motions; however, wanted to reread the briefs. Court is concerned whether plaintiff can plead materiality and there is no information regarding the directors. As to intentional fraud, Court does not think it can adequately be plead. COURT ORDERED, matter CONTINUED TO CHAMBERS for further review. ;</i>
06/20/2017	CANCELED Status Check (3:00 AM) (Judicial Officer: Allf, Nancy) <i>Vacated - per Stipulation and Order</i> Status Check: Decision
09/29/2017	 Minute Order (3:00 AM) (Judicial Officer: Allf, Nancy) <i>Minute Order: Motion to Seal/Redact Records set 10/4/2017 GRANTED and VACATED</i> Minute Order - No Hearing Held; Minute Order: Motion to Seal/Redact Records set 10/4/2017 GRANTED and VACATED Journal Entry Details: <i>COURT FINDS after review Defendants filed a Motion to Seal Defendants Motion to Dismiss Plaintiffs Second Amended Complaint and Appendix (Motion) on September 1, 2017. Hearing was set for October 4, 2017 at 9:30 a.m. on Motions Calendar. COURT FURTHER FINDS after review the Certificate of Service indicates the Motion was electronically served on all parties on September 1, 2017. COURT FURTHER FINDS after review no opposition has been filed. COURT FURTHER FINDS after review EDCR 2.20(e) provides in relevant part: failure of the opposing party to serve and file written opposition may be construed as an admission</i>


CASE SUMMARY

CASE NO. A-16-733154-B

that the motion and/or joinder is meritorious and a consent to granting the same. COURT ORDERS for good cause appearing and after review pursuant to EDCR 2.20(e) and SRCR 3 Defendants Motion to Seal Defendants Motion to Dismiss Plaintiffs Second Amended Complaint and Appendix is GRANTED; the Court has reviewed the Motion, which provides cause for granting the Motion; Hearing set for Motions Calendar on October 4, 2017 at 9:30 a.m. is hereby VACATED; Movant to prepare the appropriate Order. CLERK S NOTE: Counsel is to ensure a copy of the forgoing minute order is distributed to all interested parties; additionally, a copy of the foregoing minute order was faxed to the following: Fennemore Craig, P.C. (702-692-8099), The O'Mara Law Firm P.C. (775-323-4082), Robbins Geller Rudman & Dowd LLP (619-231-7423).;




10/04/2017 **CANCELED Motion to Seal/Redact Records (9:30 AM)** (Judicial Officer: Allf, Nancy)
Vacated
Defendants' Motion to Seal Defendants' Motion to Dismiss Plaintiffs' Second Amended Complaint and Appendix

10/05/2017  **Minute Order (3:00 AM)** (Judicial Officer: Allf, Nancy)
Minute Order: Motion to Dismiss set 10/11/2017 CONTINUED to 11/8/2017
Minute Order - No Hearing Held; Minute Order: Motion to Dismiss set 10/11/2017 CONTINUED to 11/8/2017
Journal Entry Details:
COURT FINDS after review on August 16, 2017 the parties filed a Stipulation and Order Setting Deadline to Respond to the Complaint and Setting Briefing Schedule (Stipulation), indicating that Defendants would be filing a Motion to Dismiss by September 1, 2017, and the parties stipulated that the opposing brief would be due October 6, 2017, and the reply brief would be due October 27, 2017. COURT FURTHER FINDS after review the Defendants Motion to Dismiss Plaintiffs Second Amended Complaint was filed on September 1, 2017. A hearing was inadvertently set for October 11, 2017 at 10:30 a.m. on Motions Calendar. This date occurs before the Motion to Dismiss would be fully briefed per the briefing schedule set in the parties August 16, 2017 Stipulation. COURT ORDERS for good cause appearing and after review the hearing set for October 11, 2017 at 10:30 a.m. on Motions Calendar is CONTINUED to November 8, 2017 at 10:30 a.m. on MOTIONS CALENDAR to allow the matter to be fully briefed according to the briefing schedule. CLERK'S NOTE: Counsel is to ensure a copy of the forgoing minute order is distributed to all interested parties; additionally, a copy of the foregoing minute order was faxed to the following: Fennemore Craig, P.C. (702-692-8099), The O'Mara Law Firm P.C. (775-323-4082), Robbins Geller Rudman & Dowd LLP (619-231-7423).;

12/04/2017  **Minute Order (3:00 AM)** (Judicial Officer: Allf, Nancy)
Minute Order: Defendants' Reply in Support of Their Motion to Dismiss Plaintiffs' Second Amended Complaint set 12/6/2017 CONTINUED to 12/7/2017
Minute Order - No Hearing Held; Minute Order: Defendants' Reply in Support of Their Motion to Dismiss Plaintiffs' Second Amended Complaint set 12/6/2017 CONTINUED to 12/7/2017
Journal Entry Details:
COURT FINDS after review on September 1, 2017 Defendants filed a Motion to Seal Defendants Motion to Dismiss Plaintiffs Second Amended Complaint and Appendix. On October 6, 2017 Plaintiffs filed a Motion to Seal Plaintiffs Opposition to Defendants Motion to Dismiss. On October 27, 2017 Defendants filed a Motion to Seal Defendants Reply in Support of Their Motion to Dismiss Plaintiffs Second Amended Complaint and Declaration of Colin B. Davis, Esq. and a hearing was set for December 6, 2017 at 9:30 a.m. on Motions Calendar. COURT FURTHER FINDS after review on October 13, 2017 the parties filed a Stipulation and Order to Move Hearings on Defendants Motion to Seal Defendants Motion to Dismiss Plaintiffs Second Amended Complaint and Appendix and (2) Defendants Motion to Dismiss Plaintiffs Second Amended Complaint (Stipulation). COURT FURTHER FINDS after review the Stipulation seeks to move all Motions related to Defendants Motion to Dismiss Plaintiffs Second Amended Complaint to be heard as the same time as the Motion to Dismiss, which is set for December 7, 2017 at 10:30 a.m. on Motions Calendar. COURT ORDERS for good cause appearing and after review Defendants Motion to Seal Defendants Reply in Support of Their Motion to Dismiss Plaintiffs Second Amended Complaint and Declaration of Colin B. Davis, Esq. set for December 6, 2017 at 9:30 a.m. is hereby CONTINUED to December 7, 2017 at 10:30 a.m. on Motions Calendar so that the three pending Motions to Seal will be addressed together. CLERK'S NOTE: This Minute Order was electronically served by Courtroom Clerk, Nicole McDevitt, to all registered parties for Odyssey File and Serve /nm

CASE SUMMARY

CASE NO. A-16-733154-B


	12/4/2017;	
12/07/2017	<p>Motion to Dismiss (10:30 AM) (Judicial Officer: Allf, Nancy) Events: 09/01/2017 Filed Under Seal <i>Defendants' Motion to Dismiss Plaintiffs' Second Amended Complaint</i></p> <p>MINUTES</p> <p> Filed Under Seal Filed By: Consolidated Case Party Phillippy, Robert J <i>Defendants' Motion to Dismiss Plaintiffs' Second Amended Complaint</i> Denied;</p>	
12/07/2017	<p>Motion to Seal/Redact Records (10:30 AM) (Judicial Officer: Allf, Nancy) <i>Defendants' Reply in Support of Their Motion to Dismiss Plaintiffs' Second Amended Complaint</i> Granted;</p>	
12/07/2017	<p> All Pending Motions (10:30 AM) (Judicial Officer: Allf, Nancy) <i>Deft's Motion to Dismiss Plaintiffs' Second Amended Complaint...Deft's Motion to Seal/Reply in Support of their Motion to Dismiss Plaintiffs' Second Amended Complaint</i> Decision Made; Deft's Motion to Dismiss Plaintiffs' Second Amended Complaint...Deft's Motion to Seal/Reply in Support of their Motion to Dismiss Plaintiffs' Second Amended Complaint Journal Entry Details: <i>Deft's Motion to Dismiss Plaintiffs' Second Amended Complaint...Deft's Motion to Seal/Reply in Support of their Motion to Dismiss Plaintiffs' Second Amended Complaint ALSO PRESENT: Tim LaComb, Esq., pending pro hac application. COURT ORDERED, 1) Defts' Motion to Seal the Defendants' Motion to Dismiss and the Second Amended Complaint and Appendix, GRANTED. 2) Plaintiffs' Motion to Seal the Plaintiffs' Opposition, GRANTED. 3) Defendants' Motion to Seal the Defendants' Reply, GRANTED. Upon the Court's inquiry, all counsel confirmed they were ready to proceed on Defendants' Motion to Dismiss the Second Amended Complaint. Argument presented by Mr. Lutz in support of the Motion, during which he presented a copy of NV 2017 Session Laws Re Chapter 559 S.B. No. 203, which was marked as a Court's Exhibit and lodged with the Clerk. Mr. Knotts presented argument in support of his Opposition as it applied to separate and aggregate Directors. Mr. Lutz's argued in Reply. COURT ADVISED that the Defendants' Motion to Dismiss has been considered under 12(b)(5) and also 9(b) and it is only considered as a Motion to Dismiss and not as a motion for summary judgment, although extraneous facts have been raised in the motion and in the reply. COURT FOUND that the Plaintiff has stated a claim under which relief can be granted and there are sufficient new facts alleged in order to maintain the causes of action as alleged: intentional misconduct, fraud, knowing violation with regard to the issues you specified with regard to motive, conflict and knowledge, materiality. COURT ORDERED, THE MOTION TO DISMISS, DENIED AS TO ALL THE DIRECTORS. Following colloquy between the Court and Mr. Lutz, COURT DIRECTED Mr. Lutz to Answer the Complaint within forty-five days after entry of the Order. Because of the upcoming Holiday, COURT DIRECTED Plaintiffs' counsel to prepare the order and to make sure the Defendants approve the form. If there is a dispute as to the form of the order, counsel is to let the Court know and they will get it resolved either by telephone or by competing letters that the Court can review as to the competing provisions. ;</i></p>	
02/27/2018	<p>Status Check (3:00 AM) (Judicial Officer: Allf, Nancy) <i>IN HOUSE: Status Check to see if everyone answered so we can set Rule 16 Conference</i></p>	
03/13/2018	<p>CANCELED Motion to Associate Counsel (3:00 AM) (Judicial Officer: Allf, Nancy) <i>Vacated</i> <i>Motion to Associate Counsel (Timothy Zimmer Lacombe Esq)</i></p>	
03/26/2018	<p> Minute Order (3:00 AM) (Judicial Officer: Allf, Nancy) <i>Minute Order: Defendants' Motion to Seal Defendants' Answers to Plaintiffs' Second Amended Complaint set 3/28/2018 GRANTED and VACATED</i> Minute Order - No Hearing Held; Minute Order: Defendants' Motion to Seal Defendants' Answers to Plaintiffs' Second Amended Complaint set 3/28/2018 GRANTED and VACATED Journal Entry Details:</p>	

CASE SUMMARY


CASE NO. A-16-733154-B


COURT FINDS after review on February 20, 2018 Defendants Phillippy, Potashner, Cox, Kadia, Khaykin, and Simone filed Defendants Motion to Seal Defendants Answers to Plaintiffs Second Amended Complaint (Motion), and a hearing was set for March 28, 2018 at 9:00 a.m. on Motions Calendar. COURT FURTHER FINDS after review the Certificate of Service indicates the Motion was electronically served on all parties on February 20, 2018. COURT FURTHER FINDS after review no oppositions to the Motion have been filed. COURT FURTHER FINDS after review pursuant to EDCR 2.20(e) the failure of the opposing party to serve and file written opposition may be construed as an admission that the motion and/or joinder is meritorious and a consent to granting the same. COURT ORDERS for good cause appearing and after review pursuant to EDCR 2.20(e), SRCR (3), and the merits of the Motion, Defendants Motion to Seal Defendants Answers to Plaintiffs Second Amended Complaint is hereby GRANTED. The hearing set for March 28, 2018 at 9:00 a.m. on Motions Calendar is VACATED. Movant to submit the appropriate Order in compliance with EDCR 7.21. CLERK'S NOTE: This Minute Order was electronically served by Courtroom Clerk, Nicole McDevitt, to all registered parties for Odyssey File & Serve. /nm 3-26-2018;

03/28/2018 **CANCELED Motion to Seal/Redact Records (9:00 AM)** (Judicial Officer: Allf, Nancy)
Vacated - Previously Decided
Defendants' Motion to Seal Defendants' Answers to Plaintiffs' Second Amended Complaint

06/11/2018  **Minute Order (4:00 PM)** (Judicial Officer: Allf, Nancy)
 Minute Order - No Hearing Held;
 Journal Entry Details:
COURT FINDS after review on May 9, 2018 Plaintiff filed Plaintiffs Unopposed Motion for Voluntary Dismissal of Dixon Chung Without Prejudice Pursuant to NRCP 41(a)(2) (Motion), and a hearing was set for June 13, 2018 at 9:30 a.m. on Motions Calendar. COURT FURTHER FINDS after review the Certificate of Service indicates the Motion was electronically served on all parties on May 9, 2018. In the Motion, Counsel represents that the Defendants have confirmed that they do not oppose this Motion. No oppositions have been filed. COURT FURTHER FINDS after review pursuant to EDCR 2.20(e) the failure of the opposing party to serve and file written opposition may be construed as an admission that the motion and/or joinder is meritorious and a consent to granting the same. COURT ORDERS for good cause appearing and after review pursuant to EDCR 2.20(e), the representation of counsel that the Defendants have confirmed they do not oppose the Motion, and NRCP 41(a)(2), Plaintiffs Unopposed Motion for Voluntary Dismissal of Dixon Chung Without Prejudice Pursuant to NRCP 41(a)(2) is hereby GRANTED. Hearing set for June 13, 2018 at 9:30 a.m. on Motions Calendar is VACATED. Movant to prepare the order in compliance with EDCR 7.21. CLERK'S NOTE: This Minute Order was electronically served by Courtroom Clerk, Haly Pannullo, to all registered parties for Odyssey File & Serve. hvp/06/11/18;

06/13/2018 **CANCELED Motion (9:30 AM)** (Judicial Officer: Allf, Nancy)
Vacated - per Judge
Plaintiffs' Unopposed Motion for Voluntary Dismissal of Dixon Chung Without Prejudice Pursuant to NRCP 41(a)(2)

06/15/2018  **Minute Order (3:00 AM)** (Judicial Officer: Allf, Nancy)
 Minute Order - No Hearing Held;
 Journal Entry Details:
COURT FINDS after review on May 18, 2018 Plaintiff filed Plaintiff's Motion for Class Certification and Memorandum of Points and Authorities in Support Thereof, and the matter was set for hearing on June 20, 2018 at 9:30 a.m. on Motions Calendar. COURT FURTHER FINDS after review no oppositions have been filed, but due to the nature of the matter the Court deems it appropriate to leave the hearing on calendar for a hearing. All parties and counsel may appear telephonically through Courtcall. CLERK'S NOTE: A copy of this minute order was faxed to: The O'Mara Law Firm, P.C. (775-323-4082), Robbins Geller Rudman & Dowd LLP (619-231-7423), Fennemore Craig, P.C. (702-692-8099), Ballard Spahr (702-471-7070);

08/02/2018  **Minute Order (3:00 AM)** (Judicial Officer: Allf, Nancy)
 Minute Order - No Hearing Held;
 Journal Entry Details:

COURT FINDS after review on May 18, 2018 Plaintiff filed Plaintiff's Motion for Class Certification and Memorandum of Points and Authorities in Support Thereof (Original

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Motion). COURT FURTHER FINDS after review on June 19, 2018 the parties filed a Stipulation and Order Setting Briefing Schedule and Hearing on Plaintiffs Motion for Class Certification (Stipulation) setting a briefing schedule on the Original Motion, and setting the hearing for September 27, 2018 at 9:00 a.m. on Motions Calendar. COURT FURTHER FINDS after review on July 12, 2018 Plaintiff filed Plaintiff s Amended Motion for Class Certification and Memorandum of Points and Authorities in Support Thereof (Amended Motion), and a hearing was set for August 15, 2018 at 9:30 a.m. on Motions Calendar. COURT FURTHER FINDS after review the date master calendar set for the Amended Motion to be heard is prior to the hearing date the parties originally stipulated to. COURT ORDERS for good cause appearing and after review pursuant to the stipulated hearing date, and the interests of judicial economy and minimizing legal fees for all parties, all matters currently set for August 15 and 16, 2018 are CONTINUED to September 27, 2018 at 9:30 a.m. on Motions Calendar. The Court will hear all matters together. ;

09/24/2018



Minute Order (3:00 AM) (Judicial Officer: Allf, Nancy)

Minute Order: Matters set 9/27/2018

Minute Order - No Hearing Held; Minute Order: Matters set 9/27/2018

Journal Entry Details:

COURT FINDS after review on May 18, 2018 Plaintiff filed Plaintiff s Motion for Class Certification and Memorandum of Points and Authorities in Support Thereof (Original Motion). COURT FURTHER FINDS after review on June 19, 2018 the parties filed a Stipulation and Order Setting Briefing Schedule and Hearing on Plaintiffs Motion for Class Certification (Stipulation) setting a briefing schedule on the Original Motion, and setting the hearing for September 27, 2018 on Motions Calendar. COURT FURTHER FINDS after review that since the filing of the Original Motion and Stipulation, various other matters have been filed with the Court and set for hearing on September 27, 2018 on Motions Calendar. COURT ORDERS for good cause appearing and after review that on or before September 26, 2018 the parties shall agree to and jointly file with the Court a stipulation setting forth the order in which each of the matters set for hearing on September 27, 2018 shall be argued. CLERK'S NOTE: This Minute Order was electronically served by Courtroom Clerk, Nicole McDewitt, to all registered parties for Odyssey File & Serve. /nm;

09/27/2018

Motion (10:30 AM) (Judicial Officer: Allf, Nancy)

Plaintiff's Motion for Class Certification and Memorandum of Points and Authorities in Support Thereof

Granted;

09/27/2018

Motion to Seal/Redact Records (10:30 AM) (Judicial Officer: Allf, Nancy)

Motion to File Plaintiff's Motion for Class Certification and Memorandum of Points and Authorities in Support thereof Under seal

Granted;

09/27/2018

Joinder (10:30 AM) (Judicial Officer: Allf, Nancy)

Joinder to Plaintiffs' Motion for Class Certification

Matter Heard;

09/27/2018

Motion (10:30 AM) (Judicial Officer: Allf, Nancy)

Plaintiffs' Amended Motion for Class Certification and Memorandum of Points and Authorities in Support Thereof

Granted;

09/27/2018

Motion to Seal/Redact Records (10:30 AM) (Judicial Officer: Allf, Nancy)

Motion to Seal Defendants' Opposition to Plaintiff's Motion for Class Certification and Appendix in Support, and Motion to Strike the Joinder in Plaintiff's Motion for Class Certification

Granted;

09/27/2018

Motion for Class Certification (10:30 AM) (Judicial Officer: Allf, Nancy)

Defendant's Motion to File Plaintiff's Amended Motion for Class Certification and Memorandum of Points and Authorities in Support thereof Under Seal

Granted;

CASE SUMMARY

CASE NO. A-16-733154-B

09/27/2018	<p>Motion to Strike (10:30 AM) (Judicial Officer: Allf, Nancy) Events: 07/13/2018 Filed Under Seal <i>Defendants' Motion to Strike the Joinder in Plaintiff's Motion for Class Certification</i> Denied;</p>
09/27/2018	<p>Motion to Seal/Redact Records (10:30 AM) (Judicial Officer: Allf, Nancy) <i>Motion to Seal Defendants' Opposition to Plaintiff's Amended Motion for Class Certification</i> Granted;</p>
09/27/2018	<p>Motion to Seal/Redact Records (10:30 AM) (Judicial Officer: Allf, Nancy) <i>Motion to file Plaintiffs' Opposition to Defendants' Motion to Strike the Joinder in Plaintiff's Motion for Class Certification Under Seal</i> Granted;</p>
09/27/2018	<p>Motion (10:30 AM) (Judicial Officer: Allf, Nancy) <i>Motion to File Plaintiffs' Reply Brief in Support of their Motion for Class Certification and Joinder Under Seal</i> Granted;</p>
09/27/2018	<p>Motion to Seal/Redact Records (10:30 AM) (Judicial Officer: Allf, Nancy) <i>Motion to Seal Defendants' Reply in Support of their Motion to Strike the Joinder in Plaintiff's Motion for Class Certification</i> Granted;</p>
09/27/2018	<p> All Pending Motions (10:30 AM) (Judicial Officer: Allf, Nancy) Matter Heard; Journal Entry Details:</p> <p><i>MOTION TO SEAL DEFENDANTS' REPLY IN SUPPORT OF THEIR MOTION TO STRIKE THE JOINDER IN PLAINTIFF'S MOTION FOR CLASS CERTIFICATION...MOTION TO FILE PLAINTIFFS' REPLY BRIEF IN SUPPORT OF THEIR MOTION FOR CLASS CERTIFICATION AND JOINDER UNDER SEAL...MOTION TO FILE PLAINTIFFS' OPPOSITION TO DEFENDANTS' MOTION TO STRIKE THE JOINDER IN PLAINTIFF'S MOTION FOR CLASS CERTIFICATION UNDER SEAL...MOTION TO SEAL DEFENDANTS' OPPOSITION TO PLAINTIFF'S AMENDED MOTION FOR CLASS CERTIFICATION...DEFENDANTS' MOTION TO STRIKE THE JOINDER IN PLAINTIFF'S MOTION FOR CLASS CERTIFICATION...DEFENDANT'S MOTION TO FILE PLAINTIFF'S AMENDED MOTION FOR CLASS CERTIFICATION AND MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT THEREOF UNDER SEAL...MOTION TO SEAL DEFENDANTS' OPPOSITION TO PLAINTIFF'S MOTION FOR CLASS CERTIFICATION AND APPENDIX IN SUPPORT, AND MOTION TO STRIKE THE JOINDER IN PLAINTIFF'S MOTION FOR CLASS CERTIFICATION...PLAINTIFFS' AMENDED MOTION FOR CLASS CERTIFICATION AND MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT THEREOF...JOINDER TO PLAINTIFFS' MOTION FOR CLASS CERTIFICATION...MOTION TO FILE PLAINTIFF'S MOTION FOR CLASS CERTIFICATION AND MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT THEREOF UNDER SEAL...PLAINTIFF'S MOTION FOR CLASS CERTIFICATION AND MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT THEREOF Court noted the motions to seal are unopposed and ORDERED, Motion to Seal Defendants' Reply in Support of their Motion to Strike the Joinder in Plaintiff's Motion for Class Certification, Motion to File Plaintiffs' Reply Brief in Support of their Motion for Class Certification and Joinder Under Seal, Motion to file Plaintiffs' Opposition to Defendants' Motion to Strike the Joinder in Plaintiff's Motion for Class Certification Under Seal, Motion to Seal Defendants' Opposition to Plaintiff's Amended Motion for Class Certification, Defendant's Motion to File Plaintiff's Amended Motion for Class Certification, Memorandum of Points and Authorities in Support thereof Under Seal, Motion to Seal Defendants' Opposition to Plaintiff's Motion for Class Certification and Appendix in Support, and Motion to Strike the Joinder in Plaintiff's Motion for Class Certification, and Motion to File Plaintiff's Motion for Class Certification and Memorandum of Points and Authorities in Support thereof Under seal GRANTED. Arguments by Mr. O'Mara, Mr. Lutz, and Mr. Knots regarding the merits of and oppositions to remaining motions. Court stated its findings and ORDERED, Defendants' Motion to Strike the Joinder in Plaintiff's Motion for Class Certification DENIED; Plaintiff's Motion for Class Certification and Memorandum of Points and Authorities in Support Thereof and Plaintiffs' Amended Motion for Class Certification and Memorandum of Points and Authorities in Support Thereof GRANTED and</i></p>

CASE SUMMARY

CASE NO. A-16-733154-B


	<i>Court will prepare a written decision. COURT ORDERED, matter SET on chambers calendar for written decision. Plaintiff's counsel to prepare the order however, to wait until Court has prepared its written decision. 10/16/2018 (CHAMBERS) DECISION: PLAINTIFF'S MOTION FOR CLASS CERTIFICATION AND MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT THEREOF UNDER SEAL AND PLAINTIFF'S AMENDED MOTION FOR CLASS CERTIFICATION AND MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT THEREOF;</i>
10/16/2018	CANCELED Motion to Associate Counsel (3:00 AM) (Judicial Officer: Allf, Nancy) <i>Vacated</i> <i>Motion to Associate Counsel (David Todd Wissbroecker Esq)</i>
10/16/2018	CANCELED Decision (3:00 AM) (Judicial Officer: Allf, Nancy) <i>Vacated - per Law Clerk</i> <i>Decision: Plaintiff's Motion for Class Certification and Memorandum of Points and Authorities in Support Thereof and Plaintiffs' Amended Motion for Class Certification and Memorandum of Points and Authorities in Support Thereof</i>
01/03/2019	Motion to Compel (11:00 AM) (Judicial Officer: Allf, Nancy) <i>Motion to Seal Plaintiffs' Motion to Compel Defendants To Search for Relevant Electronic Evidence and the Affidavit of Timothy Z Lacombe in Support Thereof</i> Granted;
01/03/2019	 Motion to Compel (11:00 AM) (Judicial Officer: Allf, Nancy) <i>Plaintiffs Motion to Compel Defendants to Search for Relevant Electronic Evidence</i> Granted in Part; Journal Entry Details: <i>MOTION TO SEAL PLAINTIFFS' MOTION TO COMPEL DEFENDANTS TO SEARCH FOR RELEVANT ELECTRONIC EVIDENCE AND THE AFFIDAVIT OF TIMOTHY Z LACOMB IN SUPPORT THEREOF...PLAINTIFFS MOTION TO COMPEL DEFENDANTS TO SEARCH FOR RELEVANT ELECTRONIC EVIDENCE There being no opposition, COURT ORDERED, Motion to Seal Plaintiffs' Motion to Compel Defendants To Search for Relevant Electronic Evidence and the Affidavit of Timothy Z Lacombe in Support Thereof GRANTED. Arguments by Mr. Knotts and Mr. Davis regarding the merits of and opposition to the motion to compel. Court stated its findings and ORDERED, Plaintiffs Motion to Compel Defendants to Search for Relevant Electronic Evidence GRANTED IN PART as to Mr. Phillippy's personal e-mail and what the gmail account referenced, and with regard to any text on Mr. Phillippy's personal or business phone; DENIED IN PART WITHOUT PREJUDICE with regard to the other members of the board. Plaintiff's counsel to prepare the order and submit it to opposing counsel for approval;</i>
01/03/2019	 All Pending Motions (11:00 AM) (Judicial Officer: Allf, Nancy)
01/17/2019	CANCELED Motion to Seal/Redact Records (10:00 AM) (Judicial Officer: Allf, Nancy) <i>Vacated - per Law Clerk</i> <i>Motion to Seal Defendants' Opposition to Plaintiffs Motion to Compel Defendants to Search for Relevant Electronic Evidence and Appendix in Support Thereof</i>
01/23/2019	CANCELED Motion to Seal/Redact Records (9:30 AM) (Judicial Officer: Allf, Nancy) <i>Vacated - per Law Clerk</i> <i>Motion to Seal Reply in Support of of Plaintiffs Motion to Compel Defendants to Search for Relevant Electronic Evidence</i>
04/23/2019	 Minute Order (3:00 AM) (Judicial Officer: Allf, Nancy) <i>Minute Order: Motion to Associate Counsel set 4/24/2019 GRANTED and VACATED</i> <i>Minute Order - No Hearing Held; Minute Order: Motion to Associate Counsel set 4/24/2019 GRANTED and VACATED</i> Journal Entry Details: <i>COURT FINDS after review on April 18, 2019, the Motion to Associate Counsel on Order Shortening Time (Motion to Associate) was filed with the Court and the matter was set on Motions Calendar for April 24, 2019 at 9:30 a.m. COURT FURTHER FINDS after review that the Motion to Associate was served upon the parties on April 18, 2019 pursuant to the</i>

CASE SUMMARY


CASE NO. A-16-733154-B

Certificate of Service attached thereto. COURT FURTHER FINDS after review EDCR 2.20(e) provides in relevant part: Failure of the opposing party to serve and file written opposition may be construed as an admission that the motion and/or joinder is meritorious and a consent to granting the same. COURT FURTHER FINDS after review no opposition to the Motion to Associate has been filed. COURT FURTHER FINDS after review that on April 22, 2019 the Notice of Non-Opposition to Defendant s Motion to Associate Counsel [Katie Magallanes] was filed with the Court COURT ORDERS for good cause appearing and after review pursuant to the merits of the Motion and EDCR 2.20(e), the Motion to Associate is hereby GRANTED and the hearing set on Motions Calendar for April 24, 2019 at 9:30 a.m. is hereby VACATED. Movant to prepare the Order in compliance with EDCR 7.21. CLERK'S NOTE: This Minute Order was electronically served by Courtroom Clerk, Nicole McDevitt, to all registered parties for Odyssey File & Serve. /nm 4/23/2019;

04/24/2019 **CANCELED Motion to Associate Counsel** (9:30 AM) (Judicial Officer: Allf, Nancy)
Vacated - Moot
Motion to Associate Counsel on Order Shortening Time

05/01/2019  **Motion to Amend** (10:30 AM) (Judicial Officer: Allf, Nancy)
 Events: 03/04/2019 Motion to Amend
Defendants' Motion to Amend the Order Setting Civil Jury Trial, Pre-Trial and Calendar Call

MINUTES

 **Motion to Amend**
 Filed By: Defendant Newport Corp
Defendants' Motion to Amend the Order Setting Civil Jury Trial, Pre-Trial and Calendar Call
 Granted;
 Journal Entry Details:
Upon inquiry of Court, Mr. Lutz addressed the timeliness of the motion and why the motion was filed as a motion to amend. Arguments by Mr. Lutz and Mr. Knotts regarding the merits of and opposition to the motion. Court stated it would consider Defendants' Motion to Amend the Order Setting Civil Jury Trial, Pre-Trial and Calendar Call as a Motion to strike the Jury. Court stated its findings and ORDERED, motion GRANTED. Mr. Lutz to prepare the order, either a simple form or with findings, and submit it to opposing counsel for approval.;


06/13/2019 **CANCELED Motion for Leave** (10:00 AM) (Judicial Officer: Cherry, Michael A.)
Vacated - Set in Error
Motion for Leave to Extend Discovery Deadlines on Order Shortening Time

07/18/2019 **CANCELED Status Check: Trial Readiness** (9:30 AM) (Judicial Officer: Allf, Nancy)
Vacated - Superseding Order

07/22/2019 **CANCELED Motion to Associate Counsel** (10:30 AM) (Judicial Officer: Allf, Nancy)
Vacated
Motion to Associate Counsel on Order Shortening Time (Christopher H. Lyons, Esq.)

07/22/2019 **CANCELED Motion to Associate Counsel** (10:30 AM) (Judicial Officer: Allf, Nancy)
Vacated - Moot
Motion to Associate Counsel on Order Shortening Time (Christopher H. Lyons)



10/10/2019 **Motion to Seal/Redact Records** (11:00 AM) (Judicial Officer: Allf, Nancy)
Plaintiffs' Motion to Seal Plaintiffs' Motion for Leave to Amend the Second Amended Complaint and Appendix of Exhibits
 Granted;

10/10/2019  **Motion for Leave** (11:00 AM) (Judicial Officer: Allf, Nancy)
Plaintiff's Motion for Leave to Amend the Second Amended Complaint
 Denied;
 Journal Entry Details:
PLAINTIFF'S MOTION FOR LEAVE TO AMEND THE SECOND AMENDED COMPLAINT...PLAINTIFFS' MOTION TO SEAL PLAINTIFFS' MOTION FOR LEAVE TO

CASE SUMMARY

CASE NO. A-16-733154-B

AMEND THE SECOND AMENDED COMPLAINT AND APPENDIX OF EXHIBITS PLAINTIFFS' MOTION TO SEAL PLAINTIFFS' MOTION FOR LEAVE TO AMEND THE SECOND AMENDED COMPLAINT AND APPENDIX OF EXHIBITS Court stated no argument was needed and ORDERED, Plaintiffs' Motion to Seal Plaintiffs' Motion for Leave to Amend the Second Amended Complaint and Appendix of Exhibits GRANTED. COURT FURTHER ORDERED, Plaintiff's Motion to Seal Plaintiffs' Reply Brief in Support of Motion for eave to Amend the Second Amended Complaint and Declaration of David C. O'Mara in Further Support set on November 6, 2019 and Defendant's Motion to Seal Defendants' Motion for Summary Judgment and Certain Exhibits in the Appendix of Exhibits in Support of Defendants' Motion for Summary Judgment SET November 21, 2019 GRANTED and those matters are VACATED. PLAINTIFF'S MOTION FOR LEAVE TO AMEND THE SECOND AMENDED COMPLAINT Arguments by Mr. Knotts and Mr. Lutz regarding the merits of and opposition to the motion. Court stated its findings and ORDERED, Plaintiff's Motion for Leave to Amend the Second Amended Complaint DENIED. Colloquy regarding Court's ruling. Court directed counsel to provide un-redacted briefs on a disc or drive to the Court a week before the hearing for Motion for Summary Judgment and ORDERED, Motion for Summary Judgment moved to 1:30 p.m. on November 21, 2019. Court directed counsel bring availability for trial to the hearing so trial can be scheduled.;

10/10/2019	 All Pending Motions (11:00 AM) (Judicial Officer: Allf, Nancy) Matter Heard;
10/17/2019	CANCELED Calendar Call (10:31 AM) (Judicial Officer: Allf, Nancy) Vacated - Superseding Order
10/21/2019	CANCELED Jury Trial (10:30 AM) (Judicial Officer: Allf, Nancy) Vacated - Superseding Order
11/06/2019	CANCELED Motion to Seal/Redact Records (9:30 AM) (Judicial Officer: Allf, Nancy) Vacated - Previously Decided Plaintiff's Motion to Seal Plaintiffs' Reply Brief in Support of Motion for Leave to Amend the Second Amended Complaint and Declaration of David C. O'Mara in Further Support
11/21/2019	CANCELED Motion (11:00 AM) (Judicial Officer: Allf, Nancy) Vacated - Previously Decided Defendant's Motion to Seal Defendants' Motion for Summary Judgment and Certain Exhibits in the Appendix of Exhibits in Support of Defendants' Motion for Summary Judgment
11/21/2019	Status Check (1:30 PM) (Judicial Officer: Allf, Nancy) Matter Heard;
11/21/2019	Motion (1:30 PM) (Judicial Officer: Allf, Nancy) Defendants' Motion for Summary Judgment Granted;
11/21/2019	Motion to Strike (1:30 PM) (Judicial Officer: Allf, Nancy) Defendants' Motion to Strike on Order Shortening Time Denied;
11/21/2019	 All Pending Motions (1:30 PM) (Judicial Officer: Allf, Nancy) Matter Heard; Journal Entry Details: APPEARANCES CONTINUED: Andrew Mundt, Esq. present with Plaintiff's counsel. Colin Davis, Esq. and Brian Lutz, Esq. present for Defendant Pro Hoc Vice. DEFENDANTS' MOTION TO STRIKE ON ORDER SHORTENING TIME ... DEFENDANTS' MOTION FOR SUMMARY JUDGMENT ... STATUS CHECK Mr. Lutz argues Plaintiff exceeded the page limit and the sepearate statement violated NRCP 2.20(a). Mr. Knotts argues based on his reading of the law there was not violation. COURT ORDERED, Motion to Strike is DENIED. Following arguments by counsel, COURT ORDERED, MATTER TAKEN UNDER ADVISEMENT and CONTINUED to chambers on 12/10/19. COURT FURTHER ORDERED, Status Check CONTINUED. 12/10/19 DEFENDANT'S MOTION FOR SUMMARY JUDGEMENT (CHAMBERS) 12/10/19 STATUS CHECK (CHAMBERS);

CASE SUMMARY

CASE NO. A-16-733154-B

12/09/2019



Minute Order (4:30 PM) (Judicial Officer: Allf, Nancy)

Vacate; Request for In Chamber Hearing on Motion to Seal Errata to Defendant's Motion for Summary Judgment...Request for In Chambers Hearing on Motion to Seal (1) Defendants' Reply in Support of there Motion for Summary Judgment and (2) Declaration of Brian M. Lutz in Support of Defendant's Reply in Support of their Motion for Summary Judgment

Journal Entry Details:

COURT FINDS after review that on December 6, 2019, the Motion to Seal Defendants (1) Motion In Limine No. 1; (2) Motion In Limine No. 2; (3) Declaration Of Maximilien D. Fetaz, Esq. In Support Of Defendants Motions In Limine Nos. 1 And 2; And (4) Exhibits 2 4, 6, And 9 To The Appendix Of Exhibits In Support Of Defendants Motions In Limine Nos. 1 And 2; and on November 5, 2019, a Request for In Chambers Hearing on Motion to Seal Errata to Defendants Motion for Summary Judgment were filed with the Court (collectively the Motions to Seal). COURT FURTHER FINDS after review that the Motions to Seal were set on Motions Calendar for December 11, 2019 at 9:30 a.m. COURT FURTHER FINDS after review that the Motions to Seal were served on December 6, 2019 and on November 5, 2019, respectively, pursuant to the Certificates of Service attached thereto. COURT FURTHER FINDS after review EDCR 2.20(e) provides in relevant part: [f]ailure of the opposing party to serve and file written opposition may be construed as an admission that the motion and/or joinder is meritorious and a consent to granting the same. COURT FURTHER FINDS after review no oppositions to the Motions to Seal have been filed. THEREFORE, COURT ORDERS for good cause appearing and after review pursuant to the merits of the motions and EDCR 2.20(e), the Motions to Seal are hereby GRANTED, and the matters set for Motions Calendar on December 11, 2019 at 9:30 a.m. are hereby VACATED. Movant to prepare the respective Orders in compliance with EDCR 7.21. ;

12/10/2019



Minute Order (3:00 AM) (Judicial Officer: Allf, Nancy)

Minute Order: Defendants' Motion for Summary Judgment and Status check



Matter Heard;

Journal Entry Details:

COURT FINDS after review that Defendant s Motion for Summary Judgment (the Motion for Summary Judgment) was filed on August 23, 2019. COURT FURTHER FINDS after review that the Court heard oral arguments on the Motion for Summary Judgment on November 21, 2019. The Court took the matter under submission and set a Status Check for December 10, 2019 on Chambers Calendar for the Court to issue a Minute Order with its decision. COURT FURTHER FINDS after review that under Nevada s business judgment rule, directors and officers, in deciding upon matters of business, are presumed to act in good faith, on an informed basis and with a view to the interests of the corporation. See, NRS 78.138(3). COURT FURTHER FINDS after review that the business judgment rule does not only protect individual directors from personal liability, rather, it expresses a sensible policy of judicial noninterference with business decisions and is designed to limit judicial involvement in business decision-making so long as a minimum level of care is exercised in arriving at the decision. Wynn Resorts, Ltd v. Eighth Jud. Dist. Ct., 133 Nev. 369, 375 (2017). Specifically, it prevents a court from replac[ing] a well-meaning decision by a corporate board with its own decision. Id.; see also Lamden v. La Jolla Shores Clubdominium Homeowners Ass'n, 21 Cal.4th 249, 87 Cal.Rptr.2d 237, 980 P.2d 940, 945 (1999) (A hallmark of the business judgment rule is that, when the rule's requirements are met, a court will not substitute its judgment for that of the corporation's board of directors.). COURT FURTHER FINDS after review in order to rebut Nevada s business judgment rule, the Plaintiffs must provide prima facie evidence that the Board s decision to approve the merger in the underlying case was either (1) the product of fraud, (2) the product of self-interest, or (3) that the directors failed to exercise due care in reaching its decision. Wynn Resorts, 133 Nev. at 377. COURT FURTHER FINDS after review that despite Plaintiff s claims of self-interest, there is no direct material evidence against any of the Newport directors to rebut Nevada s business judgment rule. COURT FURTHER FINDS after review that there is no material evidence that any of the directors, including Directors Potashner and Phillippy, failed to exercise due care. The merger came about following a nine-month sale process and with 16 board meetings, whether full board or committee meetings, which included financial and legal advisors to approve the sale. As such, the evidence supports that at least a minimum level of care was exercised in arriving at the merger decision. COURT FURTHER FINDS after review that the merger was not the product of self-interest or fraud. With respect to Mr. Phillippy and Mr. Potashner, the Court does not find that material discussions regarding employment or related compensation with MKS took place. And, any post-close employment discussions after the signing of the merger are not relevant in the Court s analysis. Similarly, there is no material evidence regarding Phillippy s or Potashner s intent to deceive or defraud the Board. THEREFORE, COURT

CASE SUMMARY


CASE NO. A-16-733154-B

	<p><i>ORDERS for good cause appearing and after review that the Motion for Summary Judgment is hereby GRANTED in its entirety as to Directors Potashner, Cox, Kadia, Khaykin, Simone, and Phillippy. COURT FURTHER ORDERS for good cause appearing and after review that Defendants are directed to prepare and submit an order containing detailed findings of fact and conclusions of law (Order) based upon the Court s decision as clarified herein. Defendants are further ordered to provide opposing counsel with the proposed Order on or before January 3, 2020, from which date Plaintiffs shall have ten (10) days to review and approve said Order as to form before the Order is submitted to the Court. COURT FURTHER ORDERS that the Status Check set for December 10, 2019 on Chambers Calendar is hereby VACATED. CLERK'S NOTE: This Minute Order was electronically served by Courtroom Clerk, Nicole McDevitt, to all registered parties for Odyssey File & Serve. /nm 12/10/2019;</i></p>
12/11/2019	<p>CANCELED Motion to Seal/Redact Records (9:30 AM) (Judicial Officer: Allf, Nancy) <i>Vacated</i> <i>Request for in Chambers Hearing on Motion to Seal Errata to Defendants' Motion for Summary Judgment</i></p>
12/11/2019	<p>CANCELED Motion to Seal/Redact Records (9:30 AM) (Judicial Officer: Allf, Nancy) <i>Vacated</i> <i>Request for in Chambers Hearing on Motion to Seal (1) Defendants' Reply in Support of Their Motion for Summary Judgment and (2) Declaration of Brian M. Lutz in Support of Defendants' Reply in Support of Their Motion for Summary Judgment</i></p>
12/17/2019	<p> Minute Order (3:00 AM) (Judicial Officer: Allf, Nancy) <i>Minute Order: Status check set 12/19/2020 VACATED</i> <i>Minute Order - No Hearing Held; Minute Order: Status check set 12/19/2020 VACATED</i> <i>Journal Entry Details:</i> <i>COURT FINDS after review that Defendant s Motion for Summary Judgment (the Motion for Summary Judgment) was filed on August 23, 2019. COURT FURTHER FINDS after review that the Court heard oral arguments on the Motion for Summary Judgment on November 21, 2019. The Court took the matter under submission and issued a Minute Order with its decision on December 10, 2019 granting the Motion for Summary Judgment. THEREFORE, COURT ORDERS for good cause appearing and after review in light of the Court s decision, the Status Check set for December 19, 2019 at 10:00 a.m. regarding trial readiness is hereby VACATED. CLERK'S NOTE: This Minute Order was electronically served by Courtroom Clerk, Nicole McDevitt, to all registered parties for Odyssey File & Serve. /nm;</i></p>
12/19/2019	<p>CANCELED Status Check (10:00 AM) (Judicial Officer: Allf, Nancy) <i>Vacated</i> <i>Trial Readiness</i></p>
01/02/2020	<p> Calendar Call (10:30 AM) (Judicial Officer: Sturman, Gloria) <i>Off Calendar;</i> <i>Journal Entry Details:</i> <i>There being no parties present, and due to the Motion for Summary Judgment being granted, COURT ORDERS, Calendar Call OFF CALENDAR.;</i></p>
01/06/2020	<p>CANCELED Bench Trial (10:30 AM) (Judicial Officer: Allf, Nancy) <i>Vacated</i></p>
01/08/2020	<p>CANCELED Motion to Seal/Redact Records (9:30 AM) (Judicial Officer: Allf, Nancy) <i>Vacated</i> <i>Motion to Seal Defendants'(1) Motion in Limine. 1; (2) Motion in Limine No. 2;(3) Delcaration of Maximilien D. Fetaz, Esq. in Support of Defendants' Motion in Limine Nos. 1 and 2; and (4) Exhibits 2-4,6, and 9 to the Appendix of Exhibits in Support of Defendants' Motions in Limine Nos. 1 and 2</i></p>
01/08/2020	<p>CANCELED Motion in Limine (9:30 AM) (Judicial Officer: Allf, Nancy) <i>Vacated</i> <i>Defendants' Motion in Limine No. 1 to Exclude Evidence, Testimony, and Argument Related to Post-Merger Financial Performance</i></p>

EIGHTH JUDICIAL DISTRICT COURT

CASE SUMMARY

CASE NO. A-16-733154-B

01/08/2020	CANCELED Motion in Limine (9:30 AM) (Judicial Officer: Allf, Nancy) <i>Vacated</i> <i>Defendants' Motion in Limine No. 2 to Preclude Plaintiffs' Purported Expert Brian Foley from Offering Non-Opinion Testimony Regarding Factual "Observations"</i>
01/23/2020	CANCELED Calendar Call (10:31 AM) (Judicial Officer: Allf, Nancy) <i>Vacated</i>
01/27/2020	CANCELED Jury Trial (10:30 AM) (Judicial Officer: Allf, Nancy) <i>Vacated - On in Error</i>
01/30/2020	 Motion (3:00 PM) (Judicial Officer: Allf, Nancy) <i>Motion to Extend Time to File a Motion to Retax Costs on Shortened Time</i> Motion Granted; Journal Entry Details: <i>David O'Mara, Esq. and Christopher Lyons, Esq., Attorneys for Plaintiff; Maximilien D. Fetaz, Esq. and Colin Davis, Esq., Attorneys for Defendant, also present by Conference Call. Mr. Knotts advised the Defendant filed a Memorandum of Costs for over \$2.6 Million containing more than 2,000 pages of exhibits and Defendant denied Plaintiff's request for additional time to review the Memorandum. Further, Mr. Knotts argued, due to the voluminous number of exhibits, the Plaintiff believed good cause exists for an extension. Mr. Davis advised the Plaintiff requested a 45-day extension and Defendant offered a 15-day extension which was rejected by the Plaintiff. Further, Mr. Davis argued a 45-day extension would delay resolution of this matter as the Defendant intends to file a Motion for Attorney's Fees and Costs. Following arguments by counsel, Court stated its FINDINGS and ORDERED, Plaintiff's Motion GRANTED; Mr. Knotts to prepare the Order. COURT FURTHER ORDERED, Plaintiff's Motion to Retax Costs and Defendant's Motion for Attorney's Fees and Costs to be filed by 03/20/20. ;</i>

DATE

FINANCIAL INFORMATION

Defendant MKS Instruments Inc	
Total Charges	1,483.00
Total Payments and Credits	1,483.00
Balance Due as of 2/20/2020	0.00
Defendant PSI Equipment Inc	
Total Charges	30.00
Total Payments and Credits	30.00
Balance Due as of 2/20/2020	0.00
Consolidated Case Party Cox, Christopher	
Total Charges	30.00
Total Payments and Credits	30.00
Balance Due as of 2/20/2020	0.00
Consolidated Case Party Kadia, Siddhartha C	
Total Charges	30.00
Total Payments and Credits	30.00
Balance Due as of 2/20/2020	0.00
Consolidated Case Party Khaykin, Oleg	
Total Charges	30.00
Total Payments and Credits	30.00
Balance Due as of 2/20/2020	0.00
Consolidated Case Party Phillippy, Robert J	
Total Charges	233.50
Total Payments and Credits	233.50
Balance Due as of 2/20/2020	0.00
Consolidated Case Party Pincon, Hubert C	
Total Charges	24.00
Total Payments and Credits	24.00

CASE SUMMARY**CASE NO. A-16-733154-B**

Balance Due as of 2/20/2020	0.00
Consolidated Case Party Potashner, Kenneth F	
Total Charges	33.50
Total Payments and Credits	33.50
Balance Due as of 2/20/2020	0.00
Consolidated Case Party Simone, Peter J	
Total Charges	30.00
Total Payments and Credits	30.00
Balance Due as of 2/20/2020	0.00
Defendant Newport Corp	
Total Charges	1,556.50
Total Payments and Credits	1,556.50
Balance Due as of 2/20/2020	0.00
Plaintiff Chung, Dixon	
Total Charges	619.00
Total Payments and Credits	619.00
Balance Due as of 2/20/2020	0.00

DISTRICT COURT CIVIL COVER SHEET A- 16- 733154- C

Clark County, Nevada

Case No. _____

(Assigned by Clerk's Office)

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

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

DIXON CHUNG, individually and on behalf of all
others similarly situated

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

NEWPORT CORP., KENNETH F.

POTASHNER, CHRISTOPHER COX, ROBERT L. GUYETT, OLEG KHAYKIN, MICHAEL T. O'NEILL,

C. KUMAR N. PATEL, ROBERT J. PHILLIPPY, PETER J. SIMONE, MKS INSTRUMENTS, INC., and PSI EQUIPMENT, INC.,

Attorney (name/address/phone):

John P. Aldrich, Aldrich Law Firm, Ltd.
1601 S. Rainbow Boulevard, Suite 160
Las Vegas, NV 89146
(702) 853-5490

Attorney (name/address/phone):

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

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

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

3/9/16

Date

/s/ John P. Aldrich

Signature of initiating party or representative

See other side for family-related case filings.



FFCL

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Khaykin, and Peter J. Simone*

**DISTRICT COURT
CLARK COUNTY, NEVADA**

In re NEWPORT CORPORATION
SHAREHOLDER LITIGATION

CASE NO.: A-16-733154-B

(Consolidated with Case No. A-16-734039-B)

This Document Relates To:

CLASS ACTION

ALL ACTIONS.

**FINDINGS OF FACT, CONCLUSIONS
OF LAW, AND ORDER GRANTING
DEFENDANTS' MOTION FOR
SUMMARY JUDGMENT**

On November 21, 2019, the parties appeared for a hearing on Defendants Robert J. Phillippy, Kenneth F. Potashner, Christopher Cox, Siddhartha C. Kadia, Oleg Khaykin, and Peter J. Simone's (collectively, "Defendants") Motion for Summary Judgment. Plaintiffs and class representatives Hubert C. Pincon and Locals 302 and 612 of the International Union of Operating Engineers-Employers Construction Industry Retirement Trust appeared by and through their counsel of record, David A. Knotts, Esq. and Andrew Mundt, Esq., of Robbins Geller Rudman &

1 Dowd LLP, and David O'Mara, Esq., of The O'Mara Law Firm, P.C. Defendants appeared by
2 and through their counsel of record, Brian M. Lutz, Esq., Meryl L. Young, Esq., and Colin B.
3 Davis, Esq., of Gibson, Dunn & Crutcher LLP, and Maximilien D. Fetaz, Esq., of Brownstein
4 Hyatt Farber Schreck LLP. The Court, having considered the briefing and evidence filed by the
5 parties, the relevant legal authorities, and the oral arguments of counsel, makes the following
6 findings of fact and conclusions of law in GRANTING Defendants' Motion for Summary
7 Judgment.

8 Any Finding of Fact more appropriately designated as a Conclusion of Law shall be so
9 deemed and any Conclusion of Law more appropriately designated as a Finding of Fact similarly
10 shall be so deemed.

11 **FINDINGS OF FACT**

12 **A. Background of the Merger**

13 1. This matter concerns the all-cash acquisition of Newport Corporation ("Newport"
14 or the "Company") by MKS Instruments, Inc. ("MKS") for \$23.00 per share (the "Merger"),
15 which was signed on February 22, 2016, and closed on April 29, 2016.

16 2. Before the Merger, Newport was a publicly traded supplier of advanced laser and
17 photonics technology products and systems. Mr. Phillippy was Newport's CEO, Mr. Potashner
18 was the independent Chairman of Newport's Board of Directors (the "Board"), and Messrs. Cox,
19 Kadia, Khaykin, and Simone were the other independent, non-employee members of Newport's
20 Board.

21 3. Beginning in June 2015, Newport engaged in discussions with nine parties as part
22 of a Board-led strategic review process. The potential transactions Newport considered took
23 many forms, including potential merger-of-equals transactions, a potential stock-and-cash
24 transaction, and potential all-cash acquisitions, including by MKS.

25 4. In connection with the strategic review process, the Board retained independent,
26 qualified financial and legal advisors (J.P. Morgan and Gibson, Dunn & Crutcher LLP). During
27 the roughly nine-month sale process, the Board met sixteen times and received detailed financial
28 analysis presentations from J.P. Morgan on at least nine occasions. The Board, through its

1 representatives, negotiated with five potential transaction partners, including MKS. The Board
2 received regular updates about the status of the negotiations, both at formal meetings and
3 informally, and considered the merits and risks of each potential alternative, including remaining
4 independent.

5 5. In late-November 2015, Newport received an unsolicited inquiry from MKS. The
6 two companies promptly entered into a confidentiality agreement and commenced due diligence
7 without exclusivity. On December 23, 2015, MKS proposed to acquire Newport for \$20.50 per
8 share in cash. After further negotiation, on January 15, 2016, MKS made a revised proposal to
9 acquire Newport for \$23.00 per share in cash, representing a 65% premium over Newport's then-
10 current stock price.

11 6. MKS continued with due diligence, including extensive meetings with Newport
12 management. On February 10, 2016, MKS sent Newport a letter reaffirming MKS's proposal of
13 \$23.00 per share and requesting exclusivity through February 25, 2016. In view of the advanced
14 stage of the negotiations, another interested party's withdrawal from the sale process, and the fact
15 that any possible combination with the only other remaining interested party would not result in a
16 premium for Newport stockholders and was uncertain to proceed, the Board agreed to grant MKS
17 twelve days of exclusivity.

18 7. At a February 22, 2016 Board meeting, J.P. Morgan delivered its opinion that the
19 proposed consideration from MKS was fair to Newport stockholders. The Board unanimously
20 approved the Merger Agreement and recommended that Newport stockholders vote in favor of
21 the Merger. The parties signed the Merger Agreement the same day.

22 8. The Merger was announced on February 23, 2016. Newport's stockholders
23 received \$23.00 per share in cash, a 53% premium over Newport's closing stock price the day
24 before the announcement, and a 13-year high price for Newport's shares. At an April 27, 2016
25 stockholder meeting, 99.4% of Newport's voting stockholders voted to approve the Merger. The
26 Merger closed on April 29, 2016.

B. Newport's Financial Forecasts and Strategic Planning Process

9. In connection with the strategic review process, Newport management prepared two sets of five-year financial forecasts to evaluate potential transactions—the “base case forecasts” and the “acquisition forecasts.” The base case forecasts projected potential revenues if Newport grew organically (i.e., without acquisitions). The base case forecasted a compound annual revenue growth rate of 3% and assumed that Newport would increase its profit margins.

10. The alternative case that Newport modeled, the acquisition forecasts, assumed additional revenue to reach a compound annual revenue growth rate of 10%. The acquisition forecasts hypothesized that Newport would acquire one or more unidentified companies with \$50 million of revenue each year (\$250 million over five years), at a \$75 million purchase price each year.

11. Newport disclosed to its stockholders each of these sets of forecasts in connection with their consideration of the Merger. Newport advised stockholders that “the inclusion of Forecasts in this proxy statement should not be regarded as an indication that [Newport], [MKS], Merger Sub or their respective affiliates or representatives considered or consider the Forecasts to be a prediction of actual future events, and the Forecasts should not be relied upon as such.” Newport also disclosed in the Proxy that “the Acquisition Forecasts were prepared to provide the Company with a potential alternative standalone perspective to the Base Case Forecasts reflecting a hypothetical scenario in which the Company was projected to complete significant acquisitions each year.” “Because the Acquisition Forecasts assumed the completion of highly uncertain acquisitions of unidentified and unknown parties by the Company, as well as other additional risks and uncertainties,” the Newport Board primarily relied on the base case forecasts in evaluating the Merger. For the same reason, J.P. Morgan used the base case forecasts in its fairness opinion.

12. Newport's routine, annual strategic planning process commenced around the same time as the discussions with MKS. In late 2015, Newport's three business unit leaders delivered their initial strategic plan presentations to Newport management. The presentations from the business units contained hundreds of pages detailing proposed operational strategies and a

1 handful of pages reflecting the business units' proposed financial projections for the next three
2 years (i.e., 2016 through 2018). Because of the Merger, the 2016 to 2018 strategic plan never
3 was presented to or approved by the Newport Board, as it would have been in the ordinary course.

4 13. During due diligence, MKS requested an update regarding Newport's strategic
5 planning process. Newport responded that "our Strategic Plan update is still in process—we have
6 reviewed the strategy presentations by each of our business groups, but have not yet synthesized
7 or prioritized them into the strategic plan for Newport as a whole." Newport nonetheless
8 provided the work-in-process strategic plan to MKS because MKS was well along in its due
9 diligence process, and Newport wanted to be responsive to requests from an interested potential
10 acquirer.

11 14. Although the 2016 to 2018 strategic plan never was finalized, Newport's business
12 units and finance team used the 2016 forecasts in the strategic plan presentations to complete
13 multiple iterations of Newport's 2016 annual operating plan. At a December 28, 2015 Board
14 meeting, the Newport Board received an update on the status of Newport's 2016 annual operating
15 plan. Newport updated the base case forecasts disclosed in the Proxy to incorporate the 2016
16 numbers contained in the annual operating plan, and J.P. Morgan relied on the updated base case
17 forecasts in its fairness opinion.

18 **C. Defendants' Post-Closing Roles and Related Discussions**

19 15. Following the Merger, Mr. Phillippy lost his job as Newport's CEO. Unlike many
20 other Newport employees, Mr. Phillippy was not retained as an MKS employee following the
21 Merger.

22 16. MKS briefly retained Mr. Phillippy as a consultant to assist in the transition and
23 appointed him to the MKS board of directors. The compensation Mr. Phillippy temporarily
24 received as an MKS consultant and director was substantially lower than the compensation he
25 would have received if he had remained as Newport's CEO.

26 17. Mr. Phillippy did not discuss his post-closing consultancy or MKS directorship
27 with MKS before the Newport Board approved the Merger, and he was not offered either position
28

1 until after the Newport Board approved the Merger. This was confirmed by the unrebutted
2 testimony of MKS's corporate representative, John Ippolito:

3 Q. Were there any discussions between Mr. Phillippy and MKS regarding his
4 future role following the closing of the transaction prior to the merger agreement
being signed?

5 A. No.

6 18. Following the Merger, the Newport Board ceased to exist. Newport's five
7 independent directors were not retained by MKS in any capacity.

8 19. On February 24, 2016, after the Merger Agreement was signed and the Merger
9 was publicly announced, Mr. Potashner sent an email to the chairman of a potential merger-of-
10 equals partner of Newport that Newport had discussions with during the strategic review process
11 and proposed to discuss "whether an opportunity exist[ed] for [board of directors] involvement"
12 for Mr. Potashner at the subject company. The individual Mr. Potashner contacted responded that
13 he had "a strong preference for a small board" and thought that the company's board of directors
14 was "just the right size." Mr. Potashner never was appointed to that company's board of
15 directors.

16 20. On February 27, 2016, Mr. Potashner sent an email to MKS's CEO suggesting that
17 MKS consider two Newport Board members—Mr. Potashner and Mr. Simone—as candidates for
18 MKS's board of directors. Neither Mr. Potashner nor Mr. Simone ever was appointed to the
19 MKS board of directors.

20 CONCLUSIONS OF LAW

21 **A. Legal Standard for Summary Judgment**

22 1. Rule 56 safeguards the rights of litigants to obtain a timely and efficient resolution
23 where there is no evidentiary basis for a claim. *Wood v. Safeway, Inc.*, 121 Nev. 724, 731, 121
24 P.3d 1026, 1031 (2005) (adopting *Celotex Corp. v. Catrett*, 477 U.S. 317, 324 (1986)). Summary
25 judgment "shall" be granted where there is no "genuine dispute as to any material fact and the
26 movant is entitled to judgment as a matter of law." NRCP 56(a). Although the moving party
27 bears the initial burden to show the absence of such issues, that burden is satisfied by showing the
28 lack of evidence to support a claim. *Cuzze v. Univ. & Cmty. Coll. Sys. of Nev.*, 123 Nev. 598,

603, 172 P.3d 131, 134 (2007). The opponent then must set forth sufficient admissible evidence to permit a reasonable trier of fact to return a verdict in its favor. *Id.*

2. Moreover, if the nonmoving party will bear the burden of persuasion at trial, the “moving party may satisfy the burden of production by either (1) submitting evidence that negates an essential element of the nonmoving party’s claim, or (2) pointing out ... that there is an absence of evidence to support the nonmoving party’s case.” *Francis v. Wynn Las Vegas*, 127 Nev. 657, 671, 262 P.3d 705, 714 (2011) (quoting *Cuzze*, 123 Nev. at 602–03, 172 P.3d at 134 (citation omitted)) (internal quotation marks omitted). “In such instances, in order to defeat summary judgment, the nonmoving party must transcend the pleadings and, by affidavit or other admissible evidence, introduce specific facts that show a genuine issue of material fact.” *Id.* at 671, 262 P.3d at 714–15 (quoting *Cuzze*, 123 Nev. at 603, 172 P.3d at 134) (internal quotation marks omitted).

B. Plaintiffs Cannot Overcome Nevada’s Business Judgment Rule

3. Under Nevada’s business judgment rule, Newport’s directors and officers, “in deciding upon matters of business, are presumed to act in good faith, on an informed basis and with a view to the interests of the corporation.” NRS 78.138(3). The business judgment rule “ensures that courts defer to the business judgment of corporate executives” and “precludes courts from reviewing the substantive reasonableness of a board’s business decision.” *Wynn Resorts, Ltd. v. Eighth Judicial Dist. Ct.*, 133 Nev. 369, 376–78, 399 P.3d 334, 343–44 (2017).

4. “The business judgment rule does not only protect individual directors from personal liability; rather, it expresses a sensible policy of judicial noninterference with business decisions and is designed to limit judicial involvement in business decision-making so long as a minimum level of care is exercised in arriving at the decision.” *Id.*, 133 Nev. at 376, 399 P.3d at 342 (quoting 18B Am. Jur. 2d Corporations § 1451 (2016)) (internal quotation marks omitted). “Specifically, it prevents a court from replac[ing] a well-meaning decision by a corporate board with its own decision.” *Id.* (citation and internal quotation marks omitted); *see also Lamden v. La Jolla Shores Clubdominium Homeowners Ass’n*, 21 Cal. 4th 249, 87 Cal. Rptr. 2d 237, 980 P.2d 940, 945 (1999) (“A hallmark of the business judgment rule is that, when the rule’s requirements

are met, a court will not substitute its judgment for that of the corporation's board of directors."").
"[E]ven a bad decision is generally protected by the business judgment rule's presumption that
the directors acted in good faith, with knowledge of the pertinent information, and with an honest
belief that the action would serve the corporation's interests." *Shoen v. SAC Holding Corp.*, 122
Nev. 621, 636, 137 P.3d 1171, 1181 (2006).

5. In an action for damages such as this, the Court first must determine whether the
business judgment rule presumption has been rebutted. NRS 78.138(7); *see also Wynn Resorts*,
133 Nev. at 375, 399 P.3d at 341–42. In order to rebut Nevada's business judgment rule at the
summary judgment stage, Plaintiffs must provide prima facie evidence that the Board's decision
to approve the Merger was either (1) the product of fraud, (2) the product of self-interest, or
(3) that the Board failed to exercise due care in reaching its decision. *Id.*, 133 Nev. at 377, 399
P.3d at 343; *see also La. Mun. Police Emps.' Ret. Sys. v. Wynn*, 829 F.3d 1048, 1062 (9th Cir.
2016) (interpreting NRS 78.138); Nev. Jury Instruction 15.14 (explaining showing required to
rebut presumption).

6. Despite Plaintiffs' claims of self-interest, there is no direct, material evidence
against any of the Newport directors to rebut Nevada's business judgment rule.

1. The Newport Board Exercised Due Care

7. To determine whether the Board exercised due care, the Court only may consider
"the procedural indicia of whether the directors resorted in good faith to an informed
decisionmaking process." *Wynn Resorts*, 133 Nev. at 377–78, 399 P.3d at 343 (quoting *WLR*
Foods, Inc. v. Tyson Foods, Inc., 857 F. Supp. 492, 494 (W.D. Va. 1994), *aff'd* 65 F.3d 1172 (4th
Cir. 1995)). These include "the identity and qualifications of any sources of information or
advice sought which bear on the decision reached, the circumstances surrounding selection of
these sources, the general topics (but not the substance) of the information sought or imparted,
whether advice was actually given, whether it was followed, and if not, what sources of
information and advice were consulted to reach the decision in issue." *Id.*; *see also Shoen*, 121
Nev. at 632, 137 P.3d at 1178 ("[T]he duty of care consists of an obligation to act on an informed
basis").

8. There is no material evidence that any of the directors failed to exercise due care. The Merger came about following a nine-month sale process and with sixteen board meetings, whether full Board or committee meetings, which included financial and legal advisors to approve the sale. As such, the evidence supports that at least a minimum level of care was exercised in arriving at the Merger decision.

2. The Merger Was Not the Product of Self-Interest or Fraud

9. In *Wynn Resorts*, the Nevada Supreme Court held that “the business judgment rule applies to the Board” as a whole. 133 Nev. at 376, 399 P.3d at 342; *see also Orman v. Cullman*, 794 A.2d 5, 22 (Del. Ch. 2002) (“[T]he business judgment rule presumption ... can be rebutted by alleging facts which ... establish that the *board* was either interested in the outcome of the transaction or lacked independence ...”). Where, as here, board action is challenged, the decision in question cannot be “the product of” fraud or self-interest or a failure to exercise due care unless the purported self-interest or fraud affects the decision-making process of the board as a whole.

10. “To rebut the business judgment rule based solely on the material conflicts of a minority of the directors of a multi-director board, a plaintiff must allege that those conflicts affected the majority of the board.” *In re Towers Watson & Co. Stockholders Litig.*, 2019 WL 3334521, at *8 (Del. Ch. July 25, 2019). “A plaintiff can show this in one of two ways: by demonstrating that the conflicted director either ‘controls or dominates the board as a whole’ or ‘fail[ed] to disclose his interest in the transaction to the board and a reasonable board member would have regarded the existence of the material interest as a significant fact in the evaluation of the proposed transaction.’” *Id.* (quoting *Cinerama, Inc. v. Technicolor, Inc.*, 663 A.2d 1156, 1168 (Del. 1995)).

11. The Merger was not the product of self-interest or fraud. There is no evidence that Newport’s five independent directors—a majority of Newport’s six-member Board—had any financial interest in the Merger other than as stockholders of Newport. Although Mr. Potashner requested that MKS and another potential merger-of-equals partner of Newport consider Mr. Potashner and Mr. Simone for board of directors positions, those requests occurred after the

1 signing of the Merger Agreement and were denied. Any post-close employment discussions after
2 the signing of the Merger Agreement are not relevant in the Court's analysis. *See English v.*
3 *Narang*, 2019 WL 1300855, at *12 (Del. Ch. Mar. 20, 2019) (“[T]o be material, post-close
4 employment discussions must have occurred before the Merger Agreement was signed.”).

5 12. There also is no evidence that Mr. Phillippy controlled or dominated the Newport
6 Board. To the contrary, the evidence shows that Newport's Board members independently
7 exercised their business judgment to evaluate the merits of the Merger.

8 13. Nor is there any evidence that Mr. Phillippy failed to disclose a material interest in
9 the Merger to the Newport Board. Mr. Phillippy's temporary post-closing consulting
10 arrangement with MKS to assist in the transition and his appointment to the MKS board of
11 directors did not render him interested in the Merger.¹ The undisputed evidence establishes that
12 Mr. Phillippy did not discuss and was not offered either of these positions until after the Board
13 approved the Merger. Again, any post-close employment discussions after the signing of the
14 Merger Agreement are not relevant in the Court's analysis. *See id.* This is because the issue that
15 could create a conflict of interest is whether a fiduciary of Newport had a motive to play favorites
16 during the sale process in order to secure post close employment. By contrast, discussions that
17 occur after the terms of the transaction are agreed to—like those that occurred here—do not pose
18 the same risk of favoritism.

19 14. Plaintiffs' claim that Mr. Phillippy had an improper “interest” in the Merger also
20 fails because there is no evidence that any supposed benefits he received were material to him.
21 “Materiality means that the alleged benefit was significant enough ‘in the context of the director's
22 economic circumstances, as to have made it improbable that the director could perform her
23 fiduciary duties to the ... shareholders without being influenced by her overriding personal
24 interest.’” *Orman*, 794 A.2d at 23 (quoting *In re Gen. Motors Class H S'holders Litig.*, 734 A.2d

25
26
27 ¹ Plaintiffs also suggest that the change-in-control compensation Mr. Phillippy received under
28 his preexisting severance agreement rendered him interested in the Merger. But these benefits
were agreed to in 2008—years before the sale process that led to the Merger commenced—
and Mr. Phillippy would have received them in connection with any change-in-control
transaction that resulted in his termination.

1 611, 617 (Del. Ch. 1999)); *see also Shoen*, 122 Nev. at 639, 137 P.3d at 1183 (“[T]o show
2 interestedness, a shareholder must allege that a majority of the board members would be
3 ‘*materially affected*, either to [their] benefit or detriment, by a decision of the board, in a manner
4 not shared by the corporation and the stockholders.’”) (emphasis added) (citation omitted). Here,
5 there is no evidence of Mr. Phillippy’s individual “financial circumstances” that would permit a
6 determination that any benefits he received were material to him, let alone that they somehow
7 were more favorable than keeping his job as Newport’s CEO. To the contrary, the compensation
8 Mr. Phillippy temporarily received as an MKS consultant and director was substantially less than
9 the compensation he would have received if he had remained as Newport’s CEO.

10 15. There also is no material evidence that Mr. Phillippy’s employment as Newport’s
11 CEO ever was at risk. Newport’s CFO, who Mr. Phillippy had professional disagreements with,
12 could not fire Mr. Phillippy because he was Mr. Phillippy’s subordinate. And although an activist
13 investor sent emails suggesting that the Company “needs a new CEO or needs to be sold,” there is
14 no material evidence that the Board ever considered firing Mr. Phillippy.

15 16. Nor is there any material evidence that Mr. Phillippy or Mr. Potashner intended to
16 deceive the Board, or that the Merger was the product of fraud. Plaintiffs claim that Mr. Phillippy
17 defrauded the Newport Board and stockholders by not disclosing the numbers that were generated
18 by Newport’s business units in connection with the Company’s late-2015 strategic planning
19 process (other than updating the base case forecasts to incorporate the 2016 annual operating
20 plan). But there is no evidence that Mr. Phillippy believed that the strategic plan numbers were
21 complete or reliable and nonetheless intentionally withheld them from the Newport Board and
22 stockholders. And there is no evidence that Mr. Phillippy had a self-interested motive to conceal
23 the strategic plan numbers from anyone.

24 ORDER

25 THEREFORE, IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that
26 defendants’ Motion for Summary Judgment be, and the same is, hereby GRANTED;

27 IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that judgment be entered
28 in favor of Defendants and against Plaintiffs on all of Plaintiffs’ claims against Defendants.

IT IS SO ORDERED.

DATED: Jan. 21, 2020

Nancy L. Allf
HON. NANCY L. ALLF
DISTRICT COURT JUDGE JP

Submitted by:

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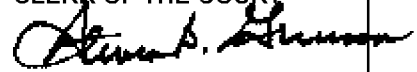
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27 *Khaykin, and Peter J. Simone*

28
DISTRICT COURT
CLARK COUNTY, NEVADA

In re NEWPORT CORPORATION
SHAREHOLDER LITIGATION

CASE NO.: A-16-733154-C

(Consolidated with Case No. A-16-734039-B)

This Document Relates To:

CLASS ACTION

ALL ACTIONS.

**NOTICE OF ENTRY OF FINDINGS OF
FACT, CONCLUSIONS OF LAW, AND
ORDER GRANTING DEFENDANTS'
MOTION FOR SUMMARY JUDGMENT**

NOTICE OF ENTRY OF ORDER

PLEASE TAKE NOTICE that a Findings of Fact, Conclusions of Law, and Order Granting Defendants' Motion for Summary Judgment was entered on January 23, 2020 in the above entitled matter. A copy of said Order is attached hereto.

DATED this 23rd day of January, 2020.

BROWNSTEIN HYATT FARBER SCHRECK, LLP

/s/ Maximilien D. Fetaz

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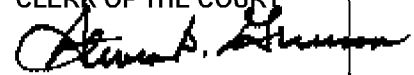
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I am an employee of Brownstein Hyatt Farber Schreck, LLP and pursuant to NRCP 5(b), EDCR 8.05, Administrative Order 14-2, and NEFCR 9, I caused a true and correct copy of the foregoing **NOTICE OF ENTRY OF FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER GRANTING DEFENDANTS' MOTION FOR SUMMARY JUDGMENT** to be submitted electronically to all parties currently on the electronic service list on January 23, 2020.

/s/ Wendy Cosby
an Employee of Brownstein Hyatt Farber Schreck, LLP



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**DISTRICT COURT
CLARK COUNTY, NEVADA**

In re NEWPORT CORPORATION
SHAREHOLDER LITIGATION

CASE NO.: A-16-733154-B

(Consolidated with Case No. A-16-734039-B)

This Document Relates To:

CLASS ACTION

ALL ACTIONS.

**FINDINGS OF FACT, CONCLUSIONS
OF LAW, AND ORDER GRANTING
DEFENDANTS' MOTION FOR
SUMMARY JUDGMENT**

On November 21, 2019, the parties appeared for a hearing on Defendants Robert J. Phillippy, Kenneth F. Potashner, Christopher Cox, Siddhartha C. Kadia, Oleg Khaykin, and Peter J. Simone's (collectively, "Defendants") Motion for Summary Judgment. Plaintiffs and class representatives Hubert C. Pincon and Locals 302 and 612 of the International Union of Operating Engineers-Employers Construction Industry Retirement Trust appeared by and through their counsel of record, David A. Knotts, Esq. and Andrew Mundt, Esq., of Robbins Geller Rudman &

1 Dowd LLP, and David O'Mara, Esq., of The O'Mara Law Firm, P.C. Defendants appeared by
2 and through their counsel of record, Brian M. Lutz, Esq., Meryl L. Young, Esq., and Colin B.
3 Davis, Esq., of Gibson, Dunn & Crutcher LLP, and Maximilien D. Fetaz, Esq., of Brownstein
4 Hyatt Farber Schreck LLP. The Court, having considered the briefing and evidence filed by the
5 parties, the relevant legal authorities, and the oral arguments of counsel, makes the following
6 findings of fact and conclusions of law in GRANTING Defendants' Motion for Summary
7 Judgment.

8 Any Finding of Fact more appropriately designated as a Conclusion of Law shall be so
9 deemed and any Conclusion of Law more appropriately designated as a Finding of Fact similarly
10 shall be so deemed.

11 **FINDINGS OF FACT**

12 **A. Background of the Merger**

13 1. This matter concerns the all-cash acquisition of Newport Corporation ("Newport"
14 or the "Company") by MKS Instruments, Inc. ("MKS") for \$23.00 per share (the "Merger"),
15 which was signed on February 22, 2016, and closed on April 29, 2016.

16 2. Before the Merger, Newport was a publicly traded supplier of advanced laser and
17 photonics technology products and systems. Mr. Phillippy was Newport's CEO, Mr. Potashner
18 was the independent Chairman of Newport's Board of Directors (the "Board"), and Messrs. Cox,
19 Kadia, Khaykin, and Simone were the other independent, non-employee members of Newport's
20 Board.

21 3. Beginning in June 2015, Newport engaged in discussions with nine parties as part
22 of a Board-led strategic review process. The potential transactions Newport considered took
23 many forms, including potential merger-of-equals transactions, a potential stock-and-cash
24 transaction, and potential all-cash acquisitions, including by MKS.

25 4. In connection with the strategic review process, the Board retained independent,
26 qualified financial and legal advisors (J.P. Morgan and Gibson, Dunn & Crutcher LLP). During
27 the roughly nine-month sale process, the Board met sixteen times and received detailed financial
28 analysis presentations from J.P. Morgan on at least nine occasions. The Board, through its

1 representatives, negotiated with five potential transaction partners, including MKS. The Board
2 received regular updates about the status of the negotiations, both at formal meetings and
3 informally, and considered the merits and risks of each potential alternative, including remaining
4 independent.

5 5. In late-November 2015, Newport received an unsolicited inquiry from MKS. The
6 two companies promptly entered into a confidentiality agreement and commenced due diligence
7 without exclusivity. On December 23, 2015, MKS proposed to acquire Newport for \$20.50 per
8 share in cash. After further negotiation, on January 15, 2016, MKS made a revised proposal to
9 acquire Newport for \$23.00 per share in cash, representing a 65% premium over Newport's then-
10 current stock price.

11 6. MKS continued with due diligence, including extensive meetings with Newport
12 management. On February 10, 2016, MKS sent Newport a letter reaffirming MKS's proposal of
13 \$23.00 per share and requesting exclusivity through February 25, 2016. In view of the advanced
14 stage of the negotiations, another interested party's withdrawal from the sale process, and the fact
15 that any possible combination with the only other remaining interested party would not result in a
16 premium for Newport stockholders and was uncertain to proceed, the Board agreed to grant MKS
17 twelve days of exclusivity.

18 7. At a February 22, 2016 Board meeting, J.P. Morgan delivered its opinion that the
19 proposed consideration from MKS was fair to Newport stockholders. The Board unanimously
20 approved the Merger Agreement and recommended that Newport stockholders vote in favor of
21 the Merger. The parties signed the Merger Agreement the same day.

22 8. The Merger was announced on February 23, 2016. Newport's stockholders
23 received \$23.00 per share in cash, a 53% premium over Newport's closing stock price the day
24 before the announcement, and a 13-year high price for Newport's shares. At an April 27, 2016
25 stockholder meeting, 99.4% of Newport's voting stockholders voted to approve the Merger. The
26 Merger closed on April 29, 2016.

B. Newport's Financial Forecasts and Strategic Planning Process

9. In connection with the strategic review process, Newport management prepared two sets of five-year financial forecasts to evaluate potential transactions—the “base case forecasts” and the “acquisition forecasts.” The base case forecasts projected potential revenues if Newport grew organically (i.e., without acquisitions). The base case forecasted a compound annual revenue growth rate of 3% and assumed that Newport would increase its profit margins.

10. The alternative case that Newport modeled, the acquisition forecasts, assumed additional revenue to reach a compound annual revenue growth rate of 10%. The acquisition forecasts hypothesized that Newport would acquire one or more unidentified companies with \$50 million of revenue each year (\$250 million over five years), at a \$75 million purchase price each year.

11. Newport disclosed to its stockholders each of these sets of forecasts in connection with their consideration of the Merger. Newport advised stockholders that “the inclusion of Forecasts in this proxy statement should not be regarded as an indication that [Newport], [MKS], Merger Sub or their respective affiliates or representatives considered or consider the Forecasts to be a prediction of actual future events, and the Forecasts should not be relied upon as such.” Newport also disclosed in the Proxy that “the Acquisition Forecasts were prepared to provide the Company with a potential alternative standalone perspective to the Base Case Forecasts reflecting a hypothetical scenario in which the Company was projected to complete significant acquisitions each year.” “Because the Acquisition Forecasts assumed the completion of highly uncertain acquisitions of unidentified and unknown parties by the Company, as well as other additional risks and uncertainties,” the Newport Board primarily relied on the base case forecasts in evaluating the Merger. For the same reason, J.P. Morgan used the base case forecasts in its fairness opinion.

12. Newport's routine, annual strategic planning process commenced around the same time as the discussions with MKS. In late 2015, Newport's three business unit leaders delivered their initial strategic plan presentations to Newport management. The presentations from the business units contained hundreds of pages detailing proposed operational strategies and a

1 handful of pages reflecting the business units' proposed financial projections for the next three
2 years (i.e., 2016 through 2018). Because of the Merger, the 2016 to 2018 strategic plan never
3 was presented to or approved by the Newport Board, as it would have been in the ordinary course.

4 13. During due diligence, MKS requested an update regarding Newport's strategic
5 planning process. Newport responded that "our Strategic Plan update is still in process—we have
6 reviewed the strategy presentations by each of our business groups, but have not yet synthesized
7 or prioritized them into the strategic plan for Newport as a whole." Newport nonetheless
8 provided the work-in-process strategic plan to MKS because MKS was well along in its due
9 diligence process, and Newport wanted to be responsive to requests from an interested potential
10 acquirer.

11 14. Although the 2016 to 2018 strategic plan never was finalized, Newport's business
12 units and finance team used the 2016 forecasts in the strategic plan presentations to complete
13 multiple iterations of Newport's 2016 annual operating plan. At a December 28, 2015 Board
14 meeting, the Newport Board received an update on the status of Newport's 2016 annual operating
15 plan. Newport updated the base case forecasts disclosed in the Proxy to incorporate the 2016
16 numbers contained in the annual operating plan, and J.P. Morgan relied on the updated base case
17 forecasts in its fairness opinion.

18 **C. Defendants' Post-Closing Roles and Related Discussions**

19 15. Following the Merger, Mr. Phillippy lost his job as Newport's CEO. Unlike many
20 other Newport employees, Mr. Phillippy was not retained as an MKS employee following the
21 Merger.

22 16. MKS briefly retained Mr. Phillippy as a consultant to assist in the transition and
23 appointed him to the MKS board of directors. The compensation Mr. Phillippy temporarily
24 received as an MKS consultant and director was substantially lower than the compensation he
25 would have received if he had remained as Newport's CEO.

26 17. Mr. Phillippy did not discuss his post-closing consultancy or MKS directorship
27 with MKS before the Newport Board approved the Merger, and he was not offered either position
28

1 until after the Newport Board approved the Merger. This was confirmed by the un rebutted
2 testimony of MKS's corporate representative, John Ippolito:

3 Q. Were there any discussions between Mr. Phillippy and MKS regarding his
4 future role following the closing of the transaction prior to the merger agreement
being signed?

5 A. No.

6 18. Following the Merger, the Newport Board ceased to exist. Newport's five
7 independent directors were not retained by MKS in any capacity.

8 19. On February 24, 2016, after the Merger Agreement was signed and the Merger
9 was publicly announced, Mr. Potashner sent an email to the chairman of a potential merger-of-
10 equals partner of Newport that Newport had discussions with during the strategic review process
11 and proposed to discuss "whether an opportunity exist[ed] for [board of directors] involvement"
12 for Mr. Potashner at the subject company. The individual Mr. Potashner contacted responded that
13 he had "a strong preference for a small board" and thought that the company's board of directors
14 was "just the right size." Mr. Potashner never was appointed to that company's board of
15 directors.

16 20. On February 27, 2016, Mr. Potashner sent an email to MKS's CEO suggesting that
17 MKS consider two Newport Board members—Mr. Potashner and Mr. Simone—as candidates for
18 MKS's board of directors. Neither Mr. Potashner nor Mr. Simone ever was appointed to the
19 MKS board of directors.

20 CONCLUSIONS OF LAW

21 A. Legal Standard for Summary Judgment

22 1. Rule 56 safeguards the rights of litigants to obtain a timely and efficient resolution
23 where there is no evidentiary basis for a claim. *Wood v. Safeway, Inc.*, 121 Nev. 724, 731, 121
24 P.3d 1026, 1031 (2005) (adopting *Celotex Corp. v. Catrett*, 477 U.S. 317, 324 (1986)). Summary
25 judgment "shall" be granted where there is no "genuine dispute as to any material fact and the
26 movant is entitled to judgment as a matter of law." NRCP 56(a). Although the moving party
27 bears the initial burden to show the absence of such issues, that burden is satisfied by showing the
28 lack of evidence to support a claim. *Cuzze v. Univ. & Cmty. Coll. Sys. of Nev.*, 123 Nev. 598,

603, 172 P.3d 131, 134 (2007). The opponent then must set forth sufficient admissible evidence to permit a reasonable trier of fact to return a verdict in its favor. *Id.*

2. Moreover, if the nonmoving party will bear the burden of persuasion at trial, the “moving party may satisfy the burden of production by either (1) submitting evidence that negates an essential element of the nonmoving party’s claim, or (2) pointing out ... that there is an absence of evidence to support the nonmoving party’s case.” *Francis v. Wynn Las Vegas*, 127 Nev. 657, 671, 262 P.3d 705, 714 (2011) (quoting *Cuzze*, 123 Nev. at 602–03, 172 P.3d at 134 (citation omitted)) (internal quotation marks omitted). “In such instances, in order to defeat summary judgment, the nonmoving party must transcend the pleadings and, by affidavit or other admissible evidence, introduce specific facts that show a genuine issue of material fact.” *Id.* at 671, 262 P.3d at 714–15 (quoting *Cuzze*, 123 Nev. at 603, 172 P.3d at 134) (internal quotation marks omitted).

B. Plaintiffs Cannot Overcome Nevada’s Business Judgment Rule

3. Under Nevada’s business judgment rule, Newport’s directors and officers, “in deciding upon matters of business, are presumed to act in good faith, on an informed basis and with a view to the interests of the corporation.” NRS 78.138(3). The business judgment rule “ensures that courts defer to the business judgment of corporate executives” and “precludes courts from reviewing the substantive reasonableness of a board’s business decision.” *Wynn Resorts, Ltd. v. Eighth Judicial Dist. Ct.*, 133 Nev. 369, 376–78, 399 P.3d 334, 343–44 (2017).

4. “The business judgment rule does not only protect individual directors from personal liability; rather, it expresses a sensible policy of judicial noninterference with business decisions and is designed to limit judicial involvement in business decision-making so long as a minimum level of care is exercised in arriving at the decision.” *Id.*, 133 Nev. at 376, 399 P.3d at 342 (quoting 18B Am. Jur. 2d Corporations § 1451 (2016)) (internal quotation marks omitted). “Specifically, it prevents a court from replac[ing] a well-meaning decision by a corporate board with its own decision.” *Id.* (citation and internal quotation marks omitted); *see also Lamden v. La Jolla Shores Clubdominium Homeowners Ass’n*, 21 Cal. 4th 249, 87 Cal. Rptr. 2d 237, 980 P.2d 940, 945 (1999) (“A hallmark of the business judgment rule is that, when the rule’s requirements

are met, a court will not substitute its judgment for that of the corporation's board of directors."").
"[E]ven a bad decision is generally protected by the business judgment rule's presumption that
the directors acted in good faith, with knowledge of the pertinent information, and with an honest
belief that the action would serve the corporation's interests." *Shoen v. SAC Holding Corp.*, 122
Nev. 621, 636, 137 P.3d 1171, 1181 (2006).

5. In an action for damages such as this, the Court first must determine whether the
business judgment rule presumption has been rebutted. NRS 78.138(7); *see also Wynn Resorts*,
133 Nev. at 375, 399 P.3d at 341–42. In order to rebut Nevada's business judgment rule at the
summary judgment stage, Plaintiffs must provide prima facie evidence that the Board's decision
to approve the Merger was either (1) the product of fraud, (2) the product of self-interest, or
(3) that the Board failed to exercise due care in reaching its decision. *Id.*, 133 Nev. at 377, 399
P.3d at 343; *see also La. Mun. Police Emps.' Ret. Sys. v. Wynn*, 829 F.3d 1048, 1062 (9th Cir.
2016) (interpreting NRS 78.138); Nev. Jury Instruction 15.14 (explaining showing required to
rebut presumption).

6. Despite Plaintiffs' claims of self-interest, there is no direct, material evidence
against any of the Newport directors to rebut Nevada's business judgment rule.

1. The Newport Board Exercised Due Care

7. To determine whether the Board exercised due care, the Court only may consider
"the procedural indicia of whether the directors resorted in good faith to an informed
decisionmaking process." *Wynn Resorts*, 133 Nev. at 377–78, 399 P.3d at 343 (quoting *WLR*
Foods, Inc. v. Tyson Foods, Inc., 857 F. Supp. 492, 494 (W.D. Va. 1994), *aff'd* 65 F.3d 1172 (4th
Cir. 1995)). These include "the identity and qualifications of any sources of information or
advice sought which bear on the decision reached, the circumstances surrounding selection of
these sources, the general topics (but not the substance) of the information sought or imparted,
whether advice was actually given, whether it was followed, and if not, what sources of
information and advice were consulted to reach the decision in issue." *Id.*; *see also Shoen*, 121
Nev. at 632, 137 P.3d at 1178 ("[T]he duty of care consists of an obligation to act on an informed
basis").

8. There is no material evidence that any of the directors failed to exercise due care. The Merger came about following a nine-month sale process and with sixteen board meetings, whether full Board or committee meetings, which included financial and legal advisors to approve the sale. As such, the evidence supports that at least a minimum level of care was exercised in arriving at the Merger decision.

2. The Merger Was Not the Product of Self-Interest or Fraud

9. In *Wynn Resorts*, the Nevada Supreme Court held that “the business judgment rule applies to the Board” as a whole. 133 Nev. at 376, 399 P.3d at 342; *see also Orman v. Cullman*, 794 A.2d 5, 22 (Del. Ch. 2002) (“[T]he business judgment rule presumption ... can be rebutted by alleging facts which ... establish that the *board* was either interested in the outcome of the transaction or lacked independence ...”). Where, as here, board action is challenged, the decision in question cannot be “the product of” fraud or self-interest or a failure to exercise due care unless the purported self-interest or fraud affects the decision-making process of the board as a whole.

10. “To rebut the business judgment rule based solely on the material conflicts of a minority of the directors of a multi-director board, a plaintiff must allege that those conflicts affected the majority of the board.” *In re Towers Watson & Co. Stockholders Litig.*, 2019 WL 3334521, at *8 (Del. Ch. July 25, 2019). “A plaintiff can show this in one of two ways: by demonstrating that the conflicted director either ‘controls or dominates the board as a whole’ or ‘fail[ed] to disclose his interest in the transaction to the board and a reasonable board member would have regarded the existence of the material interest as a significant fact in the evaluation of the proposed transaction.’” *Id.* (quoting *Cinerama, Inc. v. Technicolor, Inc.*, 663 A.2d 1156, 1168 (Del. 1995)).

11. The Merger was not the product of self-interest or fraud. There is no evidence that Newport’s five independent directors—a majority of Newport’s six-member Board—had any financial interest in the Merger other than as stockholders of Newport. Although Mr. Potashner requested that MKS and another potential merger-of-equals partner of Newport consider Mr. Potashner and Mr. Simone for board of directors positions, those requests occurred after the

1 signing of the Merger Agreement and were denied. Any post-close employment discussions after
2 the signing of the Merger Agreement are not relevant in the Court's analysis. *See English v.*
3 *Narang*, 2019 WL 1300855, at *12 (Del. Ch. Mar. 20, 2019) (“[T]o be material, post-close
4 employment discussions must have occurred before the Merger Agreement was signed.”).

5 12. There also is no evidence that Mr. Phillippy controlled or dominated the Newport
6 Board. To the contrary, the evidence shows that Newport's Board members independently
7 exercised their business judgment to evaluate the merits of the Merger.

8 13. Nor is there any evidence that Mr. Phillippy failed to disclose a material interest in
9 the Merger to the Newport Board. Mr. Phillippy's temporary post-closing consulting
10 arrangement with MKS to assist in the transition and his appointment to the MKS board of
11 directors did not render him interested in the Merger.¹ The undisputed evidence establishes that
12 Mr. Phillippy did not discuss and was not offered either of these positions until after the Board
13 approved the Merger. Again, any post-close employment discussions after the signing of the
14 Merger Agreement are not relevant in the Court's analysis. *See id.* This is because the issue that
15 could create a conflict of interest is whether a fiduciary of Newport had a motive to play favorites
16 during the sale process in order to secure post close employment. By contrast, discussions that
17 occur after the terms of the transaction are agreed to—like those that occurred here—do not pose
18 the same risk of favoritism.

19 14. Plaintiffs' claim that Mr. Phillippy had an improper “interest” in the Merger also
20 fails because there is no evidence that any supposed benefits he received were material to him.
21 “Materiality means that the alleged benefit was significant enough ‘in the context of the director's
22 economic circumstances, as to have made it improbable that the director could perform her
23 fiduciary duties to the ... shareholders without being influenced by her overriding personal
24 interest.’” *Orman*, 794 A.2d at 23 (quoting *In re Gen. Motors Class H S'holders Litig.*, 734 A.2d

25
26
27 ¹ Plaintiffs also suggest that the change-in-control compensation Mr. Phillippy received under
28 his preexisting severance agreement rendered him interested in the Merger. But these benefits
were agreed to in 2008—years before the sale process that led to the Merger commenced—
and Mr. Phillippy would have received them in connection with any change-in-control
transaction that resulted in his termination.

1 611, 617 (Del. Ch. 1999)); *see also Shoen*, 122 Nev. at 639, 137 P.3d at 1183 (“[T]o show
2 interestedness, a shareholder must allege that a majority of the board members would be
3 ‘*materially affected*, either to [their] benefit or detriment, by a decision of the board, in a manner
4 not shared by the corporation and the stockholders.’”) (emphasis added) (citation omitted). Here,
5 there is no evidence of Mr. Phillippy’s individual “financial circumstances” that would permit a
6 determination that any benefits he received were material to him, let alone that they somehow
7 were more favorable than keeping his job as Newport’s CEO. To the contrary, the compensation
8 Mr. Phillippy temporarily received as an MKS consultant and director was substantially less than
9 the compensation he would have received if he had remained as Newport’s CEO.

10 15. There also is no material evidence that Mr. Phillippy’s employment as Newport’s
11 CEO ever was at risk. Newport’s CFO, who Mr. Phillippy had professional disagreements with,
12 could not fire Mr. Phillippy because he was Mr. Phillippy’s subordinate. And although an activist
13 investor sent emails suggesting that the Company “needs a new CEO or needs to be sold,” there is
14 no material evidence that the Board ever considered firing Mr. Phillippy.

15 16. Nor is there any material evidence that Mr. Phillippy or Mr. Potashner intended to
16 deceive the Board, or that the Merger was the product of fraud. Plaintiffs claim that Mr. Phillippy
17 defrauded the Newport Board and stockholders by not disclosing the numbers that were generated
18 by Newport’s business units in connection with the Company’s late-2015 strategic planning
19 process (other than updating the base case forecasts to incorporate the 2016 annual operating
20 plan). But there is no evidence that Mr. Phillippy believed that the strategic plan numbers were
21 complete or reliable and nonetheless intentionally withheld them from the Newport Board and
22 stockholders. And there is no evidence that Mr. Phillippy had a self-interested motive to conceal
23 the strategic plan numbers from anyone.

24 ORDER

25 THEREFORE, IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that
26 defendants’ Motion for Summary Judgment be, and the same is, hereby GRANTED;

27 IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that judgment be entered
28 in favor of Defendants and against Plaintiffs on all of Plaintiffs’ claims against Defendants.

IT IS SO ORDERED.

DATED: Jan. 21, 2020

Nancy L. Allf
HON. NANCY L. ALLF
DISTRICT COURT JUDGE JP

Submitted by:

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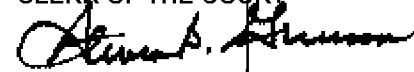
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**DISTRICT COURT
CLARK COUNTY, NEVADA**

In re NEWPORT CORPORATION
SHAREHOLDER LITIGATION

CASE NO.: A-16-733154-B

(Consolidated with Case No. A-16-734039-B)

This Document Relates To:

CLASS ACTION

ALL ACTIONS.

**ORDER DENYING PLAINTIFFS' MOTION
FOR LEAVE TO AMEND THE SECOND AMENDED COMPLAINT**

1 This matter concerns the all-cash acquisition of Newport Corporation ("Newport") by MKS
2 Instruments, Inc. for \$23.00 per share (the "Merger"). On August 9, 2019 Plaintiffs and class
3 representatives Hubert C. Pincon and Locals 302 and 612 of the International Union of Operating
4 Engineers-Employers Construction Industry Retirement Trust filed a Motion for Leave to Amend
5 the Second Amended Complaint (the "Motion"). On October 10, 2019, the Court heard argument
6 on Plaintiffs' Motion. Plaintiffs appeared by and through their counsel of record, David A. Knotts,
7 Esq., of Robbins Geller Rudman & Dowd LLP, and David O'Mara, Esq., of The O'Mara Law Firm,
8 P.C. Defendants appeared by and through their counsel of record, Brian M. Lutz, Esq. and Colin
9 B. Davis, Esq., of Gibson, Dunn & Crutcher LLP, and Maximilien D. Fetaz, Esq., of Brownstein
10 Hyatt Farber Schreck LLP. The Court, having reviewed the papers filed by the parties, and
11 considered the written and oral arguments of counsel, finds and orders as follows:

12 **FINDINGS OF FACT AND CONCLUSIONS OF LAW**

13 1. All pleading amendments other than those permitted "as a matter of course" under
14 Rule 15(a)(1) of the Nevada Rules of Civil Procedure must meet the requirements of
15 Rule 15(a)(2), which provides that, "a party may amend its pleading only with the opposing
16 party's written consent or the court's leave."

17 2. Although the Court "should freely give leave [to amend] when justice so requires,"
18 NRCP 15(a)(2), the Court may deny leave to amend on grounds of "'undue delay, bad faith, or
19 dilatory motives on the part of the movant.'" *MEI-GSR Holdings, LLC v. Peppermill Casinos,*
20 *Inc.*, 134 Nev. 235, 239, 416 P.3d 249, 254-55 (2018) (quoting *Kantor v. Kantor*, 116 Nev. 886,
21 891-93, 8 P.3d 825, 828-29 (2000)).

22 3. This litigation commenced on March 9, 2016, when a putative shareholder of
23 Newport filed the initial complaint in this action.

24 4. This case has been extensively litigated for more than three-and-a-half years. The
25 parties have briefed and argued a motion for expedited discovery, two motions to dismiss, a
26 motion for class certification, a motion to compel, and a motion to amend the order setting civil
27 jury trial, pre-trial and calendar call. Fact discovery closed on May 10, 2019, and expert
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1 discovery closed on August 2, 2019. Defendants filed a motion for summary judgment on
2 August 23, 2019, and that motion is scheduled to be heard November 21, 2019.

3 5. On August 9, 2019, Plaintiffs filed the Motion. Plaintiffs' Motion seeks leave to
4 file a proposed third amended complaint containing additional factual allegations and additional
5 theories of liability that are not contained in the operative Second Amended Complaint; naming
6 Newport's former Chief Financial Officer, Charles Cargile, as a defendant; and adding a prayer
7 for rescissory damages.

8 6. Although Plaintiffs' Motion was timely filed under the agreed-upon scheduling
9 order, the Court nonetheless denies the motion because the proposed amendment would cause
10 undue delay to the resolution of this case, and it would be prejudicial to Defendants and
11 Mr. Cargile. The initial complaints in this matter, filed in March 2016, contained prayers for
12 rescission and/or rescissory damages. Plaintiffs abandoned their prayer for rescission and/or
13 rescissory damages in their First Amended Complaint (filed on October 18, 2016) and in their
14 Second Amended Complaint (filed on July 27, 2017), the latter of which is the operative
15 complaint in this action. Moreover, despite the requirement under NRCP 16.1 that "[a] party
16 must, without awaiting discovery, provide to the other parties ... a computation of each category
17 of damages claimed by the disclosing party," Plaintiffs did not disclose in their NRCP 16.1 initial
18 disclosures (served on May 15, 2018) that they would be claiming rescissory damages in this
19 case. Plaintiffs did not give notice to Defendants that Plaintiffs intended to seek rescissory
20 damages at trial until after fact discovery had closed, when their expert addressed rescissory
21 damages in his opening report.

22 7. Plaintiffs acknowledge that "post-merger performance is crucial" to proving
23 rescissory damages (Pls.' Reply Br. 14), but Plaintiffs abandoned their prayer for rescissory
24 damages and sought to resurrect it only after fact discovery had closed. As a result, Defendants
25 did not have the ability to develop evidence regarding issues relevant to rescissory damages,
26 including the performance of Newport in the years following the closing of the Merger. Adding a
27 prayer for rescissory damages at this late stage, just months before trial, would unduly delay
28 resolution of this case, which has been pending for more than three-and-a-half years, and would

1 prejudice Defendants. A new scheduling order would be required. Additional fact and expert
2 discovery would be required for the period following the close of the Merger. Additional motion
3 practice likely would be required, which further would delay the resolution of this case. Because
4 Plaintiffs abandoned their prayer for rescissory damages and unduly delayed in seeking leave to
5 add that prayer to this case, Plaintiffs cannot seek rescissory damages at trial.

6 8. Adding Mr. Cargile as a defendant at this late stage of the litigation also would
7 unduly delay the resolution of this action. Mr. Cargile is not a necessary party. Although the
8 Court makes no finding regarding the futility of Plaintiffs' proposed amendment adding
9 Mr. Cargile as a defendant, as a result of discovery conducted early in this case, Plaintiffs had in
10 their possession more than three years before they filed their Motion extensive information
11 concerning Mr. Cargile's conduct and involvement in the transaction. Thus, Plaintiffs unduly
12 delayed in seeking leave to add Mr. Cargile as a proposed defendant, and it would be prejudicial
13 to Mr. Cargile and Defendants to add Mr. Cargile as a defendant at this late stage of the
14 proceedings.

15 BASED UPON THE FOREGOING, THE COURT HEREBY ORDERS, ADJUDGES,
16 AND DECREES as follows:

17 Plaintiffs' Motion for Leave to Amend the Second Amended Complaint is DENIED.

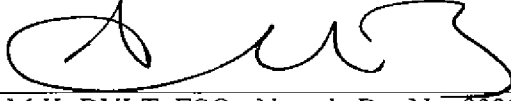
18 **IT IS SO ORDERED.**

19
20 DATED: 11/18/19

Nancy L. Allf
HON. NANCY L. ALLF
DISTRICT COURT JUDGE *FD*

Submitted by:

BROWNSTEIN HYATT FARBER SCHRECK, LLP



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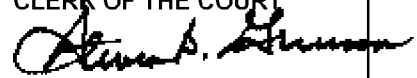
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26 *Potashner, Christopher Cox, Siddhartha C. Kadia, Oleg*

27 *Khaykin, and Peter J. Simone*

28 **DISTRICT COURT
CLARK COUNTY, NEVADA**

In re NEWPORT CORPORATION
SHAREHOLDER LITIGATION

CASE NO.: A-16-733154-C

(Consolidated with Case No. A-16-734039-B)

This Document Relates To:

CLASS ACTION

ALL ACTIONS.

NOTICE OF ENTRY OF ORDER

PLEASE TAKE NOTICE that on November 20, 2019 an Order Denying Plaintiffs' Motion for Leave to Amend the Second Amended Complaint was filed in the above entitled matter. A copy of said Order is attached hereto.

DATED this 20th day of November, 2019.

BROWNSTEIN HYATT FARBER SCHRECK, LLP

/s/ Adam K. Bult

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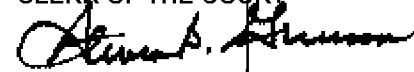
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I am an employee of Brownstein Hyatt Farber Schreck, LLP and pursuant to NRCP 5(b), EDCR 8.05, Administrative Order 14-2, and NEFCR 9, I caused a true and correct copy of the foregoing **NOTICE OF ENTRY OF ORDER** to be submitted electronically to all parties currently on the electronic service list on November 20, 2019.

/s/ Wendy Cosby
an Employee of Brownstein Hyatt Farber Schreck, LLP



ORDR

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**DISTRICT COURT
CLARK COUNTY, NEVADA**

In re NEWPORT CORPORATION
SHAREHOLDER LITIGATION

CASE NO.: A-16-733154-B

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2 discovery would be required for the period following the close of the Merger. Additional motion
3 practice likely would be required, which further would delay the resolution of this case. Because
4 Plaintiffs abandoned their prayer for rescissory damages and unduly delayed in seeking leave to
5 add that prayer to this case, Plaintiffs cannot seek rescissory damages at trial.

6 8. Adding Mr. Cargile as a defendant at this late stage of the litigation also would
7 unduly delay the resolution of this action. Mr. Cargile is not a necessary party. Although the
8 Court makes no finding regarding the futility of Plaintiffs' proposed amendment adding
9 Mr. Cargile as a defendant, as a result of discovery conducted early in this case, Plaintiffs had in
10 their possession more than three years before they filed their Motion extensive information
11 concerning Mr. Cargile's conduct and involvement in the transaction. Thus, Plaintiffs unduly
12 delayed in seeking leave to add Mr. Cargile as a proposed defendant, and it would be prejudicial
13 to Mr. Cargile and Defendants to add Mr. Cargile as a defendant at this late stage of the
14 proceedings.

15 BASED UPON THE FOREGOING, THE COURT HEREBY ORDERS, ADJUDGES,
16 AND DECREES as follows:

17 Plaintiffs' Motion for Leave to Amend the Second Amended Complaint is DENIED.

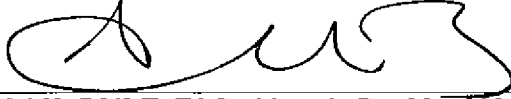
18 **IT IS SO ORDERED.**

19
20 DATED: 11/18/19

Nancy L. Allf
HON. NANCY L. ALLF
DISTRICT COURT JUDGE *FD*

Submitted by:

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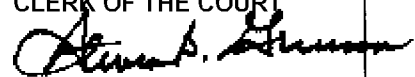
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and Peter J. Simone

DISTRICT COURT

CLARK COUNTY, NEVADA

In re NEWPORT CORPORATION

SHAREHOLDER LITIGATION

) Lead Case No. A-16-733154-B

) (Consolidated with Case No. A-16-734039-B)

This Document Relates To:

) CLASS ACTION

ALL ACTIONS.

**~~PROPOSED~~ ORDER STRIKING THE JURY DEMAND AND AMENDING THE
ORDER SETTING CIVIL JURY TRIAL, PRE-TRIAL AND CALENDAR CALL**

This matter concerns the all-cash acquisition of Newport Corporation ("Newport") by MKS Instruments, Inc. ("MKS") for \$23.00 per share (the "Merger"). Plaintiffs Hubert C. Pincon ("Mr. Pincon") and Locals 302 and 612 of the International Union of Operating Engineers-Employers Construction Industry Retirement Trust (the "Fund," and collectively with Mr. Pincon, "Plaintiffs"), former shareholders of Newport during the relevant period, filed a complaint that brings only claims for breach of fiduciary duty arising out of the Merger but also

1 includes a demand for a jury trial. On March 4, 2019, Defendants filed a Motion to Amend the
2 Order Setting Civil Jury Trial, Pre-Trial and Calendar Call, asking the Court to set the case for a
3 bench trial instead of a jury trial because it is a case in equity. On May 1, 2019, the Court heard
4 Defendants' motion. Plaintiffs appeared by and through their counsel of record, David A.
5 Knotts, Esq., and Timothy Z. LaComb, Esq., of Robbins Geller Rudman & Dowd LLP, and
6 David O'Mara, Esq., of The O'Mara Law Firm, P.C. Defendants appeared by and through their
7 counsel of record, Brian M. Lutz, of Gibson, Dunn & Crutcher LLP, and Brandi M. Planet, of
8 Fennemore Craig, P.C. The Court, having reviewed the papers filed by the parties, and
9 considered the written and oral arguments of counsel, finds and orders as follows:

10 **FINDINGS OF FACT AND CONCLUSIONS OF LAW**

11 1. Each of Plaintiffs' claims is for breach of fiduciary duty brought by former
12 shareholders of an acquired company against corporate directors of the acquired company related
13 to a cash-out merger.

14 2. Under Nevada law, such claims are equitable in nature. *See Cohen v. Mirage*
15 *Resorts, Inc.*, 119 Nev. 1, 11, 15 n.45, 17, 62 P.3d 720, 727, 729 n.45, 731 (2003).

16 3. Because this is a case in equity, "there is no right to a jury trial," NRCP 39(a), and
17 the case must be tried to the Court, rather than to a jury.

18 BASED UPON THE FOREGOING, THE COURT HEREBY ORDERS, ADJUDGES
19 AND DECREES as follows:

20 Defendants' Motion to Amend the Order Setting Civil Jury Trial, Pre-Trial and Calendar
21 Call is GRANTED.

22 Plaintiffs' demand for a jury trial is STRICKEN.

23 ///

24
25 ///

26
27 ///

28

1 Any and all orders referring to a jury trial in this case are AMENDED to provide for a
2 bench trial.

3 The case will be set for a trial before the Court.

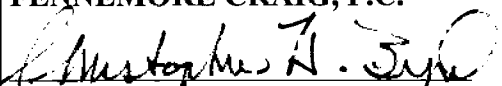
4 Dated this ____ day of May, 2019.

5
6 _____
DISTRICT COURT JUDGE

7 Respectfully Submitted by:



8 **FENNEMORE CRAIG, P.C.**

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17 *Christopher Cox, Siddhartha C. Kadia, Oleg Khaykin,*
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18 Approved as to form by:

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20 /s David C. O'Mara

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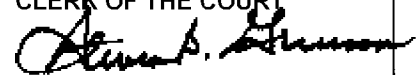
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26 *Counsel for Plaintiffs*



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DISTRICT COURT

CLARK COUNTY, NEVADA

In re NEWPORT CORPORATION
SHAREHOLDER LITIGATION

Lead Case No.: A-16-733154-B

(Consolidated With Case No.: A-16-734039-B)

This Document Relates To:

ALL ACTIONS.

NOTICE OF ENTRY OF ORDER

TO: ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

YOU, AND EACH OF YOU, WILL PLEASE TAKE NOTICE that an Order Striking the

///

///

1 Jury Demand and Amending the Order Setting Civil Jury Trial, Pre-Trial and Calendar Call was filed in
2 the above-referenced matter on the 4th day of June, 2019, a copy of which is attached hereto.

3 Dated this 4th day of June, 2019.

4 **FENNEMORE CRAIG, P.C.**

5 */s/Christopher H. Byrd, Esq.*

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and Peter J. Simone*

CERTIFICATE OF SERVICE

I hereby certify that a copy of the following: **NOTICE OF ENTRY OF ORDER** was served upon the following person(s) either by electronic transmission through the Wiznet system pursuant to NEFCR 9, NRCP 5(b) and EDCR 7.26 or by mailing a copy to their last known address, first class mail, postage prepaid for non-registered users, on this 4th day of June, 2019 as follows:

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18 *Corporation, Robert J. Phillippy, Kenneth F.*
19 *Potashner, Christopher Cox, Siddhartha C.*
20 *Kadia, Oleg Khaykin and Peter J. Simone*

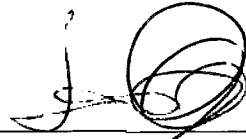
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7 *Inc. and PSI Equipment, Inc.*

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14 *Christopher Cox, Siddhartha C. Kadia, Oleg Khaykin,*

and Peter J. Simone

15 **DISTRICT COURT**

16 **CLARK COUNTY, NEVADA**

17 In re NEWPORT CORPORATION)
18 SHAREHOLDER LITIGATION)

Lead Case No. A-16-733154-B

(Consolidated with Case No. A-16-734039-B)

19 This Document Relates To:)
20)

CLASS ACTION

21 ALL ACTIONS.)

22 **~~PROPOSED~~ ORDER STRIKING THE JURY DEMAND AND AMENDING THE**
ORDER SETTING CIVIL JURY TRIAL, PRE-TRIAL AND CALENDAR CALL

23 This matter concerns the all-cash acquisition of Newport Corporation ("Newport") by
24 MKS Instruments, Inc. ("MKS") for \$23.00 per share (the "Merger"). Plaintiffs Hubert C.
25 Pincon ("Mr. Pincon") and Locals 302 and 612 of the International Union of Operating
26 Engineers-Employers Construction Industry Retirement Trust (the "Fund," and collectively with
27 Mr. Pincon, "Plaintiffs"), former shareholders of Newport during the relevant period, filed a
28 complaint that brings only claims for breach of fiduciary duty arising out of the Merger but also

1 includes a demand for a jury trial. On March 4, 2019, Defendants filed a Motion to Amend the
2 Order Setting Civil Jury Trial, Pre-Trial and Calendar Call, asking the Court to set the case for a
3 bench trial instead of a jury trial because it is a case in equity. On May 1, 2019, the Court heard
4 Defendants' motion. Plaintiffs appeared by and through their counsel of record, David A.
5 Knotts, Esq., and Timothy Z. LaComb, Esq., of Robbins Geller Rudman & Dowd LLP, and
6 David O'Mara, Esq., of The O'Mara Law Firm, P.C. Defendants appeared by and through their
7 counsel of record, Brian M. Lutz, of Gibson, Dunn & Crutcher LLP, and Brandi M. Planet, of
8 Fennemore Craig, P.C. The Court, having reviewed the papers filed by the parties, and
9 considered the written and oral arguments of counsel, finds and orders as follows:

10 **FINDINGS OF FACT AND CONCLUSIONS OF LAW**

11 1. Each of Plaintiffs' claims is for breach of fiduciary duty brought by former
12 shareholders of an acquired company against corporate directors of the acquired company related
13 to a cash-out merger.

14 2. Under Nevada law, such claims are equitable in nature. *See Cohen v. Mirage*
15 *Resorts, Inc.*, 119 Nev. 1, 11, 15 n.45, 17, 62 P.3d 720, 727, 729 n.45, 731 (2003).

16 3. Because this is a case in equity, "there is no right to a jury trial," NRCP 39(a), and
17 the case must be tried to the Court, rather than to a jury.

18 BASED UPON THE FOREGOING, THE COURT HEREBY ORDERS, ADJUDGES
19 AND DECREES as follows:

20 Defendants' Motion to Amend the Order Setting Civil Jury Trial, Pre-Trial and Calendar
21 Call is GRANTED.

22 Plaintiffs' demand for a jury trial is STRICKEN.

23 ///

24
25 ///

26
27 ///

28

1 Any and all orders referring to a jury trial in this case are AMENDED to provide for a
2 bench trial.

3 The case will be set for a trial before the Court.

4 Dated this ____ day of May, 2019.

5
6 _____
DISTRICT COURT JUDGE

7 Respectfully Submitted by:

8 **FENNEMORE CRAIG, P.C.**

9
10 Christopher H. Byrd, Esq. (NV Bar No. 1633)
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12 -and-

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and Peter J. Simone

18 Approved as to form by:

19 **THE O'MARA LAW FIRM, P.C.**

20 /s/ David C. O'Mara

21 David C. O'Mara, Esq. (NV Bar No. 8599)
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23 David T. Wissbroecker, Esq.
David A. Knotts, Esq.
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26 Counsel for Plaintiffs

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Other Business Court Matters

COURT MINUTES

April 14, 2016

A-16-733154-B Dixon Chung, Plaintiff(s)
vs.
Newport Corp, Defendant(s)

April 14, 2016

9:30 AM

All Pending Motions

HEARD BY: Alf, Nancy

COURTROOM: RJC Courtroom 03A

COURT CLERK: Nicole McDevitt

RECORDER: Patti Slattery

REPORTER:

PARTIES

PRESENT:

JOURNAL ENTRIES

- A733154 - PLAINTIFF'S MOTION FOR CONSOLIDATION OF RELATED ACTIONS AND APPOINTMENT OF ROBBINS GELLER RUDMAN & DOWD LLP AS LEAD COUNSEL; AND MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT THEREOF; ON ORDER SHORTENING TIME [A-16-733154-C/ A-16-734039-B]...PLAINTIFF'S MOTION FOR APPOINTMENT AS LEAD COUNSEL AND RESPONSE TOP APPOINTMENT OF ROBBINS GELLER RUDMAN & DOWD LLP AS LEAD COUNSEL ON ORDER SHORTENING TIME...EX PARTE MOTION FOR ORDER SHORTENING TIME AND ORDER SHORTENING TIME...MOTION TO ASSOCIATE COUNSEL (DANIEL W. HALSTON) ON ORDER SHORTENING TIME...MOTION TO ASSOCIATE COUNSEL (ALEXANDRA C. BOUDREAU) ON ORDER SHORTENING TIME...MOTION TO ASSOCIATE COUNSEL (MERYL L.YOUNG, ESQ.) ON ORDER SHORTENING TIME...MOTION TO ASSOCIATE COUNSEL (COLIN B. DAVIS, ESQ.) ON ORDER SHORTENING TIME

A734039 -PLAINTIFF'S MOTION TO WAIVE REQUIREMENTS OF NEV. R. CIV. P. 16.1 AND ORDER FOR LIMITED EXPEDITED DISCOVERY; AND MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT THEREOF...PLAINTIFF'S MOTION FOR CONSIDERATION OF RELATED ACTIONS AND APPOINTMENTS OF ROBBIN GELLER RUDMAN & DOWD LLP AS

LEAD COUNSEL; AND MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT THEREOF

COUNSEL PRESENT: David O'Mara, Esq. present on behalf of Plaintiff (A734039); David Knotts, Pro Hac Vice Pending, present on behalf of Plaintiff (A734039); Abe Vigil, Esq. present on behalf of Defendants MK Instruments and PSI Equipment (A733154 & A734039); Brian Lutz, Pro Hac Vice Pending, present on behalf of Defendant Newport Corporation (A733154 & A734039); Collin Davis, Pro Hac Vice Pending, present on behalf of Defendant Newport Corporation (A733154 & A734039); Christopher Byrd, Esq. present on behalf of Defendant Newport Corporation (A733154 & A734039); Dan Halsten, Pro Hac Vice Pending (appearing telephonically), present on behalf of Defendants MK Instruments (A733154 & A734039); Meryl Young, Pro Hac Vice Pending (appearing telephonically), present on behalf of Defendant Newport Corporation (A733154 & A734039).

Court inquired if there would be any oppositions regarding the four pending pro hac vice application. Counsel agreed there were no oppositions. COURT ORDERED, Motion to Associate Counsel (Daniel W. Halston) GRANTED; Motion to Associate Counsel (Alexandra C. Boudreau) GRANTED; Motion to Associate Counsel (Meryl L. Young, Esq.) GRANTED; and Motion to Associate Counsel (Colin B. Davis) GRANTED. Court noted that Mr. Lutz has a Motion to Associate counsel set for the chamber calendar on April 20, 2016. Upon inquiry by the Court, counsel had no objection to the motion. COURT ORDERED, Motion to Associate Counsel (Lutz) GRANTED AND VACATED from the April 20, 2016 calendar. There being no opposition, Court stated everyone who is present today will be allowed to participate. As to Plaintiff's Motion for Consolidation of related actions and Appointment of Robbins Geller Rudman & Dowd LLP as Lead Counsel; and Memorandum of Points and Authorities in Support Thereof; on OST [A-16-733154-B/A-16-734039-B], Mr. O'Mara stated they provided a stipulation and that parties are in agreement to that effect. COURT ORDERED, motion GRANTED, cases A733154 and A734039 CONSOLIDATED. Order SIGNED IN OPEN COURT. Mr. O'Mara further stated they provided the Court a stipulation as to confidentiality that has been signed by all parties. Upon inquiry by Court, all counsel stated they have reviewed it and there is no objection. Order SIGNED IN OPEN COURT.

Arguments by Mr. Knotts, Mr. Lutz and Mr. Halsten regarding the merits of and opposition to Plaintiff's Motion to Waive Requirements of Nev. R. Civ. P. 16.1 and Order for Limited Expedited Discovery; and Memorandum of Points and Authorities in Support Thereof on Order Shortening Time. Court stated its findings and ORDERED, Plaintiff's Motion to Waive Requirements of Nev. R. Civ. P. 16.1 and Order for Limited Expedited Discovery; and Memorandum of Points and Authorities in Support Thereof on Order Shortening Time GRANTED. Court directed counsel to meet as whether there are any issues of scope counsel can agree to. Matter trailed.

RECALLED: Same parties present as before. Colloquy and arguments regarding stipulations, discovery, search terms, potential custodians, and scope to the transaction and sale process. Court stated the search term for Mr. Potashner as chairman of the board will be an allowable search term, Court is inclined to allow his deposition as a preliminary matter only so if additional discovery is produced, his deposition could be expanded at a later time, Court will not restrict Plaintiff to just the

complaint, and Court will expand the search terms to items they've received in the informal discovery period within reasonable limits. Colloquy regarding setting a preliminary injunction. COURT ORDERED, preliminary junction SET April 25, 2016 at 10:00 a.m., Plaintiff's brief due April 18, 2016 by 7:00 p.m., Defendant's brief due April 21, 2016. Court directed counsel to reduce the scope of discovery to writing in an order.

-----CONSOLIDATED WITH A734039-----
-----PLACE ALL DOCUMENTS IN LEAD CASE A733154-----

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Other Business Court Matters

COURT MINUTES

April 22, 2016

A-16-733154-B	Dixon Chung, Plaintiff(s) vs. Newport Corp, Defendant(s)
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April 22, 2016	3:00 AM	Minute Order
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HEARD BY: Alf, Nancy **COURTROOM:** No Location

COURT CLERK: Nicole McDevitt

RECORDER:

REPORTER:

**PARTIES
PRESENT:**

JOURNAL ENTRIES

- Court FINDS that on April 20, 2016 Plaintiffs filed a Request to Vacate Preliminary Injunction Hearing Date. COURT FURTHER FINDS on April 21, 2016 Newport Defendants filed a Statement of Non-Opposition to Plaintiffs' Request to Vacate Preliminary Injunction hearing Date. For good cause appearing, COURT ORDERS, Evidentiary Hearing set April 25, 2016 VACATED.

CLERK S NOTE: Counsel is to ensure a copy of the forgoing minute order is distributed to all interested parties; additionally, a copy of the foregoing minute order was distributed to the following Service Recipients via Wiznet E-Service: Traci Bixenmann (traci@johnaldrichlawfirm.com); Abran Vigil (vigila@ballardspahr.com); Catherine Wrangham-Rowe (wranghamrowec@ballardspahr.com); Las Vegas Docketing (lvdocket@ballardspahr.com) Maria Gall (GallM@BallardSpahr.com); Christopher H. Byrd, Esq. (cbyrd@fclaw.com); Trista Day (tday@fclaw.com); Brian M. Lutz, Esq. (blutz@gibsondunn.com); Colin B. Davis, Esq. (cdavis@gibsondunn.com); Meryl L. Young, Esq. (myoung@gibsondunn.com); Barbie Akin (bakin@gibsondunn.com); Patti L. McLean (pmclean@gibsondunn.com); Bryan Snyder, Paralegal (bsnyder@omaralaw.net); David C. O'Mara, Esq. (david@omaralaw.net); Valerie Weis, Paralegal (val@omaralaw.net). And faxed to: The O'Mara Law Firm, P.C. (775-323-4082), Robbins Geller Rudman & Dowd LLP (619-321-7423), Ballard Spar (702-471-7070), Fennemore Craig P.C. (702-692-8099), Wilmer Hale (617-526-5000); Gibson Dunn (Irvine, CA) (949-451-4220) and Gibson Dunn (San Fransisco, CA) (415-393-8306)

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Other Business Court Matters

COURT MINUTES

May 31, 2016

A-16-733154-B	Dixon Chung, Plaintiff(s) vs. Newport Corp, Defendant(s)
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May 31, 2016	3:00 AM	Motion to Associate Counsel
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HEARD BY: Allf, Nancy

COURTROOM: No Location

COURT CLERK: Nicole McDevitt

RECORDER:

REPORTER:

**PARTIES
PRESENT:**

JOURNAL ENTRIES

- COURT FINDS after review that on April 25, 2016 Plaintiffs filed a Motion to Associate Counsel, David Anthony Knotts, Esq. and the Hearing was set for Chambers Calendar on May 31, 2016. COURT FURTHER FINDS after review the Motion is in compliance with SCR 42 and no opposition has been filed.

COURT ORDERS after review, for good cause appearing and pursuant to EDCR 2.20 (e), failure to file an opposition may be construed as an admission that the motion is meritorious and consent to granting the same, Plaintiffs Motion to Associate Counsel, David Anthony Knotts, Esq. is GRANTED; Hearing on CHAMBERS CALENDAR on May 31, 2016 is VACATED. The Court has signed the Order previously submitted by Plaintiffs.

CLERK'S NOTE: Counsel is to ensure a copy of the forgoing minute order is distributed to all interested parties; additionally, a copy of the foregoing minute order was distributed to the following Service Recipients via Wiznet E-Service:

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**DISTRICT COURT
CLARK COUNTY, NEVADA**

Other Business Court Matters

COURT MINUTES

January 10, 2017

A-16-733154-B	Dixon Chung, Plaintiff(s)
	vs.
	Newport Corp, Defendant(s)

January 10, 2017	3:00 AM	Motion to Associate Counsel
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HEARD BY: Allf, Nancy

COURTROOM: No Location

COURT CLERK: Nicole McDevitt

RECORDER:

REPORTER:

**PARTIES
PRESENT:**

JOURNAL ENTRIES

- COURT FINDS after review that on December 6, 2016, Defendants filed a Motion to Associate Counsel (Shira Beth Furman) and the matter was set for Chambers Calendar on January 10, 2017. COURT FURTHER FINDS after review the Motion seeks to associate Shira Beth Furman, Esq. of the law firm of Wilmer Cutler Pickering Hale & Dorr LLP; The Motion is in compliance with SCR 42 and no opposition has been filed.

COURT ORDERS after review, for good cause appearing and pursuant to EDCR 2.20 (e), failure to file an opposition may be construed as an admission that the motion is meritorious and consent to granting the same, Defendant s Motion to Associate Counsel (Shira Beth Furman) is GRANTED; Hearing on CHAMBERS CALENDAR on January 10, 2017 is VACATED; Movant to submit the Order.

CLERK S NOTE: Counsel is to ensure a copy of the forgoing minute order is distributed to all interested parties; additionally, a copy of the foregoing minute order was distributed to the following Service Recipients via Wiznet E-Service:

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Wilmer Cutler Pickering Hale & Dorr LLP

Daniel W. Halston daniel.halston@wilmerhale.com

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Other Business Court Matters

COURT MINUTES

January 17, 2017

A-16-733154-B	Dixon Chung, Plaintiff(s) vs. Newport Corp, Defendant(s)
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January 17, 2017	3:00 AM	Motion to Associate Counsel
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HEARD BY: Allf, Nancy

COURTROOM: No Location

COURT CLERK: Nicole McDevitt

RECORDER:

REPORTER:

**PARTIES
PRESENT:**

JOURNAL ENTRIES

- COURT FINDS after review that on December 14, 2016, Defendants filed a Motion to Associate Counsel (Jason R. Meltzer) and the matter was set for Chambers Calendar on January 17, 2017. COURT FURTHER FINDS after review the Motion seeks to associate Jason R. Meltzer, Esq. of the law firm of Gibson, Dunn & Crutcher LLP; The Motion is in compliance with SCR 42 and no opposition has been filed.

COURT ORDERS after review, for good cause appearing and pursuant to EDCR 2.20 (e), failure to file an opposition may be construed as an admission that the motion is meritorious and consent to granting the same, Defendant s Motion to Associate Counsel (Jason R. Meltzer) is GRANTED; Hearing on CHAMBERS CALENDAR on January 17, 2017 is VACATED; Movant to submit the Order.

CLERK S NOTE: Counsel is to ensure a copy of the forgoing minute order is distributed to all interested parties; additionally, a copy of the foregoing minute order was distributed to the following Service Recipients via Wiznet E-Service:

Aldrich Law Firm, Ltd.

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Robbins Geller Rudman & Dowd

Edward M. Gergosian, Esq. egregosian@rgrdlaw.com

Wilmer Cutler Pickering Hale & Dorr LLP
Daniel W. Halston daniel.halston@wilmerhale.com

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Other Business Court Matters

COURT MINUTES

February 15, 2017

A-16-733154-B Dixon Chung, Plaintiff(s)
vs.
Newport Corp, Defendant(s)

February 15, 2017 10:30 AM All Pending Motions

HEARD BY: Allf, Nancy

COURTROOM: RJC Courtroom 03A

COURT CLERK: Katrina Hernandez
Louisa Garcia

RECORDER: Traci Rawlinson

REPORTER:

PARTIES

PRESENT:	Byrd, Christopher H.	Attorney
	Davis, Colin B.	Attorney
	Halston, Daniel W	Attorney
	Knotts, David A.	Attorney
	Lutz, Brian M.	Attorney
	O'Mara, David C.	Attorney
	Vigil, Abran E.	Attorney
	Young, Meryl Lyn	Attorney

JOURNAL ENTRIES

- Following arguments by Counsel, COURT ORDERED as follows:

As to PLAINTIFFS' MOTION TO STRIKE EXHIBITS A AND B IN THE APPENDIX OF EXHIBITS SUBMITTED WITH THE DECLARATION OF BRIAN LUTZ, Court DENIED the motion as procedurally incorrect. It stated it won't consider the contents of the exhibits in its ruling for the purposes of this motion.

As to all pending motions to seal, Court inquired whether parties had any objections, and there being none, COURT ORDERED all pending motion's to seal including NEWPORT DEFENDANT'S MOTION TO SEAL NEWPORT DEFENDANTS' MOTION TO DISMISS PLAINTIFF'S FIRST

AMENDED COMPLAINT AND NEWPORT DEFENDANTS' APPENDIX...PLAINTIFF'S MOTION TO SEAL FIRST AMENDED COMPLAINT FOR BREACH OF FIDUCIARY DUTY...DEFENDANT MKS INSTRUMENTS, INC.'S MOTION TO SEAL MOTION TO DISMISS PLAINTIFFS' VERIFIED FIRST AMENDED COMPLAINT FOR BREACH OF FIDUCIARY DUTY...GRANTED. COURT FURTHER ORDERED, Motions to seal Newport Defendants' Motion to Seal Newport Defendant's Reply in Support of Their Motion to Dismiss Plaintiff's First Amended Complaint and Defendants' Motion to Seal Reply In Support of Motion to Dismiss Plaintiffs' Verified Consolidated First Amended Class Action Complaint, ADVANCED to today, and GRANTED.

Louisa Garcia, Courtroom Clerk present.

As to MKS MOTION TO DISMISS PLAINTIFF'S VERIFIED CONSOLIDATED FIRST AMENDED CLASS ACTION COMPLAINT...NEWPORT DEFTS' MOTION TO DISMISS PLTFs' FIRST AMENDED COMPLAINT, COURT ORDERED, Motions to Dismiss taken UNDER ADVISEMENT. Court stated it was its inclination to grant both Motions; however, wanted to reread the briefs. Court is concerned whether plaintiff can plead materiality and there is no information regarding the directors. As to intentional fraud, Court does not think it can adequately be plead. COURT ORDERED, matter CONTINUED TO CHAMBERS for further review.

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Other Business Court Matters

COURT MINUTES

September 29, 2017

A-16-733154-B Dixon Chung, Plaintiff(s)
vs.
Newport Corp, Defendant(s)

September 29, 2017	3:00 AM	Minute Order	Minute Order: Motion to Seal/Redact Records set 10/4/2017 GRANTED and VACATED
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HEARD BY: Alf, Nancy

COURTROOM: No Location

COURT CLERK: Nicole McDevitt

RECORDER:

REPORTER:

**PARTIES
PRESENT:**

JOURNAL ENTRIES

- COURT FINDS after review Defendants filed a Motion to Seal Defendants Motion to Dismiss Plaintiffs Second Amended Complaint and Appendix (Motion) on September 1, 2017. Hearing was set for October 4, 2017 at 9:30 a.m. on Motions Calendar.

COURT FURTHER FINDS after review the Certificate of Service indicates the Motion was electronically served on all parties on September 1, 2017.

COURT FURTHER FINDS after review no opposition has been filed.

COURT FURTHER FINDS after review EDCR 2.20(e) provides in relevant part: failure of the opposing party to serve and file written opposition may be construed as an admission that the motion and/or joinder is meritorious and a consent to granting the same.

COURT ORDERS for good cause appearing and after review pursuant to EDCR 2.20(e) and SRCR 3 Defendants Motion to Seal Defendants Motion to Dismiss Plaintiffs Second Amended Complaint and Appendix is GRANTED; the Court has reviewed the Motion, which provides cause for granting the Motion; Hearing set for Motions Calendar on October 4, 2017 at 9:30 a.m. is hereby VACATED; Movant to prepare the appropriate Order.

CLERK S NOTE: Counsel is to ensure a copy of the forgoing minute order is distributed to all interested parties; additionally, a copy of the foregoing minute order was faxed to the following: Fennemore Craig, P.C. (702-692-8099), The O'Mara Law Firm P.C. (775-323-4082), Robbins Geller Rudman & Dowd LLP (619-231-7423).

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Other Business Court Matters

COURT MINUTES

October 05, 2017

A-16-733154-B Dixon Chung, Plaintiff(s)
vs.
Newport Corp, Defendant(s)

October 05, 2017	3:00 AM	Minute Order	Minute Order: Motion to Dismiss set 10/11/2017 CONTINUED to 11/8/2017
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HEARD BY: Allf, Nancy**COURTROOM:** No Location**COURT CLERK:** Nicole McDevitt**RECORDER:****REPORTER:**

**PARTIES
PRESENT:**

JOURNAL ENTRIES

- COURT FINDS after review on August 16, 2017 the parties filed a Stipulation and Order Setting Deadline to Respond to the Complaint and Setting Briefing Schedule (Stipulation), indicating that Defendants would be filing a Motion to Dismiss by September 1, 2017, and the parties stipulated that the opposing brief would be due October 6, 2017, and the reply brief would be due October 27, 2017.

COURT FURTHER FINDS after review the Defendants Motion to Dismiss Plaintiffs Second Amended Complaint was filed on September 1, 2017. A hearing was inadvertently set for October 11, 2017 at 10:30 a.m. on Motions Calendar. This date occurs before the Motion to Dismiss would be fully briefed per the briefing schedule set in the parties August 16, 2017 Stipulation.

COURT ORDERS for good cause appearing and after review the hearing set for October 11, 2017 at 10:30 a.m. on Motions Calendar is CONTINUED to November 8, 2017 at 10:30 a.m. on MOTIONS CALENDAR to allow the matter to be fully briefed according to the briefing schedule.

CLERK'S NOTE: Counsel is to ensure a copy of the forgoing minute order is distributed to all interested parties; additionally, a copy of the foregoing minute order was faxed to the following: Fennemore Craig, P.C. (702-692-8099), The O'Mara Law Firm P.C. (775-323-4082), Robbins Geller Rudman & Dowd LLP (619-231-7423).

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Other Business Court Matters

COURT MINUTES

December 04, 2017

A-16-733154-B Dixon Chung, Plaintiff(s)
vs.
Newport Corp, Defendant(s)

December 04, 2017 3:00 AM Minute Order

**Minute Order:
Defendants' Reply in
Support of Their
Motion to Dismiss
Plaintiffs' Second
Amended Complaint
set 12/6/2017
CONTINUED to
12/7/2017**

HEARD BY: Allf, Nancy

COURTROOM: No Location

COURT CLERK: Nicole McDevitt

RECORDER:

REPORTER:

PARTIES

PRESENT:

JOURNAL ENTRIES

- COURT FINDS after review on September 1, 2017 Defendants filed a Motion to Seal Defendants Motion to Dismiss Plaintiffs Second Amended Complaint and Appendix. On October 6, 2017 Plaintiffs filed a Motion to Seal Plaintiffs Opposition to Defendants Motion to Dismiss. On October 27, 2017 Defendants filed a Motion to Seal Defendants Reply in Support of Their Motion to Dismiss Plaintiffs Second Amended Complaint and Declaration of Colin B. Davis, Esq. and a hearing was set for December 6, 2017 at 9:30 a.m. on Motions Calendar.

COURT FURTHER FINDS after review on October 13, 2017 the parties filed a Stipulation and Order to Move Hearings on Defendants Motion to Seal Defendants Motion to Dismiss Plaintiffs Second Amended Complaint and Appendix and (2) Defendants Motion to Dismiss Plaintiffs Second

Amended Complaint (Stipulation).

COURT FURTHER FINDS after review the Stipulation seeks to move all Motions related to Defendants Motion to Dismiss Plaintiff s Second Amended Complaint to be heard as the same time as the Motion to Dismiss, which is set for December 7, 2017 at 10:30 a.m. on Motions Calendar.

COURT ORDERS for good cause appearing and after review Defendants Motion to Seal Defendants Reply in Support of Their Motion to Dismiss Plaintiffs Second Amended Complaint and Declaration of Colin B. Davis, Esq. set for December 6, 2017 at 9:30 a.m. is hereby CONTINUED to December 7, 2017 at 10:30 a.m. on Motions Calendar so that the three pending Motions to Seal will be addressed together.

CLERK'S NOTE: This Minute Order was electronically served by Courtroom Clerk, Nicole McDevitt, to all registered parties for Odyssey File and Serve /nm 12/4/2017

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Other Business Court Matters

COURT MINUTES

December 07, 2017

A-16-733154-B Dixon Chung, Plaintiff(s)
vs.
Newport Corp, Defendant(s)

December 07, 2017	10:30 AM	All Pending Motions	Deft's Motion to Dismiss Plaintiffs' Second Amended Complaint...Deft's Motion to Seal/Reply in Support of their Motion to Dismiss Plaintiffs' Second Amended Complaint
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HEARD BY: Allf, Nancy

COURTROOM: RJC Courtroom 03A

COURT CLERK: Sharon Chun

RECORDER: Brynn White

REPORTER:

PARTIES

PRESENT:	Byrd, Christopher H.	Attorney
	Davis, Colin B.	Attorney
	Knotts, David A.	Attorney
	Lutz, Brian M.	Attorney
	O'Mara, David C.	Attorney
	Young, Meryl Lyn	Attorney

JOURNAL ENTRIES

- Deft's Motion to Dismiss Plaintiffs' Second Amended Complaint...Deft's Motion to Seal/Reply in Support of their Motion to Dismiss Plaintiffs' Second Amended Complaint

ALSO PRESENT: Tim LaComb, Esq., pending pro hac application.

COURT ORDERED,

- 1) Defts' Motion to Seal the Defendants' Motion to Dismiss and the Second Amended Complaint and Appendix, GRANTED.
- 2) Plaintiffs' Motion to Seal the Plaintiffs' Opposition, GRANTED.
- 3) Defendants' Motion to Seal the Defendants' Reply, GRANTED.

Upon the Court's inquiry, all counsel confirmed they were ready to proceed on Defendants' Motion to Dismiss the Second Amended Complaint.

Argument presented by Mr. Lutz in support of the Motion, during which he presented a copy of NV 2017 Session Laws Re Chapter 559 S.B. No. 203, which was marked as a Court's Exhibit and lodged with the Clerk.

Mr. Knotts presented argument in support of his Opposition as it applied to separate and aggregate Directors.

Mr. Lutz's argued in Reply.

COURT ADVISED that the Defendants' Motion to Dismiss has been considered under 12(b)(5) and also 9(b) and it is only considered as a Motion to Dismiss and not as a motion for summary judgment, although extraneous facts have been raised in the motion and in the reply.

COURT FOUND that the Plaintiff has stated a claim under which relief can be granted and there are sufficient new facts alleged in order to maintain the causes of action as alleged: intentional misconduct, fraud, knowing violation with regard to the issues you specified with regard to motive, conflict and knowledge, materiality.

COURT ORDERED, THE MOTION TO DISMISS, DENIED AS TO ALL THE DIRECTORS.

Following colloquy between the Court and Mr. Lutz, COURT DIRECTED Mr. Lutz to Answer the Complaint within forty-five days after entry of the Order.

Because of the upcoming Holiday, COURT DIRECTED Plaintiffs' counsel to prepare the order and to make sure the Defendants approve the form. If there is a dispute as to the form of the order, counsel is to let the Court know and they will get it resolved either by telephone or by competing letters that the Court can review as to the competing provisions.

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Other Business Court Matters**COURT MINUTES****March 26, 2018**

A-16-733154-B Dixon Chung, Plaintiff(s)
vs.
Newport Corp, Defendant(s)

March 26, 2018**3:00 AM****Minute Order**

**Minute Order:
Defendants' Motion
to Seal Defendants'
Answers to Plaintiffs'
Second Amended
Complaint set
3/28/2018 GRANTED
and VACATED**

HEARD BY: Alf, Nancy**COURTROOM:** No Location**COURT CLERK:** Nicole McDevitt**RECORDER:****REPORTER:****PARTIES****PRESENT:**

JOURNAL ENTRIES

- COURT FINDS after review on February 20, 2018 Defendants Phillippy, Potashner, Cox, Kadia, Khaykin, and Simone filed Defendants Motion to Seal Defendants Answers to Plaintiffs Second Amended Complaint (Motion), and a hearing was set for March 28, 2018 at 9:00 a.m. on Motions Calendar.

COURT FURTHER FINDS after review the Certificate of Service indicates the Motion was electronically served on all parties on February 20, 2018.

COURT FURTHER FINDS after review no oppositions to the Motion have been filed.

COURT FURTHER FINDS after review pursuant to EDCR 2.20(e) the failure of the opposing party to

serve and file written opposition may be construed as an admission that the motion and/or joinder is meritorious and a consent to granting the same.

COURT ORDERS for good cause appearing and after review pursuant to EDCR 2.20(e), SRCR (3), and the merits of the Motion, Defendants Motion to Seal Defendants Answers to Plaintiffs Second Amended Complaint is hereby GRANTED. The hearing set for March 28, 2018 at 9:00 a.m. on Motions Calendar is VACATED. Movant to submit the appropriate Order in compliance with EDCR 7.21.

CLERK'S NOTE: This Minute Order was electronically served by Courtroom Clerk, Nicole McDevitt, to all registered parties for Odyssey File & Serve. /nm 3-26-2018

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Other Business Court Matters

COURT MINUTES

June 11, 2018

A-16-733154-B	Dixon Chung, Plaintiff(s) vs. Newport Corp, Defendant(s)
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June 11, 2018

4:00 PM

Minute Order

HEARD BY: Alf, Nancy

COURTROOM: No Location

COURT CLERK: Haly Pannullo

RECORDER:

REPORTER:

PARTIES

PRESENT:

JOURNAL ENTRIES

- COURT FINDS after review on May 9, 2018 Plaintiff filed Plaintiffs Unopposed Motion for Voluntary Dismissal of Dixon Chung Without Prejudice Pursuant to NRCP 41(a)(2) (Motion), and a hearing was set for June 13, 2018 at 9:30 a.m. on Motions Calendar.

COURT FURTHER FINDS after review the Certificate of Service indicates the Motion was electronically served on all parties on May 9, 2018. In the Motion, Counsel represents that the Defendants have confirmed that they do not oppose this Motion. No oppositions have been filed.

COURT FURTHER FINDS after review pursuant to EDCR 2.20(e) the failure of the opposing party to serve and file written opposition may be construed as an admission that the motion and/or joinder is meritorious and a consent to granting the same.

COURT ORDERS for good cause appearing and after review pursuant to EDCR 2.20(e), the representation of counsel that the Defendants have confirmed they do not oppose the Motion, and NRCP 41(a)(2), Plaintiffs Unopposed Motion for Voluntary Dismissal of Dixon Chung Without Prejudice Pursuant to NRCP 41(a)(2) is hereby GRANTED. Hearing set for June 13, 2018 at 9:30 a.m. on Motions Calendar is VACATED. Movant to prepare the order in compliance with EDCR 7.21.

CLERK'S NOTE: This Minute Order was electronically served by Courtroom Clerk, Haly Pannullo, to all registered parties for Odyssey File & Serve. hvp/06/11/18

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Other Business Court Matters

COURT MINUTES

June 15, 2018

A-16-733154-B	Dixon Chung, Plaintiff(s)
	vs.
	Newport Corp, Defendant(s)

June 15, 2018	3:00 AM	Minute Order
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HEARD BY: Alf, Nancy	COURTROOM: No Location
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COURT CLERK: Nicole McDevitt

RECORDER:

REPORTER:

**PARTIES
PRESENT:**

JOURNAL ENTRIES

- COURT FINDS after review on May 18, 2018 Plaintiff filed Plaintiff s Motion for Class Certification and Memorandum of Points and Authorities in Support Thereof, and the matter was set for hearing on June 20, 2018 at 9:30 a.m. on Motions Calendar.

COURT FURTHER FINDS after review no oppositions have been filed, but due to the nature of the matter the Court deems it appropriate to leave the hearing on calendar for a hearing. All parties and counsel may appear telephonically through Courtcall.

CLERK'S NOTE: A copy of this minute order was faxed to: The O'Mara Law Firm, P.C. (775-323-4082), Robbins Geller Rudman & Dowd LLP (619-231-7423), Fennemore Craig, P.C. (702-692-8099), Ballard Spahr (702-471-7070)

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Other Business Court Matters

COURT MINUTES

August 02, 2018

A-16-733154-B	Dixon Chung, Plaintiff(s) vs. Newport Corp, Defendant(s)
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August 02, 2018	3:00 AM	Minute Order
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HEARD BY: Allf, Nancy	COURTROOM: No Location
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COURT CLERK: Alice Jacobson

RECORDER:

REPORTER:

**PARTIES
PRESENT:**

JOURNAL ENTRIES

- COURT FINDS after review on May 18, 2018 Plaintiff filed Plaintiff s Motion for Class Certification and Memorandum of Points and Authorities in Support Thereof (Original Motion).

COURT FURTHER FINDS after review on June 19, 2018 the parties filed a Stipulation and Order Setting Briefing Schedule and Hearing on Plaintiffs Motion for Class Certification (Stipulation) setting a briefing schedule on the Original Motion, and setting the hearing for September 27, 2018 at 9:00 a.m. on Motions Calendar.

COURT FURTHER FINDS after review on July 12, 2018 Plaintiff filed Plaintiff s Amended Motion for Class Certification and Memorandum of Points and Authorities in Support Thereof (Amended Motion), and a hearing was set for August 15, 2018 at 9:30 a.m. on Motions Calendar.

COURT FURTHER FINDS after review the date master calendar set for the Amended Motion to be heard is prior to the hearing date the parties originally stipulated to.

COURT ORDERS for good cause appearing and after review pursuant to the stipulated hearing date, and the interests of judicial economy and minimizing legal fees for all parties, all matters currently set for August 15 and 16, 2018 are CONTINUED to September 27, 2018 at 9:30 a.m. on Motions Calendar.

The Court will hear all matters together.

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Other Business Court Matters

COURT MINUTES

September 24, 2018

A-16-733154-B	Dixon Chung, Plaintiff(s)
	vs.
	Newport Corp, Defendant(s)

September 24, 2018	3:00 AM	Minute Order	Minute Order: Matters set 9/27/2018
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HEARD BY: Allf, Nancy **COURTROOM:** No Location

COURT CLERK: Nicole McDevitt

RECORDER:

REPORTER:

**PARTIES
PRESENT:**

JOURNAL ENTRIES

- COURT FINDS after review on May 18, 2018 Plaintiff filed Plaintiff s Motion for Class Certification and Memorandum of Points and Authorities in Support Thereof (Original Motion).

COURT FURTHER FINDS after review on June 19, 2018 the parties filed a Stipulation and Order Setting Briefing Schedule and Hearing on Plaintiffs Motion for Class Certification (Stipulation) setting a briefing schedule on the Original Motion, and setting the hearing for September 27, 2018 on Motions Calendar.

COURT FURTHER FINDS after review that since the filing of the Original Motion and Stipulation, various other matters have been filed with the Court and set for hearing on September 27, 2018 on Motions Calendar.

COURT ORDERS for good cause appearing and after review that on or before September 26, 2018 the parties shall agree to and jointly file with the Court a stipulation setting forth the order in which each of the matters set for hearing on September 27, 2018 shall be argued.

CLERK'S NOTE: This Minute Order was electronically served by Courtroom Clerk, Nicole McDevitt,

to all registered parties for Odyssey File & Serve. /nm

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Other Business Court Matters

COURT MINUTES

September 27, 2018

A-16-733154-B Dixon Chung, Plaintiff(s)
vs.
Newport Corp, Defendant(s)

September 27, 2018 10:30 AM All Pending Motions

HEARD BY: Allf, Nancy **COURTROOM:** RJC Courtroom 03A

COURT CLERK: Nicole McDevitt

RECORDER: Brynn White

REPORTER:

PARTIES

PRESENT:

Byrd, Christopher H.	Attorney
Davis, Colin B.	Attorney
Knotts, David A.	Attorney
LaComb, Timothy Z.	Attorney
Lutz, Brian M.	Attorney
O'Mara, David C.	Attorney

JOURNAL ENTRIES

- MOTION TO SEAL DEFENDANTS' REPLY IN SUPPORT OF THEIR MOTION TO STRIKE THE JOINDER IN PLAINTIFF'S MOTION FOR CLASS CERTIFICATION...MOTION TO FILE PLAINTIFFS' REPLY BRIEF IN SUPPORT OF THEIR MOTION FOR CLASS CERTIFICATION AND JOINDER UNDER SEAL...MOTION TO FILE PLAINTIFFS' OPPOSITION TO DEFENDANTS' MOTION TO STRIKE THE JOINDER IN PLAINTIFF'S MOTION FOR CLASS CERTIFICATION UNDER SEAL...MOTION TO SEAL DEFENDANTS' OPPOSITION TO PLAINTIFF'S AMENDED MOTION FOR CLASS CERTIFICATION...DEFENDANTS' MOTION TO STRIKE THE JOINDER IN PLAINTIFF'S MOTION FOR CLASS CERTIFICATION...DEFENDANT'S MOTION TO FILE PLAINTIFF'S AMENDED MOTION FOR CLASS CERTIFICATION AND MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT THEREOF UNDER SEAL...MOTION TO SEAL DEFENDANTS' OPPOSITION TO PLAINTIFF'S MOTION FOR CLASS CERTIFICATION AND APPENDIX IN SUPPORT, AND MOTION TO STRIKE THE JOINDER IN PLAINTIFF'S MOTION FOR CLASS CERTIFICATION...PLAINTIFFS' AMENDED MOTION FOR CLASS CERTIFICATION

AND MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT THEREOF...JOINDER TO PLAINTIFFS' MOTION FOR CLASS CERTIFICATION...MOTION TO FILE PLAINTIFF'S MOTION FOR CLASS CERTIFICATION AND MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT THEREOF UNDER SEAL...PLAINTIFF'S MOTION FOR CLASS CERTIFICATION AND MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT THEREOF

Court noted the motions to seal are unopposed and ORDERED, Motion to Seal Defendants' Reply in Support of their Motion to Strike the Joinder in Plaintiff's Motion for Class Certification, Motion to File Plaintiffs' Reply Brief in Support of their Motion for Class Certification and Joinder Under Seal, Motion to file Plaintiffs' Opposition to Defendants' Motion to Strike the Joinder in Plaintiff's Motion for Class Certification Under Seal, Motion to Seal Defendants' Opposition to Plaintiff's Amended Motion for Class Certification, Defendant's Motion to File Plaintiff's Amended Motion for Class Certification, Memorandum of Points and Authorities in Support thereof Under Seal, Motion to Seal Defendants' Opposition to Plaintiff's Motion for Class Certification and Appendix in Support, and Motion to Strike the Joinder in Plaintiff's Motion for Class Certification, and Motion to File Plaintiff's Motion for Class Certification and Memorandum of Points and Authorities in Support thereof Under seal GRANTED.

Arguments by Mr. O'Mara, Mr. Lutz, and Mr. Knotts regarding the merits of and oppositions to remaining motions.

Court stated its findings and ORDERED, Defendants' Motion to Strike the Joinder in Plaintiff's Motion for Class Certification DENIED; Plaintiff's Motion for Class Certification and Memorandum of Points and Authorities in Support Thereof and Plaintiffs' Amended Motion for Class Certification and Memorandum of Points and Authorities in Support Thereof GRANTED and Court will prepare a written decision. COURT ORDERED, matter SET on chambers calendar for written decision. Plaintiff's counsel to prepare the order however, to wait until Court has prepared its written decision.

10/16/2018 (CHAMBERS) DECISION: PLAINTIFF'S MOTION FOR CLASS CERTIFICATION AND MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT THEREOF UNDER SEAL AND PLAINTIFF'S AMENDED MOTION FOR CLASS CERTIFICATION AND MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT THEREOF

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Other Business Court Matters

COURT MINUTES

January 03, 2019

A-16-733154-B Dixon Chung, Plaintiff(s)
vs.
Newport Corp, Defendant(s)

January 03, 2019 11:00 AM Motion to Compel

HEARD BY: Allf, Nancy **COURTROOM:** RJC Courtroom 03A

COURT CLERK: Nicole McDevitt

RECORDER: Brynn White

REPORTER:

PARTIES

PRESENT: Byrd, Christopher H. Attorney
 Davis, Colin B. Attorney
 Knotts, David A. Attorney
 LaComb, Timothy Z. Attorney
 Lutz, Brian M. Attorney
 O'Mara, David C. Attorney

JOURNAL ENTRIES

- MOTION TO SEAL PLAINTIFFS' MOTION TO COMPEL DEFENDANTS TO SEARCH FOR RELEVANT ELECTRONIC EVIDENCE AND THE AFFIDAVIT OF TIMOTHY Z LACOMB IN SUPPORT THEREOF...PLAINTIFFS MOTION TO COMPEL DEFENDANTS TO SEARCH FOR RELEVANT ELECTRONIC EVIDENCE

There being no opposition, COURT ORDERED, Motion to Seal Plaintiffs' Motion to Compel Defendants To Search for Relevant Electronic Evidence and the Affidavit of Timothy Z Lacombe in Support Thereof GRANTED.

Arguments by Mr. Knotts and Mr. Davis regarding the merits of and opposition to the motion to compel. Court stated its findings and ORDERED, Plaintiffs Motion to Compel Defendants to Search for Relevant Electronic Evidence GRANTED IN PART as to Mr. Phillippy's personal e-mail and what the gmail account referenced, and with regard to any text on Mr. Phillippy's personal or business

phone; DENIED IN PART WITHOUT PREJUDICE with regard to the other members of the board.
Plaintiff's counsel to prepare the order and submit it to opposing counsel for approval

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Other Business Court Matters

COURT MINUTES

April 23, 2019

A-16-733154-B	Dixon Chung, Plaintiff(s) vs. Newport Corp, Defendant(s)
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April 23, 2019

3:00 AM

Minute Order

**Minute Order:
Motion to Associate
Counsel set 4/24/2019
GRANTED and
VACATED**

HEARD BY: Allf, Nancy

COURTROOM: No Location

COURT CLERK: Nicole McDevitt

RECORDER:

REPORTER:

**PARTIES
PRESENT:**

JOURNAL ENTRIES

- COURT FINDS after review on April 18, 2019, the Motion to Associate Counsel on Order Shortening Time (Motion to Associate) was filed with the Court and the matter was set on Motions Calendar for April 24, 2019 at 9:30 a.m.

COURT FURTHER FINDS after review that the Motion to Associate was served upon the parties on April 18, 2019 pursuant to the Certificate of Service attached thereto.

COURT FURTHER FINDS after review EDCR 2.20(e) provides in relevant part: Failure of the opposing party to serve and file written opposition may be construed as an admission that the motion and/or joinder is meritorious and a consent to granting the same.

COURT FURTHER FINDS after review no opposition to the Motion to Associate has been filed.

COURT FURTHER FINDS after review that on April 22, 2019 the Notice of Non-Opposition to

Defendant s Motion to Associate Counsel [Katie Magallanes] was filed with the Court

COURT ORDERS for good cause appearing and after review pursuant to the merits of the Motion and EDCR 2.20(e), the Motion to Associate is hereby GRANTED and the hearing set on Motions Calendar for April 24, 2019 at 9:30 a.m. is hereby VACATED. Movant to prepare the Order in compliance with EDCR 7.21.

CLERK'S NOTE: This Minute Order was electronically served by Courtroom Clerk, Nicole McDevitt, to all registered parties for Odyssey File & Serve. /nm 4/23/2019

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Other Business Court Matters

COURT MINUTES

May 01, 2019

A-16-733154-B Dixon Chung, Plaintiff(s)
vs.
Newport Corp, Defendant(s)

May 01, 2019 10:30 AM Motion to Amend

HEARD BY: Allf, Nancy **COURTROOM:** RJC Courtroom 03A

COURT CLERK: Nicole McDevitt

RECORDER: Brynn White

REPORTER:

PARTIES

PRESENT: Knotts, David A. Attorney
LaComb, Timothy Z. Attorney
Lutz, Brian M.
O'Mara, David C. Attorney
Planet, Brandi M. Attorney

JOURNAL ENTRIES

- Upon inquiry of Court, Mr. Lutz addressed the timeliness of the motion and why the motion was filed as a motion to amend. Arguments by Mr. Lutz and Mr. Knotts regarding the merits of and opposition to the motion. Court stated it would consider Defendants' Motion to Amend the Order Setting Civil Jury Trial, Pre-Trial and Calendar Call as a Motion to strike the Jury. Court stated its findings and ORDERED, motion GRANTED. Mr. Lutz to prepare the order, either a simple form or with findings, and submit it to opposing counsel for approval.

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Other Business Court Matters

COURT MINUTES

October 10, 2019

A-16-733154-B Dixon Chung, Plaintiff(s)
vs.
Newport Corp, Defendant(s)

October 10, 2019 11:00 AM Motion for Leave

HEARD BY: Allf, Nancy **COURTROOM:** RJC Courtroom 03A

COURT CLERK: Nicole McDevitt

RECORDER: Brynn White

REPORTER:

**PARTIES
PRESENT:**

JOURNAL ENTRIES

- PLAINTIFF'S MOTION FOR LEAVE TO AMEND THE SECOND AMENDED COMPLAINT...PLAINTIFFS' MOTION TO SEAL PLAINTIFFS' MOTION FOR LEAVE TO AMEND THE SECOND AMENDED COMPLAINT AND APPENDIX OF EXHIBITS

PLAINTIFFS' MOTION TO SEAL PLAINTIFFS' MOTION FOR LEAVE TO AMEND THE SECOND AMENDED COMPLAINT AND APPENDIX OF EXHIBITS

Court stated no argument was needed and ORDERED, Plaintiffs' Motion to Seal Plaintiffs' Motion for Leave to Amend the Second Amended Complaint and Appendix of Exhibits GRANTED. COURT FURTHER ORDERED, Plaintiff's Motion to Seal Plaintiffs' Reply Brief in Support of Motion for eave to Amend the Second Amended Complaint and Declaration of David C. O'Mara in Further Support set on November 6, 2019 and Defendant's Motion to Seal Defendants' Motion for Summary Judgment and Certain Exhibits in the Appendix of Exhibits in Support of Defendants' Motion for Summary Judgment SET November 21, 2019 GRANTED and those matters are VACATED.

PLAINTIFF'S MOTION FOR LEAVE TO AMEND THE SECOND AMENDED COMPLAINT Arguments by Mr. Knotts and Mr. Lutz regarding the merits of and opposition to the motion. Court stated its findings and ORDERED, Plaintiff's Motion for Leave to Amend the Second Amended Complaint DENIED. Colloquy regarding Court's ruling. Court directed counsel to provide un-

redacted briefs on a disc or drive to the Court a week before the hearing for Motion for Summary Judgment and ORDERED, Motion for Summary Judgment moved to 1:30 p.m. on November 21, 2019. Court directed counsel bring availability for trial to the hearing so trial can be scheduled.

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Other Business Court Matters

COURT MINUTES

November 21, 2019

A-16-733154-B Dixon Chung, Plaintiff(s)
vs.
Newport Corp, Defendant(s)

November 21, 2019 1:30 PM All Pending Motions

HEARD BY: Allf, Nancy **COURTROOM:** RJC Courtroom 03A

COURT CLERK: Nicole McDevitt

RECORDER: Brynn White

REPORTER:

PARTIES

PRESENT: Fetaz, Maximilien D. Attorney
 Knotts, David A. Attorney
 O'Mara, David C. Attorney

JOURNAL ENTRIES

- APPEARANCES CONTINUED: Andrew Mundt, Esq. present with Plaintiff's counsel. Colin Davis, Esq. and Brian Lutz, Esq. present for Defendant Pro Hoc Vice.

DEFENDANTS' MOTION TO STRIKE ON ORDER SHORTENING TIME ... DEFENDANTS' MOTION FOR SUMMARY JUDGMENT ... STATUS CHECK

Mr. Lutz argues Plaintiff exceeded the page limit and the separate statement violated NRCP 2.20(a). Mr. Knotts argues based on his reading of the law there was not violation. COURT ORDERED, Motion to Strike is DENIED.

Following arguments by counsel, COURT ORDERED, MATTER TAKEN UNDER ADVISEMENT and CONTINUED to chambers on 12/10/19. COURT FURTHER ORDERED, Status Check CONTINUED.

12/10/19 DEFENDANT'S MOTION FOR SUMMARY JUDGEMENT (CHAMBERS)

12/10/19 STATUS CHECK (CHAMBERS)

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Other Business Court Matters

COURT MINUTES

December 09, 2019

A-16-733154-B Dixon Chung, Plaintiff(s)
vs.
Newport Corp, Defendant(s)

December 09, 2019 4:30 PM Minute Order

**Request for In
Chamber Hearing on
Motion to Seal Errata
to Defendant's
Motion for Summary
Judgment...Request
for In Chambers
Hearing on Motion to
Seal (1) Defendants'
Reply in Support of
there Motion for
Summary Judgment
and (2) Declaration of
Brian M. Lutz in
Support of
Defendant's Reply in
Support of their
Motion for Summary
Judgment**

HEARD BY: Allf, Nancy

COURTROOM: RJC Courtroom 03A

COURT CLERK: Denise Husted

RECORDER:

REPORTER:

PARTIES

PRESENT:

JOURNAL ENTRIES

- COURT FINDS after review that on December 6, 2019, the Motion to Seal Defendants (1) Motion In

PRINT DATE: 02/20/2020

Page 44 of 50

Minutes Date: April 14, 2016

Limine No. 1; (2) Motion In Limine No. 2; (3) Declaration Of Maximilien D. Fetaz, Esq. In Support Of Defendants Motions In Limine Nos. 1 And 2; And (4) Exhibits 2 4, 6, And 9 To The Appendix Of Exhibits In Support Of Defendants Motions In Limine Nos. 1 And 2; and on November 5, 2019, a Request for In Chambers Hearing on Motion to Seal Errata to Defendants Motion for Summary Judgment were filed with the Court (collectively the Motions to Seal).

COURT FURTHER FINDS after review that the Motions to Seal were set on Motions Calendar for December 11, 2019 at 9:30 a.m.

COURT FURTHER FINDS after review that the Motions to Seal were served on December 6, 2019 and on November 5, 2019, respectively, pursuant to the Certificates of Service attached thereto.

COURT FURTHER FINDS after review EDCR 2.20(e) provides in relevant part: [f]ailure of the opposing party to serve and file written opposition may be construed as an admission that the motion and/or joinder is meritorious and a consent to granting the same.

COURT FURTHER FINDS after review no oppositions to the Motions to Seal have been filed.

THEREFORE, COURT ORDERS for good cause appearing and after review pursuant to the merits of the motions and EDCR 2.20(e), the Motions to Seal are hereby GRANTED, and the matters set for Motions Calendar on December 11, 2019 at 9:30 a.m. are hereby VACATED. Movant to prepare the respective Orders in compliance with EDCR 7.21.

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Other Business Court Matters

COURT MINUTES

December 10, 2019

A-16-733154-B Dixon Chung, Plaintiff(s)
vs.
Newport Corp, Defendant(s)

December 10, 2019 3:00 AM Minute Order

HEARD BY: Alf, Nancy

COURTROOM: No Location

COURT CLERK: Nicole McDevitt

RECORDER:

REPORTER:

**PARTIES
PRESENT:**

JOURNAL ENTRIES

- COURT FINDS after review that Defendant s Motion for Summary Judgment (the Motion for Summary Judgment) was filed on August 23, 2019.

COURT FURTHER FINDS after review that the Court heard oral arguments on the Motion for Summary Judgment on November 21, 2019. The Court took the matter under submission and set a Status Check for December 10, 2019 on Chambers Calendar for the Court to issue a Minute Order with its decision.

COURT FURTHER FINDS after review that under Nevada s business judgment rule, directors and officers, in deciding upon matters of business, are presumed to act in good faith, on an informed basis and with a view to the interests of the corporation. See, NRS 78.138(3).

COURT FURTHER FINDS after review that the business judgment rule does not only protect individual directors from personal liability, rather, it expresses a sensible policy of judicial noninterference with business decisions and is designed to limit judicial involvement in business decision-making so long as a minimum level of care is exercised in arriving at the decision. Wynn Resorts, Ltd v. Eighth Jud. Dist. Ct., 133 Nev. 369, 375 (2017). Specifically, it prevents a court from replac[ing] a well-meaning decision by a corporate board with its own decision. Id.; see also Lamden

v. La Jolla Shores Clubdominium Homeowners Ass'n, 21 Cal.4th 249, 87 Cal.Rptr.2d 237, 980 P.2d 940, 945 (1999) (A hallmark of the business judgment rule is that, when the rule's requirements are met, a court will not substitute its judgment for that of the corporation's board of directors.).

COURT FURTHER FINDS after review in order to rebut Nevada s business judgment rule, the Plaintiffs must provide prima facie evidence that the Board s decision to approve the merger in the underlying case was either (1) the product of fraud, (2) the product of self-interest, or (3) that the directors failed to exercise due care in reaching its decision. Wynn Resorts, 133 Nev. at 377.

COURT FURTHER FINDS after review that despite Plaintiff s claims of self-interest, there is no direct material evidence against any of the Newport directors to rebut Nevada s business judgment rule.

COURT FURTHER FINDS after review that there is no material evidence that any of the directors, including Directors Potashner and Phillippy, failed to exercise due care. The merger came about following a nine-month sale process and with 16 board meetings, whether full board or committee meetings, which included financial and legal advisors to approve the sale. As such, the evidence supports that at least a minimum level of care was exercised in arriving at the merger decision.

COURT FURTHER FINDS after review that the merger was not the product of self-interest or fraud. With respect to Mr. Phillippy and Mr. Potashner, the Court does not find that material discussions regarding employment or related compensation with MKS took place. And, any post-close employment discussions after the signing of the merger are not relevant in the Court s analysis. Similarly, there is no material evidence regarding Phillippy s or Potashner s intent to deceive or defraud the Board.

THEREFORE, COURT ORDERS for good cause appearing and after review that the Motion for Summary Judgment is hereby GRANTED in its entirety as to Directors Potashner, Cox, Kadia, Khaykin, Simone, and Phillippy.

COURT FURTHER ORDERS for good cause appearing and after review that Defendants are directed to prepare and submit an order containing detailed findings of fact and conclusions of law (Order) based upon the Court s decision as clarified herein. Defendants are further ordered to provide opposing counsel with the proposed Order on or before January 3, 2020, from which date Plaintiffs shall have ten (10) days to review and approve said Order as to form before the Order is submitted to the Court.

COURT FURTHER ORDERS that the Status Check set for December 10, 2019 on Chambers Calendar is hereby VACATED.

CLERK'S NOTE: This Minute Order was electronically served by Courtroom Clerk, Nicole McDevitt, to all registered parties for Odyssey File & Serve. /nm 12/10/2019

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Other Business Court Matters

COURT MINUTES

December 17, 2019

A-16-733154-B	Dixon Chung, Plaintiff(s) vs. Newport Corp, Defendant(s)
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December 17, 2019	3:00 AM	Minute Order	Minute Order: Status check set 12/19/2020 VACATED
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HEARD BY: Alf, Nancy

COURTROOM: No Location

COURT CLERK: Nicole McDevitt

RECORDER:

REPORTER:

**PARTIES
PRESENT:**

JOURNAL ENTRIES

- COURT FINDS after review that Defendant s Motion for Summary Judgment (the Motion for Summary Judgment) was filed on August 23, 2019.

COURT FURTHER FINDS after review that the Court heard oral arguments on the Motion for Summary Judgment on November 21, 2019. The Court took the matter under submission and issued a Minute Order with its decision on December 10, 2019 granting the Motion for Summary Judgment.

THEREFORE, COURT ORDERS for good cause appearing and after review in light of the Court s decision, the Status Check set for December 19, 2019 at 10:00 a.m. regarding trial readiness is hereby VACATED.

CLERK'S NOTE: This Minute Order was electronically served by Courtroom Clerk, Nicole McDevitt, to all registered parties for Odyssey File & Serve. /nm

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Other Business Court Matters

COURT MINUTES

January 02, 2020

A-16-733154-B Dixon Chung, Plaintiff(s)
vs.
Newport Corp, Defendant(s)

January 02, 2020 10:30 AM Calendar Call

HEARD BY: Sturman, Gloria

COURTROOM: RJC Courtroom 10D

COURT CLERK: Nicole McDevitt

RECORDER: Brynn White

REPORTER:

PARTIES

PRESENT:

JOURNAL ENTRIES

- There being no parties present, and due to the Motion for Summary Judgment being granted,
COURT ORDERS, Calendar Call OFF CALENDAR.

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Other Business Court Matters

COURT MINUTES

January 30, 2020

A-16-733154-B Dixon Chung, Plaintiff(s)
vs.
Newport Corp, Defendant(s)

January 30, 2020 3:00 PM Motion

HEARD BY: Allf, Nancy **COURTROOM:** RJC Courtroom 03A

COURT CLERK: Carolyn Jackson

RECORDER: Brynn White

REPORTER:

PARTIES

PRESENT: Knotts, David A. Attorney

JOURNAL ENTRIES

- David O'Mara, Esq. and Christopher Lyons, Esq., Attorneys for Plaintiff; Maximilien D. Fetaz, Esq. and Colin Davis, Esq., Attorneys for Defendant, also present by Conference Call.

Mr. Knotts advised the Defendant filed a Memorandum of Costs for over \$2.6 Million containing more than 2,000 pages of exhibits and Defendant denied Plaintiff's request for additional time to review the Memorandum. Further, Mr. Knotts argued, due to the voluminous number of exhibits, the Plaintiff believed good cause exists for an extension. Mr. Davis advised the Plaintiff requested a 45-day extension and Defendant offered a 15-day extension which was rejected by the Plaintiff. Further, Mr. Davis argued a 45-day extension would delay resolution of this matter as the Defendant intends to file a Motion for Attorney's Fees and Costs. Following arguments by counsel, Court stated its FINDINGS and ORDERED, Plaintiff's Motion GRANTED; Mr. Knotts to prepare the Order. COURT FURTHER ORDERED, Plaintiff's Motion to Retax Costs and Defendant's Motion for Attorney's Fees and Costs to be filed by 03/20/20.

EXHIBIT(S) LIST

Case No.: A 733154

Dept. No.: 27

Plaintiff: Dixon Chung

Hearing / Trial Date: 12-7-17

Judge: Nancy Alf

Court Clerk: Sharon Chun

Recorder / Reporter: Brynn Griffiths

Counsel for Plaintiff: D. Knotts, et al

VS.

Defendant: Newport Corp

Counsel for Defendant: Brian Lutz et al

HEARING / TRIAL BEFORE THE COURT

Count's

EXHIBITS

[illegible]

EXHIBIT(S) LIST

Case No.:

A733154

Hearing / Trial Date:

10-10-19

Dept. No.:

27

Judge:

Nancy Allf

Court Clerk:

Nicole McDewitt

Plaintiff:

Dixon Chung

Recorder / Reporter:

Brynn White

Counsel for Plaintiff:

David Knotts

Defendant:

Newport Corp

Counsel for Defendant:

Brian Lutz,

Collin Davis, Maximilien Fetaz

vs.

HEARING / TRIAL BEFORE THE COURT

Court's

EXHIBITS

[illegible]



EIGHTH JUDICIAL DISTRICT COURT CLERK'S OFFICE
NOTICE OF DEFICIENCY
ON APPEAL TO NEVADA SUPREME COURT

DAVID C. O'MARA
311 E. LIBERTY ST.
RENO, NV 89501

DATE: February 20, 2020
CASE: A-16-733154-B
C/W A-16-734039-B

RE CASE: In re NEWPORT CORPORATION SHAREHOLDER LITIGATION

NOTICE OF APPEAL FILED: February 18, 2020

YOUR APPEAL HAS BEEN SENT TO THE SUPREME COURT.

PLEASE NOTE: DOCUMENTS **NOT TRANSMITTED HAVE BEEN MARKED:**

- ☒ \$250 – Supreme Court Filing Fee (Make Check Payable to the Supreme Court)**
 - If the \$250 Supreme Court Filing Fee was not submitted along with the original Notice of Appeal, it must be mailed directly to the Supreme Court. The Supreme Court Filing Fee will not be forwarded by this office if submitted after the Notice of Appeal has been filed.
- ☐ \$24 – District Court Filing Fee (Make Check Payable to the District Court)**
- ☒ \$500 – Cost Bond on Appeal (Make Check Payable to the District Court)**
 - NRAP 7: Bond For Costs On Appeal in Civil Cases
- ☐ Case Appeal Statement
 - NRAP 3 (a)(1), Form 2
- ☐ Order
- ☐ Notice of Entry of Order

NEVADA RULES OF APPELLATE PROCEDURE 3 (a) (3) states:

"The district court clerk must file appellant's notice of appeal despite perceived deficiencies in the notice, including the failure to pay the district court or Supreme Court filing fee. The district court clerk shall apprise appellant of the deficiencies in writing, and shall transmit the notice of appeal to the Supreme Court in accordance with subdivision (g) of this Rule with a notation to the clerk of the Supreme Court setting forth the deficiencies. Despite any deficiencies in the notice of appeal, the clerk of the Supreme Court shall docket the appeal in accordance with Rule 12."

Please refer to Rule 3 for an explanation of any possible deficiencies.

*****Per District Court Administrative Order 2012-01, in regards to civil litigants, "...all Orders to Appear in Forma Pauperis expire one year from the date of issuance." You must reapply for in Forma Pauperis status.***

Certification of Copy

State of Nevada }
County of Clark } SS:

I, Steven D. Grierson, the Clerk of the Court of the Eighth Judicial District Court, Clark County, State of Nevada, does hereby certify that the foregoing is a true, full and correct copy of the hereinafter stated original document(s):

NOTICE OF APPEAL; CASE APPEAL STATEMENT; DISTRICT COURT DOCKET ENTRIES; CIVIL COVER SHEET; FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER GRANTING DEFENDANTS' MOTION FOR SUMMARY JUDGMENT; NOTICE OF ENTRY OF FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER GRANTING DEFENDANTS' MOTION FOR SUMMARY JUDGMENT; ORDER DENYING PLAINTIFFS' MOTION FOR LEAVE TO AMEND THE SECOND AMENDED COMPLAINT; NOTICE OF ENTRY OF ORDER; ORDER STRIKING THE JURY DEMAND AND AMENDING THE ORDER SETTING CIVIL JURY TRIAL, PRE-TRIAL AND CALENDAR CALL; NOTICE OF ENTRY OF ORDER; DISTRICT COURT MINUTES; EXHIBITS LIST; NOTICE OF DEFICIENCY

In re NEWPORT CORPORATION
SHAREHOLDER LITIGATION,

Case No: A-16-733154-B
Consolidated with A-16-734039-B
Dept No: XXVII

now on file and of record in this office.

IN WITNESS THEREOF, I have hereunto
Set my hand and Affixed the seal of the
Court at my office, Las Vegas, Nevada
This 20 day of February 2020.

Steven D. Grierson, Clerk of the Court



Heather Ungermann, Deputy Clerk